

Azerbaijan
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**Review of 3rd periodical report of the Republic of Azerbaijan on
Implementation of International Covenant on Economic, Social, and Cultural rights**



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About report

The information covers an alternative and independent report to Azerbaijani 3rd periodical report on execution of international Covenant on economical, economic and cultural rights. Some worrying facts and issues on conventional provisions are presented in the report.

The information was prepared by Education on Human Rights Public Association. Local legislation, state programs, reports on these programs, unrevoked media information, decisions and statements of state bodies and officials, also reports of NGOs functioning at the relevant fields were used in order to prepare this information.

Reports and opinions of following NGOs were used during preparation of the information:

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Education for Human Rights Public Association is deeply thankful the commitment by the abovementioned NGOs in preparation of this report.

The correctness and veracity of information was in all cases in the center of attention while preparing this report. The information, opinions and findings were assured by various sources and their correctness was analyzed.

Abbreviation

EHR - Education on Human Rights Public Association
SOCAR – State Oil Company of the Republic of Azerbaijan

Positive aspects

EHR highly regards the adopted **National Action Program to increase efficiency of protection of human rights and freedoms** by Presidential decree and considers it as an important document that will promote protection and realization of human rights and freedoms in Azerbaijan in accordance with international human rights standards. But we also consider that the efficiency of the National Program will solely and directly depend on creation of executive and monitoring mechanisms, as well as provision of participation of NGOs, especially independent civil society members.

EHR notes with appreciation of the submission Ombudsman's first Alternative Report on economic, social and cultural rights.

Concluding observations of the Committee on Economic, Social and Cultural Rights of the 2nd Azerbaijani government's periodical report: Azerbaijan E/C.12/1/Add.104 (14 December 2004)

EHR's comments to recommendations, proposal and suggestions regarding concluding observations of the 2nd Azerbaijani periodical report

1. EHR expresses its regrets that following vulnerable issues in Committee's concluding observations regarding 2nd periodical report of the Azerbaijani government are still in serious and vulnerable state.

2. EHR regretfully notes that previous recommendations E/C.12/1/Add.104 (14 December 2004) have not been followed, it is concerned that many of them have not been addressed, serious concerns regarding lack of independence of the judiciary and the persistence and the extent of corruption in the State party, lack of domestic application of Covenant, low level of social benefits and increasing of forced evictions in the background of beautification projects and ahead of Eurovision song Contest main worrying this report.

3. EHR regretfully notes that lack of judicial practice and precedent which has directly applied the Covenant is negatively influence proper application of Covenant in the country.

4. EHR notes with particular concern that law-enforcement and judicial bodies have refused to directly apply the provisions of the Covenant, particularly right to adequate housing and provision to prevent of forced evictions and home demolitions.

Regarding the paragraph 13 of the Concluding Observations.

5. Citizens lack opportunities of efficient trial protection in case of mass violation of economic and social rights as a result of lack of independent judiciary government, as well as systematic corruption and failed governance. The situation still continues to exist.

Regarding the paragraph 15 of the Concluding Observations.

6. EHR is also concerned about the legal status of a significant number of long-term residents in the State party who remain stateless. We regret to express that, there are number of young people that served in the army but still not able to gain citizenship in Azerbaijan. According to unofficial information, the government is in political position to prevent mass migration of Georgian and Iranian citizens to Azerbaijan by not giving them citizenship. (More in info is

below/ and for full report please visit following address: For full report (in English) visit http://migration-az.org/upload/files/report_in_eng.doc)

Regarding the paragraph 18 of the Concluding Observations.

7. Lack of legislative provisions ensuring access of persons with disabilities to the labor market not adopted yet. (Comprehensive coverage in the following information on general comments no. 5)

Regarding the paragraph 54 of the Concluding Observations.

8. Despite the Committee regrets the lack of information on forced deportation and demands the government to provide such information in the next, 3rd periodical report, Azerbaijani government chose to remain silent regarding information on vulnerable situation in the country in the current report.

9. EHR also expresses its regrets to stress that the Ombudsman's expression regarding disturbance on forced deportation under provision of adequate housing, page 35, paragraph 8.1, was not satisfying.

Regarding the paragraph 2.2 of the Covenant

10. Discrimination based on political identity still exists as the most popular and unsolved problem in Azerbaijan. Dangerous level of such discrimination shall easily be expressed by mentioning the two incidents in latest months:

11. Fact 1 – on March 6, 2012, Azerbaijan Popular Front Party (APFP) activists' peaceful demonstration calling for 'freedom to prisoners of conscience' ended up in violent use of force against young men Dayanat Babayev and Jabbar Savalanli and they were hospitalized. Babayev had his ribs broken and Savalanli with serious damage to his head. But lately Dayanat Babayev expressed to newspaper Azadlyg that they were refused to provide medical statement on damages they had suffered.

12. Fact 2 - Doctors in Nakhchivan refuse to treat a depressed person that tries to commit suicide as he was an opposition. Any of the hospitals of Autonomous Republic of Nakhchivan refuse to treat Sevindik Ahmadov, a resident of village Qorchulu, Sharur district that suffered grave economic problems and tries to commit suicide. The reason was his membership of APFP. He was also expelled from Nakhchivan Psychic Illnesses dispenser as he was brought in a critical condition. A human rights defender, Mr. Ilgar Nasibov told to Turan informational agency. According to him, it was against humanity and doctoral oath to immediately banish Sevindik Ahmadov from the dispenser by even not informing his family members: 'He was already out when we had arrived at dispenser. It was evident that he was in critical situation.'

Report on causes and cases of statelessness in the Republic of Azerbaijan. Obtained from site of Azerbaijan Migration Center.

13. Current Situation on statelessness

- Lack of responsible body for statelessness issues.
- Although there are enough legislative acts regulating the relations with regard to stateless persons, these acts do not define the rules or process of documenting individuals who become stateless after 1st January 1992.
- According to the current legislation, since 01 January 1992 stateless persons who have obtained permanent permission to reside in Azerbaijan have been provided with ID documents by the Ministry of Internal Affairs ('MIA').
- Stateless persons who permanently reside in other States and come to Azerbaijan for temporary residence are provided with a residence permit by the State Migration Service ('SMS').
 - At present, neither the MIA nor the SMS accept applications of, or provide documents for, individuals who became stateless after 1992 and do not document them. Even individuals provided with stateless person ID cards by the Ministry of Internal Affairs from 1992 to 2007 are not recognized as stateless persons by SMS.
- Lack of Database on stateless persons and information collected by AMC
- Since 1992 there has not been an authority responsible for the documentation of persons who have become stateless, and as a result there is no information about the exact

number of stateless persons in the country. Until now neither the authorities nor international organizations or non-governmental organizations have held any examination to try and determine the extent of the problem.

14. There is currently no formal mechanism for determining statelessness in Azerbaijan. In the absence of a determination procedure, individuals affected by statelessness can be trapped in a legal limbo for years. As they have lost the citizenship of the country in which they were born, these persons are unable to return back to that country.

15. Living undocumented or with undefined status deprives a person of many of their rights. Undocumented persons are unable to sign a labor contract or contracts that require the approval of notary, and they cannot use their rights to medical and legal assistance or their right to a pension. In cases when they face coercion and other violations they dare not risk applying to law-enforcement bodies as they live without valid documents. As a result, they gradually become dependent on others and often become victims of various crimes, including human trafficking.

For full report (in english) visit http://migration-az.org/upload/files/report_in_eng.doc

Regarding the implementation of the provisions 6-8 of the Covenant

Findings of the report on situation of human rights in oil-industry sector by Oil Workers' Rights Protection Organization.

16. Aid Foundation to Armed Forces exists in Azerbaijan. According to the statute of this Foundation, collected aid may be directed to development of material-technical basis of Armed Forces, preparation of military materials, their examination, production, repairing and modernization, conducting military scientific-researches and constructor-testing works, purchase of military technology, weapons and tools, preparation of martial specialists, their education, as well as solution of social and household problems of military men.

17. According to monitoring by Organization for protection of oil-industry workers' rights it was obvious that trade union of SOCAR headquarters and workers adopted a decision on April 12, 2010, to collect 2% of their monthly wages and to transfer to the Foundation. It was verbally expressed to the workers of SOCAR departments and institutions that such collections are temporary (for two months) and the goal was to people that suffered as a result of over flooding of Kura river (**please also see to evaluate the state actions to overcome the results of natural disaster: the report by Ombudsman**). But as the workers obtained documents regarding their salaries, one of the emissions in amount of 2% could not be explained (only 'sq.' was mentioned in document). Lately such emissions become permanent and continue for a year. Considering that the SOCAR had 71,585 contractual workers till January 1st, 2010 (now it is almost 85,000 as 'Azerkimya' Production Union also joined the SOCAR) and average monthly wage consisted of 533,66 AZN in 2009 (the year of 2010 is not yet known), then monthly salary fund of the SOCAR consists of 38,202,000.00 AZN. Annual number is 458,424,600.00 AZN, and 2% of it would be 9,186,000.00 AZN

18. Entries by the SOCAR to Aid Foundation to Armed Forces are implemented by violation of the principle of voluntariness and are proven by following facts as well:

- a. By virtues of a letter by the SOCAR vice president S.Qasimov, dated April 24, 2010, 'it is told to heads of the SOCAR institutions and organizations that they should conduct campaign and promotional work among their colleagues regarding this matter.' As a

- result of such promotional works and campaigns by heads, each of workers was forced to donate 2% of their monthly wages ‘with respect to principle of voluntariness’.
- b. Entries to Aid Foundation to Armed Forces is implemented by initiatives and orders of employers instead of principle of voluntariness and oil-industry workers that appeal to the Organization tell that they were forced and feared to make such payments, instead of volunteering.
 - c. Labor legislation considers mandatory emissions by employer from employee such as income tax and payments to social protection fund, as well as voluntary payments such as Trade Unions. Mandatory emissions are regulated by legislation. Voluntary payments shall only be conducted by individual written application of an employee, instead of promotional works of a higher organization, neither an order, nor a protocol.
 - d. Emissions from wages of employees that were not indicated by legislation, as well as transfers to Aid Foundation to Armed Forces, unless they are considered by labor contract, is illegal. Conduction of these payments by promotional works and orders of a higher organization, and protocols without any exclusion to employees indicates that such emissions by the SOCAR are conducted by fear and force, instead of voluntariness

19. Despite that EHR appraises state governmental administration’s efforts to solve just salary problem in law enforcement bodies, as well as expresses its grave concerns on continuing existence of the biggest unjust salary policy in health care, cultural and educational fields.

Article 11. The right to an adequate standard of living

The right to adequate housing (art.11)

20. Human rights defenders must be able to work in safety, UN tells Azerbaijan. UN: “Given the worrying reports of forced evictions and destruction of property in Baku, as well as of harassment of human rights defenders, we call on the authorities of Azerbaijan to thoroughly investigate this case and, if necessary, provide adequate compensation and restitution,”. EHR regretfully notes that, government still hasn't taken any appropriate measures¹.

21. For two years, thousands of apartments are being destroyed by the government in downtown Baku and outside settlements for purposes of investment projects. The serious and mass violation of right to housing, and social concerns have been noted by popular international media and human rights organizations².

22. EHR expresses its concerns that transfer of citizens were not conducted with respect to principles and demands of international human rights in any cases despite the facts justifying some of the deportations. It calls the working group to urge Azerbaijani government to implement legislative demands immediately to make current situation better, to investigate facts of violation of citizens’ right to property and apartment and enforce relevant decisions.

Ombudsman’s report for the year of 2011

23. In its report for 2011, Ombudsman expressed that one of the problems regarding apartments is that various citizens not even for the last 15 years, beginning from the midst of 20th century occupied lands in Baku and outside of it and built illegal constructions. Another problem is such

¹ <http://www.un.org/apps/news/story.asp?NewsID=39303&Cr=Azerbaijan&Cr1>

² <http://www.hrw.org/world-report-2012/world-report-2012-azerbaijan>

buildings that many people are settled are not privatized and not registered. The commissioner recommended to privatize illegal and non-registered constructions in milk plants of Hovsan, Bina, Ramany, also Baku settlements of 'Alatava', 'Zygh', 'Vorovski', 'Xutor', 'NZS', 'UPD', 'Keshla', and 'Yasamal', to consider registration of rights on those properties, and to speed up its solution.

24. The fact is that nowadays Azerbaijani citizens are being forced (with participation of local executive authorities, with bulldozers) to leave the apartments they live. People suffer a lot from inadequate and low compensation rates, also necessity to leave their houses leaving necessary equipments inside.

25. Workers of SOCAR destroyed houses that belong to citizens by use of force and without any warning in **Sulutapa settlement, in Khojahasan district**. Dozens of people were injured as a result of this dispute. Any legal measure was not taken with regard to this event. For more: <http://www.youtube.com/watch?v=EdOg4RzaE4U>

26. In accordance with the claim by 'Azerneftiyagh' oil production plant, a body of SOCAR, Khatai District court decided on destruction of house in settlement of NZS, Ilham Mammadov Street 168. As to the decision, houses have to be destructed by its owners, the are must be emptied, and owners need to pay 100 AZN fine to government. Ground for this decision was identified as oil pipeline of the plant are located in this area. Settler made local protests after warning on destruction of their houses and mass media highlighted this event.

27. Should be noted that people that were warned about destruction of their homes are not recent settlers and they built their houses in the beginning of 90s, which is 20-22 years ago. Most of the settlers were registered in their apartments by court decisions. Almost 30 families are internally displaced persons from occupied territories, the rest are from different regions of Azerbaijan. Now it is clear that anger is growing not only among the ones whose houses are destroyed, but also other residents of the district. Because as the house destruction campaign is widened, no one's property rights are guaranteed, and think they will be the next one. The general atmosphere in this settlement of majority of laborers and poor's, but settlers are willing to resist the fact of danger on destruction of their houses and housing in streets without any compensation.

28. EHR proposed recommendations to the government regarding forceful deportation of people that live in settlement of NZS, Ilham Mammadov street, without provision with adequate housing, stating that such a position does not comply with requirements of International Covenant on Economic, Social, and Cultural rights and to solve these matters with respect to principles of international human rights, that the governmental institutions never paid attention to this case.

Official numbers and concerns

29. According to official numbers, more than 27,000 illegal constructions exist in mine areas of SOCAR, belonging to both physical and legal persons.

Overall, several official institutions of the Republic of Azerbaijan admit that over 500,000 illegal buildings are located in and outside Baku. Mani among those are buildings that were built in the beginning of 1900s, but were not legalized as a result of corruption and inefficient administrative procedures.

Floods on Kura and Araz rivers

30. According to information by 'Kur' Civil Society Headquarters, more than 20,000 settlement, 110,000 hectares plantation and pasture fields were damaged as a result of floods on Kura and

Araz rivers in 2010, according to approximate calculations, over 100,000 people, as well as various agricultural fields, nourishment and household buildings, also educational, religion and health care buildings, and infrastructure gravely suffered.

31. An important point shall be noted that, at the time of decree no. 197s was signed by Cabinet of Ministers on July 09, 2010, floods were still remaining in majority of the fields that suffered and there was no life there. It was hard to enter the flooded fields, to investigate and clearly identify in which situation the houses are. For this reason, as stated in the decree, construction of 3205 houses, repairing 3222 buildings and restoration of 700 houses could not be exact numbers.

32. Actual evaluation by the governmental commission started in July-August of 2010, after flooding has stopped. But should be noted with regret that, despite considered by presidential decree of May 19, 2010, the damage done by Kura-Araz river floods has not still been comprehensively and fairly investigated yet.

33. Despite a long time passed since the floods and abovementioned decree by the Cabinet of Ministers, the issued indicated in the decree were not solved. Many houses in critical conditions still remain even though 3143 houses were built in flooded fields. Compensation provided to people that suffered was not adequate to solve their problems. Although not covering the whole list of damaged houses, numbers that were indicated in decree no. 197s (3222+700=3922) express that minimum 3922 families still suffer as their property rights are not restored. But in reality, numbers of people that are suffering from not restored property rights are far more than indicated numbers.

General analysis of violations

- Provision of aid and compensation regarding the damage. Methodology, assignment and reason of compensation were not clarified. In many cases, citizens while receiving compensation did were not provided with any document, notification, or receipt. The costs in documents were expresses only by numbers, not as a word at the same time;
- In some cases, compensations were less than considered;
- Abuse and corruption facts during construction of houses;
- Requests were not responded. Kur Headquarters requested Ministry of Communications and Information Technologies to provide name of the citizens and amount of compensation provided in order to secure transparency, also suggested to provide this information on web page of the ministry. But the ministry strangely responded that those information were 'state secrets.'
- Some people have not been able to get compensation over the previous period. For example, more than 100 family that are located in area called 'iki bandarasi', village Ulajaly if sabirabad district, have not still been able to obtain compensation. The same situations exist also in other regions.
- Total expenditures for construction of homes is not clear. 202,300,000.00 AZN was determined by decree no. 197s by Cabinet of Ministers dated July 09, 2010, to build 3205 houses. It means 63,000 AZN to be spent for a single house approximately. Expenditures such a number for one house ends up in some questions. But relevant organizations do not announce the number spend for houses (or for one house).
- There are problems in recently constructed buildings.

On the situation with Property Rights in Azerbaijan on 2011 by Public Union For Assistance To Free Economy.

Problems in legislation

34. A year after that new Apartment Code entered into force, its implementation tools were identified by presidential decree no. 272, dated May 24, 2010, on 'Provision of implementation of the Apartment Code'. The code adopted at the time of serious need for legal regulations in this field, some of its provisions composed a legal basis for further lack of restraint and injustice by officials, instead of being a step forward. Its primary victims were historical and architectural monuments that are located in preserve Ichari shahar, and belong to citizens under property rights.

35. Up to recent, intervention to citizens' property rights used to be legalized under 'state or public needs.' But article 28 of the new code opened new paths in this direction. Destruction of houses in 'critical conditions' by governmental bodies was legalized and ended up in comprehensive results.

Scandalous decree no.511

36. Decree no. 511 of Baku City Executive Authorities, dated September 24, 2008, was the most mentioned source that composed so-called legal grounds for destructions during illegal interventions to citizens' property rights with regard to construction of Winter Boulevard, starting from 2009. As it is indicated in the body of the decree, the head of Baku CEA passed beyond limits of its authorities by virtue of order in 2nd paragraph and point 1 ('Area behind the Heydar Aliiev palace was identified for construction of a park, houses and non-living spaces to be destroyed, and resident to be transferred'). Because giving such an order, he actually adopted a decision over a property that belongs to others. Whereas, Article 13, part 1 of the Constitution implies that property is untouchable in the Republic of Azerbaijan and is protected by state. As well as, article 29, part 4 stresses that no one shall be deprived of its property without a court decision.

37. The mentioned article permits to alienate a property only and only for public needs and only in case of prior and just compensation. Of course, Baku CEA's intentions to construct a new park in downtown Baku shall not be categorized among public necessities.

38. Other than that, according to article 153.3 of the Civil Code, it is only up to legislation to obtain right to property, right to ownership, right to utilize property, to dispose, or to abolish right to property, depending on assets are under property rights of physical or legal persons, the Republic of Azerbaijan and municipalities.

39. But none of the legislative acts of the Republic Azerbaijan does provide authorities to the head of Baku CEA to dispose on property that belong to others, neither any kind of intervention, destruction of a legal building, to send a notification stressing that it is public necessity, which is actually not, to evaluate assets, or etc. For this reason the abovementioned decree failed to refer to any legislative act. At the same time, according to article 203.5 of the Civil Code, mandatory alienation of property of physical and legal persons is permitted only for public needs, with prior just compensation. The essence and limits of 'public need' is determined by article 157.9 of the Civil Code that are:

- Construction of roads and communication lines;
- Determination of border lines;
- Construction of defense buildings.

40. That area of mass demolitions in the city center is adjacent to the streets Shamsi Badalbeyli, Fizuli and Mirzaga Aliyev. Numerous protests and lawsuits of the residents are ignored by the authorities, even if the courts decide to stop the demolition. The government has not created a commission that would decide the question of a civilized compensation to the owners of demolished houses and refuses to pay more than 1,500 manat per square meter. Only in the center the number of affected residents is more than 5 thousand. The total number of the victims of illegal demolition in the capital is close to 60,000.

41. Azerbaijani government does not pay adequate compensation to people affected by impacts of business and other projects that are conducted under the name of innovation, by virtue of oil revenues that are spent under the name of investment, and such discomfort exist in every part of the country.

http://www.youtube.com/watch?v=g_wXx6hZIFw&feature=youtu.be

<http://www.youtube.com/watch?v=yxxhXH-4-FU>

<http://www.youtube.com/watch?v=6snHactPDGc>

According to researches, only 743 families could improve its housing conditions, despite the fact that the number of such families was 1758 in year 2000.

42. An expert with reference to information by State Statistics Committee states that annual number of families that have been able to improve their housing conditions in Azerbaijan is in decreasing tendentious since 1998, excluding the years of 2003 and 2008.

43. According to him, the number of families that have been able to improve their housing conditions is decreasing 7% each year since 1998

44. As to experts, these indicators show that people's access to housing is decreasing time by time in Azerbaijan: 'Social Housing Fund shall be established in the republic immediately to improve the situation, and provide access of masses to housing'

The right to adequate food (art. 11)

45. Economic Research Service of US Department of Agriculture announced its report called «Cross-Price Elasticity of Demand» for the year of 2011. According to this report, the Republic of Azerbaijan is leader among 114 countries for family budget of food. The report also notes that families spend 73,5% of their budget for buying food. The second place is shared by Tanzania and Nigeria. Their budget for food is 73,2% and 72,9% respectively.

Right to health (art.12)

Ensuring the Right to Health

46. Although overall budget expenditures in 2012 increased 6,5% comparing to forecasts of 2011, transportation and communication costs increased 24,9%, judiciary, law enforcement and prosecution 20,6%, health care 5,7%, and education costs increased only 3,4%. It is hard to understand government's so called proportion increase. Because 7,2 billion AZN of this year's budget of 17 billion AZN belongs to investment costs. **Total of costs determined only for transportation is higher than grand total of both health care and education costs. It is a sign of priority given to social costs of the budget.** Investment costs in Azerbaijan for last 5 years

consisted 20 billion AZN (USD 25 billion), only 7-8 billion AZN (5,5 billion for education and 2 billion for health care) was spent for social needs.

Shares of health care costs in GDP

Year	Health care costs	Share of health care costs in total budget expenditures (%)	Share of health care costs in GDP (%)
2005	115,3	5,4	0,9
2006	162,0	4,3	0,9
2007	257,2	4,2	1,0
2008	346,2	3,2	0,9
2009	402,4	3,8	1,2
2010	429,2	3,7	1,0
2011 (forecast)	563,2	3,5	1,4

47. ‘Despite of several directives and decrees by the president, they has not been any steps taken regarding medical insurance.’ Hadi Rajabli, chairman of Social Policy Committee of Milli Majlis (parliament) expressed to media. According to the committee chairman, this act was adopted approximately 10 years ago and was amended on December 07, 2007. The decree confirmed that State Agency on Medical Insurance shall be established before Cabinet of Ministers. At the same time, conception of mandatory medical insurance and reformation of health care financing in the Republic of Azerbaijan is approved. By presidential decree, ‘Plan of measures realization of conception of implementation of mandatory medical insurance and reformation of system of health care financing in the republic during the years of 2008-2012’ was approved at the same time. For this reason Medical Insurance Agency was donated 51 million AZN in 2009, 30 million in 2010, and also 30 million in 2011. ‘Despite the funds confirmed in the budget for years, none of it has been spent as a result of carelessness.’ Continuing separation of performance of Medical Insurance Agency is still vulnerable.

14 DIALYSIS CENTERS 65 DISTRICTS (REGIONS)

48. At present, more than 1700 patients who are constantly on dialysis, are officially registered. According the Ministry of Health, every year 14 of 100 dialysis patients die. At present, more than 1700 patients who are constantly on dialysis are officially registered. According the Ministry of Health, every year 14 of 100 dialysis patients die.

49. According Ministry of Health, 22 public branch of dialysis provide service in Azerbaijan at present. 8 of them are located in rural area, 14 branches operate in Baku. Patients who require dialysis usually face difficulties on registration. This restricts their right to freedom of movement and leads to additional expenses.

50. EHR regretfully notes that dialysis patient is suffered for being forced to be examined in hospitals where they are registered.

51. EHR also notes with concern increasing of selective abortion in the Azerbaijan.

Azerbaijan Migration Center’s Annual Report (2010) on combating human trafficking and forced labour in Azerbaijan Republic. (for full report please: www.migration-az.org/upload/files/annual_report_ofAMC.doc)

Contradictions in legislation

52. Although the Criminal Code of Azerbaijan defines transplantation of human organs and tissues as human trafficking, Article 137 of the Criminal Code also criminalizes sale and transplantation of human organs and tissues. The crime prescribed by Article 137 of the Criminal Code is not proportionate with sanction. As a result of both crimes, the same public relations (both personal freedom and life and health) are violated. However, those two crimes are classified differently. We consider that there should be held more detailed investigation in this sphere.

53. The analyses of the court practice shows that there is no established court practice regarding crimes of human trafficking and involving in prostitution. For instance, in some cases for the same crime, investigation bodies refers to both Article 144-1 and Article 243 of the Criminal Code and send the criminal case to court. But sometimes, the same crime is referred to only Article 243 of the Criminal Code by investigative bodies. This leads to confusion both in courts and investigation practice. In some cases, courts show different positions from investigative bodies and in some cases, they repeat the investigation. For instance, the courts remove Article 243 of the Criminal Code from indictment bill in respect to the accused person who was accused jointly under Article 144-1 and 243. They motivate that it is unreasonable to accuse a person under two articles because Article 243 of the Criminal Code is covered by 144-1. Accusation for one crime for twice is aggravating the situation of a person, and it is incompatible with a principle of the legislation. Furthermore, since Article 144-1 is so called “formal” nature crime, it is considered as committed as soon as any of the actions of this crime is done. According to Article 1.0.2 of the Law on Combating Human Trafficking of 28 June 2005, sexual exploitation is one of the forms of human exploitation that is an important part of human trafficking. According to Article 1.0.4 of the same Law, “sexual exploitation” is using a person in prostitution and receiving benefits from sexual exploitation of others.

54. Furthermore, there is another issue in court practice. In many cases, the courts differs those two articles based on profit making. If during sexual exploitation, a person was both involved in prostitution and there was financial benefit from it, the courts mainly refers to both articles. However, as it was mentioned, Article 144-1 of the Criminal Code covers both crimes.

55. Another contradiction is that prosecution bodies and courts refer to Article 243 of the Criminal Code (involving in prostitution) for the same crime. Accused person for this crime usually informs that he or she committed this crime because of financial dependence in other words the reason was to give money to another person. Thus, this is in fact completely under the scope of Article 144-1 of the Criminal Code.

56. As it is seen while examining the committed crimes, such as withdrawal for transplantation of body organs or tissues of a person (article 137 of the CC of AR), involving in prostitution (article 243 of CC of AR), involving in forced labour (Code of AR on administrative offences), in accordance with the article 144-1 of CC of AR the investigation and court bodies face some problems. For the purpose of eliminating those problems there should be concrete definition of persons and the sphere of protected public relations that are under the scope of the mentioned articles.

57. Azerbaijani Government considers that forced labor crimes are not common in Azerbaijan³. But in fact the practice of 2009-2010 shows that agencies fighting human trafficking fail in expressing political will to eliminate the situation. Because the number of victims of forced labor in Azerbaijan is many times more than victims of sexual exploitation. For full report (in english) visit: www.migration-az.org/upload/files/annual_report_of_AMC.doc

The right to water (Articles 11-12)

58. The quality of fresh water reserve in Azerbaijan is vulnerable. Especially, over 46% of suburban residents have to use pit water without any information on its physical and chemical compound. According to information by State statistics Committee, 29,6% of the country, 26,3% of city residents, and 29,9% of suburban residents obtain fresh water out of pits in their yards.

59. People in districts without centralized watering system obtain fresh out of pits, irrigation watercourses, as well as rivers and lakes, which are not subject to any ecological treatment. People located in majority of villages of Kurdamir, Yevlakh, Ujar, Bilasuvar, Salyan, Sabirabad and other districts primitively treat, clear and drink water of watercourses by Kura and Araz river.

60. Azersu Open Joint-Stock Company admits that as an institution it is capable of monitoring quality of water related to centralized watering system of only 49 districts of the country. In only 16 of these districts existing water reserves maintain chlorinator tools and water collected in reserves is cleared by chlorine. In the rest 33 districts fresh water is cleared by dry chlorine. 0,2-0,3 milligrams of chlorine is poured into each cubic meter of water. Muddiness of water taken out of artesian pits is cleared by mixing 0,5-1,5 chlorine to each liter.

61. It is not appropriate to check quality of fresh water relying on USSR standards adopted in 1982: 'Azerbaijan as a member of UN, World Health Organization and other international organizations is under obligations to provide people with continuing and safe fresh water. That's why quality norms of water must base on standards of World Health Organization. But now it is regulated by standards of a country that does not exist. Whereas, new standards and technical conditions have been adopted in majority of CSI countries, including Russian Federation.'

62. According to media announcements by Azersu officials, situation of 1300 villages regarding water is grave, 196 villages are in critical condition. There is need for 30 million AZN to solve problems of those 196 villages. They should have been saved if Eurovision was not going to happen. Fund that was determined to re-installation of water supply and sewerage system of more than 15 districts such as Tartar, was directed to construction of Baku Concert-Complex Crystal Hall. By decree of Cabinet of ministers 57 million AZN was cut from water and drainage budget of these districts for construction of that hall.

Right to education – on articles 13-14 and 15 of the Covenant

63. Stated in the report on monitoring by Assistance to Economical Initiatives Public Association, that Azerbaijani government does not rule the educational system, as well as high school education by virtue of programs that are professionally developed, and resemble long-term priority and goals of governmental education policy. It is true that some programs

³ Look: (The information of National Coordinator about combating human trafficking in 2010, 7th page, 2nd and 3rd paragraphs)

regarding educational sector, for example, maintenance of pedagogic staff in secondary school network (for years of 2005-2009), provision of high schools with information and communication technologies (2005-2007), informatization of educational system (2008-2012) as well as school building construction programs exist in the country. But these programs are specific and do not reflect educational policy and targets related to development of education as a strategic field in short and long terms.

64. The unpopularity of secondary education and pedagogic activities is a concern of national security in Azerbaijan. Approximately prior to the latest 5-6 years, students of final, 10th and 11th grades preferred to prepare outside school tutors. It meant that despite students had gained knowledge of certain standards; there was necessity of professional development of their skills in order to enroll in universities. But during last years, students of even elementary schools, and students of secondary schools cannot make without outside school tutorials. It indicates that quality of education already is not capable of meeting people's needs in elementary levels of education. It is clear that families pay for so called performance of teachers that are not eager to provide qualified education, by hiring tutors. Researches indicate those families' annual expenditures for outside school education of single child that is getting prepared for university exams, is 3 times more than annual expenditures of state budget for a student. http://sei.az/upload/files/education-report_last.pdf

General Comment 5

People with disabilities

Prepared by Education on Human Rights Public Association

Regarding to articles 6-8 on right to work

65. According to Article 66 of the Labour Code, employees disabled and injured in homeland defence, military operations for freedom and territorial integrity of the country do not undergo through the attestation. EHR underlines with the concern that this Article discriminates against people who were disabled during the battles in Afghanistan and rescue operations in Chernobyl nuclear power plant accident in the Soviet period. EHR asks the Committee to urge the government to review this article again.

66. EHR is concerned that the requirements on the allocation of jobs for people with disabilities were not clearly determined in the legislation, and there is a lack of and effective enforcement mechanisms in the related field.

67. The relations in the field of social services to disabled people are regulated by the Law on Social Services for Older People of 22 June 2011, Law on Prevention of Disablement, Rehabilitation and Protection of Persons with Disability of 25 August 1992, Law on Social Protection of Orphans and Children Deprived of Parental Care of 22 June 1999. Unfortunately, there is no separate law regulating social services for persons with disability.

68. According to Law of the Republic of Azerbaijan on Subsistence Level (5 October 2004), subsistence level is a social standard measured by mandatory payments to consumer basket. Minimum basket of consumer goods is determined by socio-demographic groups of population. According Article 1 of abovementioned Law, the main socio-demographic groups are working-age population, pensioners, persons with disability and children. However, Azerbaijan's Cabinet of Ministers' decision on "Approval of minimum consumer basket" of 23 June 2005 does not provide for calculation of minimum consumer basket for disabled people, thus, there is an [incompatibility](#) with the Law on Subsistence Level. EHR, therefore, considers that Cabinet of Ministers should eliminate the mentioned contradiction by calculating and approving minimum consumer basket for disabled people. It is also strongly recommended to the Government to raise minimum wage in the country to the level of average wages.

69. Regardless of their form of ownership, enterprises, establishments and organizations which avoid providing persons with disabilities and persons with limited health opportunities under the age of 18 with employment pay the third of average monthly salary in the country to the state budget for all months of such unemployed quote. However, this requirement of the law is not

executed because of the lack of information about its implementation and the fact that this requirement is not sanctioned. In the system of corrupt management, enterprises, institutions and organizations have all opportunities to refuse to provide this requirement.

70. EHR notes with regrets that there are no government policies (including a tax incentive) to encourage employers to recruit persons with disabilities.

71. According to Article 106.2 of the Tax Code, the income tax rate of production entities representing person with disabilities in which 50% of total employees consist of the disabled is reduced to 50%. However, this privilege provided by law is not efficient in practice. There are serious obstacles in front of continuation of the activities of public organizations that represent the disabled. This concession was provided in a very narrow and restrictive manner. The reference of this concession of the Law not only to the organizations representing persons with disabilities, but also all commercial organizations where the disabled constitute even a certain percentage of the staff can improve the provision of employment for persons with disabilities and promote their business activity.

72. According to the "Employment Law", employers who avoid providing persons with disabilities and persons with limited health opportunities under the age of 18 with employment with the request of the relevant executive authority pay the third of average monthly salary in the country to the state budget for every month of such unemployment period. However, there is no statistical data on the practice of this provision.

73. EHR deeply regrets that according to the current legislation, persons owning a land property are not included to the employed category of population, and as a result, they are not registered as unemployed.

74. The references on disability provided by the Medical Social Expert Commissions, the institution which determines the level of disability, do not reflect whether these people with disabilities have labour capacity or not. This leads to a gross violation of labour rights of persons with disabilities that are capable of working. While determining the disability level of person with disabilities, it is necessary to have transparent procedural rules about the reference on the possible labour capacities of the disabled.

75. The GENERAL COLLECTIVE AGREEMENT signed between the Cabinet of Ministers of the Azerbaijan Republic, Azerbaijan Trade Associations Confederation, and National Confederation of Entrepreneurs (Employers) Organizations between the years of 2010-2011 is a policy document which determines the positions and joint activities of the country's socio-economic policy and social-labour relations for the years of 2010-2011. EHR expresses its regret that persons with disabilities are left outside the political (legal) program on the provision of population employment and labour market, and the government of Azerbaijan shows the care for the disabled in a fragmental form.

76. The fund on the labour protection stipulated by the Labour Code has not been yet established. The provision of financial compensation for persons with disabilities injured during production accidents is very fragile.

77. Although the Law on Medical Insurance was adopted in 1999, it still does not have operational mechanisms.

Proposals for Improvement

78. The problem of job creation for persons with limited health opportunities should be constantly carried out in a sustainable manner, rather on the level of separate projects.

79. In order to solve the employment problems of persons with disabilities, it is important to include to the legislation the imperative provisions which will require employers to sign employment contracts with the disabled, and norms which will determine serious responsibility for violating the implementation of existing quotas and those provisions. On the other hand, stimulating privileges, benefits and state support should be provided to the employers who are hiring the disabled.

80. For the implementation of the Law on PLHOCPD, (*Law of the Republic of Azerbaijan on "Prevention of limited health opportunities of children and persons with disabilities, and the provision of their rehabilitation and social protection"*) appropriate enforcement mechanisms should be worked out within the short period of time, and serious and transparent control (state and public) of the implementation of this law should be ensured.

Regarding articles of 13 and 14 on right to education.

81. Although a limited number of disabled persons have an opportunity to get high education in public and private schools, they still have to pay tuition fees. EHR strongly recommend to state to exempt from education fees of people with disabilities in order to facilitate access to education of people with disabilities.

82. Today only one library for the blind operates in Azerbaijan. As the blind and physically handicapped people say, material and technical base of this only library is extremely weak. Thus, EHR calls the government to take urgent steps in this regard.

83. EHR expresses its concern that the General Education Concept approved by the Cabinet of Ministers' decision № 103 of 3 June 2010 does not contain any provisions regarding disabled people.

84. EHR expresses its concern that, children with no and poor eye-sight are living in rural areas can not enjoy their right to education because of lack of boarder schools for blind in the regions. According to information from the parents of disabled children and regional organizations, families are unable to send their children to capital city to get education.

85. Currently there are more than 60000 children with limited health opportunities. According to official statistics, 1105 of them live in specialized schools, 2664 in boarding schools, 1353- in night school; 7750 are receiving home education, only 268 are involved in inclusive education. A large number of disabled children involved in "home education" and "specialized education" is a matter of serious concern to EHR, as this prevents full and active participation of children with disability in society and community life.

Proposals for Improvement

86. We believe that it is necessary to conduct awareness trainings on the respect of persons with disabilities in educational institutions in the official level and develop special educational programs in order to draw attention to persons with disabilities. This will help to the formulation of the necessary pedagogical cadres with required specializations and expansion of the relevant educational classes in all educational institutions.

87. Also, it is important to revise the issues of qualification development and re-qualification in educational institutions, preparation of special education and training programs and cadre classification in accordance with the state standards.

88. It is necessary to expand the list of qualifications in educational institution, including specializations, such as early development specialist, social worker for people with limited opportunities, labour masters for the work with persons with disabilities, physical education teachers, instructors for sport medium treatment. (These specializations existed in medical and physical education institutions in the Soviet period, but they were abolished for unknown reasons later on)

General comments No. 9. Implementation of the Convention inside country

89. EHR expresses its grief that the situation on unapplied and forgotten principles of international covenants and conventions by local courts is also common with the International Covenant on Economic, Social, and Cultural rights.

90. EHR especially notes that courts are not aware of Committee regulations such as right to adequate housing, forced deportations, settlement issues and right to adequate housing within context of international events. EHR notes that court's ignorance of relevant articles referred by the Convention in Baku Court of Appeal in February-March of 2012 during the hearings on forced deportation of hundreds of families from their houses, is an indicator that the Convention's implementation is not accepted by courts and administrative bodies in national level.

91. Especially the principles and definitions of grave importance defined by the Convention are not still reflected in national legislation. E.g., right to adequate housing, right to adequate food, and etc.

Final recommendations and suggestions

- To improve mechanisms of independent investigation and transparency in the governance;
- To carry out transparent reforms involving the impartial actors of civil society for proper implementation of statements which are calling for fighting against corruption, particularly in education, court and law enforcement agencies;
- To carry out reforms in order to ensure that international human rights laws to be applied by the domestic courts and state bodies;
- Ensuring increased expenditures allocated for the improvement of social and health services and to provide medical and education staff with fair wages;
- Ensuring transparency in the implementation of state programs related to social and health services;
- EHR requests from Azerbaijan authorities to provide information on judicial training for judges, advocates and other stakeholders.

Suggested questions for list of issues:

- Please provide the Committee with detailed information on how the Government encourages the courts and public bodies to apply the provisions of Covenant?
- What special (legislative and administrative) measures have been adopted to address to prevent forced evictions and home demolitions?
- Please provide information for comparison of the wages in education and health sector with wages in legal enforcement bodies?
- Do the domestic laws recognize the right to housing in the context of forced evictions? (Request court practice information).
- What steps are being taken to ensure collection of adequate data on children and adults with disabilities, including women and girls with disabilities, and use disaggregated data and results of studies to develop policies and programmes to promote equal opportunities for them in society?
- What steps are being taken to ensure that the mental health policy requires all health care and services to be based on the free and informed consent of the person concerned and that involuntary treatment and confinement are not permitted by law?

- What services are in place to reach out and educate children and adults with disabilities about sexual and reproductive health, HIV/AIDS? Is information available in accessible and age appropriate formats for both children and adults with disabilities?
- Can the government clarify how the 2011-2012 minimum wages was calculated, and how the implications for economic and social rights were taken into account, particular the rights of the most vulnerable sectors of the population to achieve an adequate standard of living and economic security?
- How concluding observations followed up by government and what steps are being taken to share concluding observations in society and how civil society actors are involved addressing recommendations from the 2004 concluding observations on Azerbaijan of the Committee on the economic, social and cultural rights?
- How the international human rights standards were followed in the situations of house demolitions and evacuations of the aftermath of development projects, mega-events and natural disasters?
- Can government provide concrete and detailed data on persons affected by house demolitions, evacuations and natural disasters?
- How many houses have been demolished in Baku during last two years (as well around of Baku) aftermath of development projects?
- Any activities on raising awareness and capacity building on the Covenant among the courts, police bodies, educational institutions, and other public authorities.
- Information on the number of individuals and families dwelling in slums without adequate housing and access to potable water and sanitation services. Please also provide specific information on forced evictions and homelessness in country.

Annexe: Fact 1

Illegal deprivation of huge Companies by members of ruling elite.

Recent months, one of the huge businesses of the country known as a "Zulfuqarli Brothers" is re-subjected illegal deprivation of investments and companies forcibly.

The "Baku Steel" Company was one of the huge companies in Azerbaijan that was undergone state controlled pressures, which aimed forcibly taking away the property of the company from owners. During last 7-8 years owners were arrested, imprisoned and forced to share their 80 percent of income with the one of the strong member of ruling elite. Currently, the government structures are unlikely to investigate any of these violations.

In the environment of impunity, insecure and lack of rule of law, government obviously continue ignoring basic principles of rule of law and human rights such as denial of the right to an independent and impartial tribunal, denial of the right to equality before the law; denial of the right to effective legal assistance; denial of the right to disclosure of the prosecution's case and other essential rights.

In this case it is well-known to everyone who stands behind the unlawful confiscation of business of "Zulfuqarli Brothers". The aftermath of illegal confiscations and attacks, the owners of "Caspian-Pipe Plant", "Baku Electro-stamp Plant" and "Baku Steel Company" have been forcibly deprived of their property.

The horrible thing is that, all legal and effective mechanisms of self-defense are being ignored, so Police, Prosecution and Court authorities are forced to behave on fear, biased in accordance with the interests of authorities while dealing with this issue. It is known to everyone in Azerbaijan that authorities and oligarch businessmen usually are not easily prosecuted.