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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

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SUMMARY RECORD (PARTIAL)* OF THE 41st MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 16 November 2004, at 3 p.m.

Chairperson: Ms. BONOAN-DANDAN

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* No summary record was prepared for the rest of the meeting.

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The discussion covered in the summary record began at 4 p.m.

CONSIDERATION OF REPORTS (agenda item 6)

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (continued)

Second periodic report of Azerbaijan (E/1990/6/Add.37; E/C.12/Q/AZE/2; E/C.12/1/Add.20; HRI/CORE/1/Add.117)

1. At the invitation of the Chairperson, the members of the delegation of Azerbaijan took places at the Committee table.
2. Mr. XALAFOV (Azerbaijan), introducing the second periodic report of Azerbaijan (E/1990/6/Add.37), said that his country had established new legal structures and procedures and adopted far-reaching political, legal and economic measures with a view to protecting human rights and promoting pluralism, the rule of law and individual freedom. Azerbaijan had acceded to the first Optional Protocol to the International Covenant on Civil and Political Rights and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, and had made statements under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment permitting the Committee against Torture to consider individual communications.
3. Azerbaijan had been a full member of the Council of Europe since January 2001 and was implementing a number of human rights and rule-of-law programmes with the Council's assistance. It was also implementing a programme of priorities for cooperation in enhancing democratization based on suggestions by the Government, representatives of international governmental and non-governmental organizations, and the Baky Office of the Organization for Security and Co-operation in Europe (OSCE).
4. Every citizen now had the right to appeal to the Constitutional Court against any act by the legislative or executive branches of government or by municipalities or courts that violated his or her rights or freedoms.
5. An Act establishing a Human Rights Commissioner (Ombudsman) had been adopted in December 2001. The Ombudsman considered complaints of human rights violations submitted by citizens, foreigners, stateless persons and legal entities. A department in the Ombudsman's Office specialized in the protection of economic and social rights. Between early 2002 and October 2004, the Ombudsman had received 9,120 communications, of which 94.7 per cent were complaints; 66.7 per cent of the latter concerned economic and social rights, including the right to work, the right to own property, the right to social security, the right to housing and the right to free enterprise. The Ombudsman had declined to consider 61.7 per cent of the complaints on grounds of lack of jurisdiction or anonymity of the complainant or because the matter was sub judice; 31.7 per cent of the complaints deemed admissible had been fully or partly resolved.

6. A State Committee on Women's Issues had been established. A national plan of action on women's issues and a programme aimed at enhancing women's role in government and the conduct of public affairs were being implemented. Some 50 women's NGOs were active in areas such as women's rights, family protection, women's and children's health, involvement of women in public affairs, assistance to refugees, children's homes and people with disabilities.
7. Azerbaijan had adopted an Act on the Rights of the Child and a Family Code, and had ratified the International Labour Organization (ILO) Worst Forms of Child Labour Convention, 1999 (No. 182).
8. A national plan of action to combat human trafficking adopted in May 2004 provided, inter alia, for the development of relevant legislation and the appointment of a national coordinator. A specialized department in the Ministry of Internal Affairs had been engaged since May 2004 in fact-finding work on slavery, child trafficking, illegal adoption, and trafficking in human organs and tissues. The facts it had uncovered had resulted in the initiation of 22 criminal proceedings and over 25 convictions.
9. A State programme to combat corruption had been adopted in 2000 and an anti-corruption Act would enter into force in January 2005. The Office of the Procurator-General had established a special anti-corruption department. Under the programme for 2004-2006, action would be taken against corruption in the social and economic fields. In December 2003, Azerbaijan had ratified two Council of Europe instruments: the Criminal Law Convention on Corruption and the Civil Law Convention on Corruption.
10. A number of programmes had been adopted in the areas of social welfare, unemployment reduction, and development of economic and social infrastructure. Azerbaijan cooperated with the World Bank, the International Monetary Fund (IMF), the European Bank for Reconstruction and Development (EBRD), and the Asian Development Bank (ADB) in economic reform projects, promotion of macroeconomic stability, and educational and cultural projects. Foreign investment in Azerbaijan over the past 10 years had amounted to US\$ 14,500 million.
11. A State programme on measures to accelerate socio-economic development had been adopted, and a State programme on poverty reduction and economic development for the period 2003-2005 covered, inter alia, social security and pension reform, drugs and medicines, education, refugees and internally displaced persons (IDPs), tax policy, banking, investment and energy policies, agriculture, ecological safety and legal reform. According to the World Bank, the number of people living beneath the poverty threshold had declined by 16.3 per cent between 1996 and 2004.
12. A State programme for the development of small and medium-sized enterprises (SMEs) covering the period 2002-2005 provided for improved State regulation of business, better protection of the rights of entrepreneurs and support for investment in SMEs. A national fund to assist entrepreneurs had been established.
13. Public revenue for the first nine months of 2004 had increased by 20.4 per cent and gross domestic product (GDP) by 9.9 per cent. An increase of 25.3 per cent in public revenue and of 27.7 per cent in expenditure was forecast for 2005. Social spending was an important

component of the 2005 budget. State wages, pensions and benefits would account for some 55 per cent of budget growth. Assistance to SMEs would double, and substantial resources would be channelled into regional development, job creation and investment programmes.

14. Oil revenues were used for development of the non-oil sector, humanitarian assistance to refugees and IDPs, and social projects.

15. The new Labour Code and Employment Act were based on international norms and determined public policy on employment assistance, labour guarantees and unemployment benefit. More than 50 ILO Conventions had been ratified, including the Employment Policy Convention, 1964 (No. 122), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Reports on the implementation of those two conventions had recently been considered by ILO.

16. The President of the Republic had set as a target the creation of 600,000 jobs within the next few years. A programme for regional social and economic development for 2004-2008 would focus on providing employment in rural areas. By October 2004, 115,000 jobs had been created. The Government was currently considering an employment strategy developed with financial and technical assistance from the United Nations Development Programme (UNDP) and ILO.

17. A State commission on reform of the health system had been established, and legislation had recently been enacted in the areas of health insurance, psychiatric and psychological assistance, tuberculosis, immunization, organ and tissue transplants, drugs, and infant and early childhood nutrition. National programmes on HIV/AIDS, malaria control, family planning and reproductive health had been adopted.

18. New housing legislation had been drafted and laws for the protection of culture, the arts and cultural identity had been enacted.

19. The continuing conflict with Armenia over Nagorno-Karabakh had adversely affected Azerbaijan's compliance with the Covenant, since it was unable to honour its obligations in respect of the territories occupied by Armenia. As a result of ethnic cleansing by Armenia, there were more than a million refugees and IDPs both in Armenia itself and in the occupied Azerbaijani territories. They were deprived of basic cultural rights, and unemployment among IDPs in the occupied regions was two to three times greater than in the country as a whole.

20. Azerbaijan's report had been prepared by a working group comprising representatives of ministries, other public bodies and NGOs; it had been established by presidential decree. The replies to the Committee's list of issues (E/C.12/Q/AZE/2) had unfortunately been submitted somewhat late owing to the need for careful analysis. He looked forward to a fruitful dialogue with the Committee and trusted that its recommendations would make a further valuable contribution to the protection of human rights in Azerbaijan.

21. The CHAIRPERSON invited Committee members to put questions to the delegation.

Articles 1-5 of the Covenant

22. Mr. ATANGANA said that additional details should be provided on the circumstances in which individuals could lodge complaints for violations of the rights enshrined in the Covenant. The State party should cite case law relating to the application of the Covenant. It would be useful to have a full account of the problems that had led to the current lack of independence of the judiciary and, in particular, details of the appointment process for judges.

23. Mr. PILLAY asked what measures the State party would take to fight corruption in the period prior to implementation in 2005 of the recently enacted legislation on corruption. In the light of reports that the judiciary was one of the least developed branches of government and that judicial corruption was widespread, it was difficult to understand how the reporting State could safeguard economic, social and cultural rights, and how it could claim that the judiciary was independent. It was unclear whether the rights under the Covenant were justiciable in the State party.

24. Mr. RIEDEL stressed the need for disaggregated statistical data in periodic reports, including analysis for each year within the reporting period. Without those data, the Committee could not evaluate progress made towards ensuring full respect for the rights under the Covenant.

25. It would be interesting to learn whether the Ombudsman had received any complaints concerning economic, social or cultural rights. The delegation should provide examples of cases the Ombudsman had referred to the Constitutional Court, particularly cases relating to rights under the Covenant.

26. He asked whether the State party supported the draft optional protocol to the Covenant granting the right of individuals or groups to submit communications concerning non-compliance with the Covenant.

27. Mr. MALINVERNI requested additional information on judges' salaries at all stages of their careers. He asked what measures had been taken to integrate IDPs and refugees who had fled from Nagorno-Karabakh. He further enquired whether the Covenant had been incorporated into domestic legislation, and requested additional information on case law relating to application of the Covenant.

28. Mr. SADI requested additional information on the State programme on protection of human rights. It would be interesting to learn whether there was a national human rights institution that conformed to the Paris Principles.

29. Further details on the Ombudsman would be welcome, particularly his name and qualifications, the process through which he was appointed, whether his decisions were binding, and whether his Office was independent in financial and other terms. It would be useful to have a full account of some complaints considered by the Ombudsman concerning rights embodied in the Covenant.

30. More specific information about the participation of NGOs in the preparation of the periodic report would be welcome. He asked whether human rights education was formal and compulsory at primary, secondary and tertiary levels.

31. Ms. BARAHONA RIERA said that it would be useful to have a full account of the mandate of the Ombudsman, and to know whether he had considered any cases relating to gender equality. She requested additional information on how legislation on gender equality was applied in practice. Further details on the State Committee on Women's Issues should be provided, in particular, the human and financial resources it had been granted, its status, and whether it was independent of the Government. It would be interesting to learn whether there had been any sociological analysis of the prevalence of female stereotypes inherited from the Soviet era, and whether violence against women was a problem.

32. Mr. TEXIER said that the number of IDPs and refugees from Nagorno-Karabakh should be clarified, given that several international agencies had provided significantly different statistics. He asked whether the State party had a policy on integrating those people, particularly in terms of their right to employment, education and health care.

33. Additional details should be provided on the judiciary, particularly who appointed judges, what their starting and final salaries were, whether judges had security of tenure, whether there was an independent disciplinary body that dealt with members of the judiciary, and whether there was a training institution for judges.

34. Although he commended the State party for having formed a working group to draft the report currently before the Committee, he considered that the establishment of a permanent body, such as a national human rights committee, would have been more useful. He asked whether NGOs had been actively involved in drafting the report. He also wished to know what was the follow-up procedure when a complaint filed with the Ombudsman's Office was deemed admissible. Were such cases referred to the courts or did the Ombudsman have the authority to decide them?

35. The Committee had received information from an international NGO on political and religious discrimination in Azerbaijan, and he wondered whether measures were being taken to address those issues. He asked what was the degree of religious freedom in the State party, and to what extent foreigners had their right to freedom of religion protected by law. He enquired whether the Code of Administrative Offences was still in force.

36. Ms. BRAS GOMES asked whether the group set up to draft the State party report would remain operational and consider the Committee's concluding observations before preparing the next report. When Azerbaijan had joined the Council of Europe, it had undertaken to adopt a law on minorities in order to supplement its legislation on discrimination. How close had the Government come to fulfilling that commitment? The report lacked information about measures of protection for disabled adults. The Committee had been informed that only 0.1 per cent of visually impaired adults in Azerbaijan were employed. She asked what positive discrimination measures had been taken to improve that percentage and integrate the visually impaired into society. She would also like to know whether sexual equality had increased since the adoption of the national plan of action on women's issues, and whether any public educational programmes had been put in place to change traditional attitudes towards the roles of men and women in society and to reduce discrimination against women.

37. Mr. CEAUSU requested further information on Azerbaijan's economic situation. He wished to know what were the country's main sources of income and what was the annual

revenue from oil. He enquired what stage the privatization process had reached in the agricultural, industrial and service sectors, what percentage of Azerbaijan's GDP was generated from the private sector, and which were the main sectors, aside from oil extraction, that had the greatest potential for economic development. In order to have a clearer understanding of the economic statistics provided in the second report, it would be useful to know what was the exchange rate between the Azerbaijani manat and the United States dollar.

38. He enquired what was the selection process for judges, and who had the authority to dismiss a judge. He asked whether an independent body had been established to monitor the independence of the judiciary and, if so, what was its mandate. Further information should be provided on the process of examining petitions filed with the Ombudsman's Office, whether the complainant was permitted to appear at the Office in person, and the full mandate of the Ombudsman.

39. Corruption was a serious problem in the majority of countries that were undergoing major political and economic reform, and posed a threat to their political, economic and social development. He asked why Azerbaijan's anti-corruption legislation would not be enforced until January 2005.

40. Mr. KERDOUN wished to know whether the Government of Azerbaijan would be prepared to accept the right of the people of Nagorno-Karabakh to self-determination.

41. Mr. XALAFOV (Azerbaijan) thanked Committee members for their questions and the interest they had shown in the development of economic, social and cultural rights in his country. His delegation would endeavour to answer all the questions, and to provide further detailed information in writing if necessary.

42. Mr. MUSAYEV (Azerbaijan) said that at the end of 2000 Azerbaijan had adopted a three-tier legal system comprising: courts of first instance, and regional and economic courts; courts of appeal; and the High Court. Azerbaijani citizens who had reached 30 years of age, had been educated in law and had had five years' experience in the legal profession were eligible to sit the examinations required in order to join the judiciary. The recruitment process for judges had been assessed by international organizations, NGOs and legal bodies. Judges in a court of first instance were appointed by the president of that court, and served a minimum term of office of five years. Judges in the court of appeal and the High Court were appointed by Parliament and served a minimum term of 10 years.

43. A legal education committee had been established within the Ministry of Justice for the education and training of judges. The committee worked in close cooperation with the United Nations and other international organizations. Procedures for the democratic election of judges had been introduced in 2000, and preparations were currently under way for the next round of judicial elections, which were due to take place in 2005. A vital role in those preparations was being played by several prestigious international institutions, including the Council of Europe. In order to further the democratization process, a legal council was being established, and would comprise representatives of the Procurator-General's Office, lawyers and independent legal experts. A special committee would be established to oversee the selection of judges. The newly selected judges would receive training at the educational institutions that had been set up under the Ministry of Justice.

44. The judicial system had been depoliticized; judges could not be removed from office and were guaranteed criminal and administrative immunity for the duration of their tenure. Criminal proceedings could be initiated against a judge only upon the Procurator-General's request. Taking disciplinary action against judges was complicated and time-consuming but could lead to their dismissal. Over the past few years, disciplinary action had been taken against 40 judges and one judge had been dismissed. Efforts were being made to stamp out corruption in the judiciary. The Government's anti-corruption programme focused on improving the system for the selection and evaluation of judges.

45. With regard to judges' salaries, he said that, in 2000, judges had been among the highest paid government employees in Azerbaijan. In line with the recent increase in the remuneration of government employees, the salaries of judges had also increased.

46. The Constitutional Court had recently adopted a series of important decisions stating that certain legal provisions on labour, housing and pensions violated the relevant provisions of the Covenant. All those decisions would be published in the near future. In December 2003, the Ministry of Justice had organized, in cooperation with the Council of Europe, a workshop on the implementation of international legal norms in the Azerbaijani judicial system.

47. Mr. XALAFOV (Azerbaijan) said that there were currently a million refugees and IDPs in Azerbaijan, including about 250,000 ethnic Azerbaijanis who had been forced to leave Armenia in 1988, and 700,000 people who had been internally displaced as a result of the conflict over Nagorno-Karabakh.

48. His Government did not recognize the right of the population of Nagorno-Karabakh to self-determination. Any decision on the future of that population must be made with the participation of the Azerbaijani and Armenian communities of Nagorno-Karabakh and would require the return of the IDPs. Of the 170,000 people who had been living in the region of Nagorno-Karabakh before the conflict, 50,000 had been Azerbaijani citizens. However, as a result of so-called "cleansing" operations, no Azerbaijani citizens remained in the region. He stressed the need to pursue negotiations aimed at finding a peaceful solution to the conflict.

49. The Government recognized the close link between economic, social and cultural rights, on the one hand, and political and civil rights, on the other, and attached great importance to their realization. It was considering the question of a draft optional protocol to the Covenant and would welcome cooperation with other States parties on the matter.

50. Mr. VALIYEV (Azerbaijan) said that the minimum wage had increased considerably over the past few years and currently stood at US\$ 20.50. Whereas in 2001 the minimum wage had accounted for only 4.5 per cent of the minimum consumer basket, it now made up 33.3 per cent and the figure was expected to rise to 56 per cent by 2005. In future, the Government would establish the minimum wage on the basis of the minimum consumer basket, thereby ensuring a decent living for workers and their families.

The meeting rose at 6 p.m.