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Summary record of the first part (public)* of the 2640th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 2 July 2009, at 3 p.m.

Chairperson: Mr. Iwasawa

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The meeting was called to order at 3.05 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant
(continued)

Third periodic report of Azerbaijan (continued) (CCPR/C/AZE/3; CCPR/C/AZE/Q/3; CCPR/C/AZE/Q/3/Add.1)

1. *At the invitation of the Chairperson, the delegation of Azerbaijan resumed their places at the Committee table.*
2. **Mr. Lallah** said he was pleased to note that the report gave detailed information on the many measures taken to combat stereotyping and social segregation of persons with disabilities. However, in its written replies, the State party had not fully replied to question No. 21, in which the Committee asked for details on the actual effects of those measures. It would be useful to have statistics disaggregated according to the type of disability and to know what percentage of the population had a disability.
3. With regard to the rights of persons belonging to minorities, the State party referred to its previous report, which dated back to 2001. Must it be concluded that the situation had not evolved since? If measures had been taken in that regard, it would be useful to know what the results had been in practice. He had found information on the subject in the report on Azerbaijan of the Council of Europe's Advisory Committee on the Framework Convention for the Protection of National Minorities. The Advisory Committee, which monitored the implementation of the Framework Convention, had pointed out that the 2002 State Language Act, pursuant to which all radio and television channels must be broadcast in Azeri, was not in conformity with that instrument. In his view, it was also incompatible with both article 27 and article 19 of the Covenant. At the very least, new legislative provisions should be adopted to ensure that members of minorities could be taught and could communicate with the authorities in their language and to improve the participation of minorities in the decision-making process.
4. **Ms. Wedgwood** said that now that Azerbaijan was no longer under the control of the Soviet Union, it should resolutely strive to move ahead to meet the expectations created by the dismantlement of the USSR. That presupposed facing reality, something which the dialogue with the Committee should help to do.
5. The situation was particularly worrisome with regard to freedom of the press. Azerbaijan was in the fifth place on the list of countries with the highest number of imprisoned journalists, some of whom were the victims of real persecution. One example was the case of Agil Khalil, forced to leave the country after having escaped several assassination attempts. A State party bore responsibility for not protecting journalists from such attacks, as confirmed in an important ruling by the Inter-American Court of Human Rights, which had found that the State was responsible for protecting persons under its jurisdiction and that its inability to ensure such protection incurred its responsibility. It also appeared that a number of foreign radio stations, such as the BBC, the Voice of America and Radio Free Europe/Radio Liberty, were prohibited from broadcasting in FM.
6. The situation with regard to freedom of association was equally alarming. The organization of demonstrations required the approval of the municipal authorities, which was subject to very restrictive conditions, and several protest demonstrations had recently been quelled with violence. Such methods brought to mind a period which one had hoped had belonged to the past and which should not be allowed to return.
7. The law prohibited persons who had studied abroad from holding religious ceremonies, which posed problems in particular for minorities, since often no one from their community had studied in Azerbaijan.

8. For many States, creating obstacles to the financing of NGOs was a way of preventing them from functioning. The financing which NGOs could obtain from foreign donors was subject to the approval of the authorities. She enquired whether it was true that a minimum capital was required for the creation of an NGO and that such bodies could not be set up by persons who did not have Azeri nationality. NGOs were important stakeholders in the life of a country and played an important role in improving State bodies, particularly the police and the army, and the Government should therefore take measures to facilitate their creation and work.

9. According to the OSCE's Office for Democratic Institutions and Human Rights, the 2008 presidential elections had been tarnished by irregularities. The President in office had had greater media coverage than the other candidates, the possibilities for political meetings had been restricted for the other political parties, and electoral commissions had not been set up with equal representation. According to the National Democratic Institute, a court in Baku had closed the election monitoring centre in May 2008 on a minor administrative pretext. She asked the delegation to comment on those various points, and she would also like to know whether bodies other than OSCE had been asked to monitor the elections as observers.

10. **Sir Nigel Rodley** said that it was strange to see the extent to which everything relating to the activities of independent journalists and the opposition in Azerbaijan was illegal: journalists were charged with and prosecuted for common law offences – when they were not themselves victims of offences, such as Agil Khalil, who had been assaulted several times. That case was known, but the Committee would appreciate comments from the delegation on another very recent one: on 8 July 2009, Emin Milli and Adnan Hajzadeh, two bloggers who had gone to the police because they had been assaulted, had been arrested for hooliganism and held in detention for two months following a trial behind closed doors. Regardless of the explanations given by the State party to attempt to justify the acts of the authorities in those cases, it was difficult to believe that independent journalists were completely free to exercise their profession. The Government should look into what appeared to be a general tendency, rather than trying to explain individual cases.

11. **Mr. Bouzid** asked whether it was true that lawyers were so few in number that the exercise of the rights of the defence was compromised and that the courts ordered closed hearings for certain cases involving serious crimes, in particular military offences.

12. **Mr. O'Flaherty** said that he would first address the question of conscientious objectors. In its previous concluding observations, the Committee had recommended the adoption of a law to ensure respect for the constitutional right to perform alternative national service, but according to information which the Committee had received, no such law had been passed to date. In October 2008, however, the Government had informed OSCE that a bill had been submitted to parliament. If that was the case, he wondered why the text had not been published and opened to public debate. Certain sources, referring to comments from Government circles, pointed out that the law punished conscientious objectors, because it imposed more difficult conditions for civil service than for military service. He sought clarification on those points and would like to know whether, pending the passage of the new law, the State party planned to declare a moratorium on the prosecution of persons who invoked the right to conscientious objection.

13. He was pleased to note that in 2001 homosexuality had been decriminalized. However, the Committee had received information according to which homosexuals had been victims of acts of violence at the hands of the police and prison staff and that persons belonging to lesbian, homosexual, bisexual and transsexual communities had been the victims of blackmail, harassment and physical and sexual violence. He asked whether Azerbaijan planned to adopt a code of ethics for its State officials and to add sexual

orientation to the forms of discrimination prohibited by law, in particular in the areas of employment and health care.

14. **Mr. Musayev** (Azerbaijan), elaborating on the replies given with regard to guarantees for the independence of the judiciary, said that the authorities were intent on further improving the judicial system, notably by increasing the number of judges and lawyers. Today there were 700 lawyers in Azerbaijan, a number which was insufficient to meet the needs, above all at regional level. The measures taken, including the introduction of an additional examination for the exercise of the profession of lawyer and of mandatory training at the new Academy of Justice, should result in an increase in the number of judicial officials and guarantee their professionalism. Another focus of action carried out by the Government with the assistance of international institutions was the renovation of judicial infrastructures, which were being equipped with modern means of communication. However, it did not suffice to conduct a careful selection of judicial personnel and to ensure their quality training to guarantee a proper administration of justice. Sometimes judges did not have the necessary professional conscience, and some could even be bribed. The authorities were aware of the problem and were taking measures to address it. More generally, they monitored judicial activity, and the results were analysed with the help of OSCE representatives. The authorities intended to pursue their efforts to improve the situation, make the administration of justice more effective, ensure the primacy of law and achieve a just balance between the branches of government. That was the whole point of the judicial reform that had been undertaken.

15. In reply to the question posed about holding public criminal proceedings, in particular military trials, he said that 95 per cent of trials were public and transparent. However, a judge could order closed proceedings in certain cases, especially for reasons relating to State security, but such cases were very rare and were not a source of concern.

16. Article 76 of the Constitution of Azerbaijan provided that, in certain cases specified by law, persons for whom the exercise of military service was contrary to their convictions could perform alternative service. In accordance with that provision, an ad hoc working group had been set up in conjunction with Council of Europe experts to elaborate a bill on alternative civil service. It was true that the bill had not been the subject of popular consultation, but it was still in the drafting stage. It would then be submitted for consideration to parliament, and the authorities hoped that the text would then be publicized.

17. With regard to the prosecution of journalists for defamation, libel or insult, the working group for the improvement of legislation was studying the possibility of abolishing the two articles of the Criminal Code which punished those offences. It should be pointed out, however, that a majority in Azeri society was opposed to revoking those provisions, which by no means targeted journalists, but were instead designed to protect the honour and dignity of all citizens. The question had also been examined in the context of a parliamentary commission, and the representatives of NGOs who had taken part in the debates had been of the view, like the authorities, that there was no reason to abolish the provisions in question. In all, criminal proceedings instituted under those two articles of the Criminal Code accounted for less than 0.1 per cent of all proceedings, which was negligible. Although several years previously the criminal courts had heard a large number of cases of that kind, today the situation was radically different, and most of the time persons filed a complaint with a civil court to defend their honour or dignity. In any case, the working group for the improvement of legislation would not fail to examine the question from the perspective considered by the Committee.

18. **Mr. Asgarov** (Azerbaijan) said that the religious communities were not required to register as such. The law merely provided that a religious community seeking to obtain the status of legal entity and related rights must be registered. The Constitution guaranteed

separation of church and State. Legislation imposed restrictions on the access of officials of religious communities to the civil service, the police and the judiciary, as well as their participation in the electoral process, but those restrictions did not apply to ordinary citizens.

19. With regard to the links between Azeri Muslims and the Supreme Religious Council of the Caucasus Peoples, he reminded the Committee that the majority of Azeris were Muslims. The Supreme Religious Council of the Caucasus Peoples was an independent institution which merely informed the State committee responsible for religious matters whether a given religious community which applied to be registered was Muslim or not. No religious community which had applied to the Supreme Religious Council had been rejected; they had all been registered.

20. Azeri Muslims were mostly Shiites, but there was also a large Sunnite community and a Sunnite current among people who had lived abroad, including a Wahhabi community, which was officially registered and carried out lawful activities. A mosque of that community, the Abu Bakr mosque in Baku, had been closed temporarily, for reasons of security associated with a terrorist act committed against a community leader by elements belonging to a radical current in the community. The authorities had closed the mosque to prevent further terrorist offences. However, the faithful had been able to continue to worship freely at one of Baku's many other mosques.

21. The concerns raised by the Committee with regard to conditions for the registering and financing of NGOs in Azerbaijan were presumably in connection with a bill which had been submitted to parliament for consideration in late June 2009; the text had provided for a number of restrictions, which had been heavily criticized by national NGOs and representatives of international NGOs present in Baku. In any case, the bill had been examined by the delegates and by various experts and had not been passed.

22. As to the central electoral commission put into place in the context of the latest presidential election, he pointed out that legislation required the commission to have a balanced representation of all political parties, to be ensured through compliance with the "three thirds" rule (one third for the party in power, one third for the opposition and one third for independents). The legislation had been strictly applied. All decisions concerning the activities of the electoral commission had been adopted by equal and direct ballot, and the same restrictions had been imposed for all political parties in the framework of the electoral campaign; for example, the political parties had all been allotted equal broadcasting time on radio and television channels.

23. The rights of national minorities were protected in full by law and in practice, whether in the areas of culture, education or other spheres of activity. The national television channel, private channels and radio stations broadcast programmes in the minorities languages, and in regions in which they were numerically important, notably in the south, south-east and north, minorities had their own television channel. Newspapers were also published in minority languages.

24. **Mr. Rahimov** (Azerbaijan) said that the authorities were making every effort to improve the situation of disabled persons and ensure their integration in society. Reforms were under way in that area, as in many others. Azerbaijan had about 420,000 disabled persons, or 5 per cent of the population. They were divided into three groups, depending on whether they were able to work (group III), unable to work except in certain conditions (group II) or completely unable to work (group I). The State assisted disabled persons through pensions, allowances and other forms of support, and every year a programme for the social welfare of disabled persons, with measures in various areas (vocational training, housing, access to employment, etc.), was funded through the State budget. In recent years, 12 rehabilitation centres had been set up to provide medical care and social assistance, in

particular training so that some disabled persons could then join the labour market. Every year, the system for the rehabilitation of the disabled enabled about 10 per cent of such persons to change their category and to move to group II or group III or even to overcome their disability entirely. In 2008, Azeri legislation had been amended to replace the words “disabled children” by “children with physical deficiencies”, which was considered to be less pejorative.

25. **Mr. Khalafov** (Azerbaijan), returning to the question of the authorization of radio stations such as the BBC or Radio Svoboda to broadcast, said it was true that, by law, those stations could not broadcast in FM, but they were entirely free to use all other media in Azerbaijan, including the Internet. The relevant legislation had been submitted for examination to the Council of Europe, which had not found it to be contrary to its recommended standards.

26. **Mr. Asgarov** (Azerbaijan), replying to questions by Sir Nigel Rodley about two bloggers arrested for hooliganism, said that according to the case file, the persons concerned had been arrested on 8 July 2009 for disorderly conduct because they had insulted and physically assaulted other persons in a restaurant. The decision to place them in detention taken by the district court had been confirmed by the court of appeal on 20 July. The case had given rise to considerable criticism by representatives of the international community in Baku; in a joint statement, the Procurator and the Ministry of Internal Affairs had asked them to refrain from commenting so as not to interfere with the proceedings. Sentencing was a matter solely for the judge, and there could be no doubt that the principle of proportionality had been respected. Azeri judges were perfectly aware of international human rights norms. They regularly attended training classes and seminars on the question, and they could also draw on the vast jurisprudence of the European Court of Human Rights.

27. **The Chairperson** thanked the delegation for its replies and invited the members of the Committee who so wished to ask additional questions.

28. **Mr. O’Flaherty** said that no reply had been given to the question of whether any measures had been taken to combat assaults on persons because of their sexual orientation or on whether sexual orientation might be included among the forms of discrimination prohibited by law. He thanked the delegation for the very useful information provided on the bill on alternative civil service and enquired whether a moratorium on prosecution of conscientious objectors would be declared pending passage of the text.

29. **Ms. Motoc** said it appeared to be contradictory that, on the one hand, public opinion was opposed to the abolition of provisions of the Criminal Code that punished defamation, libel and insult and that, on the other hand, most trials of defamation were in civil proceedings; a clarification would be welcome. It would also be useful to have an exact definition of hooliganism, because many journalists and media professionals were sentenced to prison for that offence; that called for an explanation.

30. **Mr. Amor** asked for a reply to his question on the duration of military service and sought further information on the functions which religious community leaders who had been trained abroad were allowed to exercise. He also would like to know whether classes in religion were held in public schools and, if not, in what framework the subject was taught.

31. **Mr. Musayev** (Azerbaijan) said that the provisions of the Criminal Code which defined defamation, libel and insult as offences had a deterrent role, and thus there was no contradiction between the public wish to maintain them and the fact that most persons who considered themselves to be victims of such offences preferred civil to criminal proceedings. As pointed out earlier, the working group responsible for examining legislation was studying whether those provisions should be retained or abolished. As to the

situation of conscientious objectors, it would be necessary to await the passage of the bill. However, to date very few conscripts had wanted to perform alternative service. Generally, the duration of military service was 18 months, and one year for students in higher education.

32. **Mr. Asgarov** (Azerbaijan) said that his country was striving to reconcile its traditional values with the evolution of modern society. The law did not discriminate based on sexual orientation or identity. Homosexual, bisexual and transsexual persons had become more visible in Azerbaijan, and they freely exercised the right to demonstrate and to voice their demands. To date, no complaint had been recorded for discrimination on grounds of sexual orientation, and thus it did not seem necessary to introduce legislation on the question for the moment. However, if it was found that violations of the human rights of persons belonging to sexual minorities were taking place, consideration would no doubt be given to producing an appropriate legal framework for the protection of those minorities. With regard to religious instruction, there were no restrictions on the right of persons trained abroad to teach religion in Azerbaijan. Religious education was provided in *madrassas*, independent Koran schools, and students were entitled to become religious leaders once they obtained their diploma.

33. **Mr. Khalafov** (Azerbaijan) said that his country had come a long way since the submission of its initial report to the Human Rights Committee in 1993. It had become a party to the main international human rights instruments, and it had undertaken radical reforms at political, legislative, judicial, social and economic level in order to create an environment conducive to the realization of human rights and to comply with its international obligations. After the years under the yoke of the Soviet regime, Azeri society was gradually adopting the values of democracy and human rights, and mentalities were changing. The population was more aware of its rights and was making increasing demands on the State. The Government was working to meet expectations, but the scale of change needed would take time and determination. The Committee's observations and recommendations were very useful, because they highlighted areas in which gaps persisted and contained valuable suggestions on how to address them; they would be disseminated to all stakeholders and taken duly into consideration in the formulation of future policies and reforms.

34. **The Chairperson** thanked the delegation for its very complete and detailed replies to the Committee's questions. Any additional information should be forwarded in writing by 1 p.m. of 23 July 2009 so that it could be taken into account in the text of the Committee's concluding observations.

35. *The delegation of Azerbaijan withdrew.*

The first part (public) of the meeting rose at 4.40 p.m.