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the Elimination
of all Forms of
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Sixty-sixth session

SUMMARY RECORD OF THE 1691st MEETING

Held at the Palais Wilson, Geneva,
on Friday, 4 March 2005, at 3 p.m.

Chairman: Mr. YUTZIS

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

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Third and fourth periodic reports of Azerbaijan (CERD/C/440/Add.1; HRI/CORE/1/Add.117)

1. At the invitation of the Chairman, the members of the delegation of Azerbaijan took places at the Committee table.
2. Mr. KHALAFOV (Azerbaijan), introducing the third and fourth periodic reports (CERD/C/440/Add.1) submitted by his Government, said that the protection of human rights and fundamental freedoms was a priority in State policy. Azerbaijan was a State member of the Council of Europe, and had acceded to a range of international and European human rights instruments. The Government had recognized the competence of the relevant United Nations human rights treaty bodies to receive communications from individuals who considered themselves victims of human rights violations. Azerbaijan had participated in the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and was an active participant in the Working Group on the effective implementation of the Durban Declaration and Programme of Action.
3. An Ombudsman's Office had been established to receive complaints and raise public awareness of human rights issues. It had recently held a round table on freedom of conscience with representatives of the Muslim, Jewish and Russian Orthodox religions. Measures had been taken to increase the role of women in State and public management, and a National Plan of Action on Women's Issues had been adopted. National legislation had been revised considerably since 2000, and new democratic institutions and an independent judicial system had been established. Measures were currently being taken to increase the power and effectiveness of the judiciary. The new Criminal Code prohibited acts that aroused national, racial or religious hostility if they were carried out in public or with the use of the media. The Code of Criminal Procedure and the Code of Civil Procedure had been amended to include articles stipulating the circumstances under which legal decisions could be reviewed in the light of new evidence relating to violations of rights or freedoms.
4. Measures were being taken to combat corruption, including the adoption of legislation that had entered into force in January 2005, and a State programme for combating corruption that would run until 2006. The Government had also instituted a range of programmes and measures for eradicating poverty, reducing unemployment, increasing housing provision, and promoting social and economic development.
5. Azerbaijan was a multinational, multilingual and multi-religious State, which had no recorded cases of intolerance or discrimination towards minorities. The Government provided funds for cultural centres and public organizations for national minorities. The Ministry of Culture had organized a conference on cultural diversity in June 2002, and in 2004 an

international conference entitled: "Religion and democracy: theory and historical practice" had been held in Baky. In 2004, there had been 310 different religious communities registered in Azerbaijan.

6. Efforts were made to preserve the languages of national minorities by ensuring that they were taught in secondary schools, and by publishing minority-language textbooks and dictionaries. Local radio stations broadcast programmes in minority languages in regions with large minority communities. There were daily television broadcasts and newspapers in Russian, and also in Kurdish, Georgian, Talysh and other minority languages.

7. The continuing conflict in Nagorny Karabakh was having a negative effect on the Government's ability to fulfil its obligations under the Convention. Armenia was implementing a policy of ethnic cleansing of Azerbaijanis on that territory. Tens of thousands of people had been killed and injured in the region and there were large numbers of displaced persons. His Government believed that a State should be a common home for all its citizens, and no person should be allowed to assert his or her identity in a way that would preclude the possibility of others doing the same. The settlement of conflicts involving national minorities should be based on strict territorial integrity and on maintaining and promoting the identities of those minorities. The Government acknowledged that although it had made progress, steps remained to be taken to address settlement issues.

8. Mr. TANG Chengyuan (Country Rapporteur), thanking the delegation for its presentation of the State party report, said that the Government of Azerbaijan should be commended for having acceded to the principal international human rights instruments, and for having made a declaration under article 14 of the Convention. He urged the Government to ratify the amendment to article 8. The Government had responded well to the Committee's previous concluding observations, and relevant legislative changes had been made.

9. With regard to article 5, the Committee had asked for more information on the Citizenship Act of 30 September 1998. He was pleased to note that under article 14 of the Act foreigners and stateless persons who had lived for five consecutive years in Azerbaijan and presented documents certifying that they had learned the State language could apply for Azerbaijani citizenship (para. 125). Furthermore, under article 12 of the Act, children born in Azerbaijan to stateless persons were Azerbaijani citizens (para. 124).

10. The Committee had expressed particular concern about the rights of displaced persons and refugees. According to article 6 of the Status of Refugees and Forcibly Displaced Persons (Persons Resettled in Azerbaijan) Act of 21 May 1999, refugees had the same rights, freedoms and obligations as Azerbaijani citizens, unless otherwise provided by the Constitution or other legislation (para. 275). Also, preferential treatment was given to those persons with respect to, inter alia, housing, health, education and transport, as detailed in paragraph 276 of the report.

11. In connection with article 6, the Committee had recommended that the State party should adopt special measures to ensure that the members of ethnic minorities were entitled to the same legal assistance as other persons. Under the Code of Criminal Procedure and relevant compensation legislation, all persons were guaranteed the right to compensation for damage (paras. 259 and 260).

12. Concerning article 7, the Committee had recommended that law enforcement officials should be given training on human rights and racial tolerance. He welcomed the fact that, with assistance from the Council of Europe, training courses had been held on national minorities and human rights (para. 256), and that the Human Rights Research Institute had been established within the Azerbaijani Academy of Sciences (para. 279).

13. The fourth periodic report showed that Azerbaijan was taking its obligations under the Convention seriously through the introduction of legislative and other measures to ensure equal rights for all in its multi-ethnic society. In particular, he welcomed the number of international instruments ratified and the fact that they had primacy over domestic law and could be invoked in the courts. Nevertheless, insufficient information had been provided on how such measures were enforced with a view to ending discriminatory practices by law-enforcement and other public officials and the media against minority groups. The State party must provide specific information on cases of violations dealt with by the Ombudsman and public prosecutors, and on how victims were ensured equal treatment before the law and legal assistance and adequate compensation, as appropriate.

14. In that connection, he asked what the common understanding of the term “racial discrimination” was in Azerbaijan. Was it understood as meaning only the most violent and atrocious manifestations of racial hatred, but not minor disturbances or disruptions in the daily lives and activities of members of religious and ethnic minorities? In its concluding observations on Azerbaijan’s second periodic report (E/1990/6/Add.37), the Committee on Economic, Social and Cultural Rights had expressed concern about the persistent de facto discrimination against foreign citizens, ethnic minorities and stateless persons in the fields of housing, employment and education. The conflict in Nagorny Karabakh had seriously affected the lives of the Armenian minority. NGO sources had reported that only about 650 Armenians had been registered in the 1996 census although there had been approximately 20,000 resident Armenians. Had they concealed their identity out of fear? Would the implementation of reconciliation measures facilitate the harmonious coexistence of the two peoples?

15. The situation of the 10,000 or so Chechen refugees warranted attention. They had been in Azerbaijan for many years but reportedly their conditions had deteriorated of late. Perhaps the State party might consider amending existing legislation and regulations relating to refugees since their provisions were clearly insufficient to enable current problems to be addressed. Refugees and displaced persons accounted for 13 per cent of the total population, which for a small country like Azerbaijan represented a heavy burden.

16. Similarly, the Citizenship Act had resolved some but not all problems. There were still many stateless men residing in Azerbaijan (particularly Afghans) who had married Azerbaijani women and had families but now faced expulsion. Furthermore, approximately 500,000 Azerbaijani citizens who had left the country before January 1992 had lost their citizenship under article 5 of the Citizenship Act. What would happen to them?

17. Lastly, he sought clarification concerning legislation or regulations relating to human trafficking. Many men, women and children from the Islamic Republic of Iran, Iraq and South-East Asia were trafficked through Azerbaijan to EU countries. What steps was the Government taking to remedy the situation?

18. Mr. VALENCIA RODRÍGUEZ said he understood that the State party had some difficulties in complying with the provisions of the Convention owing to the current economic and social transition and the consequences of the conflict in Nagorny Karabakh. He hoped that the latter would be settled peacefully, with the cooperation of the international community.

19. He noted the entry into force of new legislation and amendments to the Constitution, as listed in paragraph 41 of the report, and enquired how they would deal with the problem of racial discrimination. He welcomed the appointment of an Ombudsman and asked whether he or she was empowered to deal with complaints of violations by private citizens and under what procedures.

20. According to the report, the provisions of the Criminal Code and legislation governing associations and the media gave effect to article 4 of the Convention. However, had they ever been enforced with respect to racial discrimination? Also, it seemed that the Electoral Code had special provisions relating to foreigners. How well were minority groups represented in parliament and government bodies?

21. He sought clarification concerning the scope of article 164 of the Criminal Code whereby property owners had the right to use force in the event of violations of their property rights. Exactly what kind of “force” could lawfully be used? Also, did members of minority groups need to meet certain conditions in order to exercise property and inheritance rights?

22. The Labour Code and the Employment Act contained specific provisions prohibiting racial discrimination; moreover, additional guarantees were established for certain groups requiring protection. He asked for information on the results of the application of those provisions and for unemployment figures, relating in particular to minority groups.

23. The report provided ample information on economic, social and cultural rights, but he wished to know what the real situation was in terms of housing, health and education for minority ethnic groups. He enquired about the application of the Presidential Decree of 16 September 1992 on the protection of the rights and freedoms of minorities, referred to in paragraph 252. He welcomed the introduction of schools and courses for minorities as detailed in paragraph 254.

24. There was no specific legislation to implement the provisions of article 6 of the Convention. He sought clarification concerning the statement in paragraph 259 of the report, which implied that the judge hearing a discrimination case must also decide on the form of compensation.

25. The measures adopted in connection with article 7 of the Convention were commendable and should continue to be implemented. He would welcome information on results achieved thus far.

26. Mr. HERNDL said that clearly the conflict in Nagorny Karabakh and its consequences were a heavy burden on the State party, and he hoped it would be resolved peacefully.

27. He welcomed the fact that the State party had followed the Committee's recommendations by appointing an Ombudsman. However, clearer information was required on the Ombudsman's functions, procedures and status.
28. He was pleased to note that the State party had made the declaration under article 14 of the Convention, but asked what steps were being taken to publicize the relevant complaints procedure. He urged the State party to ratify the amendment to article 8.
29. With regard to the implementation of article 4, he welcomed the enactment of the new Criminal Code. However, he asked whether article 61 of the former Criminal Code had now been replaced, since it had made racism an aggravating circumstance in the commission of any offence. According to paragraph 51 of the report, article 120 of the new Code criminalized murder on grounds of ethnic, racial or religious hatred or enmity, but no mention was made of other offences.
30. Reports had been received of attacks against the members of religious and ethnic minorities by the national press. What steps were taken to enforce the Media Act? No information on specific cases relating to its enforcement had been provided in the report. He sought clarification regarding the offence of insulting national dignity referred to in paragraph 52 and whether it was on a par with racial hatred.
31. When considering Azerbaijan's second periodic report, the Committee on Economic, Social and Cultural Rights had expressed concern about long-term residents in Azerbaijan who remained stateless. Apparently at some stage a considerable number of people living in Azerbaijan had been dispossessed of their citizenship. What were the reasons for that situation and how could it be remedied?
32. Mr. SICILIANOS welcomed the progress made in establishing a national system of protection for refugees through the implementation of refugee status determination procedures. However, did the Government envisage a complementary system of protection for persons who were not officially recognized as refugees but were for compelling reasons unable to return to their homelands?
33. According to information received by the Committee, the State party did not fully observe the principle of non-refoulement. Moreover, in practice, asylum-seekers were not guaranteed the economic and social rights under the Convention relating to the Status of Refugees. He would welcome clarification in that regard.
34. He was also concerned about the lack of general awareness of racism and racial discrimination. According to the report of the European Commission against Racism and Intolerance (ECRI), the concepts of racism and discrimination were understood in a restrictive manner, and appeared to apply only to the most severe and extreme manifestations of those phenomena. Discrimination in daily life was overlooked by legislation and society at large. He wondered what steps were being taken to define and perceive discrimination more broadly, in accordance with the Convention.

35. The situation of the Armenian minority in the State party was also a matter for concern. Other than those living in Nagorny Karabakh and in the occupied territories of Azerbaijan, it appeared that only some 20,000 Armenians continued to live in Azerbaijan, and they were almost exclusively married to Azerbaijanis or of mixed Armenian-Azerbaijani descent. None of the Armenian Orthodox churches was functioning, and hate speech and derogatory public statements against Armenians occurred routinely. He wondered whether, in a spirit of reconciliation, the State party could consider addressing that situation in a manner compatible with its international commitments, including those under the Convention.

36. Mr. de GOUTTES said that the armed conflict with Armenia in Nagorny Karabakh was at the root of most of the State party's problems, such as the influx of refugees and displaced persons, the particularly difficult situation of women and children, the destruction of houses, and the employment crisis. However, there were also many positive aspects contained in the Azerbaijani report, including the statistics on the multi-ethnic composition of the population, the ratification of all the major human rights instruments, and the declaration under article 14 of the Convention. There were many provisions of criminal law against racism, and, notwithstanding Mr. Herndl's observations, it seemed that they were largely satisfactory in terms of article 4 of the Convention. He noted with satisfaction that, according to the ECRI report, the State party had established racial motivation as an aggravating circumstance. The new Labour Code also contained provisions prohibiting racial discrimination in employment.

37. He would be interested to hear an assessment of the State Committee for Women's Affairs. He would also welcome more information on the activities of the Ombudsman's Office established in July 2002 and the status of NGOs under the Non-Governmental Organizations (Voluntary Organizations and Funds) Act of 2000.

38. On the question of judicial recourse for victims of racism, he noted that no information had been provided on complaints, proceedings or judgements relating to racist acts. The State party should provide such information in its next report, as the absence of complaints was not necessarily a positive indicator, but could suggest a lack of confidence in the authorities or a lack of knowledge of their rights on the part of victims.

39. Referring to the negative consequences of the Nagorny Karabakh conflict, the Committee on Economic, Social and Cultural Rights (CESCR), in its concluding observations of December 2004, had expressed concern at the persistence of de facto discrimination against foreigners, ethnic minorities and stateless persons in the areas of housing, employment, education and health, and the high level of unemployment among refugees, displaced persons and women. In addition, it was concerned about the illegal occupation by refugees and displaced persons of properties belonging to Armenians or members of other ethnic minorities, and had recommended that the State party take measures to provide compensation or alternative solutions for those affected.

40. CESCR had expressed concern that trafficking in persons, particularly women, persisted in the State party. In addition, according to NGO sources, there was the risk of refoulement and extradition of de facto refugees to countries where they might be under threat of torture or even the death penalty.

41. Mr. AMIR said that the Committee acknowledged the substantial progress made by the State party. He would be interested to learn whether there was a national system of legal protection of refugees and, if so, how it functioned. Had any concrete measures been taken to guarantee the principle of non-refoulement for persons not officially recognized as refugees but not in a position to return to their country of origin, or could any alternative solutions be substituted? He would welcome information on the total number of refugees in the State party; the majority appeared to be ethnic Chechens from the Russian Federation. Were the protection needs of those Chechens taken into account? According to the Committee's sources, it appeared that the State party did not accept their applications for refugee status. Other nationalities were also concerned, including Afghans and Iraqis, and he wondered how their situation was regulated.

42. Mr. PILLAI noted with satisfaction that the State party had been equally regular in reporting to the other human rights treaty bodies, which reflected its commitment to fulfilling its international obligations. One of the positive aspects of the report was the acceptance of the multi-ethnic composition of the population and the explanation of that situation. A number of positive steps had been taken to combat racism and intolerance, including legislative measures containing anti-discrimination provisions and aimed at improving mother-tongue education for minorities and combating corruption. In addition, it was necessary to sensitize and train the police, judiciary and other law enforcement authorities. He would welcome more information on measures taken to make the justice system sensitive, effective and independent.

43. Article 111 of the Criminal Code criminalized acts committed with a view to establishing and maintaining the superiority of one racial group for the oppression of another racial group. He would welcome clarification of what acts were being referred to, as it was not clear whether they included the situations listed in paragraph 51 of the report. If they did, the fact that the provision covered any measure that curbed or denied a racial or ethnic minority's freedom of expression and opinion was positive. He wondered what provision of the Criminal Code prohibited statements in the media or elsewhere which amounted to incitement to racial hatred.

44. He noted that from 2000 to 2003 the courts had not dealt with any cases involving racial discrimination. He would be interested to hear the reasons for that situation. For example, were any complaints under investigation by the police, or were victims not aware of the provisions of article 111 of the Criminal Code?

45. He would be interested to learn more about the nature and disposal of the complaints dealt with by the Ombudsman since October 2002. Had that Office received any complaints of racial discrimination? According to the ECRI report, the Ombudsman could issue non-binding recommendations, and he wondered what was understood by "non-binding". Did that mechanism enable the Ombudsman to function as an effective institution? The Committee against Torture (CAT) and CESCR had recommended that the Ombudsman's independence be fully ensured and that a commission be established in accordance with the Paris Principles, which stressed the independence and effectiveness of national human rights institutions.

46. He would be interested to hear what was covered under the Non-Governmental Organizations (Voluntary Organizations and Funds) Act. Did it refer only to the funding of NGOs, or also to the kind of work that they could take up? In that connection, he would also welcome information on links between NGOs and the work of the Ombudsman.

47. In 2003, CAT had expressed concern at reports of harassment and attacks against human rights defenders in the State party, and had recommended full protection of non-governmental human rights defenders. Greater recognition of the work of NGOs by a well-organized national human rights institution would strengthen the protection of human rights defenders in their efforts to address issues relating to racial discrimination.

48. Mr. CALI TZAY said that, given the multi-ethnic composition of Azerbaijan, he had been surprised to note that very little attention had been paid in the report to minority languages spoken in the State party. He would be interested to hear what their situation was, whether they had official status, whether they were respected and promoted, and whether any had disappeared. The only reference had been in relation to the administration of justice, where if a person did not understand the language used in court, an interpreter could be provided. However, no reference had been made to the use of languages in education or employment, for example. He was concerned about that situation and would welcome clarification.

49. Mr. KHALAFOV (Azerbaijan) said that the Committee's questions were always a source of encouragement for his country in its efforts to improve its implementation of the Convention. A document describing the range of legislative and practical measures that Azerbaijan had taken with a view to implementing the Durban Declaration and Programme of Action had been made available to the Country Rapporteur.

50. The Ombudsman's Office was a new institution established under a constitutional Act with a mandate to restore the rights and freedoms accorded under the Constitution and under the international agreements to which Azerbaijan was party when those rights were violated by State bodies, local government bodies or officials. The Ombudsman's term of office was seven years, which was longer than that of members of parliament, the President or the Procurator-General. The Ombudsman was independent and answerable only to the Constitution and laws of Azerbaijan. In addition, special measures were in place to ensure his independence and to prevent interference in his work by State bodies or local authorities. The powers of the Ombudsman were not reduced if a state of war or emergency was declared. He had powers to consider complaints and appeals; if he found that a violation had occurred, he could refer the matter to the prosecutorial authorities. He provided an additional route of appeal for citizens and could make recommendations on disciplinary measures against individuals. He had the right to ask the Constitutional Court to review legislative acts in the light of their impact on human rights. In addition to the central Ombudsman's Office, there were three regional offices.

51. The Ombudsman had considered 4,500 applications since the beginning of 2002, of which 90 per cent had been complaints; of those, 32 per cent had concerned violations of civil and political rights, while 67 per cent had concerned violations of economic and social rights. More than 6 per cent of complaints had been from prisoners and 3 per cent had been to request a pardon. Complaints had also been received from persons serving in the military, their families and refugees. Of all complaints received, more than 23 per cent had been upheld in full and more than 5 per cent had been upheld in part. Detailed information about the work of the Ombudsman was published on a dedicated web site. The Ombudsman had the right to submit an annual report to the President and parliament and to make recommendations regarding measures that should be taken in the interests of protecting human rights and fundamental freedoms.

52. Mr. MUSAYEV (Azerbaijan) said that the Ombudsman had a broad mandate. He emphasized that complaints submitted to the Ombudsman by prisoners were received uncensored. The Ombudsman had the right to visit State military installations, prisons and remand centres; he could speak one-to-one with inmates and see documents that proved the legality of their detention. If the Ombudsman found that a violation had occurred, he could require that the rights of the individual concerned be restored within 10 days. If that request was not complied with, he could address the highest body of the relevant organization and other State bodies. He also had the right to refer cases to the relevant judicial institutions, and could make recommendations to the President regarding requests for pardon or citizenship. He also had the right to make suggestions to parliament regarding the adoption or review of legislation to promote human rights. The Ombudsman carried out his work in accordance with the principles of transparency, accountability, legality, fairness and impartiality.

53. Mr. KHALAFOV (Azerbaijan) said that, in addition to submitting reports to the Government and the President, the Ombudsman could bring violations to the attention of the Procurator-General and the Constitutional Court. The decisions of the Constitutional Court were published in the official gazette and in a compendium of Azerbaijani legislation. Although the Ombudsman's decisions were recommendatory, their impact was high. Moreover, the Ombudsman could refer cases to the courts.

54. Since all international agreements to which Azerbaijan was a party formed an integral part of its domestic legislation, it was not necessary for the term "ethnic minority" to be defined in national law. The rights of ethnic minorities were guaranteed fully under the Constitution and other legislation, details of which were provided in the report.

55. Mr. MUSAYEV said that Azerbaijan had provided details to the Committee on Economic, Social and Cultural Rights of more than 10 cases in which the Constitutional Court had referred directly to United Nations instruments; all such decisions were published in Azerbaijani and in Russian. Thanks to support from the Council of Europe, training seminars on international human rights instruments had been held for the benefit of judges and law enforcement officials. His Government was aware that awareness-raising served to maximize the impact of the Convention.

56. In accordance with the Television and Radio Broadcasting Act of 25 June 2002, the National Television and Radio Council monitored broadcasts for propaganda concerning terrorism, violence, cruelty and ethnic, racial or religious discrimination, which was prohibited (para. 56). In 2003, a Press Council had been established: it received and considered complaints about specific articles in the press. A permanent commission set up in February 2004, comprising members of the Press Council and representatives of the Procurator-General's Office and the Ministry of the Interior, handled disputes between State bodies and the press. The number of NGOs registered in Azerbaijan had increased dramatically following the enactment in 2004 of a new law that simplified the process for registering a legal entity.

57. Mr. ZALOV (Azerbaijan) said that, pursuant to the United Nations Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Azerbaijan had introduced a national plan to combat

people-trafficking on 6 May 2004; the measures set out in the plan included establishing the necessary legislative framework and creating a special police unit to combat people-trafficking and protect victims.

58. Mr. KHALAFOV (Azerbaijan) said that the rights of refugees and internally displaced persons were protected by law, although there were difficulties with practical implementation. Immigrants were deemed to be people who had the right to stay and work in the country, and had the same rights as Azerbaijani nationals, with the exception of some political rights. However, the reduction in the amount of international assistance to Azerbaijan had made it difficult to ensure the social and economic rights of refugees and internally displaced persons. The Government was, however, doing all it could, and had established a special fund to help build housing and other necessary infrastructure. Azerbaijan was working to reduce statelessness, was a signatory to the Convention relating to the Status of Refugees and worked with the International Organization for Migration. He drew attention to the specific characteristics of the refugee situation which resulted from the conflict with Armenia.

The meeting rose at 6 p.m.