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Human Rights Committee

Concluding observations on the fourth periodic report of Azerbaijan*

1. The Committee considered the fourth periodic report of Azerbaijan (CCPR/C/AZE/4) at its 3315th and 3316th meetings (see CCPR/C/SR.3315 and 3316), held on 20 and 21 October 2016. At its 3330th and 3333rd meetings, held on 1 and 2 November 2016, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the fourth periodic report of Azerbaijan and the information presented therein. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's high-level delegation on the measures taken during the reporting period to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies (CCPR/C/AZE/Q/4/Add.1) to the list of issues (CCPR/C/AZE/Q/4), which were supplemented by the oral responses provided by the delegation.

B. Positive aspects

3. The Committee welcomes the following measures taken by the State party:
- (a) The raising, in 2011, of the minimum age of marriage for girls from 17 to 18 years;
 - (b) The adoption on 22 May 2012 of the law on ensuring the rights and freedoms of persons held in places of detention;
 - (c) The adoption on 22 November 2013 of the law on public participation;
 - (d) The adoption on 30 September 2015 of the law on citizens' appeals.

* Adopted by the Committee at its 118th session (17 October-4 November 2016).



C. Principal matters of concern and recommendations

Implementation of the Views under the Optional Protocol

4. The Committee is concerned about the State party's failure to implement the Views adopted by the Committee under the Optional Protocol and regrets the lack of effective mechanisms and legal procedures for authors of individual communications to seek, in law and in practice, the full implementation of the Views (art. 2).

5. The State party should take all measures necessary to ensure that appropriate procedures are in place to give full effect to the rights protected under the Covenant in accordance with the Committee's Views. It should promptly and fully comply with all the Views adopted by the Committee.

Modifications to the Constitution

6. The Committee is concerned about the modifications to the Constitution approved by referendum on 26 September 2016, including about the procedure for conducting this reform, which lacked the involvement of the parliament and sufficient time for public deliberation. It is concerned that the approved modifications could lead to restrictions of Covenant rights through general and broad limitation clauses. The Committee notes the preliminary opinion of the European Commission for Democracy through Law that the recent constitutional changes expand the power of the President while reducing his political accountability and weakening the parliament, and expresses concern that the constitutional changes compromise judicial independence (arts. 2, 5, 14 and 25).

7. The State party should ensure that modifications to the Constitution are adopted in a manner compatible with the State party's obligations under the Covenant, including article 25, and that any restrictions imposed on Covenant rights comply with the principles of legal certainty and predictability and are narrowly construed and applied. It should make all changes necessary to guarantee judicial independence in law and in practice.

Discrimination on grounds of sexual orientation and gender identity

8. The Committee is concerned that the existing anti-discrimination legal framework does not explicitly prohibit discrimination on the basis of sexual orientation and gender identity. It is also concerned about impunity for reported acts of: (a) discrimination and violence against persons on the basis of their sexual orientation and gender identity, including within the family and by police and prison officials; (b) extortion of money from lesbian, gay, bisexual and transgender persons in some police stations in return for not disclosing their sexual orientation or gender identity; (c) hostility on social media targeting lesbian, gay, bisexual and transgender persons; and (d) violations of the rights of lesbian, gay, bisexual and transgender persons to freedom of expression and peaceful assembly (arts. 2, 19, 21 and 26).

9. The State party should ensure that discrimination on the basis of sexual orientation and gender identity is included in its anti-discrimination legal framework, that adequate and effective protection against all forms of discrimination, hate speech or violence committed on the basis of sexual orientation or gender identity is afforded to persons both in law and in practice, that such cases are properly investigated and that perpetrators are held accountable. It should also take all measures necessary to guarantee in practice the effective enjoyment of the rights to freedom of expression and peaceful assembly of lesbian, gay, bisexual and transgender persons and to defenders of those rights.

Rights of persons with disabilities

10. The Committee, while acknowledging the measures taken to advance the rights of persons with disabilities, is concerned about: (a) the fact that there is no comprehensive prohibition of discrimination on the grounds of disability in some areas of life and that existing regulations in this regard are not sufficiently enforced; (b) the widespread societal perception that children with disabilities are ill and need to be segregated from other children; and (c) difficulties in access to information and means of communications and the physical inaccessibility of public transportation and other facilities. The Committee notes that the law on the rights of persons with disabilities is yet to be adopted (arts. 2, 24 and 26).

11. The State party should strengthen the measures taken to guarantee, both in law and in practice, equal rights to persons with disabilities and their effective protection against discrimination and exclusion and remove the remaining barriers to non-discriminatory access by persons with disabilities to information, means of communications, public transportation and buildings.

12. The Committee is concerned about reports of involuntary confinement in psychiatric institutions of adults and children with intellectual and/or psychosocial disabilities and of the forced institutionalization of persons with a variety of disabilities, including children, without clear procedures for challenging such confinement and institutionalization and without proper judicial review. This, in practice, renders the prospect of release illusory. The Committee is further concerned about negligence and poor living conditions in such institutions and the lack of a regular assessment of those conditions (arts. 2, 7, 9, 24 and 26).

13. The State party should step up its efforts towards the deinstitutionalization of persons with disabilities by making available adequate community-based or alternative social care services for persons with psychosocial disabilities. It should ensure that psychiatric confinement is applied only as a measure of last resort and for the shortest appropriate period of time and that the confinement is strictly necessary and proportionate for the purpose of protecting the individuals in question from serious harm or from preventing injury to others. The State party should ensure that procedures for involuntary hospitalization and forced institutionalization respect the views of the individual and that any representative genuinely represents and defends the wishes and interests of the individual concerned. It should also ensure that such confinement is supported by adequate procedural and substantive safeguards established by law, including effective initial and periodic judicial review of the lawfulness of such deprivation of liberty and regular independent oversight of living conditions in such institutions. The Committee brings the State party's attention to its general comment No. 35 (2014) on liberty and security of person.

Gender equality

14. The Committee remains concerned about: (a) patriarchal attitudes and deep-rooted stereotypes regarding the roles, responsibilities and identities of women and men in society and about the severe restrictions imposed on women and girls with a view to preserving the so-called "family honour"; (b) the continued underrepresentation of women in public and political life, in particular in decision-making positions, despite the increase in representation of women in the National Assembly to 17 per cent following the most recent election; (c) the persistent gender wage gap; (d) cases of early marriage, especially in rural and mountainous regions, unregistered religious marriage (kabin) and temporary marriage (sighe) despite the legal prohibition of such practices; and (e) the sex-selective abortion of female fetuses (arts. 2, 3, 6, 23 and 26).

15. The State party should step up its measures aimed at ensuring gender equality, including by:

- (a) Developing strategies to combat patriarchal attitudes and stereotypes on the roles and responsibilities of women and men in the family and in society at large;
- (b) Strengthening efforts to achieve equitable representation of women in national and local legislative and executive bodies, including in decision-making positions, within specific time frames;
- (c) Eliminating the gender wage gap by combating vertical and horizontal segregation in employment;
- (d) Ensuring the effective enforcement of existing legal provisions against early marriage, unregistered religious marriage (*kabin*) and temporary marriage (*sighe*), and pursuing community awareness-raising campaigns discouraging such practices;
- (e) Combating sex-selective abortions, including by monitoring the scale of the phenomenon, addressing its root causes and long-term implications for society and carrying out awareness-raising activities on the detrimental impact of sex selection and on the equal value of girls and boys.

Violence against women

16. The Committee remains concerned that cases of sexual violence and domestic violence in particular remain high, are often tolerated and are underreported because of a culture of silence. It is further concerned that: (a) enforcement of existing legislation is limited; (b) courts reportedly systematically use reconciliatory measures for first-time offenders without considering the victim's opinion or safety; (c) sexual harassment is not effectively prohibited; and (d) the provision of assistance services to victims of violence is mainly delegated to non-governmental organizations (NGOs), with limited State involvement (arts. 2, 3, 7 and 26).

17. The State party should strengthen its efforts to prevent and combat all forms of violence against women, including by:

- (a) Ensuring the full criminalization of domestic violence, the explicit prohibition of sexual harassment and the effective implementation of relevant legislation in practice;
- (b) Raising awareness of the unacceptability and adverse impact of violence against women, systematically informing women of their rights and establishing an effective mechanism to encourage the reporting of cases of domestic violence to the law enforcement authorities and to protect victims who come forward;
- (c) Ensuring that law enforcement officers, members of the judiciary, social workers and medical staff receive appropriate training on how to detect and deal properly with cases of violence against women;
- (d) Ensuring that all cases of violence against women are promptly and thoroughly investigated, that perpetrators are brought to justice and that victims have access to remedies and means of protection, including sufficient, safe and adequately funded centres for victims of violence;
- (e) Preventing courts from resorting to reconciliatory measures in cases of sexual violence without due consideration for the victim's opinion and safety.

Torture and ill-treatment

18. The Committee remains concerned about consistent reports of torture and ill-treatment, including of journalists, human rights defenders and youth activists, that have reportedly led to death in several cases. While welcoming the establishment of the national preventive mechanism in 2011, the Committee is concerned about the mechanism's limited effectiveness in preventing torture and ill-treatment and other violations in places of deprivation of liberty (arts. 7 and 10).

19. **The State party should take effective measures to eradicate torture and ill-treatment, including by:**

(a) **Ensuring that all allegations of torture and ill-treatment are promptly and thoroughly investigated by an independent and impartial body, that perpetrators are prosecuted and, if convicted, are punished with adequate sanctions, and that victims are provided with effective remedies and full reparation, including appropriate compensation;**

(b) **Conducting the reforms necessary to ensure that regular monitoring and inspection of all places of deprivation of liberty is carried out by an independent and effective mechanism, and consider involving NGOs in such a process.**

Administrative detention

20. The Committee is concerned that the maximum term of imprisonment under the Code of Administrative Offences for offences such as hooliganism and traffic violations has increased from 15 to 90 days and is currently equal to the minimum term provided for under the Criminal Code; that the severity of such punishment may amount to de facto criminal sanction; and that prisoners under administrative arrest reportedly serve their sentences in facilities, such as cells of district police departments, not suitable for long-term detention (arts. 7, 9, 10 and 14).

21. **The State party should reform its system of administrative detention with a view to bringing it into full compliance with articles 9 and 14 of the Covenant, taking into account the Committee's general comment No. 35 (2014) on liberty and security of person.**

Treatment of prisoners

22. The Committee, while acknowledging the measures taken to improve conditions of detention, including the building of new prison facilities, is concerned that overcrowding remains high and that living conditions in some prisons are still inadequate. It is also concerned about corruption within prison facilities (arts. 7 and 10).

23. **The State party should redouble its efforts to address overcrowding in places of detention, including by resorting to non-custodial alternative measures to detention, combat corruption within prison facilities and improve conditions of detention in accordance with the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).**

Right to counsel

24. The Committee is concerned about deficiencies in the implementation in practice of legal provisions guaranteeing access to a lawyer to persons deprived of their liberty, about the low number of lawyers (advocates) in the State party and the May 2016 findings of the Working Group on Arbitrary Detention indicating, inter alia, that many persons arrested and detained have never had the chance to see a lawyer. The Committee is also concerned about reports that lawyers providing legal aid are insufficiently remunerated and take on

heavy workloads, which in turn affects the quality of the legal assistance provided, as well as about the deficient legal representation provided by State-appointed lawyers (arts. 9 and 14).

25. The State party should redouble its efforts to address effectively the shortage of lawyers in the country, including by ensuring that admission to the Bar can only be denied on the basis of objective criteria such as relevant knowledge and qualification. It should also ensure that:

(a) Relevant legal provisions are strictly enforced with a view to guaranteeing access to a lawyer from the very outset of a person's deprivation of liberty;

(b) Lawyers providing legal aid are properly remunerated;

(c) State-appointed defence lawyers provide adequate legal representation.

Judicial independence

26. The Committee, while acknowledging the steps taken to reform the judiciary, remains concerned about the continued lack of judicial independence from the executive branch, including prosecuting authorities. In particular, it is concerned that: (a) the Judicial-Legal Council, which has been granted extensive powers in matters related to the appointment, promotion and disciplining of judges, is susceptible to undue interference by the executive branch; and (b) allegations of corruption within the judiciary continue to be reported. The Committee is also concerned about the number of disciplinary proceedings that have been instituted against judges in recent years and regrets the lack of information on safeguards in place to ensure that judges cannot be sanctioned for minor infractions or for a controversial interpretation of the law (arts. 2 and 14).

27. The Committee reiterates its previous recommendations (see CCPR/C/AZE/CO/3, para. 12). The State party should take all measures necessary to safeguard, in law and in practice, judicial independence. In particular, it should:

(a) Ensure that the Judicial-Legal Council is fully independent from the executive branch and operates with full transparency and, to that end, ensure that decisions affecting the personal independence of judges are not influenced by political considerations;

(b) Ensure that decisions related to the selection, disciplining, evaluation and permanent appointment of judges after probation are based on objective criteria explicitly provided for by law;

(c) Step up efforts to effectively prosecute and punish perpetrators of corruption, and ensure that the subject of fighting corruption is part of the training curriculum for judges;

(d) Ensure that an independent body is responsible for judicial discipline and that sufficient safeguards are in place to prevent disciplinary actions being taken against judges for minor infractions or for a controversial interpretation of the law.

Independence and safety of lawyers

28. The Committee is concerned about reports of physical attacks, politically motivated criminal charges and other adverse repercussions, such as disbarment, against lawyers who make critical statements about State policies and State officials and against lawyers representing victims of torture, human rights defenders, activists and journalists. It is further concerned about the alleged practice of calling lawyers as witnesses in cases in

which they are representing a defendant with a view to removing them from the case for alleged conflict of interest (arts. 2 and 14).

29. The State party should take immediate measures to ensure that sufficient safeguards are in place, both in law and in practice, to guarantee the full independence and safety of lawyers and their effective protection against any form of retaliation, including violence, in connection with their professional activity. It should, inter alia:

(a) Refrain from any actions that may constitute harassment, persecution or undue interference in the work of lawyers, including their suspension, disbarment or other disciplinary action, or criminal prosecution on improper grounds, such as the expression of critical views or the nature of the cases they are involved in;

(b) Eliminate the practice of calling lawyers as witnesses in cases in which they are representing a defendant.

Freedom of movement

30. The Committee remains concerned about reports that: (a) the residence registration system, including for internally displaced persons, remains a precondition for the full enjoyment of certain rights, such as those to employment, social security and education; (b) the choice of residence for resettled internally displaced persons is restricted in practice; and (c) journalists, opposition politicians, human rights defenders and lawyers are allegedly subjected to travel bans in retaliation for engaging in their professional activities (arts. 12, 14, 19 and 25).

31. The Committee reiterates its previous recommendation (see CCPR/C/AZE/CO/3, para. 18). The State party should bring its residence registration system into full compliance with the Covenant and respect in practice the freedom to choose one's residence. It should ensure that any travel ban is justified under article 12 (3) of the Covenant and lift bans not in compliance with that article, refrain from imposing travel bans arbitrarily against journalists, opposition politicians, human rights defenders and lawyers and guarantee full respect for their freedom to leave the country.

Freedom of conscience and religious belief

32. The Committee remains concerned about undue restrictions on the exercise of freedom of religious belief, including the mandatory registration of religious organizations, the requirement for Muslim communities to obtain authorization from the Caucasus Muslim Board before registration, severe restrictions on members of religious minorities in the Autonomous Republic of Nakhchivan, censorship of religious material and the prior authorization requirement for importing, exporting, distributing and publishing such material. The Committee is also concerned about the reported interference in religious activities, the harassment of members of religious groups, including Jehovah's Witnesses, and the increase in arrests, detentions and administrative or criminal sanctions against them. Finally, the Committee is concerned that the concept of "religious activities" under the State party's legislation is vague and thus open to arbitrary interpretation (arts. 9, 14, 18 and 26).

33. The State party should guarantee the effective exercise of freedom of religion and belief in practice and refrain from any action that may restrict that freedom beyond the narrowly construed restrictions permitted under article 18 of the Covenant. It should bring its legislation, including the law on freedom of religious belief, into conformity with article 18 of the Covenant, clarify the concept of "religious activities" to ensure it is compliant with the principles of legal certainty and

predictability and investigate all acts of undue interference with the freedom of religion of religious communities, including Jehovah's Witnesses and Muslims.

34. The Committee remains concerned about the absence of specific legislation giving effect in practice to the constitutional provision (art. 76 (3)) on alternative service in cases when religious beliefs conflict with military service (arts. 2 and 18).

35. The State party should adopt without delay the legislation necessary to give effect in practice to the constitutionally recognized right to conscientious objection to military service, without limitation on the category of conscientiously held beliefs. Moreover, it should provide for alternative service of a civilian nature for conscientious objectors and repeal all sanctions against them.

Freedom of expression

36. The Committee remains concerned about extensive restrictions on freedom of expression in practice, including:

(a) Consistent reports of intimidation and harassment, including arbitrary arrest and detention, ill-treatment and conviction of human rights defenders, youth activists, political opponents, independent journalists and bloggers on allegedly politically motivated trumped-up administrative or criminal charges of hooliganism, drug possession, economic crimes, tax evasion, abuse of office, incitement to violence or hatred etc.;

(b) Reports of arbitrary interference with media freedom, including revocation of broadcast licences allegedly on political grounds (e.g. of Radio Free Europe/Radio Liberty and ANS television and radio outlets), allegations of politically motivated criminal proceedings against independent media outlets (e.g. the online news outlet Meydan TV and its journalists) and alleged financial pressure on the independent newspaper Azadliq;

(c) Criminalization of defamation (arts. 7, 9, 10, 14 and 19).

37. The State party should take all measures necessary to guarantee the full enjoyment of freedom of expression by everyone in practice. It should take immediate steps to end any repression against the above-mentioned categories of persons, provide effective protection against persecution or retaliation and ensure that any restrictions on the exercise of their freedom of expression comply with the strict requirements of article 19 (3) of the Covenant. The State party should also consider decriminalizing defamation and, in any case, countenance the application of criminal law only in the most serious of cases, bearing in mind, as provided in the Committee's general comment No. 34 (2011) on the freedoms of opinion and expression, that imprisonment is never an appropriate penalty for defamation.

Peaceful assembly

38. The Committee remains concerned about restrictions on the exercise of the right to peaceful assembly in practice. While noting that legislation only requires advance notification of a peaceful assembly, it is concerned about reports that it frequently requires permission in practice. The Committee is further concerned about allegations of frequent use of excessive force and/or detention and about the imposition of administrative and criminal penalties against persons participating in planned or spontaneous peaceful protests, including protests of the Nida Youth Movement, the protest organized by the Popular Front Party on 17 September 2016 and other demonstrations ahead of the referendum of 26 September 2016. Finally, the Committee is concerned about the use of a variety of tactics to prevent and deter individuals from joining and participating in peaceful assemblies, including the practices of preventive detention and of "prophylactic conversations" on

police premises aimed at intimidating activists and discouraging them from participating in assemblies (arts. 7, 9, 14, 19 and 21).

39. **The State party should revise its laws and practices with a view to ensuring that individuals fully enjoy their right to freedom of assembly and that any restrictions on the exercise of that right are in compliance with the strict requirements of article 21 of the Covenant. It should promptly and effectively investigate all cases of violence, excessive use of force by law enforcement officials, arbitrary arrest and detention of peaceful protesters and bring perpetrators to justice. The State party should end the practices of preventive detention of activists and “prophylactic conversations”, which are inconsistent with the State party’s obligations under articles 9, 19 and 21 of the Covenant.**

Freedom of association

40. The Committee is concerned about restrictive legislation negatively affecting the exercise of freedom of association, including stringent registration requirements for public associations and NGOs, broad grounds for denial of registration and temporary suspension or permanent closure of NGOs, restrictive regulations on grants and donations received by public associations and NGOs, including the ban on foreign funding, and heavy penalties for violations of the relevant legislation. The Committee is further concerned about threats against NGO leaders, the high number of criminal investigations against NGOs, the freezing of their assets and those of their members and the significant number of NGOs that have been closed. It is also concerned about the reported obligation for persons living in the Autonomous Republic of Nakhchivan to join the ruling party (arts. 2, 19 and 22).

41. **The State party should revise relevant laws, regulations and practices with a view to bringing them into full compliance with the provisions of articles 19 and 22 of the Covenant, including by:**

- (a) **Simplifying registration rules and clarifying the broad grounds for denying the registration of and temporarily suspending or permanently closing NGOs;**
- (b) **Ensuring that legal provisions regulating NGO grants allow access to foreign funding and do not put at risk the effective operation of public associations as a result of overly limited or overly regulated fundraising options;**
- (c) **Ending the crackdown on public associations and ensuring that they can operate freely and without fear of retribution for their legitimate activities;**
- (d) **Eliminating any obligation for persons living in the Autonomous Republic of Nakhchivan to join the ruling party.**

Participation in public life

42. The Committee is concerned about reports of irregularities during past elections, including severe restrictions on candidates prior to the 2013 presidential elections, such as permission to campaign for 22 days only and very limited opportunities for assemblies, intimidation of opposition candidates and, prior to the November 2015 legislative elections, violations in the process of registration of opposition candidates and detention and conviction of some opposition leaders (arts. 19, 21 and 25).

43. **The State party should bring its electoral regulations and practices into compliance with the Covenant, including its article 25, including by ensuring fully transparent elections and a genuine pluralistic political debate and by refraining from using criminal law provisions in an attempt to exclude opposition candidates from electoral processes.**

Rights of minorities

44. The Committee is concerned about allegations of harassment of and discrimination against members of the Armenian minority and the reluctance of Azerbaijanis of Armenian origin to self-identify as such, as well as about reports that foreigners with Armenian surnames have been prevented from entering the State party regardless of their nationality (arts. 2, 26 and 27).

45. **The State party should take all measures necessary to prevent and combat the harassment of and discrimination against members of the Armenian minority and to ensure that foreigners with Armenian surnames are not denied access to the country on arbitrary and discriminatory bases.**

D. Dissemination and follow-up

46. The State party should widely disseminate the Covenant, its two Optional Protocols, its fourth periodic report, the written replies to the Committee's list of issues and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and NGOs operating in the country, and the general public. The State party should ensure that the report and the present concluding observations are translated into the official language of the State party.

47. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party is requested to provide, within one year of the adoption of the present concluding observations, information on the implementation of the recommendations made by the Committee in paragraphs 19 (torture and ill-treatment), 29 (independence and safety of lawyers) and 37 (freedom of expression) above.

48. The Committee requests the State party to submit its next periodic report by 4 November 2020 and to include in that report specific up-to-date information on the implementation of the recommendations made in the present concluding observations and of the Covenant as a whole. The Committee also requests the State party, in preparing the report, to broadly consult civil society and NGOs operating in the country. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words. Alternatively, the Committee invites the State party to agree, by 4 November 2017, to use its simplified reporting procedure, whereby the Committee transmits a list of issues to the State party prior to the submission of its periodic report. The State party's replies to that list will constitute its fifth periodic report to be submitted under article 40 of the Covenant.
