



**International Convention
on the Protection of the
Rights of All Migrant
Workers and Members
of Their Families**

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COMMITTEE ON THE PROTECTION OF THE
RIGHTS OF ALL MIGRANT WORKERS AND
MEMBERS OF THEIR FAMILIES
Tenth session, 20 April to 1 May 2009

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 74 OF THE CONVENTION**

**Concluding observations of the Committee on the Protection of the Rights
of All Migrant Workers and Members of Their Families**

AZERBAIJAN

1. The Committee considered the initial report of Azerbaijan (CMW/C/AZE/1) at its 100th and 102nd meetings (see CMW/C/SR.100 and SR.102), held on 21 and 22 April 2009, and adopted at its 111th meeting, held on 28 April 2009, the following concluding observations

A. Introduction

2. The Committee, while regretting the delay in submission of the State party's initial report, welcomes the receipt of the report as well as the replies to the list of issues. It also welcomes the constructive and fruitful dialogue initiated with a competent high-level delegation. The Committee, while expressing satisfaction for the updated information provided orally by the delegation, regrets that the report and the written responses do not contain sufficient information on several important questions of both a legal and practical nature, and that the written responses were not submitted well in advance to allow timely translation into all the Committee's working languages.

3. The Committee recognizes that migrant flows have changed considerably and become more complex in Azerbaijan in the last few years, and that it has moved from a country of origin to becoming also a country of transit and destination, with significant numbers of migrant workers in its territory.

4. The Committee notes that many of the countries in which Azerbaijani migrant workers are employed are not yet parties to the Convention, which may constitute an obstacle to the enjoyment by those workers of the rights to which they are entitled under the Convention.

B. Positive aspects

5. The Committee notes with appreciation the State party's efforts to work on the quality and availability of data on its migratory flows, particularly through the creation of the Unified Migration Database and the inclusion of questions related to migration in the population census started in April 2009.

6. The Committee welcomes the State Migration Service, established by Decree 560 of 19 March 2007, as well as the work undertaken by the State party under the State Migration Programme of 2006-2008, established by Decree 1575 of 25 July 2006, to study migration processes with a view to enhancing relevant legislation.

7. The Committee notes that the State party has concluded bilateral and multilateral agreements, at the regional and international level, and encourages the conclusion of these agreements in so far as they promote and protect the rights of migrant workers and members of their families. The Committee notes in particular the accession of the State party to the Agreement on Cooperation in the Field of Labour Migration and the Social Protection of Migrants for the CIS region, as well as the regional cooperation on the issue of irregular migration taken under the CIS framework.

8. The Committee welcomes the recent ratification of the following instruments:

- (a) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, in 2003 and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, in 2003;
- (b) The Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and on the involvement of children in armed conflict, ratified on 25 May 2000;
- (c) The Convention on the Rights of Persons with Disabilities and its Optional Protocol on 28 January 2009.

C. Factors and difficulties

9. The Committee takes note of the expression by the State party of difficulties in implementing the Convention in the Nagorno-Karabakh region, as reflected in Security Council resolutions 822, 853, 874 and 884 of 1993.

D. Principal subjects of concern, suggestions and recommendations

1. General measures of implementation (arts. 73 and 84)

Legislation and application

10. While the Committee takes note of articles 148 and 151 of the Constitution of the State party, it is concerned that the exact status of the Convention in domestic law remains unclear and regrets the lack of information, including examples, on the application of the Convention's provisions by the domestic courts.

11. The Committee invites the State party to clarify the exact status of the Convention in domestic law, so as to ensure full implementation of all the Convention rights in all circumstances, and to provide examples of the application of the Convention's provisions by the domestic courts, in its second periodic report.

12. While taking note with interest of the State party's expressed intention to prepare a draft Migration Code which will incorporate all the provisions set out in the Convention, the Committee remains concerned at the fact that there is currently no definition of migrant workers that reflects the definition given in article 2 of the Convention.

13. The Committee encourages the State party to bring its legislation in conformity with the Convention, and promptly adopt a new Migration Code. The State party should ensure that the new Migration Code incorporates the definition of migrant worker set out in article 2 of the Convention, and is fully consistent with the rights recognized by the Convention to migrant workers in an undocumented or irregular situation.

14. The Committee notes the measures undertaken by the State party to simplify migration procedures, such as the Presidential Decree of 4 March 2009 on the application of the "single window" principle which will be applied as of 1 July 2009. However, the Committee remains concerned that in spite of the "single window" policy, the migration procedures, in particular to obtain an individual permit of work, continue to be burdensome and complex, and may as a consequence encourage irregular migration. The Committee is particularly concerned that, under Cabinet of Ministers Decision No. 214 of 6 December 2000, individual work permits may be granted for a one-year period and may be renewed four times, each time for not more than one year, after which migrant workers concerned must return to their countries for at least one year before initiating again the proceeding to return to Azerbaijan.

15. The Committee encourages the State party to: (a) take all necessary and effective measures to ensure that the implementation of its "single window" policy results in positive practical improvements to simplify and streamline the application for work permits in Azerbaijan, in order to guarantee that migrant workers enjoy their rights under the Convention without discrimination; and (b) to consider reviewing the existing restrictions on the renewal of work permits.

16. The Committee notes that Azerbaijan has not yet made the declarations provided for in articles 76 and 77 of the Convention recognizing the competence of the Committee to receive communications from States parties and individuals.

17. The Committee encourages the State party to consider making the declarations provided for in articles 76 and 77 of the Convention.

18. The Committee notes that Azerbaijan has still not ratified the ILO Migration for Employment Convention (Revised) 1949 (No. 97) or the ILO Migrant Workers Convention (Supplementary Provisions) 1975 (No. 143).

19. The Committee encourages the State party to consider ratifying ILO Conventions No. 97 and No. 143 in the near future.

Data collection

20. While welcoming the efforts made by Azerbaijan to collect information and statistics on migration issues, the Committee regrets the lack of sufficient information on migration flows and on other migration-related issues, as well as the fact that they reflect only the migrant workers who succeeded in obtaining a work permit. While noting the difficulties faced by the State party in this regard, the Committee recalls that such information is indispensable to an understanding of the situation of migrant workers in the State party and to an assessment of the implementation of the Convention.

21. The Committee encourages the State party to intensify its efforts to create a sound and coordinated database, in line with all aspects of the Convention, including systematic data - as disaggregated as possible - as a tool for effective migration policy and for the application of the various provisions of the Convention. When precise information is not possible, for instance with respect to migrant workers in an irregular situation, the Committee would appreciate receiving data based on studies or estimated assessments.

Training in and dissemination of the Convention

22. The Committee notes with appreciation that some NGOs in Azerbaijan, involved in migration issues, work on raising public awareness, provide legal advice and conduct research, and the General Collective Agreement between the Azerbaijan Confederation of Trade Unions, the Cabinet of Ministers and the National Confederation of Entrepreneurs (Employers) meant to obtain information on migrant workers in Azerbaijan and abroad, as well as enhance relevant legislation. It also notes the efforts undertaken by the State party to train judges and public prosecutors as well as the establishment of the free consultation service at the Migration Agency. The Committee, however, notes with concern that there is no sufficient information showing that the State party has taken measures to disseminate information and promote the Convention.

23. The Committee encourages the State party to: (a) intensify training for all officials working in the area of migration, in particular police and border personnel, as well as

officials at the local level dealing with migrant workers, social workers, judges and prosecutors on the protection and promotion of the rights of migrant workers, and invites the State party to provide information in its second periodic report on any such training programmes; and (b) continue to work with civil society organizations, in order to disseminate information and to promote the Convention.

2. General principles (arts. 7 and 83)

Non-discrimination

24. While taking note that, according to the delegation, migrant workers have equal rights with citizens of Azerbaijan, the Committee is concerned at information that migrant workers, in particular undocumented and irregular migrant workers, and members of their families, may in practice suffer from various forms of discrimination, in particular in the area of employment, education, and housing.

25. **The Committee encourages the State party to:**

(a) Intensify its efforts to ensure that all migrant workers and members of their families within its territory or subject to its jurisdiction effectively enjoy the rights provided for in the Convention without any discrimination, in conformity with article 7;

(b) Intensify its efforts by promoting information campaigns for public officials working in the area of migration, especially at the local level, and for the general public on the elimination of discrimination against migrants.

Right to an effective remedy

26. While taking note of the information provided by the State party that migrant workers have access to the courts of law and enjoy protection of the rights laid down in the legislation, the Committee remains concerned at reports that migrant workers, in particular those in an undocumented or irregular situation, have in practice limited access to justice, due to a lack of awareness concerning the administrative and judicial remedies that are available to them and of fear that they may lose their employment or face deportation if they approach the courts.

27. **The Committee encourages the State party to strengthen its efforts to inform migrant workers of the administrative and judicial remedies available to them and to address their complaints in the most effective manner. It recommends that the State party ensure that in legislation and in practice, migrant workers and members of their families, including those in an irregular situation, have the same rights as nationals of the State party to file complaints and to obtain effective redress mechanisms before the courts, including on labour issues.**

28. The Committee notes with concern reports that migrant workers who face expulsion or who have to leave the country after their employment has been terminated by their employer, are

not given enough time to finalize pending matters and to seek redress for any violations of rights they may have suffered.

29. The Committee recommends that the State party modify its legislation so that migrant workers may stay in the country for a sufficient period of time in order to allow them to seek redress for any violations of their rights they may have suffered.

3. Human rights of all migrant workers and members of their families (arts. 8-35)

30. While taking note of the information provided by the delegation in this regard, in particular the creation of the “Electronic Health Card” at the Information Centre of the Ministry of Health, the Committee remains concerned at reports received that migrant workers and members of their families in an undocumented or irregular situation, do not enjoy in practice their right to medical care, including emergency medical care and that children of migrant workers in an undocumented or irregular situation have difficult access to education.

31. The Committee recommends that the State party take the necessary measures, including legislative amendments, to ensure that the provision of basic services, such as education and urgent medical care, do not depend on the provision of a residence and/or work permit by the migrant worker and to guarantee the rights of migrant workers and their families, including those in an undocumented or irregular situation, under articles 28 and 30 of the Convention.

32. The Committee regrets that it has not received sufficient information on the measures taken by the State party to protect the rights of Azerbaijani migrant workers abroad.

33. The Committee nevertheless encourages the State party to take effective measures to ensure the best possible protection for Azerbaijani migrant workers abroad, including through bilateral agreements with countries receiving Azerbaijani migrant workers and by raising awareness of the rights arising out of the Convention among migrant workers and those seeking to migrate abroad to work.

4. Other rights of migrant workers and members of their families who are documented or in a regular situation (arts. 36-56)

34. The Committee is concerned about reports that in case of early termination of a labour contract the residence permit of a migrant worker becomes null and void and that migrant workers do not have the right to seek alternative employment.

35. The Committee recommends that the State party modify its legislation so that migrant workers shall not be regarded as in an irregular situation nor shall they lose their authorization of residence by the mere fact of termination of their employment prior to the expiration of their work permit, in accordance with article 51 of the Convention.

36. The Committee notes with interest information received according to which Azerbaijani nationals abroad have the right to vote in the elections of Azerbaijan, through registration at the consulates in the country where they reside. The Committee also notes that according to information provided by the delegation, foreigners who have resided in Azerbaijan for at least five years, have the right to vote in elections of the municipality in which they reside, if his/her State of origin grants the same right to foreigners.

37. The Committee recommends that the State party consider generalizing the right to vote in municipal elections for foreigners residing in Azerbaijan, and invites the State party to provide details, including statistical data, about the practical implementation of these rights in its next periodic report.

5. Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families (arts. 64-71).

38. While the Committee notes information according to which formal programmes of assistance to migrants who are returning to Azerbaijan are in the process of being drafted, it remains concerned at the absence of mechanisms to assist the voluntary return of Azerbaijani workers and members of their families to Azerbaijan although according to the State party migration flows have reversed and many Azerbaijanis who previously left the country are returning.

39. The Committee invites the State party to adopt measures, in accordance with the principles of the Convention, and to consider setting up local institutional mechanisms to facilitate the voluntary return of migrant workers and members of their families as well as their durable social and cultural reintegration.

40. The Committee notes the existence of recruitment agencies that may act as intermediaries for Azerbaijani citizens seeking work abroad, which require a permit from the Ministry of Labour and Social Protection of Azerbaijan. However, it regrets that no sufficient information was provided to assess whether the supervision of their activities is in conformity with the Convention.

41. The Committee recommends that the State party ensure that legislation on recruitment agencies that act as intermediaries for Azerbaijanis seeking work abroad, and practices, are in line with the provisions of the Convention, in particular article 66.

42. While noting with satisfaction the establishment of several bodies and institutions dealing with the issue of migration, such as State Migration Service, the Ministry of Foreign Affairs, the Ministry of Labour Protection, the Ministry of Internal Affairs, the State Committee on Refugees and Displaced Persons and the State Border Service, the Committee regrets the lack of sufficient information on the coordination and effective interaction of those institutions.

43. The Committee recommends that the State party continue its efforts to coordinate its entities working on migration issues in order to ensure their effectiveness and requests

the State party to provide information to the Committee in its second periodic report, evaluating the results and indicating progress in implementation measures.

44. The Committee is concerned at reports of the very high percentage of migrant workers who are in irregular situation, without adequate working conditions and social security benefits.

45. The Committee recommends that the State party increase its efforts and adopt appropriate measures, in accordance with the Convention, in particular with article 69, to ensure that this situation does not persist, including the possibility of regularizing the situation of these migrant workers, taking into account the duration of their stay in Azerbaijan and other relevant considerations.

46. While welcoming the steps taken by the State party to combat human trafficking, including the establishment of the National Plan of Action, the National Coordinator on Trafficking and the Unit in the Ministry of Internal Affairs and the Special Police Force, the Committee remains concerned at the persistence of human trafficking in Azerbaijan and at the lack of information on effective measures of prevention.

47. **The Committee recommends the State party to:**

- (a) Effectively implement its National Plan of Action on Trafficking for 2009-2011, ensuring its full compatibility with the Convention;**
- (b) Strengthen specific anti-trafficking legislation with appropriate penalties for human trafficking;**
- (c) Evaluate the phenomenon of trafficking in persons and compile systematic disaggregated data to better combat trafficking in persons, especially of women and children, and to bring perpetrators to justice;**
- (d) Design and carry out awareness-raising campaigns to stop trafficking in persons, as well as ensure effective care and rehabilitation for the victims of trafficking.**

6. Follow-up and dissemination

Follow-up

48. The Committee requests the State party to include in its second periodic report detailed information on measures taken to follow up on the recommendations made in these concluding observations. The Committee recommends that the State party take all appropriate measures to ensure that these recommendations are implemented, including by transmitting them for consideration and action to members of the Government and Parliament (Milli Meclis), as well as local authorities.

49. The Committee encourages the State party to involve civil society organizations in the preparation of the State party's second report.

Dissemination

50. The Committee likewise requests the State party to disseminate these concluding observations widely, including to public agencies and the judiciary, non-governmental organizations and other members of civil society, and to take steps to make them known to Azerbaijan's migrants abroad and foreign migrant workers residing or in transit in Azerbaijan.

8. Next periodic report

51. The Committee notes that the State party's second periodic report is due on 1 July 2009. In the circumstances, the Committee requests the State party to submit its second periodic report not later than 1 May 2011.
