



# **GRETA**

Group of Experts on Action  
against Trafficking in Human Beings

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## **Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Azerbaijan**

First evaluation round

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## Preamble

As the Council of Europe Convention on Action against Trafficking in Human Beings (“the Convention”) and the monitoring mechanism to evaluate its implementation are relatively new, it is appropriate to set out their salient features at the beginning of the first report to each Party to the Convention.

The Convention was adopted by the Committee of Ministers of the Council of Europe on 3 May 2005, following a series of other initiatives by the Council of Europe in the field of combating trafficking in human beings. The Convention entered into force on 1 February 2008. It is a legally binding instrument which builds on already existing international instruments. At the same time, the Convention goes beyond the minimum standards agreed upon in other international instruments and aims at strengthening the protection afforded by them.

The main added value of the Convention is its human rights perspective and focus on victim protection. The Convention clearly defines trafficking as being first and foremost a violation of human rights and an offence to the dignity and integrity of the human being; greater protection is therefore needed for all of its victims. The Convention also has a comprehensive scope of application, encompassing all forms of trafficking (whether national or transnational, linked or not linked to organised crime) and taking in all persons who are victims of trafficking (women, men or children). The forms of exploitation covered by the Convention are, at a minimum, sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs.

As trafficking in human beings is a world-wide phenomenon, one of the express purposes of the Convention is to promote international co-operation in the efforts to combat trafficking. In this context, it is noteworthy that the Convention is not restricted to Council of Europe member states; non-member states and the European Union also have the possibility of becoming Parties.

To be effective, and given the nature of the phenomenon, a strategy for combating trafficking in human beings must adopt a co-ordinated and multidisciplinary approach, incorporating prevention, protection of victims' rights and prosecution of traffickers. The Convention contains various provisions in each of these three areas, placing obligations on States to take appropriate measures, in partnership with civil society and in co-operation with other States.

The measures provided for by the Convention in the area of prevention include awareness-raising for persons vulnerable to trafficking; economic and social initiatives to tackle the underlying causes of trafficking; actions aimed at discouraging demand; and putting in place border control measures to prevent and detect trafficking in human beings.

The Convention also provides for a series of measures to protect and promote the rights of victims. Victims of trafficking must be identified and recognised as such in order to avoid police and public authorities treating them as “irregular migrants” or criminals. Victims should be granted physical and psychological assistance and support for their reintegration into society. Further, by virtue of the Convention, victims are entitled to a minimum of 30 days to recover and escape from the influence of the traffickers and to take a decision about their possible co-operation with the authorities. A renewable residence permit should be granted if their personal situation so requires and/or if their continued presence is needed in order to co-operate in a criminal investigation. In addition, the Convention establishes the right of victims to receive compensation and provides for measures for their repatriation and return with due regard to the rights, safety and dignity of the victims.

In the area of substantive and procedural criminal law, the Convention places on Parties a series of obligations aimed at enabling the effective prosecution of traffickers and ensuring that they are punished in a proportionate and dissuasive manner. Particular attention is paid to the issue of victim and witness protection during investigation and court proceedings. Parties should also provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities.

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Another important added value of the Convention is the monitoring system set up to supervise the implementation of the obligations contained in it, which consists of two pillars: the Group of Experts on Action against Trafficking in Human Beings (GRETA) and the Committee of the Parties.

GRETA is composed of 15 independent and impartial experts chosen for their recognised competence in the fields of human rights, assistance and protection of victims, and action against trafficking in human beings, or because of their professional experience in the areas covered by the Convention. The task of GRETA is to evaluate the implementation of the Convention by the Parties, following a procedure divided into rounds. At the beginning of each round, GRETA defines autonomously the provisions to be monitored and determines the most appropriate means to carry out the evaluation, being guided by the Rules of procedure for evaluating implementation of the Convention adopted at GRETA's 2nd meeting (16-19 June 2009). GRETA has decided that the duration of the first evaluation round shall be four years starting at the beginning of 2010 and finishing at the end of 2013.

In carrying out its monitoring work, GRETA has the right to avail itself of a variety of means for collecting information. As a first step, GRETA sends a detailed questionnaire to the authorities of the Party undergoing evaluation. It may also make additional requests for information. By virtue of the Convention, Parties are obliged to co-operate with GRETA in providing the requested information. Another important source of information is civil society and, indeed, GRETA maintains contacts with non-governmental organisations which can provide relevant information. In addition, GRETA may decide to carry out a visit to the country concerned in order to collect additional information or to evaluate the practical implementation of the adopted measures. This visit allows for direct meetings with the relevant bodies (governmental and non-governmental) and is also an occasion for GRETA to visit facilities where protection and assistance are provided to victims of trafficking and other related structures. Furthermore, GRETA may decide to organise hearings with various actors in the field of action against trafficking in human beings.

GRETA's evaluation reports are thus the result of information gathered from a variety of sources. They contain an analysis of the situation in each Party regarding action taken to combat trafficking in human beings and suggestions concerning the way in which the country may strengthen the implementation of the Convention and deal with any problems identified. In its assessment, GRETA is not bound by the case law of judicial and quasi-judicial bodies acting in the same field, but may use them as a point of departure or reference. The reports are drawn up in a co-operative spirit and are intended to assist States in their efforts; they can offer support for the changes on which the national authorities have already embarked, and lend legitimacy to the direction of national policies. Because of its multidisciplinary and multinational composition, and as a consequence of its independent approach, GRETA provides a professional and impartial international voice in this process.

As regards the procedure for the preparation of reports, GRETA examines a draft report on each Party in plenary session. The report is sent to the relevant government for comments, which are taken into account by GRETA when establishing its final report. This final report is adopted by GRETA in a plenary session and transmitted to the Party concerned, which is invited to submit any final comments. At the expiry of the time-limit of one month for the Party to make comments, the report and conclusions by GRETA, together with eventual comments made by the national authorities, are made public and sent to the Committee of the Parties. In the context of the first evaluation round, this completes GRETA's task in respect of the Party concerned, but it is only the first stage in an on-going dialogue between GRETA and the authorities.

The second pillar of the monitoring mechanism, the Committee of the Parties, is composed of the representatives in the Committee of Ministers of the Parties to the Convention and of representatives of Parties non-members of the Council of Europe. On the basis of GRETA's reports, the Committee of the Parties may adopt recommendations addressed to a Party concerning the measures to be taken to implement GRETA's conclusions.

## Executive summary

The Azerbaijani authorities have taken a number of steps to prevent and combat trafficking in human beings in recent years. The national legal and policy framework in the field of action against trafficking has evolved in the light of the country's international commitments, in particular with the introduction of a trafficking offence in the Criminal Code and the adoption of national action plans. An institutional framework has also been put in place with the appointment of a national co-ordinator on THB in 2004 as well as the setting up of the Working Group on combating THB in 2004 so as to ensure co-ordination among public actors. However, GRETA calls for more involvement of NGOs, trade unions and civil society in the development and implementation of anti-trafficking policies and improved co-ordination among public actors at country and regional levels.

Whilst there have already been two national action plans to combat THB, the focus has been in practice on trafficking for sexual exploitation. GRETA therefore asks the Azerbaijani authorities to strengthen action to prevent and combat trafficking for the purpose of labour exploitation, in particular in the sectors of construction, agriculture and domestic work.

Efforts have been made by the Azerbaijani authorities to develop training on THB in co-operation with international organisations. Nonetheless, GRETA stresses that more needs to be done to improve the knowledge and sensitivity of relevant professionals, at national and local levels, about the identification and rights of victims of trafficking for all types of exploitation.

As regards prevention, GRETA welcomes the initiatives already taken to raise awareness of trafficking but draws attention to the need to combat vigorously gender-based violence and the stigmatisation of victims of trafficking. It also calls on the Azerbaijani authorities to do more to discourage demand for services from trafficked persons, in partnership with the private sector and civil society. Furthermore, steps must be taken to ensure the systematic registration of all children at birth and provide stateless persons and irregular migrants with the appropriate documents to reduce their vulnerability to trafficking.

Insofar as identification of trafficked victims is concerned, rules on indicators for interviewing and identifying victims and rules on the national referral mechanism for victims of trafficking in human beings have been issued. Nonetheless, GRETA stresses that the National Referral Mechanism and multi-agency involvement in identification should be reinforced by formalising the role and input of NGOs and other relevant stakeholders such as labour inspectors and medical staff. Furthermore, increased attention should be paid to the identification of victims of trafficking for the purpose of labour exploitation.

Concerning assistance to victims, there are two state-run shelters for victims of trafficking and several NGO-run shelters which can accommodate trafficked victims. However, victims are only placed in the state-run shelters if they agree to co-operate with the authorities and once criminal proceedings have been initiated. As a result, NGO-run shelters have to accommodate a great number of possible victims whereas state-run shelters do not operate at full capacity. According to GRETA, particular attention needs to be given to emergency and safe accommodation for victims who do not co-operate with law enforcement authorities. Insofar as compensation is concerned, GRETA stresses that victims should be systematically informed about the possibility of obtaining compensation and their access to it should be ensured.

A 30-day recovery and reflection period was introduced in legislation in 2013. GRETA calls on the Azerbaijani authorities to ensure that possible victims of trafficking are systematically informed that they can benefit from a recovery and reflection period and are effectively granted it. The Azerbaijani authorities should also clarify internal legislation concerning the possibility for victims of THB of obtaining temporary residence permits.

Rules on the repatriation of victims of trafficking in human beings have been adopted and a special procedure exists for children. GRETA nevertheless emphasises that particular attention should be paid to ensuring that, in practice, appropriate risk assessment are carried out prior to return.

Azerbaijani legislation provides for the non-punishment of victims of trafficking for their involvement in unlawful activities to the extent they have been compelled to do so. However, there seems to be sometimes confusion between sex workers who are in breach of the administrative prohibition on prostitution and trafficked victims who have been forced into prostitution and therefore risk being deported without having been identified as trafficked victims. GRETA stresses the need to assess the implementation by relevant actors, including prosecutors and the judiciary, of the principle of non-punishment.

Protective measures are available under Azerbaijani law to protect victims of trafficking, and GRETA encourages their full use and asks that efforts be made to improve the procedures for interviewing victims, especially child victims, during investigations and court hearings.

Furthermore, GRETA calls on the Azerbaijani authorities to strengthen their efforts to ensure that crimes related THB for all types of exploitation are proactively investigated and prosecuted promptly and effectively. GRETA also expresses concern that sentences handed down are not commensurate to the gravity of the offence. Therefore, it calls on the Azerbaijani authorities to continue improving the specialisation and training of judges, prosecutors and police investigators regarding the seriousness of THB and the severe impact of exploitation on victims.

## I. Introduction

1. Azerbaijan deposited the instrument of ratification of the Council of Europe Convention on Action against Trafficking in Human Beings (“the Convention”) on 23 June 2010.<sup>1</sup> The Convention entered into force for Azerbaijan on 1 October 2010.<sup>2</sup>

2. As established in Article 36(1) of the Convention, the Group of Experts on Action against Trafficking in Human Beings (“GRETA”) monitors the implementation of the Convention by the Parties. GRETA does so in conformity with the procedure laid down in Article 38 of the Convention and the Rules on the evaluation procedure of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties. For the first evaluation round, GRETA drew up a monitoring timetable according to which the Parties to the Convention were divided into groups, Azerbaijan being in the third group of 10 Parties to be evaluated.

3. In accordance with Article 38 of the Convention, GRETA proceeded with the examination of the measures taken by Azerbaijan to implement the provisions set out in the Convention. The “Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties – first evaluation round” was sent to Azerbaijan on 31 January 2012. The deadline for replying to the questionnaire was 1 June 2012. Azerbaijan submitted its reply on 21 May 2012.

4. In preparation of the present report, GRETA used the reply to the questionnaire by Azerbaijan, other information collected by GRETA and information received from civil society. In addition, an evaluation visit to Azerbaijan took place from 13 to 17 May 2013, carried out by the following delegation:

- Mr Nicolas Le Coz, President of GRETA;
- Ms Alina Brașoveanu, First Vice-President of GRETA;
- Ms Claudia Lam, Administrator at the Secretariat of the Convention on Action against Trafficking in Human Beings.

5. During the visit, the GRETA delegation held meetings with the National Co-ordinator on Combating Trafficking in Human Beings, as well as with members of Parliament, the Supreme Court and the Ombudsman’s Office. Meetings were also held with representatives of the General Prosecutor’s Office and the Ministries of Internal Affairs, Foreign Affairs, Justice, Labour and Social Protection, National Security, Health, Youth and Sport, and Education. The GRETA delegation also met representatives of the State Committee on Family, Woman and Child Issues, the State Migration Service, the State Border Service and the State Customs Committee. These meetings took place in a spirit of close co-operation (see Appendix II).

6. The GRETA delegation held separate meetings with representatives of non-governmental organisations (NGOs) and other members of civil society, as well as with relevant international organisations present in Azerbaijan. GRETA is grateful for the information provided by them.

<sup>1</sup> At the time of ratification, the Republic of Azerbaijan made the following declaration:

“The rights and obligations set out in the provisions of the Convention shall not be applied by the Republic of Azerbaijan in respect of Armenia.

The Republic of Azerbaijan declares that it is unable to guarantee the implementation of the provisions of the Convention in its territories occupied by the Republic of Armenia (the Nagorno-Karabakh region of the Republic of Azerbaijan and its seven districts surrounding that region), until the liberation of these territories from the occupation and complete elimination of the consequences of that occupation (the schematic map of the occupied territories of the Republic of Azerbaijan is available [here](#)).<sup>3</sup>

<sup>2</sup> The Convention as such entered into force on 1 February 2008, following its 10th ratification.

7. Further, in the context of the evaluation visit to Azerbaijan, the GRETA delegation visited a state-run shelter for victims of trafficking in human beings and the Assistance Centre for Victims of Trafficking in Human Beings, as well as an NGO-run shelter for children which can accommodate children vulnerable to trafficking and child victims of trafficking.

8. GRETA is grateful for the assistance provided by the contact person appointed by the Azerbaijani authorities, Mr Ilkin Gurbanov, Head of Section within the Department on Combating Trafficking in Human Beings.

9. The draft version of the present report was adopted by GRETA at its 18th meeting (4-8 November 2013) and was submitted to the Azerbaijani authorities for comments on 20 December 2013. The authorities' comments were received on 4 March 2014 and were taken into account by GRETA when drawing up the final evaluation report, which was adopted at GRETA's 19<sup>th</sup> meeting (17-21 March 2014).

## **II. National framework in the field of action against trafficking in human beings in Azerbaijan**

### **1. Overview of the current situation in the area of trafficking in human beings in Azerbaijan**

10. According to the Azerbaijani authorities, Azerbaijan is primarily a country of origin of victims of trafficking in human beings (THB). The number of identified victims of THB was 91 in 2009, 34 in 2010, 29 in 2011, 53 in 2012, and 56 in 2013. The majority of the victims were Azerbaijani women trafficked abroad for sexual exploitation, mainly to Turkey and the United Arab Emirates. The male victims identified (18 in 2012, 15 in 2013) were primarily trafficked to Russia and the United Arab Emirates for labour exploitation. A total of 10 child victims of THB were identified in 2009-2013, seven of whom were trafficked for the purpose of illegal adoption and remainder for sexual exploitation.

11. The few foreign victims identified in Azerbaijan were mainly women trafficked for sexual exploitation from Uzbekistan. There have been rare cases of internal trafficking (two in 2012, five in 2013).

12. GRETA notes that the above figures concern only victims of THB identified as such by the authorities and may not reflect the actual scale of THB in Azerbaijan. Due to its rapid economic development, Azerbaijan has attracted a growing number of migrant workers in recent years. According to several reports, Azerbaijan is increasingly becoming a country of destination for people trafficked for the purpose of labour exploitation, in particular in the construction sector, and to a lesser extent in agriculture and domestic work. While the Azerbaijani authorities are conscious of the migration trends, they do not consider Azerbaijan to be a destination country for THB for labour exploitation. Further, internal trafficking, in particular of women and girls for sexual exploitation and children for begging and labour exploitation, is also taking place in Azerbaijan. Another area which should receive more attention from the authorities concerns THB for the purpose of the removal of organs (see paragraph 198).

13. As noted above (see footnote 1), Azerbaijan made a declaration when ratifying the Convention, according to which "it is unable to guarantee the implementation of the provisions of the Convention in its territories occupied by the Republic of Armenia (the Nagorno-Karabakh region of the Republic of Azerbaijan and its seven districts surrounding that region), until the liberation of these territories from the occupation and complete elimination of the consequences of that occupation". GRETA is therefore not in a position to cover the situation in the areas which are not under the effective control of the Azerbaijani authorities.

## **2. Overview of the legal and policy framework in the field of action against trafficking in human beings**

### a. Legal framework

14. At the international level, in addition to the Council of Europe Convention on Action against Trafficking in Human Beings, Azerbaijan is Party to the United Nations Convention against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (both of which it ratified in 2003). Azerbaijan is also Party to the UN Convention on the Rights of the Child and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (ratified in 1992 and 2002, respectively), the Convention on the Elimination of All Forms of Discrimination against Women (ratified in 1995), as well as conventions elaborated under the International Labour Organisation (ILO).<sup>3</sup> Further, Azerbaijan is Party to a number of Council of Europe conventions in the criminal field which are relevant to action against THB.<sup>4</sup>

15. Article 144-1 on trafficking in human beings was introduced in the Azerbaijani Criminal Code (CC) in 2005 and was amended by Law No. 610-IVQD of 19 April 2013 (see paragraph 174).

16. Other legislation relevant to combating THB includes:

- Law on Combating Trafficking in Human Beings of 28 June 2005, as amended by Law No. 609-IVQD of 19 April 2013;
- Law on Social Services of 30 December 2011;
- Migration Code established by Law No. 713-IVQ of 2 July 2013, which replaced several other laws and contains provisions on the legal status of foreigners and stateless persons, immigration and labour migration;
- Law on the State Protection of Persons Participating in Criminal Proceedings of 11 December 1998;

17. Further, the secondary legislation on THB includes:

- Decision No. 203 of 9 November 2005 of the Cabinet of Ministers concerning the Rules on establishing, financing, operating and supervising special institutions for victims of trafficking in human beings;
- Decision No. 68 of 12 January 2006 of the Cabinet of Ministers concerning the Regulations on the Assistance Fund for victims of trafficking in human beings;
- Decision No. 62 of 6 March 2006 of the Cabinet of Ministers concerning the Rules on social rehabilitation of victims of trafficking in human beings;
- Decision No. 152 of 17 June 2006 of the Cabinet of Ministers on determining the allowances paid to victims of human trafficking during the reintegration period;
- Decision No. 21 of 1 February 2008 of the Cabinet of Ministers concerning the Rules on referring victims of human trafficking to the special police unit on combating trafficking in human beings;
- Decision No. 123 of 11 August 2009 of the Cabinet of Ministers concerning the Rules on the National Referral Mechanism for victims of trafficking in human beings;
- Decision No. 131 of 3 September 2009 of the Cabinet of Ministers concerning the Rules (indicators) for identification of victims of trafficking in human beings;
- Decision No. 180 of 19 November 2009 of the Cabinet of Ministers concerning the Rules on shelters for child victims of trafficking;

<sup>3</sup> Convention concerning Forced or Compulsory Labour (No.29) ratified in 1992, Convention concerning the Abolition of Forced Labour (No.105) ratified in 2000, and Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No.182) ratified in 2004.

<sup>4</sup> In particular the Convention on Cybercrime, the European Convention on Mutual Assistance in Criminal Matters and its first Additional Protocol and the European Convention on Extradition and its three first Additional Protocols.

- Decision No. 81 of 20 May 2011 of the Cabinet of Ministers concerning the Programme on elimination of social problems leading to trafficking in human beings;
- Decision No. 252 of 10 October 2013 of the Cabinet of Ministers concerning the Rules on the repatriation of victims of trafficking in human beings;
- Charter on the hotline telephone for persons subjected to trafficking in human beings and presumed and potential victims of trafficking in human beings, approved on 12 October 2007 by Order No. 590 of the Ministry of Internal Affairs.

b. National Action Plans

18. In 2004, Azerbaijan adopted the first National Action Plan on Combating THB covering the period 2004-2008. This action plan aimed at setting up the legislative framework and establishing relevant institutions, including the National Co-ordinator and the Department for Combating THB of the Ministry of Internal Affairs (see paragraphs 20 and 24). The second National Action Plan concerning the period 2009-2013 was adopted on 6 February 2009 by Order No. 133 of the President of the Republic of Azerbaijan. Its aims were to continue and consolidate the activities started under the previous action plan, as well as to ratify the Council of Europe Convention, strengthen preventive measures, improve the legislation on THB, the prosecution of THB offences and the protection and social rehabilitation of victims of trafficking, in particular children. The second NAP also envisaged measures reinforcing the co-ordination of anti-trafficking activities. The measures are to be funded through the State budget and donors.

19. The Azerbaijani authorities have informed GRETA that preparatory work on the third National Action Plan on Combating Trafficking in Human Beings (2014-2018) had been completed at the end of 2013 on the basis of proposals made by the members of the Working Group on Combating Trafficking in Human Beings (see paragraph 21) and by representatives of international organisations. The authorities have indicated that this Action Plan would have a stronger focus on THB for the purpose of labour exploitation. In their observations on the draft report, the Azerbaijani authorities have stated that the new national action plan would entail the implementation of the relevant GRETA recommendations by the authorities.

### **3. Overview of the institutional framework for action against trafficking in human beings**

a. National Co-ordinator on Combating THB

20. The National Co-ordinator on Combating THB, who is a Deputy Minister of Internal Affairs, was appointed in 2004. Under Article 7 of the 2005 Law on Combating THB, the National Co-ordinator is responsible for the implementation of the National Action Plan by co-ordinating activities of the different actors involved and ensuring exchange of information between them. Under Article 7 of the Law on Combating THB, his role is also to establish relations with relevant law-enforcement and prosecution authorities, other governmental agencies in order to increase the efficiency of the implementation of operational investigation and prosecution activities related to THB. The National Co-ordinator submits an annual report on combating THB in Azerbaijan to the Minister of Internal Affairs, the Parliament and the Ombudsman.

b. Working Group on Combating THB

21. The Working Group on Combating THB was established in 2004 to assist the National Co-ordinator and comprises representatives of the following institutions:

- Ministry of Internal Affairs
- General Prosecutor's Office
- Ministry of Justice
- Ministry of Foreign Affairs
- Ministry of Labour and Social Protection
- Ministry of Education
- Ministry of Health
- Ministry of National Security
- State Committee on Family, Woman and Child Issues
- State Migration Service
- State Border Service
- State Customs Committee
- Ministry of Youth and Sport
- Ministry of Culture and Tourism.

22. The Working Group meets once a year and NGOs are invited to attend its meetings with observer status.

c. National Referral Mechanism

23. The Cabinet of Ministers Decision No. 123 of 2009 on the "Rules of National Referral Mechanism on victims of trafficking in human beings" established a National Referral Mechanism (NRM) which is to be carried out by an inter-agency commission. The members of the inter-agency commission are the same as the members of the above-mentioned Working Group on Combating THB.

d. Department for Combating THB of the Ministry of Internal Affairs

24. The Department for Combating THB, which is a special police unit, was created in 2004 under the Organised Crime Department of the Ministry of Internal Affairs. Since 2006, it has been operating as an autonomous department under the direct supervision of the National Co-ordinator. Its tasks include investigation of THB-related offences in co-operation with the Department of Organised Crime, identification of and assistance to victims of trafficking, and collection of data on THB. The staff of the Department is composed of 64 persons, including personnel tasked with investigation, staff running the anti-trafficking hotline, staff running the shelter for victims of trafficking and police officers responsible for ensuring the protection of the shelter.

e. Courts for Serious Crimes and Prosecutor General's Office

25. THB offences are of the competence of the five regional Courts for Serious Crimes. There are two prosecutors dealing with THB within the Prosecutor General's Office. Whenever regional prosecutors come across a suspected case of THB, they must transfer it to the General Prosecutor's Office that will immediately send all information on the case to the Department for Combating THB of the Ministry of Internal Affairs, which in turn will contact the Organised Crime Department of the ministry for initial investigations to be conducted. The Prosecutor General's Office will supervise the investigations and will deal with the case once it reaches the courts.

f. Assistance Centre for Victims of THB of the Ministry of Labour and Social Protection

26. The Assistance Centre for Victims of THB of the Ministry of Labour and Social Protection is responsible for providing medical, psychological and legal assistance to victims of THB (see paragraph 138). It also helps victims of THB in accessing jobs or vocational training. The Assistance Centre is based in Baku. In addition, in May 2013, it opened a day-centre in Ganja which can also accommodate victims of THB (see paragraph 136).

g. NGOs

27. A network of anti-trafficking NGOs (NAHTAZ) was created in 2009. It includes NGOs which support victims of THB, especially migrant workers who may be in an exploitative situation and persons vulnerable to THB. Also in 2009, an NGO Coalition against Human Trafficking was created. The aim was to improve co-ordination among NGOs in the fields of prevention of THB and assistance to victims. It is made of 45 NGOs, only around 10 of which are directly involved in supporting victims of THB and persons vulnerable to THB and organising prevention activities. The Government signed a Memorandum of Understanding covering the period 2009-2013 with the NGO Coalition against THB. The Azerbaijani authorities also co-operate on some occasions with NGOs that are members of NAHTAZ. On 27 July 2013 the National Co-ordinator signed a new Memorandum of Understanding with the NGO Coalition against Human Trafficking, running over the period 2013-2018.

28. The NGO "Clean World" runs a shelter for women victims of violence which can also accommodate women victims of THB. The NGO Azerbaijan Centre for Migrants runs a shelter for migrants in need of protection, including victims of THB, which can accommodate 14 male adults for a period of two months, renewable once. Further, the NGO Azerbaijan Child Union runs a shelter for children in difficult situation, including victims of THB. Other NGOs provide legal assistance and other forms of assistance to victims of THB. Most of them conduct awareness-raising activities among professionals and groups vulnerable to THB. NGOs are sometimes invited to meetings and events organised by the National Co-ordinator.

29. In October 2011, nine NGOs received a financial award from the National Co-ordinator for their active participation in the field of combating human trafficking. In 2012, 15 NGOs involved in anti-trafficking issues received similar awards. The Azerbaijani authorities have informed GRETA that these awards were meant to acknowledge and reward awareness initiatives on THB as well as assistance activities for victims of human trafficking. Selected NGOs working in the anti-trafficking field are awarded 1 000 euros as an incentive and to support further activities.

### **III. Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Azerbaijan**

#### **1. Integration of the core concepts and definitions contained in the Convention in the internal law**

##### **a. Human rights-based approach to action against trafficking in human beings**

30. Article 1(1) (b) of the Convention establishes as one of its purposes the protection of the human rights of the victims of trafficking. Further, Article 5(3) includes the obligation for Parties to promote a human rights-based approach in the development, implementation and assessment of the policies and programmes to prevent THB. The Explanatory Report on the Convention states that the main added value of the Convention is its human rights perspective and focus on victim protection. In the same vein, the United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking emphasise that “the human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims.”<sup>5</sup>

31. THB constitutes an offence to the dignity and fundamental freedoms of the human being and thus a grave violation of human rights. GRETA emphasises the obligations of States to respect, fulfil and protect human rights, including by ensuring compliance by non-State actors, in accordance with the duty of due diligence. A State that fails to fulfil these obligations may, for instance, be held accountable for violations of the European Convention on Human Rights and Fundamental Freedoms (the ECHR). This has been confirmed by the European Court of Human Rights in its judgment in the case of *Rantsev v. Cyprus and Russia*, where the Court concluded that THB within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention, falls within the scope of Article 4 of the European Convention on Human Rights<sup>6</sup> (which prohibits slavery, servitude and forced or compulsory labour). The Court further concluded that Article 4 entails a positive obligation to protect victims or potential victims, as well as a procedural obligation to investigate trafficking.<sup>7</sup>

32. GRETA considers that the human rights-based approach to action against THB requires States to set up a comprehensive framework for the prevention of THB, the protection of trafficked persons as victims of a serious human rights violation, and the effective investigation and prosecution of traffickers. Such protection includes steps to secure that all victims of trafficking are properly identified. It also involves measures to empower trafficked persons by enhancing their rights to adequate protection, assistance and redress, including recovery and rehabilitation, in a participatory and non-discriminatory framework, irrespective of their residency status. Further, measures to prevent THB should be taken in the field of socio-economic, labour and migration policies.

33. GRETA wishes to stress the need for States to also address THB as a form of violence against women and to take account of gender-specific types of exploitation, as well as the particular situation of child victims of trafficking, in line with the relevant international legal instruments.<sup>8</sup>

<sup>5</sup> Addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1), [www.ohchr.org/Documents/Publications/Traffickingen.pdf](http://www.ohchr.org/Documents/Publications/Traffickingen.pdf)

<sup>6</sup> *Rantsev v. Cyprus and Russia*, application No. 25965/04, judgment of 7 January 2010, ECHR 2010, paragraph 282.

<sup>7</sup> See also *Siliadin v. France*, application No. 73316/01, judgment of 26 July 2005, ECHR 2005 VII; *C.N. and V. v. France*, application No. 67724/09, judgment of 11 October 2012; and *C.N. v. the UK*, application No. 4239/08, judgment of 13 November 2012.

<sup>8</sup> Such as the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, the United Nations Convention on the Rights of the Child and the Optional Protocol thereto on the sale of children, child prostitution and child pornography, and the United Nations Convention on the Elimination of All Forms of Discrimination against Women.

34. The National Programme for Action to Raise Effectiveness of the Protection of Human Rights and Freedoms in the Republic of Azerbaijan, approved by Presidential Order on 27 December 2011, describes human trafficking as a crime that poses a serious threat to human rights and freedoms. In the Criminal Code of Azerbaijan, trafficking in human beings is categorised as an offence against the person's freedom and dignity. The legislative measures taken by the authorities include steps to protect or restore the rights of victims of trafficking along with measures to combat trafficking as a crime. Pursuant to Article 151 of the Constitution, when there is a contradiction between national legislation (except for laws adopted by referendum) and international treaties to which Azerbaijan is party, the latter supersede the former. International treaties are also part of the national legal order pursuant to Article 148 of the Constitution and this applies both to the ECHR and the Council of Europe Convention on Action against Trafficking in Human Beings.

35. The human rights-based approach to action against THB entails transparency and accountability on the part of the State through the adoption of a national policy and action plans for combating trafficking in human beings, the co-ordination of the efforts of all relevant actors, the regular training of relevant professionals, research and data collection, and the provision of adequate funding for the implementation of all these measures. The following sections of this report examine in detail the effectiveness of the policies and measures taken by the Azerbaijani authorities in these fields.

b. Definitions of "trafficking in human beings" and "victim of THB" in Azerbaijani law

i. *Definition of "trafficking in human beings"*

36. In accordance with Article 4(a) of the Convention, trafficking in human beings includes three components: an action ("the recruitment, transportation, transfer, harbouring or receipt of persons"); the use of certain means ("threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person"); and the purpose of exploitation ("at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs"). In the case of children, pursuant to Article 4(c) of the Convention, it is irrelevant whether the means referred to above have been used.

37. The offence of trafficking in human beings was introduced in the Criminal Code of Azerbaijan in 2005 through Article 144-1, which was amended in April 2013 and defines trafficking in human beings as follows:

"the recruitment, obtaining, keeping, harbouring, transportation, giving or receipt of a person by means of threat or use of force, intimidation or other means of coercion, abduction, fraud, deception, abuse of power [influence] or a position of vulnerability, or by giving or receiving payments or benefits, privileges or concessions to achieve the consent of a person having control over another person, for the purpose of exploitation". Exploitation is defined as: "forced labour (services), sexual exploitation, slavery or practices similar to slavery and dependence resulting from such practices, illegal removal of human organs and tissues, illegal biomedical experiment/research on a person, use of a woman as surrogate mother, involvement in illegal as well as in criminal activity".<sup>9</sup>

38. The definition of THB in Article 144-1 of the Criminal Code as amended in 2013 is similar to the definition in Article 1.0.1 (basic concepts) of the 2005 Law on Combating THB.

<sup>9</sup> Unofficial translation provided by the Azerbaijani authorities.

39. Before the amendment to Article 144-1 of the Criminal Code, the list of actions taken into account to establish the offence of THB included the illegal crossing of the State border of Azerbaijan by a victim of trafficking, which led to confusion as to whether only transnational THB was covered by the Criminal Code. It is now clear that the definition of THB covers both national and transnational forms of THB as requested by the Convention.<sup>10</sup> The Azerbaijani authorities have specified that the amendment to Article 144-1 was reported in the Public Prosecutor's Office Journal and circulars were also sent to the relevant Prosecutor' Offices. They have also stated that there had been cases regarding trafficking within the country where Article 144-1 as amended was applied and which led to the perpetrators' convictions. **GRETA considers that the Azerbaijani authorities should continue to inform all law enforcement officials, prosecutors and judges about the fact that internal trafficking is covered by Article 144-1 of the Criminal Code.**

40. The list of means was added in Article 144-1.1 through the 2013 amendments and complies with the Convention's definition of THB.

41. As regards the forms of exploitation covered by the Azerbaijani definition of trafficking, GRETA notes with interest that in addition to those specifically mentioned in the Convention, Article 144-1.1 of the Criminal Code refers to illegal removal of human tissues, illegal biomedical experiment/research on a person, use of a woman as surrogate mother, and involvement in illegal and criminal activity.

42. Pursuant to Article 144-1 of the Criminal Code, "the consent of the victim of trafficking in human beings, the victim's lifestyle as well as immoral behaviour cannot be considered as mitigating circumstances when determining the penalty of a person accused of trafficking in human beings".<sup>11</sup> Further, Article 1.0.2 of the 2005 Law on Combating THB indicates that "the consent of a victim of trafficking in persons shall be irrelevant where any of the means set forth in Article 1.0.1 have been used".

43. Concerning child trafficking, Article 144-1 of the Criminal Code provides that "the recruitment, obtaining, keeping, harbouring, transportation, giving or receipt of a minor<sup>12</sup> for purposes of exploitation shall be considered as trafficking in human beings even if the means set forth in Article 144-1.1 of this Code are not used,"<sup>13</sup> which is in line with the Convention.

44. For further analysis of the definition of THB and related offences from a substantive criminal law perspective, see paragraphs 173-182.

#### *ii. Definition of "victim of THB"*

45. The Convention defines "victim of THB" as "any natural person who is subjected to THB as defined in Article 4 of the Convention". Recognition of victims of trafficking as such is essential as it gives rise to their entitlement to the broad range of protection and assistance measures set out in the Convention.

46. Under Article 1 of the 2005 Law on Combating THB defining basic concepts, a victim of THB is "a person subjected to or believed to be subjected to THB". Under Article 87 of the Criminal Procedure Code, "if there are sufficient grounds to believe that an individual suffered direct non-material, physical or material damage as a result of the act provided for in criminal law, he/she shall be referred to as a victim".

<sup>10</sup> It should be noted nevertheless that, at the same time, the legal or illegal crossing of Azerbaijani borders by a victim of THB was introduced as an aggravating circumstance (see paragraph 174).

<sup>11</sup> Unofficial translation provided by the Azerbaijani authorities.

<sup>12</sup> Under Azerbaijani law, a minor is a person under 18 years of age.

<sup>13</sup> The previous version of Article 144-1 on trafficking in human beings did not include the element of the means in the definition and there was therefore no specific need to mention that child trafficking occurred even when the means were not mentioned.

47. The question of the definition of victim of THB is further discussed in the sections of this report dealing with the identification of victims and the assistance measures provided to them, along with the related proposals made by GRETA.

c. Comprehensive approach to action against THB, co-ordination of all actors and actions, and international co-operation

*i. Comprehensive approach and co-ordination*

48. One of the aims of the Convention is to design a comprehensive framework for the protection of and assistance to victims and witnesses. To be effective, any national action to combat THB must be comprehensive and multi-sectoral, and take on board the required multidisciplinary expertise. Article 29(2) of the Convention requires Parties to take measures to ensure the co-ordination of national policies and actions against THB, including through the setting-up of specific co-ordinating bodies. Further, the Convention refers to the need to co-operate and build strategic partnership with civil society through co-operative frameworks that can help governments fulfil their obligations under the Convention (Article 35).

49. The Azerbaijani authorities have taken a number of steps to develop the institutional framework for tackling THB, including the setting up of a National Co-ordinator on Combating THB in 2004, a Working Group on Combating THB composed of representatives from all relevant ministries and a specialised police department for combating THB.

50. The legal and policy framework against THB is intended to cover all victims of THB subjected to different forms of exploitation, both nationally and transnationally. The second National Action Plan adopted in 2009 covered prevention, protection, prosecution measures and international co-operation. Both governmental and non-governmental actors have been involved in the implementation of this action plan. While NGOs and some intergovernmental organisations have been consulted to some extent on the future action plan (see paragraph 19), the latter will apparently not be preceded by an independent evaluation of the second action plan.

51. The co-operation between the Azerbaijani authorities, in particular the Department on Combating Human Trafficking and NGOs has improved over the years. Although NGOs are invited to meetings of the Working Group on Combating THB, this does not happen regularly. While some NGOs provide assistance, including accommodation to victims of THB, no funding from the State is provided to them with some exceptions (see paragraph 29). Some NGOs have received financial support from the State to run awareness-raising projects. During the period 2009-2011, the State Council for NGOs Support granted approximately 125 000 euros to NGOs for the implementation of 17 projects dealing with THB, and in 2012 it granted 32 000 euros. GRETA was informed that following the adoption of the Law on Social Services in 2011, it should be easier for the State to fund NGOs providing support to victims of THB.

52. According to the Azerbaijani authorities, there are NGOs which make sometimes unjustified or sensationalist claims concerning the situation of THB in the country, in particular when it comes to labour exploitation. GRETA notes that the Council of Europe Commissioner for Human Rights in his latest report on Azerbaijan<sup>14</sup> expresses concern about the freedom of association in Azerbaijan, stressing that "a number of NGOs, especially those operating in the field of human rights and those openly critical of the government, are reported to encounter several obstacles in carrying out their work in Azerbaijan". He calls upon the authorities to ensure full respect of the right to freedom of association, in particular by alleviating the registration requirements and making the whole process, as well as the functioning of NGOs, less bureaucratic. GRETA stresses the importance of ensuring that NGOs which assist victims of trafficking and defend their rights are protected from any forms of retaliation and are given the effective possibility to work, including when they are critical of government's work.

<sup>14</sup> Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, following his visit to Azerbaijan from 22 to 24 May 2013, (CommDH(2013)14), p. 3.

53. The National Co-ordinator, assisted by the Working Group on Combating THB, ensures exchange of information and co-ordination of all activities relevant to the fight against THB. However, co-ordination between ministries must be improved. In particular, while both the Department for Combating THB and the Assistance Centre of the Ministry of Labour and Social Protection are competent for assisting victims of THB, there is limited co-ordination of their respective activities.

54. GRETA notes that the focus in Azerbaijan has been essentially on fighting THB for the purpose of sexual exploitation of Azerbaijani women abroad and not enough attention has been paid to THB for labour exploitation, particularly occurring in Azerbaijan. There is also a lack of knowledge about the extent of internal trafficking and child trafficking. The Azerbaijani authorities acknowledge the fact that labour exploitation can become a problem with the increase of migrant workers and the boom of the construction sector, in particular in the context of the First European Games to be organised in 2015 in Baku. Members of civil society consider that trafficking of migrant workers for labour exploitation has become a serious problem in Azerbaijan particularly in the sectors of construction and, to a lesser extent, agriculture and domestic work. In the absence of recent research on the topic, the scale of the problem of trafficking in human beings for the purpose of labour exploitation in Azerbaijan is yet unknown. Law enforcement officials and labour inspectors reportedly have a tendency to see potential cases of THB for labour exploitation as labour disputes between the worker and the employer. **GRETA considers that the Azerbaijani authorities should acknowledge the phenomenon of THB for labour exploitation and adapt their policy and practical measures to the new situation in Azerbaijan.**

55. GRETA notes that Azerbaijan's action against THB does not involve enough stakeholders with a social rather than a law-enforcement profile. For instance, identification of victims of THB is in the exclusive competence of law enforcement officials, prosecutors and judges. The Department for Combating THB, which has been given an essential role in terms of identifying and assisting victims of THB, is a special police unit while some of its activities (such as running a hotline and running the state shelter for victims of THB) are not of policing nature.

56. **GRETA urges the Azerbaijani authorities to take further steps to ensure that the national action to combat THB is comprehensive, and in particular to:**

- **increase co-ordination of the activities of public bodies and civil society involved in the implementation of anti-trafficking measures, both at the national and at regional level;**
- **further involve NGOs, trade unions and other members of civil society in the development and implementation of anti-trafficking policy, including evaluation of anti-trafficking efforts;**
- **reinforce the interagency and multi-disciplinary approach in designing and implementing prevention and assistance measures by involving more stakeholders with a social rather than a law-enforcement background;**
- **strengthen action to prevent and combat THB for the purpose of labour exploitation, in particular in sectors at risk such as construction, agriculture and domestic work.**

57. Further, GRETA considers that the Azerbaijani authorities should introduce an independent evaluation of the implementation of the National Action Plan on Combating THB as a tool for assessing the impact of the activities and for planning future policies and measures to combat THB. GRETA also invites the authorities to consider the establishment of an independent National Rapporteur or designate another independent mechanism for monitoring the anti-trafficking activities of State institutions (see Article 29, paragraph 4, of the Convention and paragraph 298 of the Explanatory Report).

*ii. Training of relevant professionals*

58. Training of professionals working in the field of prevention of THB, assistance to victims of THB and prosecution has been provided within the framework of projects run by the Azerbaijani authorities, NGOs and intergovernmental organisations. Intergovernmental organisations, foreign stakeholders and NGOs co-operate closely with governmental institutions by providing experts and funds for the training for professionals. Some of the recent training sessions are mentioned below.

59. All the staff members of the Department for Combating THB have followed training organised by the authorities and an intergovernmental organisation abroad. According to the Azerbaijani authorities, non-specialised police officers, in particular those who play the role of liaison officers between their units and the Department, also attend training on THB both concerning the specificity of this crime and on how to behave when they come across a possible victim of THB as part of their initial training. A two-day workshop organised by the OSCE Office in Baku in co-operation with IOM and the Ministry of Internal Affairs took place in Ganja in April 2011. The purpose of the workshop was to inform regional law-enforcement agencies and other actors of the National Action Plan and anti-trafficking challenges and elaborate on the role of front-line officers in combating trafficking in human beings.

60. In 2011, the Public Administration Academy delivered a number of courses on THB in the context of on-going training of state officials on the state policy for families, women and children with difficulties. Further, the Ministry of Labour and Social Protection regularly organises training on THB issues for social workers, psychologists and medical staff working with victims of human trafficking.

61. Members of the Working Group on Combating THB attended several training session organised by the OSCE Office in Azerbaijan. In June 2012, a training session on identification of victims of THB and forced labour among asylum seekers was organised by IOM, OSCE and UNHCR for officials of the State Migration Service, and security service at Baku international Airport. In February 2013, two workshops on countering human trafficking with a focus on labour exploitation were organised for judges, prosecutors, defence lawyers and representatives of the Ministry of Internal Affairs, the State Migration Service and the State Labour Inspection Service as well as representatives of civil society by the OSCE office in Baku and UNHCR.

62. Two training sessions were organised by the Council of Europe on 15-16 December 2010 and 23-24 December 2011 in Baku. The first seminar was attended by 40 participants including police officers, representatives of the Ministry of Internal Affairs, Ministry of Foreign Affairs, Ministry of Justice and the Ombudsman Office, as well as by representatives of NGOs active in the field. The 53 participants in the second seminar included judges, prosecutors and lawyers from Baku, Sumgait, Ganja, Shirvan, Shaki and Lenkoran. In 2013, IOM started a project entitled "Enhancing the national capacity in identifying and assisting victims and potential victims of trafficking in Azerbaijan" which includes several training sessions for NGOs and media representatives in the country's different regions.

63. GRETA welcomes the efforts made by the Azerbaijani authorities in co-operation with intergovernmental organisations to train professionals working in the field of prevention of THB and protection of victims, and in particular the use of a multi-disciplinary approach to such training and the integration of THB in the basic training of police officers. Despite these efforts, NGOs have expressed concern about the lack of a proactive attitude on the part of law enforcement officers and the prevalence of negative stereotypes which hinder them from identifying victims of trafficking (see paragraph 194). It is also felt that judges need more training on THB and the rights of victims (see paragraphs 193 and 200). GRETA underlines that further training needs to be organised in the different regions to ensure that all frontline actors that could come across possible victims are adequately trained on the detection of THB for different forms of exploitation.

64. GRETA urges the Azerbaijani authorities to take further steps to improve the knowledge and sensitivity of relevant professionals, in particular police officers, prosecutors and judges, about the complex nature of THB and the rights of victims. Future training programmes should be designed for specific target groups with a view to improving the knowledge and skills of relevant professionals, which enable them to identify victims of trafficking, to assist and protect them, to facilitate compensation for victims and to secure convictions of traffickers. Training programmes should be tailored to fit the specific role in combating THB of each group of professionals. Particular attention should be paid to THB for the purpose of labour exploitation.

*iii. Data collection and research*

65. The human rights-based approach to anti-trafficking policies advocated by the Convention requires adequate monitoring and evaluation. An essential element is the regular availability of comprehensive statistical information on both trends in human trafficking and on the performance of the main actors in the fight against trafficking. The collation of data from different state institutions and NGOs raises concerns about data protection, especially when personal data are involved. International standards have been set for the collection, storage, transfer, compilation and dissemination of data. In order to ensure full compliance with these standards, Parties are expected to apply appropriate measures and techniques of data protection. An additional requirement for human rights-based anti-trafficking policies is the conduct of research and analysis with special attention to the rights and interests of victims.

66. The Department for Combating THB is responsible for collecting and storing information coming from all actors in a single database on THB in Azerbaijan. The database contains data on victims of THB and criminal offenders disaggregated according to sex, age, type of exploitation and nationality. Data collected is accessible to the officials of the Department following the regulations on confidentiality and protection of sensitive information. The National Co-ordinator publishes every year a report on THB which contains anonymous statistical data based on the information gathered by the Department for Combating THB.

67. The Law on Combating THB provides that in the context of implementing National Action Plans against THB, relevant stakeholders should only possess information necessary to fulfil their specific task. The Azerbaijani authorities have explained that the aim is to prevent corruption and protect both victims and stakeholders from the pressure of traffickers. GRETA notes that Article 316-1 of the Criminal Code criminalises the disclosure of confidential information concerning a victim of trafficking.

68. **GRETA considers that, for the purpose of preparing, monitoring and evaluating anti-trafficking policies, the Azerbaijani authorities should continue their efforts in developing and maintaining a comprehensive and coherent statistical system on trafficking in human beings by compiling reliable statistical information from all main actors and allowing disaggregation (concerning sex, age, type of exploitation, country of origin and/or destination, etc.). This should be accompanied by all the necessary measures to respect the right of data subjects to personal data protection, including when NGOs working with victims of trafficking are asked to provide information for the national database.**

69. Decision No. 81 of the Cabinet of Ministers concerning the Programme on elimination of social problems leading to trafficking in human beings, adopted in 2011, instructs the Ministry of Internal Affairs, the Ministry of Labour and Social Protection and the State Committee on Family, Woman and Child Issues conduct research in order to identify groups vulnerable to THB. To the best of GRETA's knowledge, the Azerbaijani authorities have not conducted or supported any THB-related research in recent years. Some research into THB has been carried out in Azerbaijan by non-governmental entities or intergovernmental organisations on the problem of THB, on the assistance and services available to victims of trafficking and forced labour and on THB and labour exploitation.<sup>15</sup>

70. **GRETA considers that the Azerbaijani authorities should conduct and support research on THB-related issues as an important source of information for the evaluation of current programmes and for planning future policy measures. Areas where research may shed more light on the extent of the problem of THB include trafficking for the purpose of labour exploitation, trafficking in children, trafficking for the purpose of the removal of organs and internal trafficking (i.e. within Azerbaijan).**

iv. *International co-operation*

71. The Convention requires Parties to co-operate with each other "to the widest extent possible" in order to prevent and combat THB, protect and assist victims, and investigate related criminal offences (Article 32).

72. As regards co-operation in criminal matters, Azerbaijan is party to the Agreement between the CIS Participating States on co-operation in the field of combating trafficking in human beings and illegal trade of human organs and tissues. Other multilateral agreements relevant to combating THB by which Azerbaijan is bound include: the Agreement of Governments of the Member States of the Black Sea Economic Cooperation Organisation on co-operation in combating crime, especially its organised forms; the CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases; the Agreement between the Republic of Azerbaijan, Georgia and the Republic of Turkey on co-operation in the fight against terrorism, organised crime and other serious crimes; the Agreement on co-operation among the Governments of the Organisation for Democracy and Economic Development (GUAM) Participating States in the field of combat against terrorism, organised crime and other dangerous types of crimes; and the Agreement between the CIS Participating States on co-operation in combating crime.

73. Azerbaijan has also concluded bilateral agreements on co-operation in criminal matters with a number of countries including Austria, China, Egypt, Georgia, Iran, Kazakhstan, Latvia, the Netherlands, Pakistan, Poland, Romania, the Russian Federation, Saudi Arabia, Syria, Tajikistan and Uzbekistan. A Joint Declaration on Mobility Partnership between Azerbaijan and the EU was signed in December 2013, establishing a framework for the future co-operation in the field of migration and mobility, including on preventing and combating human trafficking.

74. The main entity competent for co-operation in criminal matters within the police is the National Central Bureau of Interpol. The Ministry of Foreign Affairs also participates in exchange of information on THB-related issues. The Azerbaijani authorities have indicated that they can exchange information through Interpol, the Virtual Centre of GUAM and the CIS Bureau on combating organised crime and other serious crimes. Co-operation in the field of criminal matters also takes place in other forms than agreements. For instance, a delegation of the Department for Combating THB and the Prosecutor's Office visited Georgia from 21-23 December 2011 in order to discuss bilateral co-operation issues in the field of combating THB. Some study visits to foreign countries on THB issues took place in recent years including visits to Poland organised by the OSCE.

<sup>15</sup> For recent examples of research on THB in Azerbaijan, see several articles published on THB in Azerbaijan available in English on the website of the CARIM-East project: [www.carim-east.eu/](http://www.carim-east.eu/). See also OSCE Office in Baku, Anti-trafficking response in Republic of Azerbaijan: Assistance and services available to victims of trafficking and forced labour, September 2013. Former publications include: IOM, Shattered Dreams Report on trafficking in persons in Azerbaijan, 2002; ICMPD, Labour Exploitation and Trafficking in Azerbaijan: An Exploratory Overview, June 2008.

75. Azerbaijan co-operates closely with Turkey, one of the main countries of destination for THB of Azerbaijani citizens. In 2012, Turkey made 25 requests for legal assistance concerning THB and all of them were answered by the Azerbaijani authorities. The Azerbaijani authorities have indicated that they have taken part in joint operations against THB and illegal migration along with other GUAM countries. Azerbaijani law enforcement officials also co-operated with Ukrainian authorities on a THB case involving Ukrainian citizens in 2010.

76. However, GRETA was informed of difficulties in the co-operation with the authorities of some countries. For instance, despite the existence of a Memorandum of Understanding between the Azerbaijani Ministry of Internal Affairs and the National Committee of the United Arab Emirates on Combating Trafficking in Human Beings, co-operation with the United Arab Emirates, one of the main destination countries for Azerbaijani victims of THB, remains difficult and not all the requests for legal assistance made on the Azerbaijani side have been met.

**77. GRETA considers that the Azerbaijani authorities should further develop international co-operation on criminal matters, in particular through the conclusion of agreements on parallel investigations and/or joint investigative teams concerning THB offences. Further, the Azerbaijani authorities should seek to remove existing difficulties in international co-operation with countries of destination of victims of trafficking.**

## **2. Implementation by Azerbaijan of measures aimed to prevent trafficking in human beings**

78. According to Article 5 of the Convention, Parties must take co-ordinated action to prevent THB, with the involvement of relevant NGOs, other organisations and members of civil society, as appropriate. The Convention requires Parties in particular to take measures to discourage demand, strengthen border controls and ensure the integrity, security and validity of travel or identity documents (Articles 6 to 9).

### a. Measures to raise awareness

79. Considerable efforts are being made in Azerbaijan in the areas of awareness-raising and education in co-operation with NGOs and intergovernmental organisations. During the visit, the GRETA delegation could appreciate the numerous awareness-raising materials produced in recent years in form of posters, leaflets in several languages, CDs, TV/radio-spots, postcards, guides and manuals on trafficking in human beings, produced both by the Azerbaijani authorities and NGOs in co-operation with international partners. The Azerbaijani authorities have stated that as a result of all awareness-raising activities conducted in Azerbaijan up to May 2012, nearly 50 000 representatives of public authorities have been sensitised to THB and forced labour issues.

80. Since 2009, the Azerbaijani authorities and NGOs have been organising anti-trafficking events from 6 May to 6 June, referred to as the “month for combating human trafficking” in order to celebrate the date of adoption of the first National Action Plan against THB on 6 May 2004.

81. By way of example, a campaign funded by the Government and entitled “Let’s say no to trafficking in human beings” was conducted in Shamkir and Dashkasan regions in May 2011 involving pop stars and targeted at young people. In September 2011, a conference on THB brought together heads of youth and sport departments of 18 districts of the Aran zone in the Sabirabad region.

82. From 11-15 February 2013, a winter camp for 20 students in Guba was organised in the framework of the project “Solidifying Awareness on Trafficking in Persons in Azerbaijan through Education”. The project was organised by IOM and NGOs and funded by the Swiss Agency for Development and Cooperation. The participants were volunteers, social workers and active members of local NGOs and youth organisations. Two similar summer camps were organised in 2011 and 2012.

83. Numerous events have been organised on THB for school teachers as well as pupils and their parents. In 2013, IOM published an updated a manual for teachers entitled "Trafficking in persons: Threats and preventions measures" intended for teaching secondary school pupils (9th-11th grades).

84. In 2010, training sessions were organised for 20 Azerbaijani tour operators on "Human Trafficking and Forced Labour" by the authorities, OSCE and ILO.

85. On 6 June 2013, IOM in co-operation with the State Committee on Family, Woman and Child Issues and the Azerbaijani National Non-Governmental Forum held a round table focusing on development of programmes to eliminate child neglect and violations in the context of prevention of human trafficking. A total of 34 representatives from the Ministries of Education, Internal Affairs, Justice, Youth and Sport, the Ombudsman Office and NGOs participated in the round table discussion.

86. In 2012 and 2013, the State Migration Service carried out awareness-raising activities in the country's different regions on issues pertaining to migration, statelessness, THB and relevant legislation. It included activities aiming at informing foreigners and stateless persons about migration legislation. This was accompanied by TV spots broadcast on local channels. The State Migration Service also operates a hotline in Azerbaijani, English and Russian, and questions can be sent by email in any of these languages. Further, information brochures on migration have been published in these three languages.

87. Numerous reports indicate that stereotypes and prejudice against women, domestic violence and violence against women constitute a problem in Azerbaijan and make women and girls more vulnerable to THB. In recent years, events have been organised in co-operation with the UNICEF field office in Azerbaijan in order to preventing early marriages. These events target students of secondary schools and their parents in the regions where the problem is most prevalent.

88. While welcoming the awareness-raising initiatives taken or supported by the government, GRETA considers that the Azerbaijani authorities should design future actions in the area of raising awareness in the light of impact assessment of previous measures and on the basis of research. Awareness-raising campaigns, education in schools and training of relevant professionals should aim at promoting gender equality and eradicating gender-based violence and the stigmatisation of victims of trafficking. Further, more information campaigns for migrants living in Azerbaijan and in particular migrant workers should be conducted to inform them about their rights and the danger of THB for labour and sexual exploitation.

89. GRETA also invites the Azerbaijani authorities to contribute to awareness-raising and other prevention activities in the main countries of origin of victims trafficked to Azerbaijan, in co-operation with these countries, in order to alert potential victims of THB-related risks.

b. Measures to discourage demand

90. In accordance with the Convention, measures to discourage demand for the services of victims of trafficking, especially women and children should be understood as a positive obligation on Parties to adopt and reinforce such measures as regards THB for the purpose of any form of exploitation (see paragraph 108 of the Explanatory Report of the Convention). As it is stated in the Recommended Principles and Guidelines on Human Rights and Human Trafficking, strategies aimed at preventing THB shall address demand as a root cause of trafficking.<sup>16</sup>

<sup>16</sup> Principle 4 of Addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1), [www.ohchr.org/Documents/Publications/Traffickingen.pdf](http://www.ohchr.org/Documents/Publications/Traffickingen.pdf)

91. The Azerbaijani authorities have informed GRETA that in 2011 the Administrative Code was amended in order to increase to a maximum of 35 000 AZN (approximately 35 000 euros) the fine imposed on legal persons employing a migrant or stateless worker illegally. The fine for physical persons committing the same administrative offence is 5 000 AZN (approximately 5 000 euros). However, even if the employer is fined in some cases, the migrant worker is allegedly often deported. Therefore, this measure appears to be more targeted at discouraging illegal work and unfair competition than labour exploitation. Employers likely to employ migrant workers should also be made aware of their obligations towards the latter.

92. According to the Azerbaijani authorities, the State Migration Service regularly meets employers, civil society representatives and NGOs which protect the rights of migrant workers to solve problems that arise regarding migration procedures, legal residence, living and working conditions of migrant workers and stateless persons.

93. Using the services of a person while knowing them to be a victim of trafficking in human beings is not criminalised as such in Azerbaijan (see also paragraph 180).

**94. GRETA urges the Azerbaijani authorities to strengthen their efforts to discourage demand for services from trafficked persons as regards all forms of exploitation, with a particular emphasis on labour exploitation, in partnership with the private sector and civil society.**

**95. Further, GRETA invites the Azerbaijani authorities to consider establishing as a criminal offence the use of services which are the object of exploitation, with the knowledge that the person is a victim of trafficking in human beings.**

c. Social, economic and other initiatives for groups vulnerable to THB

96. The 2005 Law on Combating THB defines as "potential victims of THB" the following persons and groups: "people practicing vagrancy or begging, those living outcast, immoral life, children who are abandoned, uncared-for, intentionally deviating from education, persons who depend on narcotics and psychotropic agents". The State Committee on Family, Woman and Child Issues is responsible for identifying persons and groups vulnerable to THB.

97. A number of measures envisaged in the framework of the National Programme for Action to Raise Effectiveness of the Protection of Human Rights and Freedoms in the Republic of Azerbaijan approved by Presidential Order on 27 December 2011 deal with the problems of unemployment and poverty, access to health care and child abuse or domestic violence and could be seen as measures to prevent THB. However, GRETA notes that further measures are needed for some groups as indicated in the following paragraphs.

98. In recent years, the Azerbaijani authorities have taken steps to reinforce the protection of children without parental care or living in orphanages and boarding schools. Several measures have been taken within the framework of the Decision No. 81 of 20 May 2011 of the Cabinet of Ministers concerning the Programme on elimination of social problems leading to trafficking in human beings. A helpline for children is run by the Ministry of Education and a mobile group composed of a psychologist and social workers can visit the child who requests emergency assistance. However, according to some sources, Roma children, street children and children without birth registration or identity documents constitute groups vulnerable to THB (in particular for the purpose of forced labour and begging), and more should be done by the Azerbaijani authorities to protect them from THB.

99. According to the Azerbaijani authorities, 700 000 persons were displaced within Azerbaijan as a result of the conflict over Nagorno-Karabakh. Despite a number of measures recently taken by the Azerbaijani authorities to improve their social conditions, internally displaced persons remain a group living in difficult social and economic conditions<sup>17</sup> and are therefore vulnerable to THB.

100. Another group of persons vulnerable to trafficking includes persons who are stateless or living without legal documents in Azerbaijan due to absence of registration at birth or administrative obstacles to obtaining civil registration for ex-USSR citizens and migrants. Asylum-seekers and even recognised refugees are also encountering serious difficulties in their daily lives because they do not receive the appropriate legal documents from the authorities. The lack of documents is an obstacle to integration in Azerbaijani society and to access work, social and health assistance and education, making the persons concerned more vulnerable and their trafficking easier to organise and keep undercover. In their comments on the draft report, the Azerbaijani authorities have indicated that, in the period 2011-2013, 9 212 irregular migrants and stateless persons had their situation regularised. During the same period it was established that 11 855 undocumented or stateless persons were nationals of Azerbaijan and, as a result, they were issued with papers. The Law on the Status of Refugees and Internally Displaced Persons grants refugees the same rights as Azerbaijani citizens, including the right to work. The Azerbaijani authorities have indicated that no information that refugees or asylum seekers were having problems for the registration of marriages, births or in respect of other legal documents were received. Further, they have stressed that all children are issued upon birth a certificate, regardless of their nationality.

101. GRETA notes that the 2005 Law on Combating THB does not refer to migrant workers as a group vulnerable to THB (see paragraph 96). GRETA is concerned by reports according to which migrants' passports were taken away and migrants work and live in dire situations on some construction sites. In order to better prevent migrant workers from falling victim to THB for labour exploitation, more should be done to empower them by granting them a clear legal status and diminishing the precariousness of their stay in Azerbaijan. GRETA understands that the Migration Code, which entered into force on 1 August 2013, is a tool which should enhance the protection of migrants' rights. In particular, it simplifies the issuing of work permits for migrant workers and stateless persons. Prior to it, work permits were not extended more than four times. Pursuant to the Migration Code, no work permit is needed for migrant workers and stateless persons in a number of cases (e.g. when they hold a permanent residence permit; when they run an entrepreneurship activity; for seafarers; for asylum seekers and refugees). Pursuant to Article 75 of the Migration Code, migrant workers, refugees and asylum seekers enjoy the same labour conditions and remuneration as nationals. According to Article 45.0.5 of the Migration Code, family members of foreigners and stateless persons are entitled to temporary or permanent residence. Under Article 63.6 of the Migration Code, employers cannot collect and keep the passports of migrant workers and stateless persons and, under Article 82.5, persons collecting, holding and hiding the passports and other identification documents of migrant workers and stateless persons will bear liability in accordance with national law.

102. **GRETA urges the Azerbaijani authorities to ensure the registration of all children at birth and to provide persons who are stateless or living without legal documents in Azerbaijan with the appropriate documents, as well as to secure the registration of persons from vulnerable groups for social services, both as a prevention measure and in order to avoid re-trafficking.**

<sup>17</sup> See Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, Addendum, Follow-up to the visit to Azerbaijan in 2007, 23 December 2010, A/HRC/16/43/Add.2.

**103. Further, GRETA considers that the Azerbaijani authorities should:**

- **take further steps to identify persons and groups vulnerable to THB, and to address them through targeted social, economic and other initiatives;**
  - **increase their efforts to address the root causes of THB for sexual exploitation, such as stereotypes and prejudice against women, domestic violence and violence against women;**
  - **take measures to empower migrant workers who are already on the Azerbaijani territory by providing them with the relevant documents, informing them of their rights, and facilitating their access to legal redress in case of abuse of their rights.**
- d. Border measures to prevent THB and measures to enable legal migration

104. The Azerbaijani authorities have established a system for licensing of recruitment agencies that may act as intermediaries for Azerbaijani citizens seeking work abroad. Such agencies should apply to the Ministry of Labour and Social Protection to obtain the relevant authorisation. However, GRETA is surprised to learn that no recruitment agencies have applied or received such a license. According to the Azerbaijani authorities, this could be linked to the fact that Azerbaijani citizens prefer to find a job abroad and leave the country by their own means and do not make use of the services provided by such agencies.

105. Concerning migrant workers in Azerbaijan, some measures have been taken by the Ministry of Internal Affairs and the Ministry of Foreign Affairs to inform potential migrants wishing to come to Azerbaijan to work about the legal channels of migration and the danger of THB, notably on the Department for Combating THB website and websites of Azerbaijani consulates abroad.

106. However, GRETA notes with concern that, according to ECRI's third report on Azerbaijan,<sup>18</sup> migrants working in some sectors including construction, agriculture and domestic work are faced with difficulties making them vulnerable to serious forms of abuse, including to trafficking for the purpose of labour exploitation. The reasons for this state of affairs are the existence of very strict quotas applying to work permits for foreigners, the high cost of these work permits and the waiting time for obtaining or renewing them. The fact that the work permit can only be for one year and that the employer has to pay 1 000 AZN (approximately 1 000 euros) to the State to obtain the permit for the first year and for each following years is said to encourage illegal work and the vulnerability of migrant workers. In their comments on the draft report, the Azerbaijani authorities have underlined that under the new Migration Code, applications for a work permit must be processed within 20 days and the work permit must be presented to the employer within three days from the decision granting it (Article 67). No additional fees will be paid in cases where a new permit is required for a migrant worker or stateless person who is moved from one post to another within the same company. According to GRETA, measures which could improve the situation by enabling legal migration for work to Azerbaijan include removing the dependence of the migrant workers from their employers who are the only one allowed to apply for the above mentioned one-year work permit and reducing the amount to pay to obtain a one-year work permit.

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<sup>18</sup> European Commission against Racism and Intolerance (ECRI), Report on Azerbaijan (Fourth Monitoring Cycle), CRI(2011)19, 31 May 2011, paragraph 78.

107. The State Migration Service is the law enforcement body entrusted to fight illegal migration from and to Azerbaijan or transiting through the country. Other law enforcement bodies such as the State Border Service and the State Customs Service co-operate with the State Migration Service by detecting illegal behaviours in terms of migration. GRETA notes that the figures regularly published by the State Migration Service indicate a high number of migrants found in an illegal situation and a significant proportion of these migrants are requested to leave the country within 48 hours. For instance, for the month of July 2013, the State Migration Service detected 3 261 foreigners in violation of the rules on residence in Azerbaijan; out of them, 297 were fined and their residence status in the country was legalised, 2 761 received deportation orders and 176 were actually deported.<sup>19</sup>

108. The Azerbaijani authorities have indicated that, in 2008, the State Migration Service agreed on an action plan with the State Border Service and the Ministry of Internal Affairs with a view to preventing violations of the migration legislation. Moreover, training programmes and workshops, including on the Law on THB and the Action Plan against THB, have been organised with representatives of the relevant government agencies in order to improve migration procedures management.

109. **GRETA considers that the Azerbaijani authorities should make further efforts to:**

- **detect cases of THB and identify victims of trafficking in the context of border and migration-related controls;**
- **provide employees of the State Migration Service, State Border Service and State Customs Service with training in order to increase their capacity to proactively detect cases of human trafficking and identify trafficked persons. Such training should underscore the difference between human trafficking and smuggling of migrants;**
- **review the system for licensing of recruitment agencies.**

110. **Further, GRETA considers that the Azerbaijani authorities should continue their efforts to provide written information to foreign nationals planning to travel to Azerbaijan, in a language that they can understand, in order to alert them to the risks of THB, inform them of where they can go for help and advice, and provide them with information on their rights.**

<sup>19</sup> See the State Migration Service press release of 6 August 2013,  
<http://migration.gov.az/index.php?section=009&subsection=041&lang=en&pageid=4496>

### **3. Implementation by Azerbaijan of measures to protect and promote the rights of victims of trafficking in human beings**

#### **a. Identification of victims of trafficking in human beings**

111. Article 10 of the Convention requires Parties to adopt measures to identify victims. In order to do so, Parties must provide their competent authorities with persons who are trained and qualified in preventing and combating THB and in identifying and helping victims, including children. Identifying a trafficking victim is a process which takes time, and therefore the Convention provides for the rights of potential victims by establishing that when the competent authorities have reasonable grounds to believe that a person has been a victim of trafficking, he/she must not be removed from the country until the identification process is completed and must receive the assistance required by the Convention.

112. The Law on Combating THB stipulates that the identification of victims of THB is the responsibility of the special police unit, i.e. the Department for Combating THB. Other relevant documents on identification include Decision No. 131 of the Cabinet of Ministers concerning the Rules (indicators) for identification of victims of trafficking in human beings (hereafter: "Rules on indicators") and Decision No. 123 of the Cabinet of Ministers concerning the Rules on the National Referral Mechanism for victims of trafficking in human beings (hereafter: "Rules on NRM"), both of which were adopted in 2009.

113. The aim of the Rules on indicators is to increase the efficiency of the fight against THB conducted by the law enforcement authorities (police, customs, border and migration officers), staff members of diplomatic representations and other governmental authorities, as well as NGOs. This document includes a list of THB general indicators and specific indicators for each of the following categories of victims of THB: child victims, victims of sexual exploitation, victims of labour exploitation, and victims of domestic servitude.

114. The Rules on indicators stress that sometimes victims of THB do not consider themselves as such due to the psychological trauma they have experienced. The Rules further underline that both proactive and reactive measures should be taken to identify victims of THB will be taken. Proactive measures include the detection and identification of victims of THB through raids conducted in entertainment and other places where sexual services could take place and black labour markets, as well as through the monitoring of places such as construction sites, markets and stations. The reactive approach to identifying victims of THB includes: self-reporting by the victim; detection of THB during raids and investigation operations concerning other offences; reports from social workers, staff of educational and other institutions; and information from the media.

115. The Rules on indicators also contain a list of measures to be taken during the inquiry made in order to identify a victim of THB and describe the method to be followed for interviewing a possible victim. In addition, the Rules draw up a list of questions to be asked to the victim in order to collect as much information as possible on the case. However, it is not clear from the Rules who is responsible for conducting the interviews.

116. Pursuant to the Rules on NRM, the relevant police authorities have to be immediately informed in case of detection of a possible victim of THB by other bodies. Article 4.4 of these Rules indicates that victims or possible victims should be transferred to the "assistant on duty in the police authority". Transferring these persons to another police authority or another law enforcement body is prohibited according to Article 4.5 of the same Rules.

117. During GRETA's evaluation visit to Azerbaijan, the Department for Combating THB explained that the identification of victims of THB is the exclusive competence of the police, prosecutors and judges involved in the criminal proceedings relating to a THB offence. The indicators are to be used by other law enforcement officials (for instance the State Migration Service and the State Border Service) to detect victims and refer them to the Department for Combating THB. If a victim is detected by another police officer, then this police officer should refer the victim as soon as possible to the Department. However, the GRETA delegation got the impression from discussions during the visit that there was a need to further clarify with frontline officials (police, prosecutors and other law enforcement officials) the different steps of the identification procedure and the responsibilities of the different stakeholders for the referral of THB cases to the Ministry of Internal Affairs. To this end, training of all these frontline officials is essential for them to be fully aware of the procedure they must follow whenever they come across a suspected case of human trafficking (see also paragraph 64).

118. According to the authorities, the vast majority of identified victims were Azerbaijani women exploited abroad (see paragraph 10). In some cases, the victims were identified in the country of destination and in others they were detected by border officials or NGOs upon their return. There have also been some cases of self-reporting.

119. The hotline "152" was put into place in 2007 and is run by the Department for Combating THB in order to give victims or anonymous witnesses a possibility to come forward. In 2011, 500 calls were made to denounce child trafficking for forced begging and seven concerned THB for sexual exploitation.<sup>20</sup>

120. It happens very rarely that professionals such as staff of diplomatic missions, health care, staff of educational institutions detect victims of THB. Staff members of employment agencies in 16 regions have been trained on how to detect possible victims of THB and how to proceed in case they detect a victim.

121. GRETA was informed that the police, including the Department for Combating THB, had conducted raids in entertainment places in recent years. These raids resulted in a few victims being identified. Raids and controls operated by the Department for Combating THB (occasionally together with the Labour Inspection Services and the Azerbaijan Entrepreneurs Confederation) in construction sites and other places employing migrant workers have so far hardly ever resulted in the detection of victims of THB. Reports of forced labour have been brought to the attention of the Department for Combating THB which has proceeded to inspect the premises, but no case of THB for forced labour has been identified. Further, specific monitoring activity was implemented in tobacco farms for the purpose of identifying cases of forced child labour. In general, the Azerbaijani authorities have referred to over 300 raids operated in 2010-2011 to uncover cases of child labour and, while irregularities have been revealed in some instances, no case of THB for forced labour has been identified.

122. As indicated in paragraph 54, GRETA notes that improvements are necessary in the field of identification of victims of THB for the purpose of labour exploitation. While some NGOs consider certain cases as labour exploitation, the authorities take the view that it is more a problem of employers not respecting the administrative rules and not paying their employees on time. Particular attention should be paid to THB for the purpose of domestic servitude. There have been reports concerning the increasing number of Philippine women coming to Azerbaijan to work as housemaids and there have allegedly been some cases of domestic servitude. The Azerbaijani authorities admit that the number of foreign domestic workers is on the rise and that it requires measures to prevent domestic servitude of foreign workers.

<sup>20</sup> See OSCE Office in Baku, Anti-trafficking response in Republic of Azerbaijan: Assistance and services available to victims of trafficking and forced labour, September 2013, p. 21.

123. GRETA stresses that labour inspection services can play an important role when it comes to detecting cases of THB for labour exploitation. In Azerbaijan, the Labour Inspection Service is tasked with supervising the fulfilment of employers' obligations towards workers and in particular the working conditions. Following the introduction of new legislation in 2011, labour inspectors are only allowed to inspect registered companies and they have to inform such companies well in advance of the day of the inspection. Labour inspectors cannot perform unannounced inspections except when they participate in raids with the Department for Combating THB (see paragraph 121). In 2012, while more than 7 000 companies were inspected by labour inspection services, only two cases of potential forced labour were detected by labour inspectors.

124. Any migrant who is found to be in an irregular situation by the authorities is requested to leave the country within 48 hours and, if he/she does not leave, can be placed in one of the two detention centres run by the State Migration Service. In principle, the State Migration Service which delivers the deportation decision is required to inform the persons concerned of the remedies available but is not obliged to grant them access to counselling or legal assistance. According to several sources, foreigners are often deported without being given the possibility to access legal counselling and to challenge the deportation order in the courts.

125. Additional efforts are needed concerning the identification of child victims of THB within Azerbaijan. For instance, GRETA was informed that when street children or children begging in the streets are stopped by the authorities, they are kept in a centre for vagrants and are released within three hours without necessarily having been screened as to whether they were forced to beg or to work. Victims of internal THB, particularly those migrating from rural areas to main cities to find work, should also be given increased attention. The Azerbaijani authorities have explained that, if there have been cases of children forced to work in agriculture by their parents, this does not amount to forced labour or THB. They have also indicated that, in 2013, the Working Group on Combating Human Trafficking, the NGO Coalition against Human Trafficking and other NGOs had monitored 31 farms, four factories and eight road construction sites in 18 regions in order to identify possible cases of human trafficking but none had been detected. Further, measures had been taken to assist isolated and street children, without the police being involved. According to the authorities, the State Committee for Family, Women and Children Affairs has developed, together with the Ministry of Labour and Social Protection, the Joint Action Plan on the Prevention of Exploitation of Child Labour (2013-2015), which involves awareness activities, workshops at regional level, and investigations into instances of child labour at the national level with the assistance of international organisations. The final draft report of the "Programme on Social Rehabilitation and Social Reintegration of Child Victims of Human Trafficking" was submitted by the Committee to the Cabinet of Ministers in October 2013.

126. GRETA recalls that the issue of identification is of fundamental importance. Without trafficked people being identified as such, they cannot benefit from the assistance and protection measures provided for under the Convention and in Azerbaijani law. It is therefore vital for the State to ensure that an effective system for proactive identification of victims of trafficking is put in place, irrespective of their nationality and immigration status. Many trafficked people do not always identify themselves as "victims" and are not aware of the legal meaning behind the term. Therefore, the onus of identification lies with the authorities. At the same time, GRETA considers that specialised NGOs can substantially contribute to the victim identification process and should be involved in a multi-agency effort to ensure that no victim of trafficking remains unidentified. This is envisaged by Article 10 of the Convention, according to which identification is a collaborative process between the authorities and relevant victim support organisations.

127. GRETA urges the Azerbaijani authorities to:

- ensure that the application of the Rules on indicators and the Rules on the National Referral Mechanism used for the identification of victims of trafficking is duly monitored and evaluated;
- reinforce the National Referral Mechanism and the multi-agency involvement in victim identification by formalising the role and input of specialised NGOs and involving other relevant actors, such as medical staff;
- guarantee that in practice identification is dissociated from the presumed victim's co-operation in the investigation;
- increase efforts to proactively identify victims of THB for the purpose of labour exploitation in particular among foreign workers and in the sectors most at risk such as construction, agriculture and domestic work, by involving all relevant stakeholders such as labour inspectors and trade unions;
- review the mandate of labour inspectors so that they can inspect other workplaces than those of registered companies (e.g. premises where domestic workers are employed) and effectively identify victims of THB;
- improve the detection and identification of victims of trafficking among irregular migrants through a proactive approach which requires regular training on THB and the rights of victims for immigration, border and customs officers, including staff working in detention centre for migrants in an irregular situation;
- improve the detection and identification of child victims of trafficking, including by setting up a specific identification mechanism which takes into account the special circumstances and needs of child victims, involves child specialists and ensures that the best interests of the child are the primary consideration;
- increase efforts to proactively identify male victims and victims of internal THB (i.e. within Azerbaijan).

b. Assistance to victims

128. The Convention requires Parties to take measures to assist victims in their physical, psychological and social recovery, taking account of the victim's safety and protection needs, in co-operation with NGOs and other organisations engaged in assistance to victims. This assistance must be provided on a consensual and informed basis, taking account of the special needs of persons in a vulnerable position, as well as children, and it must not be made conditional on the victim's willingness to act as a witness (Article 12). The need to take account of victims' needs is also referred to in the Convention's provisions concerning temporary residence permits (Article 14) and the rights of children victims of trafficking (Article 12(7)). The Convention also establishes that the assistance to victims of THB must include appropriate and secure accommodation.

129. The Law on Combating THB provides for the obligation to provide medical and psychosocial assistance, as well as rehabilitation programmes to victims of THB (Articles 9.5 and 9.6). The Law also provides for the setting up of state-run shelters (Article 13) and assistance centres for victims of THB (Article 14). Article 15 lists the measures to be taken for the social rehabilitation of victims and Article 16 deals with the specific assistance measures for child victims of THB. Further, Decision No. 203, adopted on 9 November 2005 by the Cabinet of Ministers, stipulates the Rules on establishing, financing, operating and supervising special institutions for victims of trafficking in human beings.

130. Further, the Law on Combating THB (Article 16) and other legal provisions foresee a specific referral mechanism and assistance system for child victims of THB. The law stipulates that the best interests of the child have to be taken into account when assisting them. When a possible victim of THB is a child, the Commission of Children's Affairs and Protection of Rights, as well as the guardianship and custodial authorities where appropriate, shall be informed and participate in the decisions concerning the assistance to be provided. When the age of the possible victim is uncertain and there are reasons to believe that the victim is a child, the person shall be considered to be a child. Children placed in shelters have the right to continue their education and communicate with their parents unless the parents were involved in the trafficking of their children.

131. There is one state-run shelter for victims of trafficking in human beings in the area of Baku under the responsibility of the Department for Combating THB of the Ministry of Internal Affairs. During the evaluation visit to Azerbaijan, the GRETA delegation visited the shelter in Baku. It can receive both female and male victims of THB and, since the opening of an additional floor in 2009, it can also accommodate child victims of both sex. The shelter has a capacity of 54 beds, divided into rooms of two to six beds. There is a kitchen and several common rooms including a classroom. The shelter is protected through the presence of police officers and CCTV video surveillance. The staff of the shelter is made of a director who is also the head of an NGO running another shelter for children, and social workers. These social workers attend training organised once or twice a year (see paragraph 60). Pursuant to Article 13 of the Law on Combating THB, victims of THB can stay in the shelter for up to 30 days without having to co-operate with the investigation or prosecution authorities. The stay can be prolonged upon request by the victim or the Department for Combating THB.

132. As regards children, the Rules on placement and accommodation in shelters of child victims of trafficking, adopted by Decision of the Cabinet of Minister on 19 November 2009, stipulate that when providing assistance, priority should be given to the child's legitimate interests and all necessary measures should be taken to protect the child's rights in accordance with Azerbaijani legislation and relevant international treaties. Children can stay in a shelter for up to 60 days. This period may be prolonged upon request by the police, the guardianship authority or the Commission on the rights and protection of minors in the following cases: threats on the child's life persist; the search for the child's parents or guardians is ongoing; the child's individual rehabilitation programme has not been completed; additional interviews of the child by the bodies of the criminal proceedings are needed; the child's best interests so require. In the case of children older than 10, their opinion is taken into account when being placed in the shelter and during the extension of the term. During accommodation in the shelter, children are to be provided with medical, psychological and legal assistance, as well as possibilities to continue their education.

133. In practice, the state-run shelter in Baku has so far accommodated only victims of THB who accepted to co-operate with the authorities and these victims can only enter the shelter once the criminal proceedings have started. Possible victims of THB are not accommodated in this shelter but in NGOs' shelters. The duration of the stay for adults is limited to a maximum of two periods of 30 days. Since 2006, a total of 320 victims have been accommodated in the shelter, nearly all of them women. In 2013, 37 victims of THB (out of a total of 56 identified victims) were accommodated in the shelter. An allowance in the form of a lump sum was paid to 50 victims and 13 were assisted by the Assistance Fund for victims of trafficking. Out of those, 22 received assistance in finding employment and 21 followed vocational training.

134. There are several reasons why the state-run shelter is empty while NGOs' shelters are generally full and sometimes even overcrowded. The main explanation given to the GRETA delegation was that a victim of THB can only enter the state-run shelter once the criminal proceedings have started. It means that victims of THB who do not wish to or cannot co-operate with authorities do not have access to this shelter. In addition, this shelter does not accommodate presumed victims who would be in urgent need of a safe accommodation. In some cases, the authorities themselves have considered that NGOs' shelters are more appropriate to accommodate victims of THB. Another reason put forward is that victims feel more secure and at ease in NGO-run shelters. GRETA was informed that some possible victims of THB avoid contacts with law enforcement authorities due to a lack of trust and prefer to seek assistance from relatives or NGOs.

135. In addition to the state-run shelter, the Azerbaijani authorities have informed GRETA that there are three shelters run by NGOs which can accommodate victims and potential victims of THB in Baku. The GRETA delegation visited the shelter run by the NGO "Azerbaijan Child Union" in a suburb of Baku, which receives children in difficult situations, children vulnerable to trafficking and child victims of trafficking. It serves both as a day-centre for street children and temporary accommodation. In exceptional cases, mothers can stay with their children in the shelter.

136. The second NGO shelter is for women victims of violence, including victims of THB or domestic violence, run by the NGO "Clean World". This shelter is usually full and cannot always respond to demand. The NGO Azerbaijan Migration Centre runs the third shelter, which is for male migrants in need of protection, including victims of THB. It can accommodate up to 14 persons for a period of two months, renewable once.

137. As indicated in paragraph 26, in May 2013 a second state-run shelter was opened in Ganja by the Assistance Centre for Victims of THB of the Ministry of Labour and Social Protection, with the support of the international community. Ganja is in one of the main source regions for Azerbaijani victims of trafficking. The shelter provides accommodation to victims of THB who are in the stage of social reintegration as well as services similar to those provided by the Assistance Centre in Baku. Its main purpose is the rehabilitation and reintegration of victims of THB. This shelter has accommodated four victims of human trafficking and 17 possible victims since its creation.

138. GRETA notes that the National Programme for Action to Raise Effectiveness of the Protection of Human Rights and Freedoms in the Republic of Azerbaijan, approved by Presidential Order on 27 December 2011, provides that crisis centres for victims of human trafficking and victims of other abuse be created in the regions (Article 2.19).

139. After their stay in the shelter run by the Department for Combating THB, victims of THB are to be referred to the Assistance Centre for Victims of Trafficking in Human Beings which is based in Baku. This centre was opened in 2009 under the responsibility of the Ministry of Labour and Social Protection. During the evaluation visit to Azerbaijan, the GRETA delegation visited the centre, which is located in a flat in a building in very poor condition on the outskirts of Baku. The GRETA delegation was informed that the centre should be moved to another building in the near future and **GRETA would like to be kept informed of progress in this respect**. The centre's staff is composed of a director, a psychologist, a sociologist, a lawyer and an assistant. The support provided by the centre includes medical, psychological and legal assistance. The centre also helps victims to access jobs or vocational training in co-operation with the Employment Agency of the Ministry of Labour and Social Protection. In 2012, 47 persons (29 women and 18 men) were assisted by the centre. Some of them were referred by the Department for Combating THB, while others were sent by NGOs in particular when such victims did not wish to co-operate with law enforcement authorities. Victims can also come to the centre on their own initiative.

140. From its visit to the Assistance Centre and the information received from civil society, the GRETA delegation got the impression that it was not given all the necessary means to fulfil its mission. The centre had occasionally received equipment from the OSCE and ILO to enable it to function properly.

141. Decision No. 62 of 6 March 2006 of the Cabinet of Ministers concerning the Rules on social rehabilitation of victims of trafficking in human beings provides for the drawing up of a personal plan of reintegration into society for each victim of THB who is supported by the state-run shelter and the Assistance Centre. The State authorities are under the obligation to assist victims in finding accommodation, job and a school for children. Social reintegration of victims remains a problem, particularly in the case of women who were sexually exploited. The danger of re-victimisation is important as these women may be confronted with prejudice and rejection from their families and difficulties in finding a job.

142. Both the state-run shelter and the Assistance Centre are responsible for ensuring victims' access to free medical assistance. There are five medical institutions in Baku designated for receiving victims of THB and whose staff has been trained on THB issues. All other assistance services are to be covered by the Assistance Fund for Victims of THB (see paragraph 159).

143. GRETA urges the Azerbaijani authorities to strengthen their efforts to provide assistance to victims of trafficking, and in particular to:

- ensure that the needs of victims and possible victims of THB are met throughout Azerbaijan. Particular attention should be paid to ensuring emergency and safe accommodation for victims of THB who are not willing or able to co-operate with the law enforcement authorities and for possible victims of THB before their formal identification;
- ensure that assistance measures provided for in law are not made in practice dependent on the victims' willingness to co-operate with law enforcement agencies;
- provide the Assistance Centre for Victims of THB with all the necessary human and financial resources to fulfil its mission.

144. Further, GRETA considers that the Azerbaijani authorities should continue their efforts to facilitate the reintegration of victims of trafficking into society and avoid re-trafficking by providing them with access to education, vocational training, and the labour market.

c. Recovery and reflection period

145. As victims of trafficking are extremely vulnerable after the trauma they have experienced, Article 13 of the Convention introduces the obligation for Parties to provide in their internal law for a recovery and reflection period of at least 30 days. The recovery and reflection period, in itself, is not conditional on co-operation with the investigative or prosecution authorities and should not to be confused with the issue of a residence permit under Article 14(1) of the Convention. Pursuant to the Convention, the recovery and reflection period should be granted when there are reasonable grounds to believe that the person concerned is a victim of trafficking, i.e. before the identification procedure has been completed. During this period, Parties must authorise the person concerned to stay on their territory and expulsion orders cannot be enforced.

146. There was no provision on the recovery and reflection period in the Azerbaijani legislation before a new Article 14-1 entitled "Recovery and reflection period" was introduced in the Law on Combating THB in 2013. Pursuant to this provision, victims of THB can benefit from a recovery and reflection period of 30 days to allow them to escape from the traffickers' influence and reflect as to whether they want to co-operate with the law enforcement authorities. During this period, the victim has access to the services provided by the state shelter and the state assistance centre in order to benefit from protection and physical, psychological and social recovery. Pursuant to the same provision, expulsion orders cannot be enforced against the person concerned. If it is established that the person is not a victim of THB, he/she will not benefit from this period and if this is established only once the period already started, then the authorities will end it.

147. GRETA notes that, while Article 14-1 does not specify that the recovery and reflexion period should be granted "when there are reasonable grounds to believe that the person concerned is a victim of trafficking", the definition of "victim of THB" in Azerbaijani law includes "a person believed to be subjected to THB" (see paragraph 46). Therefore, to be in accordance with the Convention, Article 14-1 of the Azerbaijani law should be interpreted as covering possible victims for whom "there are reasonable grounds to believe that they are victims of trafficking".

148. The Azerbaijani authorities have informed GRETA that the above-mentioned change in the law will be accompanied by all the necessary adjustments in secondary legislation and training of relevant officials. GRETA stresses that it is essential that all professionals who may come into contact with possible victims of THB be informed of the existence of the recovery and reflection period. The Azerbaijani authorities have stated that relevant dealing with human trafficking cases have been informed about the amendment introducing the recovery and reflection period and the need to apply it.. **GRETA considers that the Azerbaijani authorities should take further steps to ensure that all relevant stakeholders are familiar with the recovery and reflection period, in particular the special police unit, prosecutors, judges, lawyers, labour inspectors, and staff of shelters.**

149. **Further, GRETA urges the Azerbaijani authorities to ensure that victims and possible victims of trafficking are systematically informed of the possibility of benefiting from a recovery and reflection period and are actually granted such a period.**

d. Residence permits

150. Article 14(1) of the Convention provides for two possibilities when it comes to the issuing of renewable residence permits to victims of trafficking: on the basis of their personal situation and/or their co-operation with the competent authorities in the investigation or criminal proceedings.

151. Azerbaijani legislation does not provide for residence permits for victims of THB as such. Article 20.1 of the Law on Combating THB provides for two consecutive periods during which a victim of THB cannot be deported through an administrative order. The first period is of one year and is granted by the authorities by taking into consideration the co-operation of the victim with the prosecution authorities, the physical and moral suffering of the victim, the danger run in by the victim if returned to the country of origin, in particular as concern the risk of being re-trafficked. Pursuant to Article 20.2, after this one-year period, a foreign victim can stay on Azerbaijani territory under the condition that he/she co-operates with the prosecution authorities and as long as the criminal prosecution is not completed. The Law on Combating THB also stipulates that foreigners and stateless persons who become victims of THB shall be provided with the same protection and assistance as Azerbaijani victims (Article 17-8). Persons who would like to benefit from a residence permit must apply to the State Migration Service. At the end of the second period, it is also possible to apply for a five-year residence permit. Further, Article 20.3 provides that while child victims of THB can be repatriated under some conditions (see paragraph 171), they must not be deported by administrative order.

152. In practice, given that very few foreign victims of THB have been identified in Azerbaijan, the authorities have rarely granted a residence permit. GRETA was informed that when foreign victims were identified, they wished to return to their country of origin as soon as the criminal proceedings were over. The Azerbaijani authorities have stated that Article 79.4 of the new Migration Code provides that deportation will not be applied for one year to foreigners and stateless persons who are considered to be victims of human trafficking, and until the end of the criminal prosecution for those co-operating with the prosecuting authorities, or for child victims. GRETA notes that this corresponds to the above-mentioned relevant provisions of the Law on Combating THB.

153. **GRETA considers that the Azerbaijani authorities should clarify the legislation concerning the possibility for victims of THB to obtain a temporary residence permit in Azerbaijan, including when they are not in a position to co-operate with the authorities.**

e. Compensation and legal redress

154. Article 15 of the Convention establishes the obligation for Parties to provide in their internal law for the right of victims of trafficking to legal assistance and free legal aid. Parties must also provide for the right of victims of trafficking to compensation from the perpetrators as well as adopt legislative or other measures to guarantee compensation for victims from the State. A human rights-based approach to action against THB entails the effective prosecution of traffickers, putting the emphasis on the right to effective remedy for the victim. Further, Article 15(1) of the Convention establishes that victims of trafficking must have access to information on relevant judicial and administrative proceedings in a language which they can understand.

155. Under Articles 3.6 and 3.7 of the Rules on the National Referral Mechanism, victims are entitled to raise a civil claim before criminal or civil courts to receive compensation for their material and moral damages resulting from a criminal act, as well as to receive compensation from the State Assistance Fund for Victims of THB.

156. According to Article 2 of the Law on the adoption and implementation of the Civil Procedure Code, compensation can be obtained through civil proceedings after completion of the criminal proceedings.

157. Under Article 191 of the Criminal Procedure Code, victims can claim compensation from the State for prejudice suffered as a result of a criminal act before criminal courts. However, this provision will come into force after the completion of the judicial and legal reform and the adoption of a relevant decision.

158. The court can use assets confiscated from the perpetrator to compensate victims of THB. The Azerbaijani authorities have informed GRETA that decisions of confiscation have been taken in 12 cases so far. However, these decisions did not specify which assets were to be confiscated and, in any case, the execution of the decisions remains a problem. In a case concerning 14 Azerbaijani citizens trafficked to Russia for labour exploitation (see paragraph 192), the court decided that the perpetrator would have to pay to each of the 11 victims who claimed compensation an amount of AZN 200 (approximately 200 euros) for moral damages as well as an amount ranging from AZN 31 to 1367 for material damages depending mainly on the number of days of exploitation undergone. Two of the other workers waived their claim for compensation and another one did not apply for it. The three of them were informed by the court that they could claim compensation at a later stage before civil courts.

159. Concerning compensation from the State, Articles 22 and 23 of the Law on Combating THB and Decision No. 68 of the Cabinet of Ministers concerning Regulations on the Assistance Fund for Victims of Trafficking in Human Beings adopted in 2006 provide for the setting up of an assistance fund for victims of THB. This fund started to function effectively in 2008. Currently, the fund is only financed from contributions by private donors. The total amount raised for this assistance fund at the time of GRETA delegation's visit was AZN 15 000 (approximately 15 000 euros), which is not enough to meet the needs. In principle, the fund should also be financed by the State and on the basis of confiscations from perpetrators but the modalities for such funding are not yet in place. GRETA stresses that the Azerbaijani authorities should ensure that the assistance fund for victims of THB is adequately financed, including by using money and assets confiscated from traffickers.

160. Pursuant to Article 3.7 of the Rules on NRM, compensation from the Assistance Fund can be granted even if the victim does not co-operate with law enforcement authorities. On the other hand, victims who co-operate can complement what they have received from the fund by claiming compensation from the perpetrators. Once a victim has been identified, he/she receives a one-off lump-sum of 400 AZN (approximately 400 euros). The fund is also used to cover other expenses related to the assistance of victims of THB (including medicine, and transport).<sup>21</sup>

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<sup>21</sup> The amount has been gradually increased and the authorities have indicated that it will continue to grow to take into account the needs of the victims.

161. The Azerbaijani authorities have indicated that from 2009 to 2013 the Assistance Fund had been used for the financial assistance of 133 victims of THB in order to meet their basic needs, medical needs, and for psychological and legal assistance. The overall amount spent for this purpose was AZN 6 046 (approximately 6 000 euros).

162. As indicated in paragraph 54, law enforcement officials and labour inspectors reportedly have a tendency to see potential cases of THB for labour exploitation as labour disputes between the worker and the employer. There seems to be confusion between cases of THB for labour exploitation and disputes on salaries or other aspects of working conditions. Recently, in some cases, the Azerbaijani authorities in co-operation with NGOs have successfully intervened (in out of court settlements) and obtained from employers that they pay the salaries due to migrant workers. However, GRETA stresses that where the situation corresponds to THB for forced labour and not just late payment of salaries, the reimbursement of salaries is to be ensured but would not be sufficient to compensate victims of this serious human rights violation for their moral and material damages.

163. The Law on Combating THB and the National Action Plan both envisage legal assistance for victims of THB. In principle, victims should have access to the free legal assistance system, but because of shortcomings in the system, victims are referred in practice to NGOs which provide legal assistance. These NGOs receive no funding from the State for that purpose and have to rely on external donors. The OSCE Office in Baku and the American Bar Association Rule of Law Initiative established in 2012 a network of trained lawyers to improve protection of the rights of victims of trafficking and labour exploitation and communicated to the authorities and NGOs the list of trained lawyers. There is also an NGO, the Children's Rights Legal Clinic based in Baku, which is specialised in the provision of legal counselling, legal support and representation in trials for vulnerable children and their families.

**164. GRETA urges the Azerbaijani authorities to provide information to all victims of trafficking concerning possibilities to obtain compensation and to ensure that they have effective access to compensation from the traffickers and/or the State, including by ensuring effective access to legal assistance. In this context, GRETA stresses the importance of ensuring the financing of the Assistance Fund.**

f. Repatriation and return of victims

165. Article 16 of the Convention requires Parties to establish repatriation programmes which aim at avoiding re-victimisation and involve relevant national or international institutions and NGOs, as well as to make efforts to favour the reintegration of victims into the society of the State of return. Parties must also make available to victims of trafficking contact information or structures that can assist them in the country of return, such as law enforcement offices, NGOs, legal professionals and social welfare agencies. The return of victims of trafficking must preferably be voluntary and needs to be carried out with due regard for the rights, safety and dignity of the person and for the status of any legal proceedings related to the fact that the person is a victim of THB. Furthermore a victim may not be returned where such action would be in contravention of the State's obligation of international protection recognised in Article 40-4 of the Convention.

166. Under Article 19 of the Law on Combating Trafficking, repatriation of Azerbaijani citizens who have been identified as victims of THB abroad is organised by the Ministry of Foreign Affairs through the consulates and embassies of Azerbaijan. If the person in question does not have a passport, the MFA will issue a return certificate replacing it. Pursuant to the Rules on NRM, the persons will be referred to the Department for Combating THB.

167. As far as repatriation of foreign victims of THB from Azerbaijan is concerned, pursuant to Article 20 of the Law on Combating Trafficking, the Department for Combating THB in co-operation with the State Migration Service provides the relevant documents, covers the costs of the return and take necessary measures to ensure a safe return and avoid re-trafficking. This provision was amended in 2013 to add the obligation to provide the victim with contact information of structures which can assist them in the country where they are repatriated, such as law enforcement authorities, NGOs, legal professionals who can provide counselling and social welfare agencies.

168. Pursuant to Article 20.4 which was added to the Law on Combating THB, “the relevant executive power agency adopts repatriation rules aiming at avoiding re-victimisation and co-ordinating activities of relevant state agencies on repatriation of foreigners or stateless persons who have been victims of trafficking in human beings”. In this context, GRETA wishes to stress the international obligations of the State towards stateless persons living on its territory in particular under the international conventions on statelessness to which Azerbaijan is party.

169. According to the Rules on the repatriation of victims of trafficking in human beings adopted by Decision No. 252 of the Cabinet of Ministers on 10 September 2013, the Azerbaijani authorities should conduct a risk assessment before repatriating a victim to his or her home country. The assessment should include the risk of re-trafficking, threats from the perpetrators, availability of assistance and the existence of reintegration programmes for victims of trafficking. These risks are considered when reviewing the requests filed by victims to receive residence permits. Following the risk assessment, victims are given advice on how to avoid re-trafficking and contact details of service providers in their home countries.

170. GRETA notes that Article 20.6 of the Law on Combating THB which provided that “a foreigner or a stateless person cannot be granted the right to live in the territory of the Republic of Azerbaijan if it is impossible to establish his/her personal identity and shall be provided assistance to leave the country” was rescinded in 2013. As to the procedure applying now when a foreign possible victim of THB is detected and does not have with him/her relevant identity documents, the Azerbaijani authorities have indicated that no undocumented foreigner had been so far identified as a victim of human trafficking. **GRETA would like to be kept informed about any developments on the application of Article 20.6 of the Law on Combating THB regarding foreign victims without proper identity documents.**

171. A specific procedure applies to children as provided for in Article 20.3. The return to the country of origin or to their parents is only possible if there is no risk of re-victimisation. If the child is over 10 years old, then the opinion of the child is asked and taken into account. The Azerbaijani authorities have stated that, according to the aforementioned Rules on the repatriation of victims of THB, if the repatriation of child victims is considered contrary to their interests on the basis of a risk assessment, they will not be repatriated and measures will be taken to regularise their stay in Azerbaijan.

172. **GRETA considers that the Azerbaijani authorities should continue to develop the institutional and procedural framework for the repatriation and return of victims of THB, with due regard to their rights, safety, dignity and protection. Particular attention should be paid to ensuring that appropriate risk assessment is carried out prior to the return in compliance with the state's obligations on *non-refoulement*, and that the return of child victims would not be against the best interests of the child.**

## 4. Implementation by Azerbaijan of measures concerning substantive criminal law, investigation, prosecution and procedural law

### a. Substantive criminal law

173. Pursuant to Article 18 of the Convention, Parties have the obligation to establish THB as a criminal offence when committed intentionally. Further, the Convention requires Parties to consider taking measures to criminalise the use of services which are the object of exploitation, with the knowledge that the person is a victim of THB (Article 19). In addition, forging travel or identity documents, removing, concealing or destroying them, as well as procuring or providing them, must also be established as criminal offences, when committed intentionally and for the purpose of enabling THB (Article 20).

174. Under Article 144-1.1 of the Criminal Code, the offence of THB is punished with deprivation of liberty for a term of five to 10 years. Pursuant to Article 144-1.2, the same acts are punished with deprivation of liberty for a term of eight to 12 years when the offence was committed:

- against two or more persons;
- against a minor;
- against a pregnant woman whose pregnancy is known by the perpetrator;
- by transporting a victim of human trafficking through the state border of the Republic of Azerbaijan;
- by a premeditated group of persons, an organised group and/or a criminal organisation;
- when committed through abuse of power;
- by using force endangering the life and health and/or by using threat of using such force;
- by torturing the victim or treating that person in a cruel, inhuman way or by disparaging the dignity of that person;
- for the purpose of using the organs and tissues of the victim.

175. Under Article 144-1.3 of the Criminal Code, when the acts mentioned in Articles 144-1.1 and 144-1.2 CC result in death or other severe consequences for the victim due to negligence, they are punished with deprivation of liberty for a term of 10 to 15 years.

176. Article 24(c) of the Convention provides for aggravating circumstances when the offence of THB is committed by a public official in the performance of his/her duties. The Azerbaijani authorities have informed GRETA that the aggravating circumstances of committing THB through abuse of power as provided by Article 144-1.2.6 covers this situation. In their comments on the draft report, the Azerbaijani authorities have indicated that to date no case has been brought under Article 144-1.2.6.

177. Article 144-1 of the Criminal Code prohibits THB including for “forced labour”. In addition to this provision, Article 144-2.1 (entitled “forced labour”) criminalises “forcing a person to fulfil any work (service) by threatening this person, using force or a threat of using force against this person, or by restricting freedom of a person except in specific cases provided for by law”. GRETA also notes that Article 17 of the Labour Code entitled “Prohibition of Forced Labour” provides that “it is prohibited to oblige an employee to perform a job not included in the job description through any kind of duress or use of threat of termination of the employment contract” and stipulates that offenders are to be “held liable under the procedure prescribed by legislation”.

178. The Law on Combating THB provides for the confiscation by court decision of all the property obtained through committing the offence of THB and the transfer of this property to the Assistance Fund (see paragraph 159) or the use of this property for the payment of compensation directly from the perpetrator to the victim.

179. Following amendments brought to the Criminal Code on 7 March 2012, legal entities may be held liable for criminal offences, including those relating to trafficking, committed in their name and on their behalf. The sanctions provided for legal entities are the following: fine, special confiscation, deprivation of the right to exercise certain types of activity, and termination of the legal personality. This liability does not exclude that of the physical persons involved in the committing of the offence. The Azerbaijani authorities have indicated that, to date, there have been no criminal cases regarding the involvement of legal entities in THB offences. In their observations on the draft report, the Azerbaijani authorities have specified that only criminal law sanctions were provided for by legislation in such cases. **GRETA considers that the Azerbaijani authorities should examine the reasons why no legal entities have been prosecuted for trafficking-related acts to date and, in the light of their findings, take the necessary measures to ensure that the liability of legal entities can be acted upon in practice.**

180. As indicated in paragraph 93, using the services of a person while knowing them to be a victim of trafficking in human beings is not criminalised as such in Azerbaijan. The Azerbaijani authorities have explained that if a person is aware of the offence of THB and does not denounce it to the law enforcement officials, he/she can be prosecuted for the offence of concealing another offence prohibited by Article 307 of the Criminal Code and can also in certain cases be considered as complicit or co-author.

181. A new Article 144-3 on “Illegal acts relating to travel or identity documents for the purpose of human trafficking” was introduced in the Criminal Code on May 2013. Under this provision, the following acts are punished by deprivation of liberty for a term of one to three years when committed for the purpose of human trafficking:

- forging an identity card, a passport or any other identity document or travel (border cross) documents;
- procuring or providing human traffickers or victims of human trafficking with such forged documents;
- obtaining such kind of documents for procuring or providing human traffickers or victims of human trafficking with a forged identity card, passport or other identity document or travel (border cross) documents.

182. In addition, under Article 144-3.4 of the Criminal Code, the acts of retaining, removing, concealing, damaging or destroying an identity card, a passport or any other identity document or travel (border cross) documents of another person for the purpose of human trafficking is punished by deprivation of liberty for a term of two to four years.

b. Non-punishment of victims of trafficking in human beings

183. Pursuant to Article 26 of the Convention, Parties must provide for the possibility of not imposing penalties on victims of trafficking for their involvement in unlawful activities, to the extent that they have been compelled to do so.

184. Under Article 17-7 of the Law on Combating THB, “persons subjected to THB are exempted from criminal, administrative and civil responsibility for offences committed under coercion or intimidation while they were victims of THB”. There have been no cases where this provision was applied.

185. GRETA stresses the need to ensure that no victim of trafficking is prosecuted for illegal acts due to the fact that the person concerned has not been identified as victim of THB as should have been the case. Migrant workers who are victims of trafficking for labour exploitation run the risk of sanction and deportation if not properly identified as victims.

186. In addition, the Azerbaijani authorities should be particularly mindful of the non-punishment provision in the field of trafficking for the purpose of sexual exploitation as there seems to be sometimes confusion in the mind of law enforcement officers between sex workers acting in contradiction with the administrative prohibition of prostitution applying in Azerbaijan and trafficked victims who have been forced into prostitution. The latter could run the risk of being fined if not identified as victims of THB. If they are foreigners, they also run the risk of being deported before they are identified as victims.

**187. GRETA considers that the Azerbaijani authorities should assess the implementation by the judicial and other relevant authorities of Article 26 of the Convention on the non-punishment of victims of THB for their involvement in unlawful activities, to the extent that they were compelled to do so.**

c. Investigation, prosecution and procedural law

188. One of the purposes of the Convention is to ensure the effective investigation and prosecution of THB (Article 1(1)(b)). In this context, Parties are required to co-operate with each other regarding investigations and/or criminal proceedings related to THB (Article 32). Further, the Convention establishes that the investigation or prosecution of THB offences must not be dependent on victims' reports, and that associations or NGOs aimed at fighting THB or protecting human rights must be able to assist and support victims during criminal proceedings, in accordance with the conditions established in the internal law and with the victim's consent (Article 27).

189. Any police officer or prosecutor who receives information about the occurrence of a THB related offence has the duty to inform the Department for Combating THB in order for it to participate in the investigation and assist the presumed victim. The department can also send officials to the region to assess the situation and assist on the grounds. The Department on Organised Crime is also participating in the investigations where relevant. The Ministry of National Security will investigate on THB cases which have a link with national security issues.

190. GRETA stresses the importance of special investigation techniques as set out in Recommendation Rec(2005)10 of the Committee of Ministers to member states on "special investigation techniques" in relation to serious crimes including acts of terrorism. The Department for Combating THB and the Department on Organised Crime can use several special investigation techniques such as phone tapping, cover agents and informants when investigating THB. GRETA welcomes the use of such techniques in criminal proceedings concerning trafficking in human beings. However, the Azerbaijani authorities have indicated that when exploitation takes place outside Azerbaijan, the authorities depend on co-operation of the other countries and, above all, on the testimony of the victim returned. When the victim is not in the country, there is the possibility of using video testimony and this was done in at least one case of THB.

191. The Azerbaijani authorities have informed GRETA that in 2012, 12 criminal cases related to human trafficking were opened (against 22 perpetrators). Out of these 12 cases, 10 were initiated under Article 144-1 of the CC while the two others were based on Article 144-2 of the CC ("forced labour"). In 2012, a total of 13 convictions for THB were handed down (eight prison sentences and five suspended prison sentences). During the first half of 2013, 17 criminal cases were opened under Article 144-1 of the CC and four cases under Article 144-2 of the CC. In the same period, a total of 16 convictions were handed down for THB (eight prison sentences and eight suspended prison sentences).

192. There has been only one conviction for THB for forced labour. On 25 February 2013, the Baku Court of Grave Crimes convicted an Azerbaijani citizen for having committed the offences of THB under Article 144-1 and forced labour under Article 144-2 of the Criminal Code with aggravating circumstances. The victims were 14 other Azerbaijani men who had been recruited by the perpetrator in Azerbaijan and sent to Samara, Russian Federation, to work in a pig farm. The victims were deceived as they were told that they would be working on construction sites. They were forced to work under threat of use of force, had to live on the farm premises in difficult conditions and their passports were confiscated by the employer. The Court convicted the defendant to a sentence of deprivation of liberty for eight years and six months under both Article 144-1 (THB) and 144-2 (forced labour) of the Criminal Code and granted compensation to 11 workers (see paragraph 156).

193. GRETA is concerned that, despite the rather high level of sentences provided for by the Criminal Code for THB offences (from five to 10 years for the basic offence and from eight to 15 years in case of aggravated circumstances), the sentences handed down on traffickers are generally too lenient when compared to the gravity of the acts committed against the victims.

194. According to some reports, law enforcement officers are sometimes not aware of the problems experienced by victims of THB and treat them as "prostitutes", "criminals" or "illegal migrants". In some cases, victims were allegedly interviewed by police officers in an inappropriate manner. GRETA notes that since 2005 Article 144-1 of the Criminal Code indicates that it is not allowed to use the argument that the victim was involved in illegal activity in the past to reduce the sentence for THB. In their comments on the draft report, the Azerbaijani authorities have stated that efforts are made to involve staff from the State Migration Service in workshops on the identification of victims of THB for labour exploitation, prevention of illegal employment, and standards of behaviour when dealing with foreigners and stateless persons.

195. GRETA was informed of the so-called "SerbAz" case of alleged transnational trafficking for labour exploitation in Azerbaijan, involving men from Bosnia and Herzegovina, Serbia and "the former Yugoslav Republic of Macedonia". In 2009, the alleged victims responded to an employment offer as construction workers in Azerbaijan by the company "SerbAz Project Design and Construction LLC" registered in the Netherlands and Azerbaijan. It would appear that immediately upon their arrival in Azerbaijan, their passports were taken away and they were put to work on various construction sites guarded by armed people. They were locked up after working hours, accommodated in very poor conditions and their salaries were not paid. Moreover, the workers were allegedly subjected to heavy monetary fines for "disciplinary misconduct" and abused physically and psychologically. The Serbian NGO Astra has issued a report on the case, according to which three workers died from heart attack, which was apparently not followed by any investigation. According to Astra, no investigations have been initiated in Azerbaijan and all complaints against the police and the prosecution for failure to investigate have been dismissed.

196. During the visit to Azerbaijan, the GRETA delegation raised the case in question at meetings with representatives of the Ministry of Internal Affairs and the State Prosecutor's Office. The Azerbaijani authorities informed the delegation that after having interviewed a significant number of workers concerned, the Department on Combating Human Trafficking concluded that it could not identify any sign of trafficking or forced labour. None of the persons involved in this case were identified as victims of trafficking in Azerbaijan. Some of them were paid the salaries which the company owed them (a total of four million euros were paid) thanks to the intervention of civil society and the Azerbaijani authorities. In their comments on the draft report, the Azerbaijani authorities have added that the case had been closed on 27 April 2011 as it had been considered that there was nothing to substantiate a criminal case against the company, in accordance with Article 39.1.1 of the Criminal Procedure Code. They have also stated that no complaint was subsequently lodged by the workers concerned and that the application filed on behalf of the workers by the NGO Azerbaijan Migration Centre was turned down by the Narimanov District Court and the Baku Court of Appeal, the decision of 27 April 2011 being upheld. GRETA recalls that effective investigation is a prerequisite for the successful implementation of the obligation of the Parties arising under the substantive criminal law (Chapter IV) and investigation, prosecution and procedural law (Chapter V) provisions of the Convention, and that it is not necessary to have a complaint lodged by a possible victim to start investigation or prosecution (see Article 27 of the Convention).

197. The Criminal Code contains a number of provisions which are related to THB and are used for prosecuting offence which may amount to THB. These provisions are Article 137 on forceful removal of the organs, Article 151 punishing the act of forcing a person into sexual relations, Article 171 on pushing a minor into prostitution; Article 242 on the illegal distribution of pornographic material, Article 243 on pimping and Article 244 on the maintenance of "immoral houses" for prostitution. GRETA notes that the Department for Combating THB publishes on its website annual figures concerning the above-mentioned offences along with the ones concerning THB (Article 144-1) and forced labour (Article 144-2).

198. As regards more particularly Article 137 of the Criminal Code, GRETA is concerned that, while its content deals with acts which can be qualified as THB for the purpose of the removal of organs, it provides for more lenient punishment. Under Article 137.2, compulsion to withdrawal of body organs or tissues of a person for transplantation, committed with use of violence or threat to use such violence is punished by deprivation of liberty for up to four years and with deprivation of the right to hold certain posts or to engage in certain activities for up to three years. Under Article 137.3, when the same act is committed by abusing the position of vulnerability of the victim or his or her material or other kind of dependence from the accused person, then the deprivation of liberty is of a minimum of three to four years. In this case, the person whose organs have been removed is not considered as a victim of THB and entitled to all the assistance and protection measures provided for by Azerbaijani laws and the Convention.

**199. GRETA urges the Azerbaijani authorities to strengthen their efforts to ensure that crimes related to THB for all types of exploitation are proactively investigated and prosecuted promptly and effectively, leading to proportionate and dissuasive sanctions.**

**200. Further, GRETA urges the Azerbaijani authorities to continue improving the specialisation and training of judges, prosecutors, police investigators and lawyers regarding the seriousness of THB and the severe impact of exploitation on victims and the need to respect the rights of victims of THB (see paragraph 64).**

**201. GRETA invites the Azerbaijani authorities to issue guidelines for prosecutors and judges dealing specifically with THB and explaining the phenomenon of THB, in particular for labour exploitation, the rights of the victims and the non-punishment provision.**

d. Protection of victims and witnesses

202. By virtue of Article 28 the Convention, Parties must take measures to provide effective and appropriate protection from potential retaliation or intimidation in particular during and after the investigation and prosecution of perpetrators. This protection can be of various types (physical, relocation, identity change, etc.) and is to be provided to victims of trafficking, to those who report it or otherwise co-operate with the investigating or prosecuting authorities, to witnesses who give testimony and, when necessary, to members of the families of those listed above. Further, Article 30 of the Convention includes a provision requiring Parties to take measures to protect victims' private life and identity and to provide for their safety and protection from intimidation in the course of judicial proceedings, including special protection measures for child victims of THB.

203. Under Article 18 of the Law on Combating THB, the safety of victims is to be ensured at the stages of pre-trial trial and post-trial and in compliance with the 1998 Law on the State Protection of Persons Participating in Criminal Proceedings. The law also provides for the use of pseudonym to ensure the anonymity of the victim where necessary. As indicated in paragraph 67, Article 316-1 of the Criminal Code prohibits the disclosure of confidential information concerning a victim of trafficking. Article 24 of the Law provides for hearings behind closed doors and for special testimonial measures (videoconference, video records).

204. Article 7 of the Law on the State Protection of Participants to Criminal Proceedings provides for the following protective measures in favour of victims of THB: surveillance of the person or property, special means of defence, temporary accommodation in a safe place; confidentiality; changing the person's job and place of living; changing the identity documents and external appearance.

205. Victims are sometimes afraid or reluctant to give statements because of threats of revenge from the perpetrators. It is therefore important to ensure that victims are prepared psychologically and agree to give statements, and NGOs which provide assistance to victims have an important role to play in this respect. GRETA is concerned that some members of NGOs who assist victims of THB have reportedly been threatened themselves.<sup>22</sup> It is crucial that victims, their families and their legal representatives be protected against retaliation and intimidation before, during and after court proceedings.

206. GRETA notes that there is room for improvement as concerns guidelines and infrastructures adapted for interviews with child victims of THB and forensic examination of children victims of violence. Police officers in particular should be better trained to address child victims of THB. The UN Committee on the Rights of the Child has recommended that Azerbaijan ensure, through adequate legal provisions and regulations, that all children who are victims and/or witnesses of crimes, including the offence of THB, and witnesses of such crimes, are provided with the protection required by the UN Convention on the Rights of the Child and that it take fully into account the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.<sup>23</sup>

**207. GRETA urges the Azerbaijani authorities to make full use of all measures available to protect victims of THB, witnesses and NGOs supporting victims and to prevent retaliation and intimidation during investigation as well as during and after the court proceedings. Particular attention should be paid to the current system of protection of child victims and witnesses of THB, in particular by improving the procedures for interviewing them during the investigation and court hearings.**

## Concluding remarks

<sup>22</sup> See also OSCE Office in Baku, Anti-trafficking response in Republic of Azerbaijan: Assistance and services available to victims of trafficking and forced labour, September 2013, p.28.

<sup>23</sup> UN Committee on the Rights of the Child, Concluding Observations: Azerbaijan, Fifty-ninth session, 16 January–3 February 2012, CRC/C/AZE/CO/3-4, paragraph 77. Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, Economic and Social Council resolution 2005/20, annex.

208. GRETA welcomes the steps taken by the Azerbaijani authorities to combat trafficking in human beings through the development and periodic updating of a legal and policy framework as well as the setting up of specialised structures.

209. Nevertheless, GRETA draws attention to the need for adapting the existing anti-trafficking policies with a view to strengthening action against trafficking for the purpose of labour exploitation and child trafficking. GRETA stresses that there should also be greater involvement of civil society in the development and implementation of anti-trafficking action.

210. Several important challenges remain to be tackled through policy and practical measures in order to meet the requirements of the human rights-based and victim-centred approach followed by the Convention. It is incumbent on the authorities to ensure that all victims of trafficking are properly identified and can benefit from the assistance measures provided for under Azerbaijani law whether they co-operate or not with the law enforcement authorities. Further, the authorities must ensure effective access to a recovery and reflection period, residence permit and compensation for victims of human trafficking.

211. Strengthening the effectiveness of investigations and prosecutions with a view to securing proportionate and dissuasive sanctions, and ensuring the protection of victims and witnesses of THB from potential retaliation or intimidation, are additional areas where further action is needed in order to fully apply the human rights-based and victim-centred approach promoted by the Convention.

212. All professionals who may come into contact with victims of human trafficking, including law enforcement officials, prosecutors, judges, labour inspectors, social workers and medical staff, must be continuously informed and trained about the rights of victims and the need to apply a human rights-based approach to action against human trafficking on the basis of the Convention and the case law of the European Court of Human Rights.

213. GRETA invites the Azerbaijani authorities to keep it informed on a regular basis of developments in the implementation of the Convention and looks forward to continuing the good co-operation in further efforts in achieving the purposes of the Convention.

## **Appendix I: List of GRETA's proposals**

### **Definition of “trafficking in human beings”**

1. GRETA considers that the Azerbaijani authorities should continue to inform all law enforcement officials, prosecutors and judges about the fact that internal trafficking is covered by Article 144-1 of the Criminal Code.

### **Comprehensive approach and co-ordination**

2. GRETA considers that the Azerbaijani authorities should acknowledge the phenomenon of THB for labour exploitation and adapt their policy and practical measures to the new situation in Azerbaijan.

3. GRETA urges the Azerbaijani authorities to take further steps to ensure that the national action to combat THB is comprehensive, and in particular to:

- increase co-ordination of the activities of public bodies and civil society involved in the implementation of anti-trafficking measures, both at the national and at regional level;
- further involve NGOs, trade unions and other members of civil society in the development and implementation of anti-trafficking policy, including evaluation of anti-trafficking efforts;
- reinforce the interagency and multi-disciplinary approach in designing and implementing prevention and assistance measures by involving more stakeholders with a social rather than a law-enforcement background;
- strengthen action to prevent and combat THB for the purpose of labour exploitation, in particular in sectors at risk such as construction, agriculture and domestic work.

4. Further, GRETA considers that the Azerbaijani authorities should introduce an independent evaluation of the implementation of the National Action Plan on Combating THB as a tool for assessing the impact of the activities and for planning future policies and measures to combat THB. GRETA also invites the authorities to consider the establishment of an independent National Rapporteur or designate another independent mechanism for monitoring the anti-trafficking activities of State institutions (see Article 29, paragraph 4, of the Convention and paragraph 298 of the Explanatory Report).

### **Training of relevant professionals**

5. GRETA urges the Azerbaijani authorities to take further steps to improve the knowledge and sensitivity of relevant professionals, in particular police officers, prosecutors and judges, about the complex nature of THB and the rights of victims. Future training programmes should be designed for specific target groups with a view to improving the knowledge and skills of relevant professionals, which enable them to identify victims of trafficking, to assist and protect them, to facilitate compensation for victims and to secure convictions of traffickers. Training programmes should be tailored to fit the specific role in combating THB of each group of professionals. Particular attention should be paid to THB for the purpose of labour exploitation.

### **Data collection and research**

6. GRETA considers that, for the purpose of preparing, monitoring and evaluating anti-trafficking policies, the Azerbaijani authorities should continue their efforts in developing and maintaining a comprehensive and coherent statistical system on trafficking in human beings by compiling reliable statistical information from all main actors and allowing disaggregation (concerning sex, age, type of exploitation, country of origin and/or destination, etc.). This should be accompanied by all the necessary measures to respect the right of data subjects to personal data protection, including when NGOs working with victims of trafficking are asked to provide information for the national database.

7. GRETA considers that the Azerbaijani authorities should conduct and support research on THB-related issues as an important source of information for the evaluation of current programmes and for planning future policy measures. Areas where research may shed more light on the extent of the problem of THB include trafficking for the purpose of labour exploitation, trafficking in children, trafficking for the purpose of the removal of organs and internal trafficking (i.e. within Azerbaijan).

### **International co-operation**

8. GRETA considers that the Azerbaijani authorities should further develop international co-operation on criminal matters, in particular through the conclusion of agreements on parallel investigations and/or joint investigative teams concerning THB offences. Further, the Azerbaijani authorities should seek to remove existing difficulties in international co-operation with countries of destination of victims of trafficking.

### **Measures to raise awareness**

9. While welcoming the awareness-raising initiatives taken or supported by the government, GRETA considers that the Azerbaijani authorities should design future actions in the area of raising awareness in the light of impact assessment of previous measures and on the basis of research. Awareness-raising campaigns, education in schools and training of relevant professionals should aim at promoting gender equality and eradicating gender-based violence and the stigmatisation of victims of trafficking. Further, more information campaigns for migrants living in Azerbaijan and in particular migrant workers should be conducted to inform them about their rights and the danger of THB for labour and sexual exploitation.

10. GRETA also invites the Azerbaijani authorities to contribute to awareness-raising and other prevention activities in the main countries of origin of victims trafficked to Azerbaijan, in co-operation with these countries, in order to alert potential victims of THB-related risks.

### **Measures to discourage demand**

11. GRETA urges the Azerbaijani authorities to strengthen their efforts to discourage demand for services from trafficked persons as regards all forms of exploitation, with a particular emphasis on labour exploitation, in partnership with the private sector and civil society.

12. Further, GRETA invites the Azerbaijani authorities to consider establishing as a criminal offence the use of services which are the object of exploitation, with the knowledge that the person is a victim of trafficking in human beings.

### **Social, economic and other initiatives for groups vulnerable to THB**

13. GRETA urges the Azerbaijani authorities to ensure the registration of all children at birth and to provide persons who are stateless or living without legal documents in Azerbaijan with the appropriate documents, as well as to secure the registration of persons from vulnerable groups for social services, both as a prevention measure and in order to avoid re-trafficking.

14. Further, GRETA considers that the Azerbaijani authorities should:

- take further steps to identify persons and groups vulnerable to THB, and to address them through targeted social, economic and other initiatives;
- increase their efforts to address the root causes of THB for sexual exploitation, such as stereotypes and prejudice against women, domestic violence and violence against women;
- take measures to empower migrant workers who are already on the Azerbaijani territory by providing them with the relevant documents, informing them of their rights, and facilitating their access to legal redress in case of abuse of their rights.

### **Border measures to prevent THB and measures to enable legal migration**

15. GRETA considers that the Azerbaijani authorities should make further efforts to:
- detect cases of THB and identify victims of trafficking in the context of border and migration-related controls;
  - provide employees of the State Migration Service, State Border Service and State Customs Service with training in order to increase their capacity to proactively detect cases of human trafficking and identify trafficked persons. Such training should underscore the difference between human trafficking and smuggling of migrants;
  - review the system for licensing of recruitment agencies.

16. Further, GRETA considers that the Azerbaijani authorities should continue their efforts to provide written information to foreign nationals planning to travel to Azerbaijan, in a language that they can understand, in order to alert them to the risks of THB, inform them of where they can go for help and advice, and provide them with information on their rights.

### **Identification of victims of trafficking in human beings**

17. GRETA urges the Azerbaijani authorities to:
- ensure that the application of the Rules on indicators and the Rules on the National Referral Mechanism used for the identification of victims of trafficking is duly monitored and evaluated;
  - reinforce the National Referral Mechanism and the multi-agency involvement in victim identification by formalising the role and input of specialised NGOs and involving other relevant actors, such as medical staff;
  - guarantee that in practice identification is dissociated from the presumed victim's co-operation in the investigation;
  - increase efforts to proactively identify victims of THB for the purpose of labour exploitation in particular among foreign workers and in the sectors most at risk such as construction, agriculture and domestic work, by involving all relevant stakeholders such as labour inspectors and trade unions;
  - review the mandate of labour inspectors so that they can inspect other workplaces than those of registered companies (e.g. premises where domestic workers are employed) and effectively identify victims of THB;
  - improve the detection and identification of victims of trafficking among irregular migrants through a proactive approach which requires regular training on THB and the rights of victims for immigration, border and customs officers, including staff working in detention centre for migrants in an irregular situation;
  - improve the detection and identification of child victims of trafficking, including by setting up a specific identification mechanism which takes into account the special circumstances and needs of child victims, involves child specialists and ensures that the best interests of the child are the primary consideration;
  - increase efforts to proactively identify male victims and victims of internal THB (i.e. within Azerbaijan).

## **Assistance to victims**

18. GRETA urges the Azerbaijani authorities to strengthen their efforts to provide assistance to victims of trafficking, and in particular to:

- ensure that the needs of victims and possible victims of THB are met throughout Azerbaijan. Particular attention should be paid to ensuring emergency and safe accommodation for victims of THB who are not willing or able to co-operate with the law enforcement authorities and for possible victims of THB before their formal identification;
- ensure that assistance measures provided for in law are not made in practice dependent on the victims' willingness to co-operate with law enforcement agencies;
- provide the Assistance Centre for Victims of THB with all the necessary human and financial resources to fulfil its mission.

19. Further, GRETA considers that the Azerbaijani authorities should continue their efforts to facilitate the reintegration of victims of trafficking into society and avoid re-trafficking by providing them with access to education, vocational training, and the labour market.

## **Recovery and reflection period**

20. GRETA considers that the Azerbaijani authorities should take further steps to ensure that all relevant stakeholders are familiar with the recovery and reflection period, in particular the special police unit, prosecutors, judges, lawyers, labour inspectors, and staff of shelters.

21. Further, GRETA urges the Azerbaijani authorities to ensure that victims and possible victims of trafficking are systematically informed of the possibility of benefiting from a recovery and reflection period and are actually granted such a period.

## **Residence permits**

22. GRETA considers that the Azerbaijani authorities should clarify the legislation concerning the possibility for victims of THB to obtain a temporary residence permit in Azerbaijan, including when they are not in a position to co-operate with the authorities.

## **Compensation and legal redress**

23. GRETA urges the Azerbaijani authorities to provide information to all victims of trafficking concerning possibilities to obtain compensation and to ensure that they have effective access to compensation from the traffickers and/or the State, including by ensuring effective access to legal assistance. In this context, GRETA stresses the importance of ensuring the financing of the Assistance Fund.

## **Repatriation and return of victims**

24. GRETA considers that the Azerbaijani authorities should continue to develop the institutional and procedural framework for the repatriation and return of victims of THB, with due regard to their rights, safety, dignity and protection. Particular attention should be paid to ensuring that appropriate risk assessment is carried out prior to the return in compliance with the state's obligations on *non-refoulement*, and that the return of child victims would not be against the best interests of the child.

## **Substantive criminal law**

25. GRETA considers that the Azerbaijani authorities should examine the reasons why no legal entities have been prosecuted for trafficking-related acts to date and, in the light of their findings, take the necessary measures to ensure that the liability of legal entities can be acted upon in practice.

## **Non-punishment of victims of trafficking in human beings**

26. GRETA considers that the Azerbaijani authorities should assess the implementation by the judicial and other relevant authorities of Article 26 of the Convention on the non-punishment of victims of THB for their involvement in unlawful activities, to the extent that they were compelled to do so.

### **Investigation, prosecution and procedural law**

27. GRETA urges the Azerbaijani authorities to strengthen their efforts to ensure that crimes related to THB for all types of exploitation are proactively investigated and prosecuted promptly and effectively, leading to proportionate and dissuasive sanctions.

28. Further, GRETA urges the Azerbaijani authorities to continue improving the specialisation and training of judges, prosecutors, police investigators and lawyers regarding the seriousness of THB and the severe impact of exploitation on victims and the need to respect the rights of victims of THB.

29. GRETA invites the Azerbaijani authorities to issue guidelines for prosecutors and judges dealing specifically with THB and explaining the phenomenon of THB, in particular for labour exploitation, the rights of the victims and the non-punishment provision.

### **Protection of victims and witnesses**

30. GRETA urges the Azerbaijani authorities to make full use of all measures available to protect victims of THB, witnesses and NGOs supporting victims and to prevent retaliation and intimidation during investigation as well as during and after the court proceedings. Particular attention should be paid to the current system of protection of child victims and witnesses of THB, in particular by improving the procedures for interviewing them during the investigation and court hearings.

## **Appendix II: List of public bodies and intergovernmental and non-governmental organisations with which GRETA held consultations**

### **Public bodies**

- Ministry of Internal Affairs
  - Deputy Minister of Internal Affairs, National Co-ordinator on Combating Trafficking in Human Beings
  - Anti-Trafficking Department
  - National central Bureau of INTERPOL in the Republic of Azerbaijan
  - Police Academy
  - Relief Fund for victims of THB
- Ministry of National Security
- Ministry of Justice
- Ministry of Foreign Affairs
- Ministry of Labour and Social Protection of Population
- Ministry of Health
- Ministry of Youth and Sport
- Ministry of Education
- Supreme Court
- Public Prosecutors Office
- State Border Service
- State Migration Service
- State Customs Committee
- State Committee on Family, Women and Children Affairs
- Parliament
- Ombudsman

### **Intergovernmental organisations**

- IOM Baku
- UNHCR Baku
- OSCE Baku

### **Non-governmental organisations**

- Clean World Assistance to Women Public Union
- Reliable Future
- XXI Century Women Public Association
- Women Crisis Centre
- Human Rights Centre Azerbaijan

## **Government's comments**

### **The following comments do not form part of GRETA's analysis concerning the situation in Azerbaijan**

GRETA engaged in a dialogue with the authorities of Azerbaijan on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version.

The Convention requires that "the report and conclusions of GRETA shall be made public as from their adoption, together with eventual comments by the Party concerned." GRETA transmitted its final report to the authorities of Azerbaijan on 17 April 2014 and invited them to submit any final comments. The comments of the authorities of Azerbaijan, submitted on 17 May 2014, are reproduced hereafter.

AZƏRBAYCAN RESPUBLİKASI  
DAXİLİ İŞLƏR NAZIRLIYI



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TO Mrs. Petya Nestorova  
Executive Secretary

Secretariat of the Council of Europe  
Convention on Action Against  
Trafficking in Human Beings (GRETA  
and Committee of the Parties)

Dear Mrs. Nestorova,

I would like to present my deepest gratitude to you and GRETA for your cooperation and showing best assistance in the fight against Trafficking in Human Beings.

Competent authorities of the Republic of Azerbaijan reviewed the final report prepared in the framework of first evaluation round concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Azerbaijan.

Comments of the Government regarding final report hereby attached to this letter. We welcome overview of our progress achieved in the fight against trafficking in human beings in GRETA's final report.

We are looking forward for better improved cooperation in future.

Your sincerely,

Deputy Minister,  
National Coordinator on combating  
Trafficking in Human Beings

*M. Eyyazov*  
Vilayat Eyyazov

**Government comments to the final report drawn up by GRETA concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by AZERBAIJAN**

**First evaluation round**

**Comments on General part:**

**Comment on paragraph 52:**

Registration and activity of NGOs in Azerbaijan, as well as legislation regulating their relations with state agencies have been adopted through legal expertise of Council of Europe and in cooperation with international experts. Currently nearly 3000 NGOs have passed state registration. 300 of them are NGOs activating in the field of human rights. There is a favorable condition for NGOs engaged in prevention of corruption, encouraging local self-governing agencies, development of civil society, as well as in legal assistance/awareness and allocated with matters related to ethnic minorities, and thus there is wide range of opportunities for NGOs that they could freely and independently realize their daily activities. There is a clear procedure for registration of NGOs defining registration period of non-profit legal entities for 30 days. In line with legislation if petition hasn't been refused during this period, then legal entity is accepted as registered. It is impossible to refuse application for registration without any reason for that. Current legislation doesn't make obligatory for legal entities to get registration, as well as doesn't put any restrictions to the activities of NGOs.

**Comment on paragraph 56:**

Azerbaijan stands for development of regional cooperation, but taking into account that Armenia occupied 20% of the territory of Azerbaijan, it makes impossible the cooperation at any level with this country.

**Comment on paragraph 100:**

During check up activities conducted by the State Migration Service in 2011-2013 with the aim of identification of belonging to the Azerbaijan nationality, 11855 persons had been identified as Azerbaijani nationals and they were provided with relevant documents.

In accordance with the Law on status of refugees and IDPs (internally displaced persons), unless otherwise provided by the Constitution of the Republic of Azerbaijan, above mentioned Law and other relevant legislation acts, persons with refugee status use rights and freedoms of national of the Republic of Azerbaijan as well as carries on the same responsibilities. Besides it is directly mentioned on the article 64.0.15 of the Migration Code of the Republic of Azerbaijan that persons submitted application for obtaining refugee status, obtained refugee status or granted political asylum could be engaged in labor activity without work permission (work permit is not required). Currently

refugees registered in State Migration Service are engaged in scientific, construction, small business etc.

**Comment on paragraph 106:**

According to the article 69.1 of the Migration Code of the Republic of Azerbaijan, work permit is issued for 1 year or in case the labor contract is signed for the period of less than 1 year it is issued for that period. Validity of the work permit can be extended each time for not more than 1 year.

Depending on authenticity of work permit for foreigner or stateless persons given by the Government of the Republic of Azerbaijan, different state customs were applied with a purpose of implementation of article 1.1.6 of the Decree (dated to July 8, 2013) of the President of Azerbaijan, on execution of the Law on "Confirmation of the Migration Code of the Republic of Azerbaijan, its coming into the force and relevant legal regulations regarding this" № 713-IVQ dated to 2 July, 2013

**Comment on paragraph 107:**

There was revealed that 3261 foreigner or stateless persons didn't comply with requirements of administrative legislation by violation of temporary and permanent living rules in Azerbaijan during July 2013. 297 of them were fined and their residences were legalized in the country. It was adopted decisions on voluntarily leaving the country within 48 hours for 2761 foreigner or stateless persons and also decisions were made on expulsion of 176 foreigners and stateless persons from the territory of the Republic of Azerbaijan in administrative way.

**Comment on paragraph 124:**

Foreigners or stateless persons who haven't got immigration status have to leave the territory of the Republic of Azerbaijan within the time prescribed (48 hours) in the decision made by the State Migration Agency of the Republic of Azerbaijan or Ministry of Internal Affairs of the Republic of Azerbaijan according to the article 11 of the "Rules on expulsion from the territory of the Republic of Azerbaijan of foreigner or stateless persons who hasn't got immigration status" (Approved by the decision of the Cabinet of Ministers of the Republic of Azerbaijan № 130, dated to July 1, 2010). According to the Article 14 of the same rules, foreigners or stateless persons (who haven't got immigration status) who refused to leave the territory of the Republic of Azerbaijan, detained by the decision of Court (Judge) and expelled from the territory of Azerbaijan in obligatory way. According to the rules reasons for expulsion of foreigner or stateless persons from the territory of the Republic of Azerbaijan must be stipulated (or it must be justified) in decision made by State Migration Agency of the Republic of Azerbaijan or Ministry of Internal Affairs of the Republic of Azerbaijan. Officer of the agency who has made decision regarding expulsion has to inform/make familiar foreigner or stateless persons and provide them with a copy of

this decision. If these persons do not know Azerbaijani language, then attendance of a translator would be provided. Foreigners or stateless persons have a right to complain to the court from the decision made on their expulsion from the territory of the Republic of Azerbaijan.

According to the article 79.5.1 of the Migration Code of the Republic of Azerbaijan, persons released from serving punishment, whose visa or decision on extension of temporary period of residence is cancelled, as well as those whose stay in the territory of the Republic of Azerbaijan is considered undesirable – are to be deported within 48 hours. According to the Migration Code of the Republic of Azerbaijan, reasons for expulsion of foreigner or stateless persons from the territory of the Republic of Azerbaijan must be stipulated (or it must be justified) in made decision. Person regarding whom decision on expulsion is made has to be informed and provided with a copy of this decision. If this person doesn't know Azerbaijani language, then participation of a translator would be provided. The complaint about expulsion decision from the territory of the Republic of Azerbaijan is acceptable.

Necessary works for adaptation of legal acts as well as "Rules on expulsion from the territory of the Republic of Azerbaijan of foreigner or stateless persons who hasn't got immigration status" to the Migration Code of the Republic of Azerbaijan is carried on at the moment.

Baku city Illegal Immigrants Detention Centre (2012) and Yevlakh city Illegal Immigrants Detention Centre (2013) of the State Migration Service of the Republic of Azerbaijan which is in line with the modern requirements of international standards had been established. The rights of migrants all time kept under attention in these Illegal Immigrants Detention Centers. Foreigners or stateless persons accommodated in these Detention Centers are provided with free of charge legal assistance, also they are informed about legislation on Migration of the Republic of Azerbaijan.

Officers of the State Migration Service in order to develop work capacity of these Centers conducted meetings with international experts, at the same time took part at trainings organized for them and travelled to trainings/seminars/workshops conducted in different European countries. Also officials of Ombudsman's Office regularly provide monitoring in these Centers.

Draft Law is under preparation which identifies rules for accommodating and holding foreigners or stateless persons in Illegal Immigrants Detention Centers of the State Migration Service in accordance to the Decree (dated to July 8, 2013) of the President of Azerbaijan on implementation of the Law on "Approval of the Migration Code of the Republic of Azerbaijan coming into force together with the relevant legal regulations regarding this" № 713-IVQ dated to July 2, 2013. Currently necessary works are being carried out.

**Comment on paragraph 179:**

According to the article 2.1 of the Law (dated by 7 march, 2012) of the Republic of Azerbaijan on “Amendments to the Criminal Code of the Republic of Azerbaijan” in accordance with implementation rule of criminal-legal measures regarding juridical persons, issues/points on criminal responsibility of legal entities prescribed in Criminal Code of Azerbaijan are coming into the power on the same day with amendments to be made to the Criminal Procedural Code and the Penalty Execution Code of the Republic of Azerbaijan.

According to the requirements of article 2.2 of the Law dated by 07.03.2012, chapter 15-2 of the Criminal Code of the Republic of Azerbaijan hasn't come into power and that's why no legal entity has been involved into criminal responsibility for committing trafficking in human beings crime because currently noamendments haven't been made in connection with implementation of measures of criminal-juridical character regarding legal entities in the Criminal Procedural Code and Penalty Execution Code of the Republic of Azerbaijan.

So in this case we think that in this paragraph the reason of not involving of legal entities committed THB must be clarified in accordance with comments and just only after this appropriate recommendations could be given to this case(substantive criminal law).

**Comment on paragraph 193:**

Taking into consideration public danger and character of crime of THB, persons committed such kind of crime must be punished in accordance with sanctions of article 144-1 of the Criminal Code of the Republic of Azerbaijan. While Supreme Court considering criminal cases regarding THB in cassation way, appropriate decisions were made corresponding to this point of view. Thus relevant recommendations are being given to the judges of first instance and appeal courts.

**Comments on Appendix I: List of GRETA's proposals**

**Comment on paragraph 1:**

All law enforcement officials, prosecutors and judges are officially informed about the fact that internal trafficking is covered by the Article 144-1 of the Criminal Code.

**Comment on paragraph 2:**

In accordance with the article 144-2 of the Criminal Code of Azerbaijan, forced labor is a grave crime and please be informed that regarding forced labor 4 criminal cases in 2013 and 3 criminal cases were launched in the recent months of 2014, accordingly 3 of accused persons on these cases were sentenced to 8-9 years of imprisonment.

As it seen from the above mentioned, identification of forced labor crimes and involvement of accused persons to the responsibility is carried on.

**Comment on paragraph 4:**

In line with the Law of the Republic of Azerbaijan on Combating Trafficking in Human Beings, the National Coordinator submits an annual report on combating trafficking in human beings in the Republic of Azerbaijan to the relevant state bodies, Parliament and the Ombudsman of the Republic of Azerbaijan.

The following areas are covered on this report: improvement of legislative database, preventive measures and awareness activities, trainings, seminars, international cooperation, prosecution and work with victims of THB, especially implementation of National Action Plan, works done by Governmental as well as Non-Governmental Organizations. Finally all these information were placed on Mass Media for public use.

Besides the situation of combating THB is being discussed and all proposals were taken into account during the work of the Working Group on Combating Trafficking in Human Beings and intergovernmental commission's meetings as well as in meetings organized within country with local and foreign NGOs.

Taking into account the above mentioned, there is no necessity to establish an independent evaluation mechanism on combating THB.

**Comment on paragraph 7:**

In the draft of the National Action Plan on Combating THB covering the period of 2014-2018 which is considered to be adopted in near future, it is considered to prepare methodical-educational materials, conducting scientific researches on combating THB and use results in order to improve effectiveness of activity on combating THB by involving local and foreign donor organizations.

Besides you are kindly asked to add word "legal" in the first line before the word "research" so it would be like "conduct and support legal research on THB related issues".

**Comment on paragraph 8:**

In the draft of the National Action Plan on Combating THB covering the period of 2014-2018 which is considered to be adopted in near future, it is considered to develop international cooperation on operational-interrogation activity and prosecution of THB cases and strengthening cooperation with relevant competent agencies of other countries especially destination and countries of origin and with relevant international organizations with a aim to develop effectiveness of combating THB.

Taking into account the fact that there isn't any concept of joint investigative teams in the criminal procedural legislation of Azerbaijan, you are kindly asked to substitute "joint investigation teams" with "legal assistance" in this paragraph.

### **Comments on paragraphs 11 and 12:**

In the draft of the National Action Plan on Combating THB covering the period of 2014-2018 which is considered to be adopted in near future, it is considered to cover following criteria: prevention of illegal migration, forced labor and THB; with a purpose of identification of victims and potential victims of THB to provide monitoring and inspection measures by the representatives of competent authorities of Azerbaijan; identification of circumstance which leads to THB and works to be done to prevent these circumstances; to provide measures in order to strengthen control on labor migration; establishment of criminal responsibility for the use of services of victims of THB.

### **Comments on paragraphs 20 and 21:**

All relevant governmental authorities and their officials are informed about the amendment (dated to April 19, 2013) made to the Law on Combating Trafficking in Human Beings stating that the victim of human trafficking is provided with 30 days of recovery and reflection period in order to allow him/her to recover and escape the influence of the perpetrators and to take a considered decision on co-operating with the prosecution agencies.

In the draft of the National Action Plan on Combating THB covering the period of 2014-2018 which is considered to be adopted in near future is considered to provide necessary measures for legal regulation in procedural way of prosecution on recovery and reflection period.

### **Comment on paragraph 22:**

According to the article 79.4. of the Migration Code of the Republic of Azerbaijan, decision on expulsion of foreigners and stateless persons, who are considered to be victims of human trafficking, is not made for the period of 1 year and for foreigners and stateless persons that assist the prosecuting authorities till the end of the prosecution. Decision on expulsion is not made on minor victims of human trafficking.

According to the article 20 of the Law of the Republic of Azerbaijan on Combating Trafficking in Human Beings, should a foreigner or stateless person considered as a person who became affected from trafficking in human beings the deportation to out of the borders of the Republic of Azerbaijan in administrative order is not applied towards him/her within 1 year period. The deportation to out of the borders of the Republic of Azerbaijan in administrative order is not applied regarding the children who became victims of trafficking in human beings. The return of children who became victims of trafficking in human beings to their country of origin or to their parents is only acceptable if

the likelihood of becoming of a child the victim of trafficking in human beings again is excluded. Opinion of children above 10 years old is examined and taken into account during the addressing the issue of return of children who became victims of trafficking in human beings to their country of origin or to their parents. Assistance is provided in ensuring him/her with necessary documents, covering his/her transportation and other urgent expenditures and recommendations are given on minimizing the threat of becoming of this person a victim of trafficking in the country where he/she is going to be accepted in case if the victim of trafficking in human beings has intention to leave the borders of the Republic of Azerbaijan. In order to coordinate work of relevant state bodies on repatriation of foreigners or stateless persons as well as to protect them from becoming again victims of THB, repatriation of rules of victims of THB are adopted by the relevant executive authorities. These rules also cover rights for education of children suffered from THB, provision of them with necessary care or their adoption by families or relevant boarding institutions/NGOs. The foreigner or stateless person who became a victim of trafficking in human beings can apply for getting the right to live in the Republic of Azerbaijan in accordance with the rules stipulated on the corresponding Law of the Republic of Azerbaijan in 1 year period. Cooperation of the victim of trafficking with criminal prosecution bodies, physical and moral sufferings faced by the victim of trafficking in human beings, the term of being a victim of human trafficking as well as becoming a victim of human trafficking or facing victimization by human traffickers again after the repatriation of the person to the country of origin are taken into account while reviewing such kind of application. After obtaining the right to live in the Republic of Azerbaijan, a victim of trafficking in human beings shall be granted immigrant status and shall acquire all rights and responsibilities of this status.

As a result of co-ordination of work of the Working Group under the auspices of National Coordinator on combating trafficking in human beings, 2 victims (nationals of Uzbekistan) of THB and 1 citizen of Philippine were granted with the right for legal residence in our country and thus they were provided with immigrant status in 2013.

#### **Comment on paragraph 24:**

Evaluation of risk and danger level while repatriating victim of THB is conducted and conclusions are taken into account in accordance with the decision (№ 252 dated to September 10, 2013) approved by the Cabinet of Ministers of the Republic of Azerbaijan on "The rules on the repatriation of victims of Trafficking in Human Beings". Risk and danger level are being evaluated on following points: Possibility of revictimization of victims after repatriation; Possibility of facing pursuit by the trafficker after repatriation; residing at the country as a country of origin , transit or destination country for THB to which victim is repatriated; Checking availability of rehabilitation or reintegration programs for such kind of persons in the countries where they are repatriated; Potential opportunities of governmental and non-governmental organizations for showing necessary

social assistance to victims in the countries to which they are repatriated; Determination of countries in combating THB to which victims are going to be repatriated and level of provided necessary assistance to them; Other issues which are specific on evaluation of risk and threat level.

Victims are given advises regarding reduction of risk of being victim of THB in the host country which is going to accept them. Also in case of possibility they are provided with contact details of law-enforcement agencies, NGOs, human rights defenders, social institutions of host country which could assist them there.

Children victims of THB are not applied to administrative deportation (expulsion) outside of the borders of Azerbaijan. Return of children victims of THB to their host country or back to their parents could be allowed only in case of exception of revictimization of child. Also relevant measures are conducted in a way of identification of their families and legal representatives. While solving return of children victims of THB to their host country or back to their parents, it is taken into account children's attitude to the matter if this child is over 10 years old. As a result of evaluation of risk and threats of repatriation, if repatriation of children victims of THB considered contradictory to their interests then repatriation hasn't been done. In this case necessary measures are conducted in a way of providing these children for legal residence (legalization of their being in the country, providing them with documents, social rehabilitation) in the country.

#### **Comments on paragraphs 25:**

According to the article 2.1 of the Law (dated to 7 march, 2012) of the Republic of Azerbaijan on "Amendments to the Criminal Code of the Republic of Azerbaijan" in accordance with implementation of rule of criminal-legal measures regarding legal entities, issues/points on criminal responsibility of legal entities prescribed in Criminal Code of Azerbaijan are coming into the power on the same day with amendments to be made to the Criminal Procedural Code and the Penalty Execution Code of the Republic of Azerbaijan.

Thus after amendments made to the criminal code of Azerbaijan, due to the lack of information about legal entities who has committed crime of THB any criminal case has been launched till today and so initial investigation hasn't been carried out. In case of establishment of such case prosecutor's office will immediately provide launch of criminal case and involvement of accused person to the responsibility.

#### **Comment on paragraph 26:**

According to the article 17.7 of the Law of the Republic of Azerbaijan on Combating Trafficking in Human Beings, people suffering from THB are released from civil, administrative and criminal responsibility in cases and circumstances prescribed in the

legislation of Azerbaijan for committed acts under threat or force while their being in the situation of victims of human trafficking. This issue of the above mentioned law is guided by activity on combating THB.

**Comment on paragraph 30:**

Protection of victims of THB is provided in accordance with the Law on State protection of people attending at trials and Law on Combating Trafficking in Human Beings, and of course imposed protection measures are continued till all the possible threat is disappeared. Agencies conducting prosecution and operational-interrogation activity, as well as relevant governmental and non-governmental organizations provide necessary measures for ensuring protection of victims of THB. Diplomatic missions and consulates of Azerbaijan abroad protect rights and interests of Azerbaijan nationals who are victims of THB in accordance with local legislation and within their competence.

### **Comments on paragraphs 98, 100 and 102:**

According to the provision 166.1 of the Family Code of the Republic of Azerbaijan, registration of birth is made in the place of birth of children or place of residence of parents or one of them.

According to the requirements of the paragraph 2.5 of the "Procedure for registration of acts of civil status" approved with the order 145 of the Cabinet of Ministers dated to October 31, 2003, the following documents should be submitted to the relevant registration agency for registration of birth: a marriage certificate and IDs of parents, a reference from medical institution proving birth fact, birth place and birth date; in case a child is born out of medical institutions, a reference from a doctor who assists the birth or to whom parents apply after the birth; in case a child is born dead, a reference from a doctor proving that the child is born dead; in case a child or a mother dies prior to discharge from hospital, a reference from a doctor on the birth and death; finally, in case one or both of parents is/are foreigner(s) or stateless person(s), documents on their registration in a place of residence in the Republic of Azerbaijan.

According to the paragraph 2.6 of the procedure, the fact of birth of a child shall be defined by courts in case the grounds specified in the paragraph 2.5 of the procedure are not available.

Also, parents who are not able to submit the above documents are constantly provided legal aid in obtaining the documents.

According to the articles 9 and 11 of the Family Code of the Republic of Azerbaijan, the marriage registration agency registers the marriage a month after the application of persons wishing to enter marriage. Registration of marriage requires a written agreement of persons who reached the marriage age.

According to the paragraph 3.4 of the procedure, in case the international agreements adhered by the Republic of Azerbaijan do not specify another procedure, foreigners and stateless persons wishing to marry are requested to submit a reference on their marital status from authorized agencies of countries of their citizenship and permanent residence based on the fact that their IDs do not bury any information in this respect. The reference shall be legalized in the manner prescribed. The above reference is valid for 6 months.

In line with this, registration agencies consistently carry out awareness raising activities and distribute guidebooks describing the procedure for registration of all kinds of acts of civil status, necessary documents and fees among people.

In all cases, registration of birth and marriage is ensured upon submission of all documents specified by law.