



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

Distr.: General
27 May 2013

Original: English

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

**Concluding observations on the second periodic report of
Azerbaijan, adopted by the Committee at its eighteenth
session (15-26 April 2013)**

1. The Committee considered the second periodic report of Azerbaijan (CMW/C/AZE/2) at its 218th and 219th meetings (see CMW/C/SR.218 and 219), held on 11 and 12 September 2012. At its 230th meeting, held on 25 April 2013, the Committee adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the State party's second periodic report and appreciates the constructive dialogue held with the high-level delegation. The Committee thanks the State party for its replies to the list of issues and the additional information provided by the delegation.

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

4. The Committee welcomes the contribution made by the Commissioner for Human Rights (Ombudsman) in connection with the Committee's consideration of the second periodic report of Azerbaijan. However, it notes that it did not receive any contributions from non-governmental organizations.

B. Positive aspects

5. The Committee notes with appreciation the adoption of the legislative measures, public policies and programmes to promote and protect the rights of migrant workers:

(a) Amendments to Law No.55-IQ on Registration upon place of residence and stay, on 5 March 2013;

(b) Order N1938 of the President of the Republic of Azerbaijan on the approval of the National programme for action to raise effectiveness of the protection of human rights and freedoms in the Republic of Azerbaijan, on 27 December 2011;

(c) Order N133 of the President of the Republic of Azerbaijan on the approval of the National action plan on the fight against human trafficking of the Republic of Azerbaijan (2009 – 2013), on 6 February 2009;

(d) Decision of the Cabinet of Ministers of the Republic of Azerbaijan on the Programme to address social problems creating conditions for human trafficking, on 20 May 2011.

6. The Committee notes with satisfaction the ratification by the State party of the Convention of the Commonwealth of Independent (CIS) on the legal status of migrant workers and members of their families, in September 2010.

C. Factors and difficulties

7. The Committee notes that the State party is experiencing difficulties in implementing the Convention in the Nagorno-Karabakh region. The Committee recalls that it had already made an observation in this regard during its first dialogue with the State party.

D. Principal subjects of concern, suggestions and recommendations

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

Legislation and application

8. The Committee notes that the State party has not yet become a party to ILO Conventions No. 97 (revised, 1949) concerning migration for employment, No. 143 (1975) concerning migrations in abusive conditions and the promotion of equality of opportunity and treatment of migrant workers and No. 189 (2011) concerning decent work for domestic workers.

9. The Committee invites the State party to consider ratifying ILO Conventions No. 97, No. 143 and No. 189.

10. The Committee notes that the State party has still not made the declarations provided for in articles 76 and 77 of the Convention, recognizing the competence of the Committee to receive communications from States parties and individuals.

11. The Committee reiterates its recommendation (CMW/C/AZE/CO/1, para. 17) that the State party make the declarations provided for in articles 76 and 77 of the Convention.

12. The Committee notes that, in April 2013, a new draft Migration Code was submitted to the Milli Mejlis (Parliament) for review.

13. The Committee urges the State party to ensure that the new draft Migration Code fully complies with the provisions of the Convention and includes a definition of migrant workers, including undocumented migrant workers, in conformity with the Convention, and to adopt it without delay.

Data collection

14. The Committee notes the State party's efforts to improve data collection on migration-related issues, such as the establishment of a centralized database by the State Migration Service on entries, departures and registrations of migrant workers in the State party. However, the Committee is concerned about the lack of data on the number of Azerbaijani citizens working abroad. In addition, it regrets the lack of comprehensive information and statistics on the number, employment situation and access to basic services of migrant workers and members of their families in an irregular situation. The Committee recalls that such information is indispensable to an understanding of their situation in the State party and to an assessment of the implementation of the Convention.

15. **The Committee recommends that the State party pursue its efforts to ensure that the data collection system takes into account all aspects of the Convention and to collect information and statistical data, disaggregated by sex, age, nationality and fields of occupation. In particular, it recommends that the State party include in its next periodic report disaggregated information on the number of Azerbaijani citizens working abroad; the number of migrant workers and members of their families, including those in an irregular situation, who are living in the State party; the fields and conditions of employment of migrant workers; and the enjoyment of their rights under the Convention. When precise information is not available, the Committee would appreciate receiving data based on studies or estimates.**

Training on and dissemination of the Convention

16. The Committee notes that the State Migration Service operates in three languages (Azeri, Russian and English) and that the State party has undertaken various initiatives with regard to training for public officials on migration and human trafficking, including on the application of the provisions of the Convention. However, the Committee reiterates its concern about the lack of measures to disseminate information on the content of the Convention and to establish regular training on the Convention for relevant public officials, civil society organizations and potential migrant workers.

17. **The Committee recommends that the State party:**

(a) **Take the necessary measures to ensure access by migrant workers and members of their families to information about their rights under the Convention;**

(b) **Develop and implement systematic and regular training on the content and application of the Convention for public officials dealing with migrant workers, and promote and disseminate the Convention among all relevant stakeholders.**

Corruption

18. The Committee is concerned about information received that migrant workers and members of their families allegedly often become victims of corruption and that certain officials are reportedly involved in extorting money for some services that are normally free of charge.

19. **The Committee recommends that the State party take immediate measures to address any instances of corruption and inquire into allegations of corruption by some officials who are allegedly involved in extorting money or receiving bribes. The Committee also recommends that the State party conduct information campaigns with a view to encouraging migrant workers and members of their families who claim to be victims of corruption to report the corruption, and raise awareness among migrant workers and their families as to which services are free of charge.**

2. General principles (arts. 7 and 83)

Non-discrimination

20. The Committee is concerned that despite various legislative and other measures taken by the State party to improve the situation, migrant workers and members of their families in the State party continue to suffer from various forms of discrimination and from stigmatization in the media and in society at large.

21. **The Committee reiterates its previous recommendation (CMW/C/AZE/CO/1, para. 25), encouraging the State party to:**

(a) **Intensify its efforts to ensure that all migrant workers and members of their families within its territory or subject to its jurisdiction effectively enjoy the**

rights provided for in the Convention without any discrimination, in conformity with article 7;

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

Right to an effective remedy

22. The Committee is concerned at the limited access by migrant workers and members of their families who are victims of discrimination in the State party to effective remedies. In this regard, it notes the low number of complaints by migrant workers received by the Ombudsman. The Committee is also concerned that migrant workers in an irregular situation cannot benefit from the right of legal representation, as notary offices will not issue a power of attorney if the migrant workers do not have a valid visa. The Committee is also concerned that migrant workers, in particular those in undocumented or irregular situations, do not use legal remedies for fear that they may lose their employment or face deportation if they approach the court.

23. **The Committee urges the State party to:**

(a) Ensure that migrant workers and members of their families, including those in an irregular situation, have equal opportunities as nationals of the State party to file complaints and to obtain effective redress in the courts in case that their rights under the Convention have been violated;

(b) Inform migrant workers and members of their families, including those in an irregular situation, about the judicial and other remedies available to them.

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

24. While noting that the information provided on the current negotiation process between the European Community and the State party on readmission agreements, the Committee is concerned at the lack of procedural guarantees for migrant workers.

25. The Committee recommends that the State party take into account article 22 of the Convention and ensure that current and future readmission agreements concluded between the State party and host countries include appropriate procedural guarantees for migrant workers and members of their families, as well as their durable social and cultural reintegration. The Committee also recommends that the State party gather statistical data on migrants readmitted under such agreements.

26. The Committee is concerned at contradictions in the Law on Labour Migration and the Labour Code with regard to social security and enrolment in the pension fund. The Committee is further concerned at the absence of requirement for the employer to pay into the social security scheme, which leaves the entire responsibility of payment on migrant workers, who may not be aware of this obligation, and which leaves the migrant worker unprotected in cases of occupational accidents.

27. The Committee recommends that the State party harmonize its legislation with regard to social security and enrolment in the pension fund by recognizing full social security rights to migrant workers.

28. The Committee notes the provisions of Cabinet of Ministers Decision No. 130 of 1 July 2010 on the approval of rules for the deportation from the Republic of Azerbaijan of foreigners and stateless persons without immigration status, which stipulate that migrants are given notification of the decision of expulsion and provision of interpretation in case the migrant worker does not understand Azeri language. The Committee is, however, concerned that the legislation does not provide for the requirement of presenting the notification in writing in a language that the migrant understands. The Committee is further

concerned at the increased number of deportation cases, as well as at the lack of data on appeals lodged against such decisions, and on the outcomes of such appeals.

29. The Committee recommends that the State party uphold all the procedural safeguards contained in article 22 of the Convention and provide migrant workers with adequate time to lodge appeals against expulsion decisions.

30. The Committee is concerned that children of migrant workers, including children of migrant workers in an irregular situation, are often not registered at birth and issued personal identity documents, which impedes their access to health care, social benefits and education.

31. The Committee recommends that the State party:

(a) Intensify its efforts to ensure that all children of migrant workers are registered at birth and issued personal identity documents;

(b) Provide training to the relevant law enforcement officers on the systematic birth registration of all children of migrant workers;

(c) Raise awareness on the importance of birth registration among migrant workers and members of their families, especially those in an irregular situation.

32. The Committee is concerned about the lack of information on access to education for children of migrant workers, in particular children of migrant workers in an irregular situation in the State party.

33. The Committee recommends that the State party:

(a) Ensure that all children of migrant workers have access to primary and secondary education on the basis of equality of treatment with nationals of the State party;

(b) Take measures to eliminate discrimination against children of migrant workers in the educational system;

(c) Include in its next periodic report information on the measures taken in that regard and on the enrolment rates of children of migrant workers, including those in an irregular situation.

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

34. The Committee regrets the lack of information available on the exercise of their voting rights by Azerbaijani nationals working abroad.

35. The Committee recommends that the State party increase its efforts to facilitate the exercise of voting rights of Azerbaijani nationals working abroad, particularly in light of the next presidential elections to be held in October 2013.

36. The Committee is concerned that the national legislation does not protect against expulsion in cases when migrant workers contract a virus or illness on the list of particularly dangerous infectious diseases, established by the relevant authorities, after his/her arrival in the State party or after having been residing for several years in the State party.

37. The Committee recommends that the State party take necessary measures to ensure that migrant workers affected with dangerous infectious diseases are not expelled for this reason and that they enjoy equality of treatment with nationals of the State in relation to social and health services.

38. The Committee is concerned at the absence of provisions in Law N41-IQ (1996) on the Legal status of aliens and stateless persons on family reunification, in particular,

provisions concerning family members eligible for family reunification, clear procedures, timeframes and competent authorities for family reunification applications, as well as grounds for the refusal of a family reunification application.

39. **The Committee recommends that the State party establish clear provisions on family reunification in its legislation, in order to ensure protection of the unity of migrant workers' families, in conformity with article 44 of the Convention.**

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

40. While noting the ongoing work of the State Migration Service, as well as the work of other State bodies and agencies dealing with protection of the rights of migrant workers, the Committee reiterates its previous concern (CMW/C/AZE/CO/1, para. 42) at the lack of coordination between the institutions and services that deal with the various aspects of migration policy at State level, which may impact the implementation by the State party of certain rights protected under the Convention.

41. **The Committee recommends that the State party intensify its efforts to improve coordination between ministries and agencies at State level for the effective implementation of the rights protected under the Convention, and requests the State party to provide information in its next periodic report, evaluating the results and indicating the progress in implementation measures.**

42. While noting that a readmission strategy is currently being developed for Azerbaijani returnees, the Committee regrets the lack of information on the support provided to Azerbaijani returnees and on measures taken to facilitate their economic, social and cultural reintegration.

43. **The Committee recommends that the State party take measures to assist the reintegration of returning migrant workers into the economic, social and cultural fabric of the State party, and to inform the Committee thereof in its next periodic report.**

44. While acknowledging the State party's efforts to combat trafficking in persons and sexual and commercial exploitation of migrant workers, and welcoming the adoption of the National Action Plan for 2009–2013 to prevent trafficking in persons, the Committee is concerned that there is only one shelter for victims of trafficking in the State party. The Committee is also concerned at the lack of data on the rates of prosecution and convictions at State level, as well as on the number of victims assisted.

45. **The Committee recommends that the State party:**

(a) **Increase its efforts to enforce anti-trafficking legislation and the National Action Plan and to train police officers, judges, prosecutors and social service providers on the existing legal framework;**

(b) **Allocate adequate resources to implementing strategies to combat trafficking;**

(c) **Develop effective mechanisms to identify victims of trafficking, especially migrant women and children;**

(d) **Provide adequate assistance, protection and rehabilitation to all victims of trafficking in human beings, including migrant workers, by providing them with shelters and funding NGOs assisting those victims; and ensure that victims of trafficking are informed of their rights under the Convention.**

6. Follow-up and dissemination

Follow-up

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

47. The Committee encourages the State party to intensify its efforts to involve civil society organizations in the preparation of the third periodic report.

Dissemination

48. The Committee likewise requests that the State party to disseminate the present concluding observations widely, including to Government agencies, the judiciary, non-governmental organizations and other members of civil society, and to take steps to make them known to Azerbaijani migrant workers abroad and foreign migrant workers living or in transit in Azerbaijan.

7. Next periodic report

49. The Committee requests the State party to submit its third periodic report by 1 May 2018. Alternatively, the State party may avail itself of the simplified reporting procedure, whereby the Committee prepares and adopts a list of issues to be transmitted to the State party prior to the submission of its next report. The replies of the State party to that list of issues will constitute its report under article 73 of the Convention. In that way, the State party does not need to submit its report in the traditional manner. This new optional procedure was adopted by the Committee at its fourteenth session in April 2011 (A/66/48, para. 26).
