



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

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COMMITTEE ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT
WORKERS AND MEMBERS OF THEIR FAMILIES

Tenth session

SUMMARY RECORD OF THE 102nd MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 22 April 2009, at 10 a.m.

Chairperson: Mr. EL JAMRI

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 73 OF THE CONVENTION (continued)

Initial report of Azerbaijan (continued) (CMW/C/AZE/1; CMW/C/AZE/Q/1 and Add.1)

1. At the invitation of the Chairperson, the members of the delegation of Azerbaijan resumed their places at the Committee table.
2. Mr. Natiq MAMMADOV (Azerbaijan), noting that the periodic report dated from February 2007, said that in the interim there had been a number of important developments. In March 2007, the President of Azerbaijan had issued a decree establishing the State Migration Service, and significant changes had been made to the legislation and to procedures with a view to improving the rights of migrant workers.
3. Mr. Vahab MAMMADOV (Azerbaijan) said that information on the informal sector was collected by means of regular studies done by the State Statistics Committee, the Confederation of Trade Unions and a number of research institutes. Generally, it was estimated that the informal sector accounted for 15 to 18 per cent of economic activity. While there were currently no reliable statistics on the number of migrant workers in the informal sector, the Government intended to carry out a survey of 18,000 households in 2009 to gather information on economic activities, and a new census was under way which included questions relating to immigrants and the work they did. The State Statistics Committee was working on a methodology for immigration-related studies, which would provide a clearer picture of the employment situation of migrants. In 2007 and 2008, the State Labour Inspectorate had found more than 3,000 illegally employed migrants, the majority of whom had subsequently had their situations regularized. In the past two years, over 5,000 undocumented persons had had their status legalized.
4. Trade unions were established on a voluntary basis, and it was true that the management of certain multinational enterprises restricted the right to form unions in their companies. That problem had been raised by the Azerbaijani delegation to the International Labour Conference, and the Confederation of Trade Unions was taking steps to correct the situation. Some foreign workers were members of trade unions in their countries of origin. The law provided no restrictions on the trade union activities of migrant workers.
5. Responding to a question as to whether there were any regional differences in the implementation of the Convention, he said that Armenia's occupation of 20 per cent of the country had resulted in a situation where the State party was unable to ensure compliance with the Convention in a significant part of its territory.
6. Non-governmental organizations (NGOs) were involved in drafting the reports to treaty bodies, in accordance with the national plan for the protection of human rights. A number of NGOs had taken part in the preparation of the initial report to the Committee on Migrant Workers, including the NGOs attending the current meeting. The sections of the report on human trafficking and on social protection and legal assistance for migrant workers had been drafted with the help of 35 NGOs. The Government would take account of the Committee's recommendations to ensure more active involvement of NGOs in the drafting of future reports.

7. The State Labour Inspectorate was responsible for ensuring compliance with labour law, and in 2008 alone had regularized the employment situation of over 90,000 persons, including 3,000 migrants, and had received and dealt with 38 complaints from migrant workers, 32 of which had been decided in favour of the workers. To ensure decent work, it was mandatory for labour contracts to set out conditions for remuneration and occupational safety and health. The Labour Code included a provision that gave migrant workers the right to file complaints with law enforcement and judicial bodies if their labour rights were violated.
8. By law, migrant workers legally employed in the country paid taxes. There were no provisions limiting the amount of remittances that could be sent to countries of origin, and the Government had no information on the amount of such transfers. No duties were collected on the personal effects of migrant workers when they entered and left the country. Under the law on foreigners, the labour law and the Constitution, migrant workers had the same labour rights as citizens. There were thus no differences in the way they were treated under contracts of employment.
9. Azerbaijan had ratified 56 conventions of the International Labour Organization (ILO), including the eight core conventions, and in 2004 had ratified the revised European Social Charter. In the light of the country's rapid economic and social development, the Government was now considering ratification of five more articles of the Charter and the ILO Migration for Employment Convention (Revised), 1949 (No. 97), and Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143). The reports submitted by the Government in accordance with ILO instruments and with the Charter included information on the situation of migrants.
10. The Government strived to implement the provisions of the Convention by improving national legislation and the institutional basis for the rights of migrant workers, by ensuring the law was applied, and by carrying out awareness-raising and public information activities.
11. Ms. RASULOVA (Azerbaijan) said that, under the Constitution, all international treaties and intergovernmental agreements to which Azerbaijan acceded and which contained standards at variance with those of domestic law had to be submitted by the President to parliament for approval. International agreements to which the country acceded were considered an integral part of domestic law. When there was a conflict between an international agreement and domestic law, other than the Constitution itself and laws adopted by referendum, the international agreement prevailed. The provisions of the Convention relating to the right of migrants to take part in elections did not make it mandatory for the State to allow such participation, but merely stated that participation was possible if the State party chose to allow it. In Azerbaijan, foreign citizens who had been resident in the country for five years or more had the right to vote in municipal elections, provided that the country of which they were a national accorded a similar right to citizens of Azerbaijan. They could not, however, stand for election. Under the Electoral Code, the right to be elected was reserved solely for persons holding only Azerbaijani citizenship; even dual nationals were not permitted to run for office. Under the Aliens and Stateless Persons (Legal Status) Act, foreigners had the same rights to public housing as citizens, unless otherwise specified by law. Members of the Committee had asked what kind of specifications might be invoked to restrict that right: in fact, there were no such restrictions. The

provision in question was not intended to allow for such restrictions, but to make them harder to enact. The use of the word zakon (law) in Russian indicated that any such restriction must stem from a legislative act, and not from a rule or regulation such as an administrative decision by a national or local executive body.

12. In 2003 Azerbaijan had acceded to the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing it. In accordance with its obligations under those instruments, the Trafficking in Persons Act had been adopted in 2005, and the criminal penalties for perpetrators of human trafficking had been made more severe. Administrative and criminal charges could be brought for the use of forced labour and for the transport of passengers without documents. A specialized police unit in the Ministry of Internal Affairs was responsible for combating human trafficking, and a high-level national coordinator had been appointed within the Ministry to work in that area. The President had issued two plans of action to combat human trafficking, for the periods 2004-2008 and 2009-2013. The first plan of action had concentrated on the suppression of trafficking, while the second placed more emphasis on providing reintegration services to victims and raising public awareness in order to prevent trafficking.

13. The Trafficking in Persons Act called for cooperation between the Government and NGOs, for example through the payment of grants for certain programmes. The Act established special temporary shelters and centres for victims of trafficking and also set up hotlines where victims could denounce traffickers and seek guidance and help. Assistance was in fact provided to anyone who requested it. The statistics spoke for themselves; since 2004 there had been a significant increase in the number of people charged and convicted for human trafficking and also in the number of victims receiving assistance, including minors involved in prostitution, and in the number of women arrested in transit who were passing through Azerbaijan to other countries using counterfeit passports.

14. Azerbaijan had acceded in 2004 to the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, which meant that the authorities were able to follow up on the cases of Azerbaijani children adopted in other countries so as to ensure that they were not subjected to trafficking or other abuse. Since the entry into effect of the Convention in Azerbaijan, foreign adoption had become a difficult and long process, which involved ensuring that the child had no relatives in Azerbaijan who wished to adopt the child. In 2005 and 2006, there had been 213 overseas adoptions, while in 2007 and 2008 there had been just seven. Many foreigners could no longer adopt an Azerbaijani child because their countries had not acceded to the Convention.

15. The Government cooperated closely with civil society. Its relations with NGOs were based on a partnership model whereby the Government supported NGOs who provided services to the population. NGOs were thus very active in the defence of human rights, environmental protection, and work with women, children and the disabled. The President had established a council on government support for NGOs which assessed projects and decided which ones to support.

16. Mr. MUSAYEV (Azerbaijan) said that Azerbaijan attracted migrants as it had one of the highest rates of economic growth in the world. Migration had an impact on economic and social life in Azerbaijan as most migrants worked, and, if properly regulated, migration was of great benefit to the country.

17. Some parts of Azerbaijan had regional migration offices in which illegal migrants could be held. Separate holding facilities were also currently under construction to house illegal migrants on a voluntary basis. At the same time, the State Migration Service was carrying out a joint plan of action to identify and prosecute violations of migration law in conjunction with the Ministry of Internal Affairs and the State Border Service. A similar plan was being developed with the Ministry of Labour and Social Protection and steps were being taken to bring various domestic laws and regulations on migration into line with the relevant legislation of European Union member States and international conventions.

18. Following the establishment of the “single window”, or “one-stop shop”, for migration matters, foreign nationals would be able to submit and receive all the necessary documents for migration from the State Migration Service as of 1 July 2009. The official website of the Service would also give access to the necessary application forms for migration, and online applications would eventually be possible. Holders of temporary or permanent residence permits were able to enter and exit the country freely on a passport, identity documents or official documents provided by the State Migration Service. The documentation required for obtaining a residence permit included a health certificate and proof of address.

19. Illegal migrants were granted the same rights under Azerbaijani law as legal migrants, except that, under article 27 of the Aliens and Stateless Persons (Legal Status) Act, illegal migrants who had committed a serious offence must leave the country within a period of time specified in the decision of the relevant authority or court, or face detention and forcible return.

20. A shared information system had been established within the State Migration Service to provide improved statistics and ensure greater accountability. The necessary information on migrants, including on the number of illegal migrants, could now be compiled with the help of that system. Illegal migrants already in Azerbaijan were also being regularized. As for the number of migrants wishing to work in Azerbaijan, in 2008 the State Migration Service had received around 9,000 requests for individual work permits and extensions. Immigration quotas for persons entering Azerbaijan had been abolished by presidential decree in 2008.

21. Mr. TAGHIYEV (Azerbaijan) said that foreign nationals could be refused a work permit in three cases: if they submitted false documents during the application process; if local workers were available who could do the job for which the migrant worker was applying; or if the migrant worker had not reached the age of 18. An individual work permit could be extended up to four times, for a year at a time, on submission of the necessary documents, which included justification from the employer of the need to extend the permit.

22. Azerbaijani citizens were free to choose their place of residence and work under the Constitution, and could seek work abroad either through individuals or through an agency licensed to find employment abroad for Azerbaijanis. Under no circumstances did the worker

pay any money to the State or the intermediary. The intermediary received payment from the company in which the Azerbaijani citizen was to work. The intermediary must provide the worker with a copy of the employment contract, which must include details of the protection afforded to the worker.

23. Foreign nationals and stateless persons could not be employed in the Government, the law enforcement agencies or the justice system. An application for an individual work permit must include a number of documents, including the migrant worker's employment history for the previous five years, copies of the migrant worker's qualifications and justification from the employer as to why a foreign national was required for the post. Individual work permits could be withdrawn only if the contract between migrant worker and employer was terminated early, if false documents had been presented to obtain the permit, or by a decision of the courts. On termination of a migrant worker's employment contract, the work permit must be returned to the Ministry of Labour and Social Protection. If the employment contract was terminated by the employer, the latter must bear the costs of returning the migrant worker and his or her family to their country of origin.

24. Ms. RASULOVA (Azerbaijan) added that a migrant worker's contract could be terminated under such circumstances as the employer's bankruptcy or death.

25. Mr. GAHRAMANOV (Azerbaijan) explained that, while foreign nationals and stateless persons could not reside in certain areas, such as border zones, military settlements or war zones, the same restrictions applied to Azerbaijani citizens. Illegal migrants in Azerbaijan were accorded the same general rights and freedoms as legal migrants and Azerbaijani citizens.

26. In efforts to regulate unauthorized migration, the latest technology was used to perform statistical analysis and collate the results of inter-agency research on exit from and entry to Azerbaijan. Work was also being done to unify the databases of the various migration authorities, establish a unified information system and set up a population register. Those measures should help prevent or minimize unauthorized migration.

27. The State Migration Programme for 2006-2008 had been developed to identify the goals of the country's immigration policy and to determine how to implement that policy. Most of the measures set out in the programme had already been implemented: they included the preparation of a coherent migration policy; the establishment of the State Migration Service; measures to avoid duplication of work; coordination with authorities in other countries; help for aliens and stateless persons in integrating into Azerbaijani society; and measures to prevent human trafficking. The State Migration Service coordinated the work of all the State authorities involved in migration and a new State migration programme was currently under development.

28. Mr. SEVIM (Country Rapporteur) said that he welcomed the delegation's assertion that migrants workers in an irregular situation had the same rights as documented migrant workers, particularly since the information contained in the report, for example in paragraph 20, suggested otherwise. Equal treatment of the two categories of migrant workers was particularly important with regard to articles 16, 17 and 18 of the Convention. He would appreciate clarification of whether the provisions of international treaties could be invoked directly before Azerbaijani courts by migrant workers who were in an irregular situation.

29. The delegation had said that foreign nationals could vote in local elections after five years' residence in Azerbaijan, but that right was not provided for in domestic legislation; he would appreciate clarification of that discrepancy. He would also welcome more information on whether migrant workers employed in foreign-owned companies had the same social security rights as other migrant workers.

30. Mr. ALBA said that he would appreciate more information on how the State Migration Service ensured coordination between the different national institutions dealing with migration, and to what extent the Service defined general migration policy. He asked whether the State party had entered into any bilateral agreements with neighbouring countries, or at the regional level, in the area of migration. Noting that a new State migration programme was being developed, he asked if the programme for 2006-2008 was still valid. He clarified that if the State party decided to recognize the competence of the Committee to receive and consider communications, under articles 76 and 77 of the Convention, it would need to make a specific declaration to that effect.

31. Mr. KARIYAWASAM said that as a result of the global economic crisis, many migrant workers were either returning to their country of origin or having to work in downgraded conditions. He wondered if the State party had any arrangements in place to ensure that Azerbaijani nationals abroad enjoyed decent working conditions, and what measures it was putting in place to ensure the successful integration into society of returning Azerbaijani migrant workers. Did the State party envisage any social repercussions in the event of a large-scale return?

32. Mr. EL-BORAI said that he would appreciate clarification of whether foreign nationals had the right to vote in municipal elections. He expressed concern that migrants had to pay for work permits and that those permits could be revoked in the event of an employer terminating an employment contract; in that regard, he drew attention to article 49 of the Convention. Noting that one-year work permits could be renewed four times, he asked what happened at the end of the four-year period.

33. Ms. CUBIAS MEDINA asked to what extent migrant workers in an irregular situation, who reportedly accounted for 90 per cent of all migrant workers in Azerbaijan, were able to exercise their right to health services and to education.

34. Ms. POUSSI asked whether the legislation concerning the registration of migrants contained a definition of the term "migrant worker". If so, did the definition comply with that of the Convention, and if not, did the State party intend to bring its legislation into line with the Convention?

35. Mr. SEVIM asked what steps the State party was taking to combat irregular migration, and whether it had any readmission agreements with other countries.

36. The CHAIRPERSON said that he would be interested to hear the delegation's views on the achievements of the State Migration Service in the area of migration policy. He would appreciate clarification of the apparent discrepancy between the far-reaching measures taken to combat

human trafficking and the low number of reported victims. He would welcome more details of the “one-stop shop” information centres on migration, including their geographical location, and asked whether similar centres existed for migrants of Azerbaijani origin returning to Azerbaijan.

37. Mr. Vahab MAMMADOV said that, under article 13 of the Labour Code, foreign nationals and stateless persons enjoyed the same labour rights as Azerbaijani nationals, and the same social rights. While conditions of work and remuneration were the same for Azerbaijani citizens and foreign nationals, pension issues were governed by bilateral agreements. The Government was taking all possible steps to ensure the regularization of undocumented migrant workers, including through awareness-raising activities aimed at the migrant workers themselves, their employers, and the consular services of the foreign nationals concerned. Azerbaijan was cooperating actively with potential destination countries for Azerbaijani nationals, such as China and the Philippines, and had settled all issues concerning the regularization of migrant workers from those countries resident in Azerbaijan.

38. In his view, the effects of the global economic crisis on migrant workers returning to Azerbaijan would be negligible, given the stable economic growth in Azerbaijan, and the relatively low unemployment rate compared to other countries. In any event, there had been no significant rise to date in the number of migrant workers returning to Azerbaijan. Those who did return, however, would not be faced with any particular social problems. There were few victims of human trafficking because of the high quality of Azerbaijan’s protection machinery; victims of trafficking were foreign nationals, and all possible measures were taken to protect them.

39. Mr. Natiq MAMMADOV provided figures to illustrate Azerbaijan’s stable economic growth and relatively low unemployment rate. He said that the State Migration Programme for 2006-2008 was still valid and that the regulatory basis for migration policy had been improved. It was not for the delegation to evaluate the achievements of the State Migration Service; rather, it was for the Head of State or for the Committee itself to judge. In his view, however, it had done much useful work.

40. Ms. RASULOVA (Azerbaijan) said that it had proved extremely difficult to identify and convict people engaged in human trafficking. However, in recent years several criminal groups had been identified and eliminated.

41. Article 151 of the Constitution clearly stipulated that international law had primacy over domestic legislation, except for the Constitution and laws adopted by referendum. Courts were therefore bound to apply international standards. Moreover, although there was no provision in domestic law requiring the authorities to issue residence permits to family members of migrants with work permits, the State Migration Service recognized and applied the right to family reunification in such cases.

42. Azerbaijan had not concluded any agreements to date on readmission of migrants, but it was looking into the possibility and developing an appropriate strategy. It was a complex issue, since it might open the door to readmission of foreign nationals who had used Azerbaijan as a transit country on their way to the West. The Russian Federation and Ukraine, which had signed readmission agreements with the European Union, had been given two or three years to implement the provisions.

43. The families of illegal immigrants enjoyed the same right to health care, including specialized or emergency medical assistance, as citizens of Azerbaijan. The children could attend school and were entitled to free secondary education. If the parents were well off, they could send their children to expensive private schools.

44. Mr. ASADOV (Azerbaijan) said that Azerbaijan already recognized the competence of a number of treaty bodies to consider complaints from individuals. It was currently considering the possibility of recognizing the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction under article 77 of the Convention.

45. Mr. TAGHIYEV (Azerbaijan) said that, pursuant to a decision adopted by the Cabinet of Ministers on 6 October 2000, legal persons in Azerbaijan who served as intermediaries for the placement of persons in employment abroad were not entitled to charge the worker a fee for those services.

46. When a migrant worker's permit had been extended on four occasions for a period of one year, he or she was required to leave the territory of Azerbaijan. After 12 months had elapsed, the person concerned could again seek employment in Azerbaijan. If an employer decided to terminate a labour contract, the migrant worker's permit was revoked. However, that did not mean that he or she was required to leave the country at once.

47. Ms. RASULOVA (Azerbaijan) said that Azerbaijani citizens living abroad did not lose their political rights. They could register at their local consular mission, and the diplomatic representatives of Azerbaijan were required, under article 2 of the Electoral Code, to assist them in exercising their constitutional rights during an election or a referendum. Furthermore, any citizen who was temporarily absent from the country during an election could present a voting card at the local consulate and register his or her vote.

48. Mr. MUSAYEV (Azerbaijan) said that the State Migration Service held coordination meetings with bodies responsible for migration issues in other States once a month. Issues pertaining to both legal and illegal migrants were discussed and appropriate decisions were taken. The Service also cooperated closely with international organizations such as the Office of the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM), the Council of Europe, the European Union and the European Migration Policy Centre. Joint projects were currently being implemented under the auspices of IOM. Arrangements for bilateral cooperation had been made with a number of States, including Germany, the Netherlands, the Russian Federation and other countries of the Commonwealth of Independent States.

49. The "single-window", or "one-stop shop", principle would be applied throughout the country with effect from 1 July 2009.

50. Ms. POUSSI reiterated her question as to whether the definition of a migrant worker in Azerbaijani legislation was in conformity with the Convention definition. Although international standards were accorded primacy over domestic provisions, there was probably an automatic tendency on the part of courts and plaintiffs to invoke domestic legislation.

51. The CHAIRPERSON, noting that a minimum of five years' residence was required to obtain the right to vote in municipal elections but that one-year work permits could be renewed only four times, asked how many foreigners had actually voted in recent elections.
52. Mr. Natiq MAMMADOV (Azerbaijan) said that the Migration Code that was currently being drafted would faithfully reflect all provisions of the Convention.
53. Mr. Vahab MAMMADOV (Azerbaijan) said that data concerning the number of foreigners voting in Azerbaijan would be communicated to the Committee in writing. According to the Central Electoral Commission of Azerbaijan, 10,130 Azerbaijani citizens living abroad had voted in the referendum held on 18 March 2009.
54. Mr. SEVIM (Country Rapporteur) said that the two-day discussion with the delegation had proved instructive and fruitful. A great deal had occurred in Azerbaijan since the submission of the report in 2007. Thanks to steady economic development and political stability, Azerbaijan was now a receiving country as well as a country of origin and a transit country. However, owing to the occupation of the region of Nagorny Karabakh and the inflow of more than 1 million refugees, Azerbaijan was unable to fulfil all its obligations under the Convention.
55. The application of the single-window principle was an important positive step, as was the new system for collecting data on migrants, which would provide helpful input for policymakers. He also welcomed the establishment of the State Migration Service and the recent improvements in legal standards, although it was as yet unclear whether irregular migrants enjoyed all the rights and protections set out in part III of the Convention. The legalization of irregular migrants through discussions with other countries such as the Philippines was a very important step. The Committee was also pleased to hear that Azerbaijan intended to ratify more international treaties, including ILO conventions concerning migrant workers.
56. The Committee hoped to receive further information in writing from Azerbaijan before completing its concluding observations.
57. The CHAIRPERSON said that the Committee had received a great deal of new information from the delegation, which it could use to assess the situation on the ground. It was unfortunate, however, that the replies to the list of issues had been received too late for translation into all the working languages of the Committee.
58. The establishment of the State Migration Service had laid the basis for sound coordination and governance. He hoped that Azerbaijan would decide to recognize the Committee's competence under articles 76 and 77 of the Convention so that other States parties or individuals could submit communications. He also hoped that the country would continue to remain unscathed by the global economic crisis.
59. The Committee had not yet decided whether Azerbaijan's second periodic report should be submitted four years after the date of review of the initial report by the Committee or four years after the date of submission. At any rate, he encouraged the authorities to keep the Committee informed of the action it was taking on its recommendations. He also invited Azerbaijan to participate in events organized by the Committee, such as the panel discussion on migrants' right

to association to be held on 1 May 2009, so that it could keep abreast of what was happening in other countries and regions. He also urged the State party to promote the Convention among its neighbours and migrant-receiving countries, and to encourage civil society organizations to engage in advocacy activities.

60. Mr. Natiq MAMMADOV (Azerbaijan) said he was convinced that the Committee's recommendations to his country would help to improve its migration policy and its implementation of the Convention. The authorities would remain in touch with the Committee to report on developments.

The meeting rose at 12.40 p.m.