



Convention on the Rights of the Child

Committee on the Rights of the Child

Fifty-ninth session

16 January – 3 February 2012

Optional Protocol on the sale of children, child prostitution and child pornography

List of issues concerning additional and updated information related to the consideration of the initial report of Azerbaijan (CRC/C/OPSC/AZE/1)

Addendum

Written replies of Azerbaijan*

Reply to the issues raised in paragraph 1 of the list of issues (CRC/C/OPSC/AZE/Q/1)

1. During the years of 2008-2010 and 6 months of this year, 10 criminal actions were identified with regard to the distribution of pornographic materials; one child victim of this crime was identified. In the course of this period, 5 criminal cases on child trafficking, 8 criminal cases on child prostitution, 1 criminal case on child pornography were identified, consequently, 7 persons on child trafficking, 8 persons on child prostitution, 1 person on child pornography were convicted. During 2008-2010, of accused persons who were held liable on child trafficking, 3 were sentenced to the deprivation of liberty, while 4 to conditional sentencing. Concerned state bodies and NGOs hold continuous public awareness campaigns in regions and remote areas with the purpose of prevention of child trafficking, child prostitution and child pornography. Council of State Support to NGOs under the President allocated financial resources for ensuring social protection of children from high-risk groups and those resources are used for protection of children from such cases.

2. In order to protect and ensure integration into society of adolescent victims of child trafficking, child sexual exploitation and crimes of similar nature, a shelter for children victims of human trafficking equipped with necessary resources was established under the auspices of Ministry of Internal Affairs Agency on Combating Human trafficking and was put into operation in October, 2009. Children placed in the shelter were provided with opportunities to continue education. In order to further enable them to continue education, and to place infants in relevant institutions, within the frame of the National Orientation Mechanism, based on the relevant instruction of the Ministry of Education, a number of general schools and infants' homes were allocated in the city of Baku. Furthermore, the Support Centre for victims of human trafficking was established under the Ministry of Labour and Social Protection of Population and was put into operation in March, 2009.

3. In accordance with the Regulation of the Government of Azerbaijan on Human Trafficking Victims Support Fund of January 12, 2006 and the Resolution on defining the amount of allowance paid to persons suffered from human trafficking for the period of re-integration of June 17, 2006, lump-sum allowances were paid to 123 persons who became the victims of human trafficking, including those having young children during re-integration period, 36 persons were provided with assistance from the Support Fund. During the mentioned period, payment of compensation for the material damage inflicted on 18 victims from this category was ensured through court proceedings.

4. During 6 months of 2011 lump-sum allowances were paid to 18 victims, including those with young children, and 6 persons were provided with support from the Support Fund.

5. In order to raise public awareness and conduct promotional events on human trafficking, a number of state bodies, as well as NGOs represented in working group carried out seminars for representatives of local executive power bodies, police bodies, municipalities, health, education, employment centres, youth and sport organisations and mass media, as well as training courses in higher and secondary educational institutions in 58 cities and regions in 2009, 53 cities and regions in 2010 and 23 cities and regions in the first half of 2011. Within the frame of the International Migration Organisation Project on development of training module on human trafficking, events were conducted in general schools, children's homes and boarding schools of republic and capital.

Reply to the issues raised in paragraph 2 of the list of issues

On paragraph (a) of Article 2 of the Optional Protocol

6. Based on the Criminal Code and the Law on Human Trafficking, human trafficking covers the following:

(a) Sale-purchase or other transactions on her/his possession;

(b) Involvement, possession, detention, hiding, transportation, handing or taking over of a person for exploitation purposes (even if committed without the use of the following means) committed with threat of application of force or application of force, threat or other forced means, theft, dishonesty, deception, influence means or exploitation of a situation of helplessness, or in order to get consent of a person exerting control over another person, solicitation or giving financial or other means, privileges, concessions.

On relevant paragraphs of article 3(1(i)) of the Optional Protocol

7. National legislation envisages the below-mentioned punishment for sale of children's body organs for commercial purposes.

8. In accordance with Article 137 of the Criminal Code, illegal sale and purchase of body organs or tissues of a person is punished by a fine of between two and five thousand nominal financial units or corrective works for up to two years, or with imprisonment for up to three years with deprivation of the right to hold certain posts or to engage in certain activities for the term of up to three years or without it. The same act committed with use of a helpless condition of the victim or his material, service or other dependence from guilty is punished by imprisonment for the term from three up to five years with deprivation of the right to hold the certain posts or to engage in certain activities for up to three years.

9. In accordance with Article 144-1 of criminal code, the sale of children's body organs for commercial purposes within human trafficking context, that is, an act of human trafficking committed for the purpose of the use of the body organs or tissues of victim, is punished by imprisonment for a term from eight to twelve years with confiscation of property. The same punishment is applied in the case of a commission of a crime of human trafficking against a minor.

10. Based on Article 174 of Criminal Code, illegal adoption of children is punished by a penalty of between one hundred and three hundred nominal financial units, or corrective works for a term of up to one year, or with imprisonment for the term of about six months with deprivation of the right to hold certain posts or to engage in certain activities for a term of up to three years or without it.

11. The same act committed for the purpose of forcing a person into slavery, similar practices and dependency conditions arising from this is considered human trafficking and based on Article 144-1 is punished by imprisonment for a term of five to ten years with confiscation of property.

12. The law on the fight against Human trafficking also defines the exploitation of humans – obligatory labour (service), sexual exploitation, slavery, practices similar to slavery and dependence deriving from them, illegally extracting human organs and tissues, conducting illegal bio-medical research on a person, involving into illegal including criminal activity as well as other forms of exploitation of people, to substitute use like a surrogate mother, forced labor illegally forcing a person to do certain work (to provide service); sexual exploitation - using a person for prostitution, sexual slavery or production of pornographic materials, profit from sexual exploitation of others; slavery - carrying out powers in full or partially characteristic of the right to property over a person.

Reply to the issues raised in paragraph 3 of the list of issues

13. The main programs on implementation of the National Action Plan on Struggle against Human Trafficking in Azerbaijan Republic (2009-2013) are built on the foundation of the United Nations Convention against Transnational Organized Crime and its supplementary Protocol to Prevent, Suppress and Punish trafficking in Persons, especially Women and Children, the Convention on the Rights of the Child and its Optional Protocol on the sale of children, child prostitution and child pornography, and the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

14. The Special Work Plan on measures to be implemented within the frame of National Action Plan on Combating Human Trafficking in the Republic of Azerbaijan (2009-2013) was developed. The mentioned Action Plan envisages development and efficient use of a package of social, legal, pedagogical and other measures aimed at the identification and prevention of reasons and cases enabling negligence of children in the field of prevention and rooting out of human trafficking, including child trafficking, as well as measures pertaining to the Optional Protocol.

15. In order to coordinate support provided and resources allocated for the National Action Plan, a National Coordinator was selected for the coordination of activities and improvement of mutual cooperation of National Action Plan participants.

Reply to the issues raised in paragraph 4 of the list of issues: Please indicate which activities have been conducted to raise awareness among the general public to report offences under the Optional Protocol and to train all relevant professional groups working with and for children and among children themselves about the offences under the Optional Protocol.

16. Information was provided in the State party's report (para. 28).

Reply to the issues raised in paragraph 5 of the list of issues

17. Financial resources for the implementation of the Optional Protocol are envisaged under other related expenditures within the frame of the National Action Plan on Combating Human Trafficking (2009-2013) and other State Programs. Annually 500-700 thousand US dollars are allocated from the State Budget for the fulfillment of the National Action Plan on the Struggle against Human Trafficking, whose responsible executor is the Department on the Struggle against Trafficking in Human Beings of the Ministry of Internal Affairs.

Reply to the issues raised in paragraph 6 of the list of issues

18. In order to ensure the implementation of paragraph 3 of the Work Plan on the implementation of the National Action Plan on Combating Human Trafficking (2009-2013), the Cabinet of Ministers of the Republic of Azerbaijan approved Rules (indicators) on identification of victims of human trafficking. An ultimate purpose of the Rules is to take urgent measures on more efficient identification and protection of the rights of victims and enable personnel of concerned institutions to acquire necessary knowledge on the identification of persons who have suffered from human trafficking. The Rules serve to increase the efficiency of the fight against human trafficking conducted by internal affairs, national security, law-enforcement, customs, border service and migration bodies, the country's diplomatic representatives in foreign states, as well as other state bodies and non-governmental institutions. One of the key methods of victims' identification is to compare the committed action or inaction constituting public danger with objective and subjective indications envisaged by legislation. This method of identification enables to identify whether or not a person is a victim and specify more accurately whether or not involvement, transportation or other illegal actions have been committed against him/her, and whether means of influence (threat, deception etc.) and exploitation forms (sexual, labour etc.) were used. At the same time regulations are important for defining victims of child prostitution, child exploitation and child pornography.

19. The following means (measures) are used for victims' identification.

20. Proactive means (measures) are necessary and effective measures ensuring active activities aimed at urgent identification of victims by concerned state bodies. Proactive measures are the following:

- (a) To strengthen measures on the coordination of information exchange among concerned state bodies with the purpose of identifying victims within a short period of time;
- (b) To implement complex measures on identification of victims by law-enforcement bodies at entry to and exit from country and other places;
- (c) By observing human rights and freedoms, and legislation in force, to conduct raids with the purpose of identification of victims in public-catering centres, entertainment institutions and other places where provision of sexual services is suspected;
- (d) To conduct monitoring in construction sites, markets, bus stations and other entities from this category;
- (e) To conduct raids in "black labour exchanges" where migrants are densely concentrated;
- (f) To monitor advertisements broadcasted in mass media outlets, internet and other sites;
- (g) To ensure urgent notification of special police structure in case of obtaining of information on victims or alleged victims by structures of labour and social protection of population, education and health establishments, as well as non-governmental institutions.

21. Reactive means (measures) refer to passive identification of victims. In this case, victims themselves or their relatives appeal to law-enforcement bodies. In order to ensure the efficiency of this method, victim should trust state structures, should be aware of his/her rights and know the address of organisation to contact. The capacity of "hotline" phone services, whose ultimate mission is to provide information-consultation services to victims of human trafficking, especially women and children, should be mobilized. In such services, the service operator converses with the subscriber in trusting, thoughtful, well-disposed manner irrespective of his/her psychological constitution, guides subscriber if he/she faces difficulty in making a decision.

22. Reactive measures also cover the following:

- (a) To conduct raids and investigations with the purpose of identifying crimes;
- (b) Appeal of a third party (the party can be non-governmental institutions, social workers, representatives of educational institution and other organisations, legal entities who had received information that the person is the victim of human trafficking);
- (c) To obtain information published in press.

Reply to the issues raised in paragraph 7 of the list of issues

23. In accordance with Article 148 of the Constitution of the Republic of Azerbaijan, international agreements joined by the Republic of Azerbaijan are an integral part of the legislation of the Republic of Azerbaijan.

24. International agreements joined by the Republic of Azerbaijan shall be applied directly, with the exception of cases when application of norms envisaged by those agreements requires the adoption of intra-state normative legal acts.

25. There is no provision of national legislation which hinders the application of Optional Protocol as a legal basis for extradition.

26. In accordance with Article 12.3 of Criminal Code, citizens of the Republic of Azerbaijan, foreigners or persons without citizenship who committed the crime of human trafficking, irrespective of the place of the crime commission, are held criminally liable and punished based on that Code (extraterritorial extradition).

Reply to the issues raised in paragraph 8 of the list of issues

27. In accordance with Article 51 of the Criminal Code, confiscation of property is the compulsory, non-compensated withdrawal to the property of the state of instruments and means, used by the condemned at commitment of a crime, and also a property obtained in a criminal way.

28. In case of use, misappropriation or impossibility of withdrawal to the property of the state of property obtained in a criminal way

or instruments of crime, financial resources or property of condemned person with the value of that property is confiscated. Extract from Criminal Code:

“51.1. Confiscation of property is compulsory gratuitous withdrawal to the property of the state of instruments and means, used by condemned at commitment of a crime, and also a property obtained in a criminal way.

“51.2. Confiscation of property is appointed only in the cases provided by appropriate articles of the special part of the present Code.”

29. Confiscation of the property for human trafficking envisaged by Article 144-1 is applied.

Reply to the issues raised in paragraph 9 of the list of issues

30. The Rules on the Social Rehabilitation of Victims of Human Trafficking approved by Resolution # 62 of March 6, 2006 of the Cabinet of Ministers of the Republic of Azerbaijan define mechanisms of implementation of social rehabilitation of victims of human trafficking.

31. The social rehabilitation of victims of human trafficking is carried out with the purpose of social integration of victims into society and restoration of normal mode of life and envisages the provision of legal services to the victims of human trafficking depending on their age, sex and need, measures on the continuation of their education, psychological, medical and vocational rehabilitation and the mobilization of capacity on the provision for those persons of working and living places. With this end in view, support centres develop an individual social rehabilitation plan for every victim of human trafficking.

32. The main directions of social rehabilitation of victims of human trafficking are the followings:

- (a) Provision of legal services to the victims of human trafficking for the purpose of restoration of their legal rights;
- (b) Provision of psychological assistance to the victims of human trafficking and their family members for the purpose of elimination of psychological trauma they suffered;
- (c) Medical rehabilitation of the victims of human trafficking, conducting treatment aimed at restoration of disordered or lost functions, elimination of consequences of their disorders, injuries, total or partial recovery from psychological, physiological and anatomical disorders;
- (d) Vocational rehabilitation of the victims of human trafficking aimed at restoration of their vocational skills;
- (e) Ensuring vocational training, re-training and employment of the victims of human trafficking;
- (f) Provision of assistance to the victims of human trafficking in order to enable them to continue their education.

33. Human trafficking victims' individual social rehabilitation plans are developed by the support centre for victims of human trafficking. The inclusion of measures limiting human and civil rights defined by legislation or measures which are against the will of victims of human trafficking in individual social rehabilitation plans is not permitted.

34. The Rules on Placement and Keeping in Shelters of Children Victims of Human Trafficking approved by Resolution #180 of November 19, 2009 of the Cabinet of Ministers of the Republic of Azerbaijan define the mechanisms of placement and keeping in shelters of children victims of human trafficking (hereafter “children”).

35. In accordance with the Rules, placement and keeping in shelters of children are controlled based on principles of voluntariness, confidentiality, individual approach, protection of victims' interests, ensuring their safety, equality of and respect for victims, urgent assistance, and provision of free-of-charge support.

36. Confidentiality of information on every child placed in a shelter and his/her parents shall be ensured in manner defined by the legislation of the Republic of Azerbaijan.

37. While being placed in children's shelters, child should be accompanied by person protecting his/her rights and interests.

38. Term of stay of children in a shelter is 60 days. In cases envisaged by the Rules, the term of shelter provision can be extended based on petition of special police bodies, guardianship and trusteeship body, commission on affairs of adolescents and protection of their rights.

39. Children placed in shelters are enabled to communicate with persons protecting their rights and interests (with the exception of cases when this person is allegedly responsible for their becoming victims of human trafficking), to make phone calls and benefit from a translator's services.

40. Children placed in asylums are provided with the necessary medical, psychological, legal, social assistance and opportunity to continue education.

41. Extract from the Rules on Rehabilitation of the Victims of Human Trafficking:

[7.1.] Legal assistance for victims of human trafficking is provided by asylums and support centres for victims of human trafficking, as well as, based on written claim of victims of human trafficking or asylums and support centres, by the Ministry of Justice of the Republic of Azerbaijan;

7.2. Psychological assistance for victims of human trafficking is provided by asylums and support centres for victims of human trafficking, as well as, based on their assignment, by the Ministry of Health of the Republic of Azerbaijan;

7.3. Measures on medical rehabilitation of victims of human trafficking are taken based on assignment of asylums and support centres for victims of human trafficking by concerned health facilities;

7.4. Vocational training, re-training and employment of victims of human trafficking are ensured based on assignment of support centres for victims of human trafficking by employment services institutions in manner defined by legislation;

7.5. Education of victims of human trafficking is ensured based on assignment of support centres for victims of human trafficking by educational institutions in manner defined by legislation;

7.6. Provision of victims of human trafficking with living place is ensured based on application of support centres for victims of human trafficking by the Ministry of Labour and Social Protection of Population, Ministry of Education of the Republic of Azerbaijan, Ministry of Youth and Sport of the Republic of Azerbaijan, Ministry of Health of the Republic of Azerbaijan and local executive power bodies depending on their age, family and health status.

42. In order to ensure implementation of paragraph 3 of Resolution #208 of May 6, 2004 of the President of the Republic of Azerbaijan on Approval of the National Action Plan on the Fight against Human Trafficking in the Republic of Azerbaijan, the Cabinet of Ministers of the Republic of Azerbaijan approved Rules #21 of February 1, 2008 on handing over of victims of human trafficking crimes to specialised police bodies on the fight against human trafficking[5] investigations aimed to clarify whether persons under the age of 16 and minors with signs of mental retardation are the victims or alleged victims of human trafficking should be conducted with the participation of pedagogues or psychologists.

43. In order to ensure implementation of paragraph 8 of the Work Plan on Implementation of National Action Plan on Fight against Human Trafficking (2009-2013) of the National Action Plan on Fight against Human Trafficking in the Republic of Azerbaijan (2009-2013), the Cabinet of Ministers of the Republic of Azerbaijan approved Rules # 180 of November 19, 2009 on Placing and Maintaining Children Victims of Human Trafficking in Asylums.

44.[5.1.] The State Committee of Family, Women and Children's Affairs, Guardianship and Trusteeship body and Commission of Affairs of Adolescents and Protection of Their Rights take relevant measures within their competences with the purpose of ensuring protection of the rights and interests of children placed in asylums in accordance with legislation of and international conventions and agreements joined by the Republic of Azerbaijan.

45. Social rehabilitations also implies awareness raising campaigns and monitoring for children and other age groups on internet safety and internet harassment, on prevention of exploitation and defining its potential victims.

46. In order to ensure implementation of paragraph 1.5 of Decree #272 of President of the Republic of Azerbaijan of August 4, 2005 on Application of the Law of the Republic of Azerbaijan on Fight Against Human trafficking, based on the relevant Resolution of the Cabinet of Ministers of the Azerbaijan Republic (#152, June 17, 2006), allowance in the amount of 200 AZN was defined for persons suffered from human trafficking for the period of re-integration.