



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

Concluding observations on the third periodic report of Azerbaijan*

1. The Committee considered the third periodic report of Azerbaijan¹ at its 464th and 465th meetings,² held on 4 and 5 October 2021. At its 472nd meeting, held on 8 October 2021, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the third periodic report of the State party, which was prepared in response to the list of issues prior to reporting.³ Additional information was provided by the multisectoral delegation, which was headed by Vusal Huseynov, Chief of the State Migration Service, and comprised representatives from the Presidential Administration of Azerbaijan, the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of Labour and Social Protection of the Population, the Ministry of the Interior and the State Migration Service, as well as the Permanent Representative and officials from the Permanent Mission of Azerbaijan to the United Nations Office at Geneva.

3. The Committee appreciates the open and constructive online dialogue held with the delegation, the information provided by the State party's representatives and the constructive approach to the meetings, which allowed for joint analysis and reflection.

4. The Committee is aware that Azerbaijan, as a country of origin of migrant workers, has made progress in protecting the rights of its nationals abroad. However, the Committee also notes that, as a country of origin, transit, destination and return, the State party faces a number of challenges in respect of the protection of the rights of migrant workers and members of their families.

B. Positive aspects

5. The Committee welcomes the adoption of the following legislative measures:

(a) Law on Employment of 29 June 2018, which, inter alia, regulates the activities of recruitment agencies;

(b) Amendments to the Migration Code, on 29 June 2018, which, inter alia, lifted the entry ban to the State party in cases where the prior removal of a foreigner or stateless person had been carried out following the revocation of a temporary stay, residence or work permit, or following the payment of an administrative fine that was overdue.

* Adopted by the Committee at its thirty-third session (27 September–8 October 2021).

¹ CMW/C/AZE/3.

² CMW/C/SR.464 and 465.

³ CMW/C/AZE/QPR/3.



6. The Committee welcomes the adoption of the national action plan on combating trafficking in human beings in Azerbaijan for 2020–2024. The Committee wishes to highlight the implementation of activities carried out by a number of collegiate bodies, such as councils, working groups and committees, that have worked in a coordinated manner on programmes and projects devoted to migrant workers and members of their families. It also acknowledges the State party’s engagement in regional cooperation and dialogue processes to address the migratory flows of people in the Eurasian region.

7. The Committee notes as positive that the State party voted in favour of the Global Compact for Safe, Orderly and Regular Migration, endorsed by the General Assembly on 19 December 2018 in its resolution 73/195. The Committee also notes as positive the State party’s active participation in the regional review for Europe and North America on 12 and 13 November 2020, including through the submission of voluntary inputs to contribute to the regional review, and it recommends that the State party work towards the implementation of the Global Compact for Migration, ensuring full compliance with the Convention.

8. The Committee notes as positive the standing invitation extended by the State party to the special procedures of the Human Rights Council in 2013.

C. Principal subjects of concern and recommendations

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

Current context

9. **The Committee recommends that the State party protect the rights of migrants and members of their families, in particular their right to health, and mitigate the adverse effects of the coronavirus disease (COVID-19) pandemic in the light of the joint guidance note on the impacts of the COVID-19 pandemic on the human rights of migrants, issued by the Committee and the Special Rapporteur on the human rights of migrants. In particular, the Committee recommends that the State party guarantee equitable access to vaccination against COVID-19 to all migrants and members of their families, irrespective of their nationality, migration status or other prohibited grounds for discrimination in accordance with the recommendations issued by this Committee and other regional human rights mechanisms in the aforementioned joint guidance note.**

Legislation and application

10. The Committee notes the adoption of the Migration Code in 2013. Together with the relevant provisions of the Labour Code and the Law on Employment, the Migration Code provides a legal framework on migration in the State party, including for Azerbaijani migrant workers and members of their families abroad and foreign migrant workers and members of their families in the State party. The Committee is, however, concerned that the legal framework, despite a number of legislative amendments, does not fully comply with the provisions of the Convention as will be demonstrated in the present concluding observations. The Committee also regrets that the Migration Code does not contain a definition of migrant workers in an irregular situation and refers to the concepts of “illegal migration” and “illegal migrants”, rather than to migrant workers in an irregular situation and members of their families. The Committee notes, however, the willingness expressed by the State party during the dialogue to consider correcting the language in its legislation.

11. **Reiterating its previous recommendations,⁴ the Committee recommends that the State party:**

(a) **Review the Migration Code and relevant provisions of the Labour Code and the Law on Employment and amend them, if necessary, to bring the legal framework in the State party into full compliance with the Convention, taking into account the recommendations contained in the present concluding observations, as well**

⁴ CMW/C/AZE/CO/2, para. 13.

as those from the Commissioner for Human Rights and civil society, including migrants' organizations;

(b) In particular, adopt a definition of migrant worker in an irregular situation, in line with the Convention, in its national laws, and embrace terms such as "migrant workers and members of their families in an irregular situation", in accordance with the commitments made by the State party as part of the universal periodic review process.⁵

Articles 76–77

12. The Committee notes that the State party has yet to make 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.

13. **The Committee reiterates its previous recommendations⁶ that the State party make the declarations provided for in articles 76 and 77 of the Convention.**

Ratification of relevant instruments

14. **Reiterating its previous recommendations,⁷ the Committee recommends that the State party ratify or accede, as soon as possible, to the International Convention for the Protection of All Persons from Enforced Disappearance; the Migration for Employment Convention (Revised), 1949 (No. 97) of the International Labour Organization (ILO); the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); and the ILO Domestic Workers Convention, 2011 (No. 189). The Committee also recommends that the State party consider ratifying the ILO Violence and Harassment Convention, 2019 (No. 190).**

Comprehensive policy and strategy

15. The Committee welcomes the adoption of the employment strategy of Azerbaijan for 2019–2030, which, inter alia, is aimed at strengthening the social protection of migrant workers in the State party and improving the labour migration quota system. It also notes with appreciation the various institutional and policy measures taken in support of the Azerbaijani diaspora, including migrant workers and members of their families, such as the establishment of a dedicated fund for their support and for comprehensive and multidimensional assistance provided to Azerbaijani nationals abroad, including consular and legal assistance, and the facilitation of their participation in presidential and national elections and referendums in the diplomatic representations of the State party. The Committee notes the State party's intention to pass a law on compatriots living abroad and diaspora organizations. Nonetheless, it is concerned that the national migration strategy has yet to be adopted.

16. **The Committee recommends that the State party adopt the national migration strategy without further delay, and also recommends that the State party:**

(a) **Ensure that the strategy place emphasis on the implementation of the Convention and provide for a comprehensive gender-responsive, child-sensitive and human rights-based migration policy, which also addresses the rights of foreign migrant workers and members of their families;**

(b) **Take effective measures, with clear time frames, indicators, monitoring and evaluation benchmarks, to implement the strategy, provide sufficient human, technical and financial resources for their implementation, and include in its next periodic report relevant information on the results obtained and the difficulties encountered, supported by statistics;**

⁵ A/HRC/39/14, para. 141.97; and A/HRC/39/14/Add.1, para. 34.

⁶ CMW/C/AZE/CO/2, para. 11; and CMW/C/AZE/CO/1, para. 17.

⁷ CMW/C/AZE/CO/2, para. 9.

(c) **Swiftly adopt the draft law on compatriots living abroad and diaspora organizations in a consultative process with the participation of Azerbaijani migrant workers and members of their families and migrants' organizations, and ensure the protection of their rights abroad by this law.**

Coordination

17. The Committee welcomes the existence of a coordination mechanism for the implementation of international human rights instruments, including the Convention, and of national activities in the field of migration and labour relations under the lead of the State Migration Service, with relevant central executive authorities participating. Nevertheless, the Committee is concerned about the lack of an entity at the highest level with a mandate or the authority to coordinate, at all levels of government, the implementation of the rights protected by the Convention. It is also concerned that a human rights perspective is integrated into the mandate of the State Migration Service only as far as Azerbaijani citizens abroad are concerned.

18. **With reference to its previous recommendations,⁸ the Committee recommends that the State party:**

(a) **Create an appropriate high-level interministerial body with a clear mandate and sufficient authority to coordinate all activities for the effective implementation of the rights protected under the Convention and equip such a coordinating body with the human, technical and financial resources necessary for its effective operation;**

(b) **Establish clear time frames, indicators, monitoring and evaluation benchmarks, for the implementation of the Convention, and include in its next periodic report relevant information, supported by statistics, on the results obtained.**

Data collection and right to privacy

19. The Committee notes the State party's continuous efforts to improve data collection on migrants and migration-related issues, such as the automated interagency information-retrieval system known as "Entry-Exit and Registration", the State Registry of Population and the Unified Migration Information System of the State Migration Service, which, *inter alia*, enables the issuance of temporary stay, residence and work permits in an automated procedure. The Committee is, however, concerned about the lack of disaggregated data and statistics, including on conditions of employment of migrant workers and on migrants in an irregular situation in general, which could better inform migration policies in the State party.

20. **With reference to its previous recommendations,⁹ the Committee recommends that the State party:**

(a) **Further consolidate, in accordance with target 17.18 of the Sustainable Development Goals, its system to collect data on the situation of migrant workers and members of their families in the State party covering all aspects of the Convention, in particular those in an irregular situation, and to provide publicly available statistics on migrant workers, both in regular and irregular situations, members of their families, migrant workers in transit, nationals working abroad and their conditions of employment, returnees, children who migrate abroad, including unaccompanied children, and spouses and children of migrant workers who are left behind in the State party, to effectively promote human rights-based migration policies;**

(b) **Ensure that the right to privacy, personal information and data protection of migrant workers and members of their families are protected, including by establishing appropriate reporting firewalls and access limitations, and that personal information be erased once the purpose of the data collection has been achieved, so that**

⁸ Ibid., para. 41.

⁹ Ibid., para. 15.

personal data are not used for migration control or for discrimination in public and private services.

Independent monitoring

21. The Committee welcomes the election of the Commissioner for Human Rights of Azerbaijan by the Parliament on 29 November 2019. It is, however, concerned that the Commission for Human Rights of Azerbaijan was downgraded to “B” status by the Global Alliance of National Human Rights Institutions in May 2018 and that it lacks adequate human, technical and financial resources to conduct work effectively.

22. The Committee recommends that the State party provide the Commission for Human Rights with sufficient human, technical and financial resources with the necessary anticipation, to effectively discharge its mandate to promote and protect the rights of migrant workers and members of their families under the Convention and in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

Participation of civil society

23. The Committee welcomes the participation of non-governmental organizations and civil society representatives in regular meetings of the Public Council under the State Migration Service. The Committee, however, regrets that civil society could only contribute to the third periodic report of the State party through the Public Council, that the numerous Azerbaijani diaspora organizations have not participated in its preparation and that the Law on Public Participation and other relevant pieces of legislation may limit the ability of non-governmental organizations to independently operate in the State party.

24. The Committee recommends that the State party take concrete measures, including by reviewing its pertinent legislation and amending it to strengthen its dialogue with civil society organizations, including organizations serving migrants and the Azerbaijani diaspora, in particular when preparing the national report, and also recommends that the State party ensure the effective and independent participation of civil society in the implementation of the Convention and the recommendations contained in the present concluding observations, and the monitoring thereof.

2. General principles (arts. 7 and 83)

Non-discrimination

25. The Committee takes note with appreciation of the efforts of the State party to include the principles of equality and non-discrimination in trainings for judges and lawyers on international migration law. It is, however, concerned that the Constitution, the Migration Code and the Labour Code do not cover all the prohibited grounds of discrimination enumerated in articles 1 (1) and 7 of the Convention. The Committee regrets the lack of information on the actual situation in practice that would make it possible to assess the implementation of the principle of non-discrimination with respect to both migrant workers in regular and irregular situations and members of their families.

26. With reference to its previous recommendations,¹⁰ the Committee recommends that the State party:

(a) **Deepen its legislative and policy measures to ensure that all migrant workers and members of their families within the territory or subject to its jurisdiction, regardless of their status, enjoy without discrimination the rights recognized by the Convention, in accordance with article 7 thereof;**

(b) **Raise awareness among migration officials, local authorities and the general public of the rights of all migrant workers and members of their families and**

¹⁰ Ibid., para. 21.

of the importance of eliminating discrimination against them and of combating social stigmatization;

(c) Provide information in its next periodic report on the measures taken to improve and implement its legislative framework on non-discrimination as regards the rights of migrant workers and members of their families, irrespective of their status.

Right to an effective remedy

27. The Committee welcomes that the legislative framework of the State party provides non-citizens with equal opportunities to seek redress and legal aid. It notes that during the period 2013 to 2018, a total of 1,233 complaints were received by the courts in matters falling under the competence of the State Migration Service. The Committee regrets the lack of information about the success rate of complaints submitted to courts or the Ombudsperson, including those filed by migrant workers in an irregular situation or members of their families. The Committee also remains concerned about reports that migrant workers, in particular those in irregular situations, may not resort to legal remedies for fear of losing their employment, being detained or facing expulsion if they approach a court.

28. Reiterating its previous recommendations,¹¹ the Committee recommends that the State party:

(a) Ensure that migrant workers and members of their families, including those in an irregular situation, have opportunities, in practice, equal to those of nationals of the State party, to file complaints and obtain effective redress in the courts and before the Ombudsperson in cases where their rights under the Convention have been violated, including by removing obstacles to access to justice, including portable justice, for migrants in an irregular situation, irrespective of where they or the members of their families are;

(b) Ensure that legal assistance is based on non-discrimination and is easily accessible and free of charge in practice;

(c) Intensify its efforts to inform migrant workers and members of their families, including those in an irregular situation, about the judicial and other remedies available to them, including by continuing to avail itself of the support of international organizations in awareness-raising activities.

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

Border management and migrants in transit

29. The Committee notes the efforts by the State party to simplify and accelerate the visa application and border crossing procedures, including by dedicated migration units of the State Migration Service at border points and by availing itself of technical assistance from the International Organization for Migration. The Committee is, however, concerned about:

(a) The border regime in the State party, which is largely geared towards the protection of its border and the prevention of violations of border security;

(b) The criminalization of irregular border crossings.

30. In line with the Recommended Principles and Guidelines on Human Rights at International Borders of the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Committee recommends that the State party:

(a) Adopt a human rights-based approach to border management, including in effective consultations with relevant stakeholders such as national judicial and human rights bodies, academia and civil society actors, including migrants' organizations, in the development, adoption and implementation of border-related measures;

¹¹ Ibid., para. 23.

(b) **Repeal article 318 of the Criminal Code and decriminalize irregular entry and exit and make provision for appropriate administrative penalties for such offences, since the Committee considers that, in accordance with its general comment No. 2 (2013) and its general comment No. 5 (2021), inter alia, irregular entry or stay or exit may constitute administrative offences at most and should never be considered criminal offences, as they do not infringe upon fundamental, legally protected values and, as a result, are not crimes per se against persons, property or national security.**

Right to leave

31. The Committee is concerned that article 17 of the Migration Code allows for the imposition of an exit ban on migrants, including foreign migrant workers and members of their families, inter alia, in case of the commission of an administrative offence until the execution of administrative penalties, which might not comply with the limitations permitted under article 8 (1) of the Convention, while noting the explanation provided by the State party during the dialogue that exit bans were of a technical nature and did not prevent them from leaving the country in practice.

32. **The Committee recommends that the State party ensure that migrant workers and members of their families enjoy the right to leave the State party, which may not be subject to any restrictions except those that are provided for by law; are necessary to protect national security, public order, public health or morals or the rights and freedoms of others; and are consistent with the other rights recognized in the Convention.**

Labour exploitation and other forms of ill-treatment

33. The Committee notes the efforts taken to prevent and combat child labour; however, it is concerned about the lack of information about the extent of the phenomenon and the impact of the countermeasures taken.

34. **The Committee recommends that the State party compile information on the extent of child labour, including of migrant children, with a view to establishing policies, strategies and enforcement mechanisms to ensure compliance of its legislative and policy framework with its obligations under the ILO Forced Labour Convention, 1930 (No. 29), the ILO Abolition of Forced Labour Convention, 1957 (No. 105) and the ILO Worst Forms of Child Labour Convention, 1999 (No. 182).**

Due process, detention and equality before the courts

35. The Committee welcomes the temporary stay of forced immigration detention during the COVID-19 pandemic and takes note of the information provided by the State party regarding inspection visits by the Ombudsperson, international mechanisms and civil society organizations to immigration detention facilities to monitor the conditions of detention. The Committee is highly concerned about the practice of:

(a) Administrative detention of migrant children and their families, and of other vulnerable groups of migrants, including asylum seekers;

(b) Administrative detention of irregular migrants awaiting deportation and the limited number of court decisions overturning administrative detention orders;

(c) So-called “voluntary” placement in immigration detention centres of migrants who are liable for expulsion, have applied for asylum or have been granted refugee status already, for specified periods of time and under specific conditions;

(d) Naming those locations where asylum seekers and refugees are placed “voluntarily” in a “detention centre”, since they do not have the option to stay at another place such as shelters provided by the State party or community shelters, and are subjected to a detention-like regime, albeit being permitted to leave and return to the facility, while recognizing the willingness expressed by the State party to consider renaming the existing facility in law or allocating separate premises for voluntary placement.

36. **The Committee, in accordance with its general comment No. 5 (2021), recommends that the State party:**

(a) **Adopt measures to phase out, and ultimately put an end to, immigration detention and enact a presumption in law against detention and therefore in favour of freedom;**

(b) **Immediately cease migration detention of children, whether unaccompanied, separated from their parents, or together with their families, and of other vulnerable groups of migrant workers and members of their families as well as asylum seekers and refugees;**

(c) **Ensure that:**

(i) **The detention of migrants is an exceptional measure of last resort, pursuing a legitimate end, is necessary and proportionate, and applied for the shortest possible period of time in all other cases;**

(ii) **The grounds for detention are specified in each case, with specific reasons why alternative measures cannot be implemented;**

(iii) **The measure is reviewed within 24 hours by an independent and impartial judicial authority;**

(iv) **In line with its human rights obligations, alternative measures to detention are considered and made use of before imposing detention measures. The Committee recognizes as alternatives to detention all community-based care measures or non-custodial accommodation solutions – in law, policy or practice – that are less restrictive than detention and which must be considered in the context of lawful detention decision procedures to ensure that detention is necessary and proportionate in all cases, with the aim of respecting the human rights and avoiding the arbitrary detention of migrants, asylum seekers, refugees and stateless persons;**

(d) **Ensure that alternative measures to detention are applied to asylum seekers, refugees and in all cases of voluntary return;**

(e) **Strictly separate detention regimes from “voluntary” placement in shelters, including in statutory law, and provide for State-run or community-run shelters, which are physically separated from an immigration detention centre and are not situated on the same premises.**

Expulsion

37. **The Committee takes note of the temporary stay of expulsion orders during the COVID-19 pandemic and of the information provided by the State party indicating that it is possible to lodge an appeal against expulsion orders. It is, however, concerned about:**

(a) **The lack of suspensive effect by virtue of article 79, paragraph 8, of the Migration Code, of appeals in court against expulsion orders, while noting the explanation provided by the State party that the State Migration Service at times offers an extension of the permitted period of stay in the country in practice;**

(b) **The lack of information on the extent to which migrant workers subject to expulsion proceedings make use of that right and on policies designed to provide alternatives to expulsion or return.**

38. **In line with its joint guidance note on the impacts of the COVID-19 pandemic on the human rights of migrants, issued by the Committee and the Special Rapporteur on the human rights of migrants, the Committee recommends that the State party:**

(a) **Continue to adopt measures for the temporary suspension of deportations or forced returns during the COVID-19 pandemic;**

(b) **Take the necessary legislative steps to provide for a statutory and automatic suspensive effect of appeals in court against expulsion orders, guarantee due process and procedural safeguards and ensure that migrant workers who are subject**

to an expulsion order are aware of and able to exercise their right to appeal such an order;

(c) **Strengthen the implementation of policies and mechanisms designed to provide alternatives to expulsion or return, including asylum and international protection procedures, leave to remain on humanitarian grounds and ordinary regularization mechanisms that are regulated by law, in accordance with article 69 of the Convention, and which apply to all migrants, irrespective of their migration status.**

Trade unions

39. The Committee notes that the legislative framework in the State party permits migrant workers in a regular situation to take part in trade union activities and to freely join trade unions. Nevertheless, the Committee is concerned that, due to the complexity of the collective dispute regulations in the Labour Code, there have not been any strikes in the State party in decades or strikes have been declared illegal, and that the worker, including the migrant worker, is in this case liable under article 70 of the Labour Code on non-fulfilment of work obligations.

40. **The Committee recommends that the State party take all measures necessary, including legislative amendments, to guarantee all migrant workers the right to take part in trade union activities and to freely join trade unions, in accordance with article 26 of the Convention and the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).**

Social security

41. The Committee welcomes the fact that migrant workers permanently residing in the State party enjoy the same social protection rights, including labour pension rights, as nationals of Azerbaijan. The Committee is, however, concerned that:

(a) All other migrant worker social protection schemes, including pensions, are largely governed by bilateral agreements between the migrant worker and the Government;

(b) It has reportedly been difficult for migrant workers to access their pensions after retirement without such an agreement.

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

(a) **Ensure in practice that all migrant workers and members of their families are able to subscribe to social security schemes, including pensions, and that they are informed of their rights in this regard;**

(b) **Enter into bilateral and multilateral social security agreements with all destination countries that are gender-responsive and non-discriminatory, in order to guarantee social protection for all migrant workers.**

Medical care

43. The Committee notes that the legislative framework provides for equal health care rights of citizens and foreigners and stateless persons who are permanently residing in the State party and that medical care is free in public health-care institutions. The Committee is, however, concerned about the lack of information on access to medical care for migrant workers in an irregular situation.

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

(a) **Ensure that all migrant workers and members of their families have access to the health-care system, including those in an irregular situation, and provide information in this regard in its next periodic report;**

(b) **Establish a mechanism to ensure that personal information provided by migrants upon registration with health-care and other social services is not used against them for the purpose of reporting or discriminating against them on grounds of their nationality or origin or their irregular migration status.**

Birth registration and nationality

45. The Committee notes that children of Azerbaijani migrant workers born abroad can be registered at Azerbaijani diplomatic representations and provided with birth certificates, and welcomes the repeal of the legislative requirement for foreign or stateless parents in the State party to provide a residence registration document upon birth registration, which reduces the risk of statelessness of their children. The Committee is, however, concerned:

(a) That in some cases, such as when the parents lack identification documents, birth registration of children born to asylum seekers reportedly has to be enforced by courts, while noting that the State party has made progress in the birth registration of all children born in its territory since the Committee's previous concluding observations;

(b) About the lack of a statelessness determination procedure as recommended by the 1954 Convention relating to the Status of Stateless Persons.

46. **In line with joint general comments No. 3 and No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 and No. 23 (2017) of the Committee on the Rights of the Child on the human rights of children in the context of international migration, and in accordance with target 16.9 of the Sustainable Development Goals, the Committee recommends that the State party:**

(a) **Ensure that all children of Azerbaijani migrant workers abroad and children born on the territory of the State party, in particular children born to migrants in an irregular situation and asylum seekers, are registered at birth and issued personal identity documents, and that it raise awareness on the importance of birth registration among them;**

(b) **Establish an effective statelessness determination procedure with specific procedural considerations and safeguards given the critical role of nationality for all people, including migrant workers and members of their families, and provide information, including statistics, in its next periodic report on the extent of the phenomenon.**

Education

47. The Committee welcomes the recognition in the Migration Code of full-time secondary education as a ground for issuance of a temporary residence permit for the pupil. Nevertheless, the Committee is concerned:

(a) That the Constitution guarantees the right to education only to citizens of the State party and that the ordinary legislative framework guarantees access to education only to migrant workers in a regular situation and members of their families;

(b) About cases in which parents with an irregular migration status do not send their children to school for fear of detection by the authorities, detention and expulsion, even though the migration status of their children could be regularized on the grounds of education and despite the assurances by the State party during the dialogue about the existence of reporting firewalls between the Ministry of Education and the State Migration Service;

(c) About the lack of information about the enrolment rates of children of migrant workers in an irregular situation.

48. **With reference to its previous recommendations,¹² and in line with joint general comments No. 3 and No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 and No. 23 (2017) of the Committee on the Rights of the Child, and in accordance with target 4.1 of the Sustainable Development Goals, the Committee recommends that the State party:**

(a) **Ensure that all children of migrant workers, irrespective of their status, enjoy access to preschool, primary and secondary education on the basis of equality of**

¹² Ibid., para. 33.

treatment with nationals of the State party in compliance with article 30 of the Convention;

(b) **Improve reporting firewalls between law enforcement and immigration authorities on the one hand, and education services on the other, so that all migrant workers and members of their families in an irregular situation send their children to school;**

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

Right to transfer earnings and savings

49. The Committee regrets that there are no specific mechanisms or partnerships with financial institutions in place to facilitate the transfer of remittances by Azerbaijani migrant workers to Azerbaijan and by migrant workers in the State party to their countries of origin. It takes note of the information provided by the State party about a government proposal in this regard that is under discussion.

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

(a) **Further facilitate the transfer of remittances by Azerbaijani migrant workers to Azerbaijan;**

(b) **Swiftly take measures to facilitate the transfer of remittances by migrant workers in Azerbaijan to their countries of origin, with preferential transfer and reception fees, in accordance with target 10.3 of the Sustainable Development Goals, and make savings abroad more accessible to migrant workers and members of their families in the State party.**

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

Work permits and residency

51. The Committee notes the efforts by the State party to simplify and accelerate the procedures for the issuance of work and residence permits, including by electronic means and in multiple languages, and the automatic extension of temporary residence permits during the COVID-19 pandemic, including for migrant workers and members of their families. It also notes that certain types of domestic work have been added to the list of activities for which work permits may be issued. The Committee is, however, concerned that:

(a) Migrant workers have to leave the country within 10 working days of the termination of their employment contract with one month's notice, unless there are other grounds to stay, making their immigration status entirely dependent on the employer, while noting the explanation provided by the State party during the dialogue that the State Migration Service in practice may extend the permissible period of stay on a case-by-case basis, including until court proceedings have concluded;

(b) The Administrative Offences Code penalizes migrant workers in an irregular situation who engage in labour activity without the necessary work permit, even though it is the obligation of the employer to obtain it;

(c) Cases have been reported of employers unofficially deducting the fee for the issuance of the work permits from the wages of migrant workers.

52. **The Committee recommends that the State party review and improve its work permit system to prevent abusive working conditions and labour exploitation, including by:**

(a) **Establishing a provision in statutory law to ensure that migrant workers who lose their employment have sufficient time to seek legal remedies against the termination of their employment and/or alternative employment, and refraining from their expulsion;**

(b) **Repealing provisions that penalize migrant workers for their employer's failure to obtain a work permit;**

(c) **Ensuring that migrant workers do not face reprisals or lose their employment when they report employers who deduct fees for the issuance of their work permit from their wages to the authorities.**

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

International cooperation with countries of transit and destination

53. The Committee notes the difficulties of the State party in ensuring the protection of the rights of Azerbaijani migrant workers abroad since a number of destination countries have not yet ratified the Convention. It also notes that the State party has concluded several bilateral agreements for the reciprocal provision of rights for migrant workers in a regular situation, most recently with Belarus, Belgium, Kazakhstan, and Turkmenistan, and further notes the State party's intention to conclude further agreements with other countries. It is concerned that some of the agreements do not reflect current trends as they date back a number of years, such as the one concluded with the Russian Federation in 2003, and is also concerned about the lack of information about whether any of these agreements protect the rights of migrant workers and members of their families in an irregular situation.

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

(a) **Guarantee, in the implementation of any bilateral or multilateral agreements, the life and physical integrity of migrants, including migrant workers and members of their families, in the light of the current circumstances in the State party, and ensure that such multilateral and bilateral agreements are fully consistent with the Convention, the Committee's general comments No. 1 (2011) and No. 2 (2013), and joint general comments No. 3 and No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 and No. 23 (2017) of the Committee on the Rights of the Child;**

(b) **Engage with OHCHR and seek technical assistance regarding the implementation of said agreements and the negotiation of future agreements to ensure that they are aligned with the Convention.**

Recruitment agencies

55. The Committee takes note of the information provided on the regulatory framework and licensing system for private employment agencies operating in the State party. It is, however, concerned about reports it has received that the competent monitoring bodies only intervene when they have received complaints about violations.

56. **The Committee recommends that the State party reinforce the regulatory regime for private recruitment agencies, strengthen the existing licensing system for recruitment agencies, and enhance monitoring and inspections of such agencies to ensure the rights of migrant workers in accordance with the Convention.**

Return and reintegration

57. The Committee notes the conclusion of mobility and readmission agreements between the State party and the European Union, some European Union member States, Montenegro, Norway and Switzerland, and ongoing negotiations with other countries on the readmission of persons residing without authorization, and measures taken for their reintegration into the State party such as the implementation of the project entitled Reintegration Support to Azerbaijani Returnees. The Committee, however, regrets the lack of information on the procedural safeguards for migrant workers and members of their families covered by these agreements.

58. **With reference to its previous recommendations,¹³ the Committee recommends that the State party:**

(a) **Take the measures necessary to ensure that any bilateral or multilateral mobility or readmission agreements, and the implementation of such agreements, are in conformity with the Convention, and in particular, that such agreements include appropriate procedural guarantees;**

(b) **Take effective measures to facilitate, in accordance with the principles of the Convention, the durable reintegration of returning migrant workers and members of their families into the economic, social and cultural life in the State party, as provided for in article 67 of the Convention;**

(c) **Ensure gender-responsive support for the return and reintegration of migrant workers and members of their families to address the specific physical and mental health needs of those who have experienced violence, abuse or sexual exploitation, in particular for women who have been trafficked;**

(d) **Provide information about the situation of migrant workers who have reportedly been internally displaced in the country in its next periodic report.**

Trafficking in persons

59. The Committee recognizes the various measures taken by the State party since the Committee's previous concluding observations to combat trafficking in persons, such as: legislative amendments to improve the protection of children against the risk of trafficking and to permit the issuance of temporary residence permits to victims of trafficking; the implementation of the national action plan on combating trafficking in human beings in Azerbaijan for 2020–2024; the collection of data on investigations, verdicts and assistance provided to victims of trafficking in persons; relevant training provided to officials with the support of international organizations and civil society organizations; the opening of additional publicly and privately run shelters and assistance centres for victims of trafficking; and measures to improve the protection of domestic workers, most of whom are women. Nevertheless, the Committee remains concerned about:

(a) The possibility of criminal sanctions for, or deportation of, migrant workers who are victims of trafficking, including for labour exploitation, if they are not properly identified as victims;

(b) The low prosecution and conviction rates and lenient criminal sentences imposed on perpetrators of trafficking in persons and smuggling of migrants;

(c) The lack of disaggregated data about the extent of the phenomenon, including the number of victims of trafficking and smuggling of migrants who have applied for and been granted a temporary or permanent residence permit;

(d) The limited numbers of bilateral and multilateral agreements on cooperation in the fight against trafficking in persons entered into by the State party.

60. **Recalling its previous recommendations,¹⁴ and in accordance with the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, the Committee recommends, in line with target 5.2 of the Sustainable Development Goals, that the State party:**

(a) **Review its legislation and amend it to ensure that victims of trafficking are properly identified and are not detained, charged or prosecuted for irregular entry or stay, including in countries of transit and destination, or for their involvement in unlawful activities to the extent that such an involvement is a direct consequence of their situation as victims of trafficking, emphasizing their status as victims rather than focusing on criminalization;**

¹³ Ibid., paras. 25 and 43.

¹⁴ Ibid., para. 44.

(b) **Effectively investigate and prosecute trafficking cases and impose on perpetrators sentences commensurate with the gravity of the crime;**

(c) **Strengthen international, regional and bilateral cooperation through agreements with countries of origin, transit and destination on the prevention and combating of trafficking in persons;**

(d) **Collect and regularly publish disaggregated data on the extent of the phenomenon of trafficking in persons, including on the number of victims of trafficking in persons and of smuggled migrants who have applied for temporary or permanent residence, and the number of authorizations granted, and provide information in this regard in its next periodic report.**

Measures to address migrant workers in an irregular situation

61. The Committee notes the high numbers of migrant workers in an irregular situation and members of their families in the State party. It is concerned about the lack of clarity regarding concrete measures taken to ensure that the situation of migrant workers in an irregular situation and members of their families within its territory does not persist, while noting the explanation by the State party that 12,862 migrants, including migrant workers and members of their families, have been regularized since 2016.

62. **The Committee recommends, in line with the OHCHR Recommended Principles and Guidelines on Human Rights at International Borders, that the State party:**

(a) **Take appropriate measures, other than mere border protection and law enforcement measures, for the establishment of dedicated procedures for the regularization of the situation of migrant workers in an irregular situation and members of their families so as to ensure that such a situation does not persist;**

(b) **Raise awareness among migrant workers, who are in an irregular situation, about such procedures;**

(c) **Provide information about them in its next periodic report.**

6. Dissemination and follow-up

Dissemination

63. **The Committee requests the State party to ensure the timely dissemination of the present concluding observations, in the official language of the State party, to the relevant State institutions at all levels, including to government ministries, the legislature, the judiciary and relevant local authorities, as well as to non-governmental organizations and other members of civil society.**

Technical assistance

64. **The Committee recommends that the State party further avail itself of international and intergovernmental assistance for the implementation of the recommendations contained in the present concluding observations in line with the 2030 Agenda for Sustainable Development. It also recommends that the State party continue its cooperation with specialized agencies and programmes of the United Nations.**

Follow-up to concluding observations

65. **The Committee requests the State party to provide, within two years (that is, by 1 November 2023), written information on the implementation of the recommendations contained in paragraph 16 (comprehensive policy and strategy); paragraph 36 (due process, detention and equality before the courts); paragraph 60 (trafficking in persons); and paragraph 62 (measures to address migrant workers in an irregular situation) above.**

Next periodic report

66. The Committee requests the State party to submit its fourth periodic report by 1 November 2026. In doing so, the State party may wish to follow the simplified reporting procedure. The Committee draws the State party's attention to its harmonized treaty-specific guidelines.¹⁵

¹⁵ HRI/GEN/2/Rev.6.