



# 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

### Report on follow-up to the concluding observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families\*

#### Addendum

#### Evaluation of the information on follow-up to the concluding observations on Azerbaijan

*Concluding observations (33rd session):* [CMW/C/AZE/CO/3](#), 8 October 2021

*Follow-up paragraphs:* 16, 36, 60 and 62

*Information received from State Party:* [CMW/C/AZE/FCO/3](#), 17 January 2024

*Information received from stakeholder:* Maat for Peace, Development and Human Rights, 10 May 2024

*Committee's evaluation:* 16 [C] [B], 36 [C] [C], 60 [B] [C] [F] and 62 [B] [F]

#### Paragraph 16: Comprehensive policy and strategy

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 places emphasis on the implementation of the Convention and provides 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, and 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;

(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.

\* Adopted by the Committee at its thirty-ninth session (2–13 December 2024).



**State Party's reply**

The reply of the State Party is provided in [CMW/C/AZE/FCO/3](#), paragraphs 1 to 12.

**Committee's evaluation**

[C]: Paragraph 16 (a) and (b)

The Committee regrets that information regarding the status of the national migration strategy of Azerbaijan was not provided. The Committee requests further information on the consultative process carried out with relevant stakeholders, including civil society, the national human rights institution, and migrant workers and members of their families, in the development of the strategy. The Committee encourages the State Party to take measures to implement its recommendation to adopt the national migration strategy, in line with the provisions in the Convention, without further delay, and to dedicate sufficient human, technical and financial resources for its implementation. The Committee considers that the recommendation has not been implemented.

[B]: Paragraph 16 (c)

The Committee welcomes the information provided on the draft law on compatriots living abroad and diaspora organizations, which grants compatriots living abroad the right to carry out paid labour activity in the territory of Azerbaijan without obtaining a work permit, in line with the requirements of migration and labour legislation, and on the consultations carried out with relevant stakeholders. The Committee requests further information on how the law ensures the protection of their rights abroad and reiterates its recommendation to adopt the draft law without further delay. The Committee considers that the recommendation has been partially implemented.

**Paragraph 36: Due process, detention and equality before the courts**

**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, and is necessary and proportionate, and is applied for the shortest possible period of time in all other cases;**

**(ii) The grounds for detention are specified in each case, providing 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 and 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.**

#### **State Party’s reply**

The reply of the State Party is provided in [CMW/C/AZE/FCO/3](#), paragraphs 13 to 39.

#### **Committee’s evaluation**

[C]: Paragraph 36 (a)

The Committee is concerned about reports of more than 6,300 migrants being detained in 2023 in the State Party. The Committee requests further statistical information since 2021 on the number of migrants detained in the State Party, and the grounds for and period of their detention, per year. It encourages the State Party to take measures to fully implement its recommendation to phase out, and ultimately put an end to, immigration detention, and to use it as an exceptional measure of last resort that is necessary and proportionate and that pursues a legitimate end, and to ensure that is applied for the shortest possible period of time in all other cases. The Committee considers that the recommendation has not been implemented.

[C]: Paragraph 36 (b)–(e)

The Committee notes the assurance made by the State Party that unaccompanied children are treated equally to national children deprived of parental care in the State social protection system, and the establishment of a working group to ensure that unaccompanied children receive effective social protection services. Nonetheless, it is concerned at the reports of migration-related detention of migrant children, asylum-seekers, refugees and other migrants in vulnerable situations in the State Party, and that there are no mechanisms available to challenge such detention orders.

The Committee requests further statistical information since 2021 on the number of children, asylum-seekers and refugees detained in centres for migrants in the State Party, and the grounds for and period of their detention, per year, as well as additional information from the State Party about the plans to develop mechanisms for children and other migrant workers in vulnerable situations to challenge detention orders. The Committee reiterates its recommendation to immediately cease migration-related detention of children, whether unaccompanied, separated from their parents or together with their families, and of other migrant workers and members of their families in vulnerable situations, including asylum-seekers and refugees. The Committee considers that the recommendation has not been implemented.

While welcoming the plans of the State Party to establish a reception centre for asylum-seekers and an integration centre for refugees at the State Migration Service of Azerbaijan, the Committee reiterates its recommendation to physically separate such non-custodial accommodation solutions from detention centres for migrants and to situate them on different premises. It also requests information on plans to amend the statutory law to separate detention regimes from “voluntary” placement in shelters. The Committee considers that the recommendation has been partially implemented.

## Paragraph 60: Trafficking in persons

Recalling its previous recommendations,<sup>1</sup> and in accordance with the Office of the United Nations High Commissioner for Human Rights (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;

(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.

### State Party's reply

The reply of the State Party is provided in [CMW/C/AZE/FCO/3](#), paragraphs 40 to 56.

### Committee's evaluation

[B]: Paragraph 60 (a)

The Committee welcomes Decision No. 378 of the Cabinet of Ministers of Azerbaijan on "amendments to the rules on the repatriation of victims of trafficking in human beings", which includes State migration bodies in the list of authorities mandated to proactively report to the special police unit any information relating to victims or potential victims of trafficking. However, the Committee is concerned that according to the law on "suspension of inspections conducted in the field of entrepreneurship", the duration of suspension of inspections has been extended until January 2025, which allegedly hinders proactive identification of victims. The Committee requests further information on training provided for law enforcement officials, judges, prosecutors, labour inspectors and service providers on timely identification, referral, protection and assistance for victims of trafficking. It encourages the State Party to take measures to fully implement its recommendation to ensure that victims of trafficking are properly identified. The Committee considers that the recommendation has been partially implemented.

[C]: Paragraph 60 (b) and (c)

While noting the State Party's efforts to prosecute perpetrators of trafficking in persons, the Committee is concerned about the requirement for a victim to file a complaint in order for law enforcement authorities to initiate an investigation, hindering the ability to conduct proactive investigations. The Committee encourages the State Party to take measures to fully implement its recommendation to effectively investigate and prosecute trafficking cases and to impose on perpetrators sentences commensurate with the gravity of the crime. It also requests further information on the international, regional and bilateral agreements with countries of origin, transit and destination on preventing and combating trafficking in persons. The Committee considers that the recommendation has been partially implemented.

<sup>1</sup> [CMW/C/AZE/CO/2](#), para. 45.

[F]: Paragraph 60 (d)

The Committee encourages the State Party to provide disaggregated data in its next periodic report 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.

### **Paragraph 62: Measures to address migrant workers in an irregular situation**

**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.**

#### **State Party's reply**

The reply of the State Party is provided in [CMW/C/AZE/FCO/3](#), paragraphs 57 to 60.

#### **Committee's evaluation**

[B]: Paragraph 62 (a) and (b)

The Committee welcomes the information provided by the State Party on activities conducted to raise awareness about the regularization procedures available for migrant workers in an irregular situation and members of their families. Nonetheless, it remains concerned at reports of high numbers of migrant workers in an irregular situation and members of their families in the State Party, allegedly due to promises of engaging in labour activity made by tourism companies abroad. The Committee encourages the State Party to take measures to fully implement its recommendation to 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. The Committee considers that the recommendation has been partially implemented.

[F]: Paragraph 62 (c)

The Committee encourages the State Party to provide information in its next periodic report about the procedures for the regularization of the situation of migrant workers in an irregular situation and members of their families.

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