





**Organization for Security and Co-operation in Europe**

**OSCE Office in Baku**

**NEEDS ASSESSMENT REPORT**

**Anti-trafficking response in Republic of Azerbaijan:  
Assistance and services available to  
victims of trafficking and forced labour**

**June 2012**

Published by the OSCE Office in Baku

© 2012 OSCE Office in Baku

Copyright: “All rights reserved. The contents of this publication may be freely used and copied for educational and other non-commercial purposes, provided that any such reproduction is accompanied by an acknowledgement of the OSCE Office in Baku as the source.”

This publication/report was made possible by the generous support of the American people through the United States Agency for International Development (USAID). The author’s views expressed in this publication do not necessarily reflect the views of USAID or the United States Government.

## TABLE OF CONTENTS

### LIST OF ABBREVIATIONS

### ACKNOWLEDGEMENTS

<b>I.</b>	<b>EXECUTIVE SUMMARY.....</b>	<b>1</b>
<b>II.</b>	<b>INTRODUCTION. ....</b>	<b>3</b>
	<b>A. Objectives of Assessment.....</b>	<b>3</b>
	<b>B. Overview ....</b>	<b>3</b>
<b>III.</b>	<b>BACKGROUND ...</b>	<b>4</b>
	<b>A. International commitments and legal obligations on victim assistance and protection.....</b>	<b>4</b>
	<b>1. OSCE Commitments .....</b>	<b>4</b>
	<b>2. Related international legal obligations .....</b>	<b>5</b>
	<b>B. Trafficking and Forced Labour: Definitions, rights and special concerns.....</b>	<b>6</b>
	<b>1. Definitions.....</b>	<b>6</b>
	<b>2. Forced labour as a form of trafficking.....</b>	<b>8</b>
	<b>3. Child victims of trafficking .....</b>	<b>9</b>
	<b>C. Domestic legislation and policy documents on victim assistance.....</b>	<b>10</b>
<b>IV.</b>	<b>METHODOLOGY .....</b>	<b>11</b>
<b>V.</b>	<b>FINDINGS AND ANALYSIS.....</b>	<b>12</b>
	<b>A. Co-ordination: Role of the National Co-ordinator and the Inter-agency Committee.. ..</b>	<b>12</b>
	<b>B. The role of civil society .....</b>	<b>14</b>
	<b>C. Assistance... ..</b>	<b>15</b>
	<b>1. Regulating victim assistance in domestic legislation .....</b>	<b>15</b>
	<b>2. Types of assistance available to victims .....</b>	<b>15</b>
	<b>3. Access to information about victims' rights .....</b>	<b>24</b>
	<b>4. Non-criminalization of victims and victim right to seek remedy .....</b>	<b>26</b>
	<b>5. Protection of victims and their families from retaliation or intimidation in criminal proceedings .....</b>	<b>27</b>
	<b>6. Data protection and victim's privacy .....</b>	<b>29</b>
	<b>7. Reflection period.....</b>	<b>30</b>
	<b>8. Temporary residence .....</b>	<b>30</b>
	<b>9. Return and repatriation .....</b>	<b>31</b>
<b>VI.</b>	<b>RECOMMENDATIONS FOR THE REPUBLIC OF AZERBAIJAN .....</b>	<b>33</b>

<b>A.</b>	<b>Co-ordination and co-operation .....</b>	<b>33</b>
<b>B.</b>	<b>Access to assistance .....</b>	<b>34</b>
<b>C.</b>	<b>Assistance and protection.....</b>	<b>37</b>

<b>Annex 1. Good Practices of the OSCE participating States on co-ordination of victim assistance (Romania, The Netherlands and Serbia)</b>	<b>39</b>
---	-----------

<b>Annex 2. List of interviewed agencies and organizations</b>	<b>42</b>
--	-----------

<b>Annex 3. List of reviewed documents</b>	<b>43</b>
--	-----------

## LIST OF ABBREVIATIONS

<b>ACU</b>	<b>Azerbaijan Children Union</b>
<b>AMC</b>	<b>Azerbaijan Migration Centre</b>
<b>AZN</b>	Azerbaijani Manat, the value of which is tied to the US dollar at the rate of 1AZN = USD\$0.80
<b>Clean World</b>	<b>Clean World Public Union</b>
<b>CoE</b>	Council of Europe
<b>CoE THB Convention</b>	Council of Europe Convention on Action against Trafficking in Human Beings
<b>CoM</b>	Committee of Ministers of the Republic of Azerbaijan
<b>CRC</b>	United Nations Convention on Rights of the Child
<b>Fund</b>	Assistance Fund to the Victims of Human Trafficking of Republic of Azerbaijan
<b>ILO</b>	International Labour Organisation
<b>IOM</b>	International Organisation for Migration
<b>MoEd</b>	Ministry of Education of Republic of Azerbaijan
<b>MoH</b>	Ministry of Health of Republic of Azerbaijan
<b>MIA</b>	Ministry of Internal Affairs of Republic of Azerbaijan
<b>MoJ</b>	Ministry of Justice of Republic of Azerbaijan
<b>MoLSP</b>	Ministry of Labour and Social Protection of the Population of the Republic of Azerbaijan
<b>NGO</b>	Non-Governmental organisation

<b>NRM</b>	National Referral Mechanism
<b>ODIHR</b>	OSCE Office for Democratic Institutions and Human Rights
<b>OSCE</b>	Organisation for Security and Co-operation in Europe
<b>OSCE Action Plan</b>	OSCE Action Plan to Combat Trafficking in Human Beings
<b>SCWFC</b>	State Committee on Family, Women and Children Problems of Republic of Azerbaijan
<b>THB</b>	Trafficking in human beings
<b>THB Law</b>	Law of the Republic of Azerbaijan on Trafficking in Persons
<b>Trafficking</b>	In this document refers to the concept of trafficking in human beings
<b>UN</b>	United Nations
<b>UN Global Action Plan</b>	United Nations Global Action Plan to Combat Trafficking in Persons (2010)
<b>UNTOCC Anti-Trafficking Protocol</b>	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the United Nations Convention Against Transnational Organised Crime

## **ACKNOWLEDGEMENTS**

The OSCE Office in Baku would like to thank all of the Republic of Azerbaijan's Government officials and civil society representatives who participated in this assessment for their detailed contributions. In particular, the Office thanks the Ministry of Internal Affairs, the Ministry of Labour and Social Protection and the Ministry of Health, the State Committee on Family, Women and Children Problems, the Azerbaijan Migration Centre, Clean World Public Union, the Azerbaijan Children Union and the International Organization for Migration.

These organizations' joint efforts in addressing trafficking in human beings and forced labour have consistently raised the capacity of the Republic of Azerbaijan towards increased compliance with OSCE comments and related international obligations for combating trafficking in human beings and forced labour. The OSCE Office in Baku is honoured to have excellent co-operation with all these actors.

Further, the Office is particularly grateful to the U.S. Agency for International Development (USAID) for funding this assessment. In addition, the Office thanks Ms. Tarana Bagirova, Ms. Alina Brasoveanu and Mr. Madis Vainomaa for their contributions to the assessment and to drafting the report.

May this report contribute to strengthening the Republic of Azerbaijan's comprehensive response to trafficking in human beings and forced labour, and most importantly to assisting the victims of these modern day forms of slavery to rebuild their lives.

Sincerely,

Ambassador Koray Targay  
Head of OSCE Office in Baku



## I. EXECUTIVE SUMMARY

In an effort to support the best interests of the Government of the Republic of Azerbaijan in meeting its OSCE Commitments and related international obligations, the OSCE Office in Baku (the Office) conducted two assessments of Azerbaijan's needs related to trafficking in humans and forced labour on issues of: (1) identification and investigation, and (2) assistance and services available to victims. This is the report of the second needs assessment.

The Office conducted the assessment, including the review and analysis of the assistance and services available to victims of trafficking and forced labour in Azerbaijan, with the objectives of: identifying gaps and obstacles preventing provision of effective assistance to victims, and of seeking opportunities for improving these aspects of assistance. The review of legislation and practices included housing, social, medical, psychosocial, legal, physical safety and protection, and reintegration assistance services available in Baku, the capital city of the Republic of Azerbaijan.

Azerbaijan's world record-setting levels of exponential economic growth in the energy sector over the past decade make the country more attractive than ever to organized crime circuits looking to tap into the new money pipelines. However, gaps in regulatory mechanisms, including victim assistance and most particularly witness protection could jeopardize Azerbaijan's efforts from successfully securing witness testimony needed for effective prosecution of traffickers. Correspondingly, without proportional legal penalties as a source of disincentive, Azerbaijan appears to be at grave risk of becoming a magnet for these kinds of crimes. In addition to causing horrendous harm to victims, trafficking in human beings and forced labour are known for funding myriad transnational threats related to organized crime and terrorism, which constitute some of the most challenging and costly national security threats of this century so far.

In summary, during the assessment process, the Office developed thirty-five recommendations for improvement within eight priority areas where potential opportunities for making more progress on victim assistance appear to exist.

(1) The State system is identifying and assisting mainly victims who have been trafficked for purposes of sexual exploitation; and so far have identified few victims of trafficking for labour exploitation. At the same time, civil society organisations claim that labour exploitation is a growing problem because of an influx of migrant workers due to improving economic situation in Azerbaijan.

(2) In addition, the State has not yet recognised the problem and vulnerability to trafficking of certain populations, including street children, and legally invisible persons i.e. those without any kind of identification documents. These actual and potential victims as well as those identified by civil society organizations have no access to State shelter and some other assistance services.

(3) The OSCE has received numerous comments from State officials and civil society regarding the efficiency gap of the State post-shelter Victim Assistance Centre due to lack of adequate

institutional support from the Ministry of Labour and Social Protection that is the institution responsible for its activity. The Victim Assistance Centre also seems to duplicate the services already offered by the State shelter instead of focusing on the comprehensive victim reintegration system, including providing social halfway housing, access to education and labour market.

(4) Legal assistance for victims is available, however only through civil society organizations, that are dependant upon donor funding. Thus, legal assistance for victims is at risk of disappearing in the event that donors change priorities.

(5) Witness protection measures during criminal proceedings are not available or not used, which could potentially lead to the re-traumatisation of trafficked persons and related decisions to withdraw their complaints against perpetrators. Successful prosecution of trafficking and forced labour requires effective witness testimony.

(6) The State does not involve regularly and continuously civil society organisations into the professional discussion and co-ordination of its anti-trafficking response, despite the fact that civil society provides many useful assistance services to victims of trafficking and forced labour.

(7) Officials of several Government agencies need additional skills. These agencies include Detention Centre and local level police officers of the Ministry of Internal Affairs, State shelter, State Migration Service, Employment Inspection, judges, prosecutors and defence lawyers.

(8) Civil society organizations need increased skills in daily organisational and financial management.

Depending upon the response of the Government of Azerbaijan to this assessment report, the OSCE Office in Baku is prepared to offer assistance to address improvements in each of the eight areas identified above, among others.

## **II. INTRODUCTION**

In late 2011 and early 2012, the OSCE Office in Baku conducted two assessments of Azerbaijan's needs on its capacity to address trafficking in humans and forced labour. The first report addresses investigation and prosecution of trafficking in human beings and forced labour for use by the Government of the Republic of Azerbaijan. This is the second report, which addresses the assistance and services available to victims of trafficking in human beings and forced labour in Azerbaijan for use by both Government and civil society service providers.

### **A. Objectives of the Assessment**

The Office conducted the assessment, including the review and analysis of the assistance and services available to victims of trafficking and forced labour in Azerbaijan, with the objectives of: identifying gaps and obstacles preventing provision of effective assistance to victims, and of seeking opportunities for improving these aspects of assistance.<sup>1</sup>

### **B. Overview**

The Republic of Azerbaijan has international political commitments and binding legal obligations, as well as domestic legislation and policy for addressing trafficking in human beings and forced labour, including comprehensive victim assistance. In the Background section, this report elaborates the terms of these requirements, and clarifies for practical purposes the definitions and minimum standards needed for an OSCE participating State's compliance from the perspective of assistance provided to presumed and potential victims. The Methodology section outlines the information collection methods that OSCE used in reviewing Azerbaijan's current practices in providing comprehensive assistance to victims of trafficking and forced labour. The review includes housing, social, medical, psychosocial, legal, physical safety and protection, and reintegration assistance services available in Baku, the capital city of the Republic of Azerbaijan; with a focus on seeking opportunities for improving these aspects of assistance. The Findings and Analysis section of the report details the data collected about Azerbaijan's current practices, in comparison to the minimum standards described in the Background section. The Recommendations section identifies opportunities for improvement that would enable Azerbaijan to reach greater compliance with its political commitments and legal obligations regarding the provision of comprehensive assistance to victims of trafficking and forced labour. Annex 1 contains examples of good practices from other OSCE participating States to provide further clarification.

---

<sup>1</sup> References to Azerbaijan throughout this document refer to the Republic of Azerbaijan.

### III. BACKGROUND

#### A. International commitments and legal obligations on victim assistance and protection

##### 1. OSCE commitments

*OSCE agreement by consensus.* As a participating State of the OSCE, Azerbaijan has agreed to implement political commitments adopted by the Organisation with respect to trafficking and forced labour.<sup>2</sup> Most notably all OSCE participating States have agreed by consensus that the implementation of the OSCE Action Plan to Combat Trafficking in Human Beings of July 2003 would contribute positively to securing comprehensive regional security.<sup>3</sup>

*OSCE Action Plan to Combat Trafficking in Human Beings.* The Action Plan is a comprehensive toolkit to assist the participating States through a series of recommendations, in the implementation of their political commitments on trafficking. It addresses trafficking comprehensively and contains numerous recommendations for “multi-dimensional” action to protect trafficked victims, prevent trafficking, criminalise and prosecute the perpetrators. For example, the Action Plan is effective in addressing all aspects of trafficking equally with recommendations relevant to issues of human rights protection, social and economic development, criminal justice and the rule of law. Addendum of 2005 *Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance* is a supplement to the Action Plan.<sup>4</sup> In addition, the Action Plan includes recommendations relevant to the establishment of a National Referral Mechanism<sup>5</sup> and refers to the ODIHR’s Handbook on National Referral

---

<sup>2</sup> Azerbaijan joined the OSCE as a participating State in January 1992.

<sup>3</sup> OSCE Permanent Council Decision No. 557, *OSCE Action Plan to Combat Trafficking in Human Beings*, PC.DEC/557, July 2003. Text available at: <http://www.osce.org/pc/42708>.

<sup>4</sup> OSCE Permanent Council Decision No. 685, *Addendum to the OSCE Action Plan to Combat Trafficking in Human Beings: Addressing the special needs of child victims of trafficking for protection and assistance*, PC.DEC/685, July 2005.

<sup>5</sup> OSCE Action Plan, Chapter V, s.3.1. The Action Plan recommends that:

Victims of trafficking are not subject to criminal proceedings as a result of having been trafficked (chapter III, s.1.8);  
States take measures to provide effective protection from retaliation or intimidation for witnesses in criminal proceedings and for their relatives and other persons close to them (chapter III, s.4.1);  
States ensure data protection and the victim’s right to privacy (chapter III, s.4.3);  
States provide legal counselling for victims when they are in the process of deciding whether or not to testify in court (chapter III, s.4.5);  
States permit NGO’s to support victims in court hearings (chapter III, s.4.6);  
States establish telephone ‘hotlines’ to act as an independent source of advice and guidance and a first point of contact for referral as well as to facilitate the anonymous reporting of cases (chapter IV, s.4.11);  
States adopt legislation which provides a legal basis for rendering assistance and protection (chapter V, s.1.1);  
States provide guidance to facilitate the accurate identification and treatment of trafficking victims (Chapter V, s.3.2);  
States establish shelters to meet the needs of trafficked persons and that access to shelters is for all victims of trafficking regardless of their readiness to co-operate with authorities in investigations (Chapter V, s.4);  
States develop social assistance and integration programmes including legal counselling, medical and psychological assistance and access to healthcare (Chapter V, s.6);  
States assist victims in voluntary repatriation with due regard for their safety and that of their families (Chapter V, s.7.1);  
States provide a reflection period and temporary or permanent residence permits (Chapter V, s.8); and  
States ensure that the confiscated proceeds of trafficking are used for the benefit of victims of trafficking and consider establishing a compensation fund for trafficked victims (Chapter III, s.1.5).

Mechanism (NRM) as a useful source of advice and information regarding the role of NRMs.

*The NRM Handbook*<sup>6</sup> suggests roles for Governmental actors and civil society, highlights key issues in the operation of an NRM, and describes the types of programmes and services that should ideally be available to trafficked persons. It provides examples of what has worked effectively in practice, based on the experience of the authors and a broad range of experts consulted on anti-trafficking structures and responses. The experiences of Germany, Serbia, Montenegro and Czech Republic were particularly relevant in developing the Handbook and examples from other countries are included as well. It provides guidance on how participating States can implement in practice many of the recommendations in the Action Plan for victim protection and assistance, including detailed information on key aspects of referral, support, assistance and protection, compensation, privacy, return and reintegration.

## **2. Related international legal obligations**

Regarding *trafficking in persons*, Azerbaijan is party to the UN Transnational Organised Crime Convention and Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (*UNTOCC Anti-Trafficking Protocol*).<sup>7</sup> This convention and its protocols include mandatory obligations to criminalise, investigate and prosecute trafficking but the standards with respect to the protection of and assistance to victims are general.

In addition, Azerbaijan ratified the Council of Europe (CoE) Convention on Action Against Trafficking on 23 June 2010.<sup>8</sup> This Convention contains provisions on the protection of trafficked victims and is the first instrument to acknowledge that correct identification is essential to the provision of protection and assistance and that the failure to identify victims will likely lead to the denial of rights. It also recognises the need to provide basic assistance during the victim identification process, even when the identification of victims is still only provisional, and regardless of whether or not the victims are willing and/or able to testify as witnesses. Importantly it strengthens provisions relating to reflection periods and temporary residency permits for presumed trafficked persons.

In relation to the *prohibition of slavery and forced labour*, Azerbaijan is party to the most significant international instruments including the UN slavery conventions,<sup>9</sup> the ILO

---

<sup>6</sup> *National Referral Mechanism: Joining Efforts to Protect the Rights of Trafficked Persons, A Practical Handbook*, OSCE/ODIHR, 2004 at <http://www.osce.org/node/13967>.

<sup>7</sup> *United Nations Convention against Transnational Organised Crime*, Adopted by resolution [A/RES/55/25](#) of 15 November 2000 at the fifty-fifth session of the General Assembly of the United Nations, Entry into Force: September 2003; [Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime](#), adopted by resolution [A/RES/55/25](#) of 15 November 2000 at the fifty-fifth session of the General Assembly of the United Nations, Entry into force: December 2003 – ratified by Azerbaijan on 30 October 2003.

<sup>8</sup> *The Council of Europe Convention on Action against Trafficking in Human Beings* (CETS N 197), Adopted by the Committee of Ministers on 3 May 2005. For further details and update see [www.coe.int/trafficking](http://www.coe.int/trafficking).

<sup>9</sup> *Slavery Convention*, Signed at Geneva on 25 September 1926, Entry into force: March 1927, UN, ST/HR/; *Protocol amending the Slavery Convention*, Signed at Geneva on 25 September 1926, Approved by General Assembly resolution 794 (VIII) of 23 October 1953, Entry into force: December 1953; *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and*

Conventions numbers. 29 and 105 prohibiting forced labour,<sup>10</sup> and ILO Convention 182 outlawing the worst forms of child labour.<sup>11</sup>

In terms of *general rights protection*, Azerbaijan is party to the European Convention on Human Rights, which is indirectly relevant to the protection of victims of trafficking.<sup>12</sup> Azerbaijan is also a party to the UN Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, which include provisions to protect both regular and irregular migrant workers, and is relevant to trafficked victims too.<sup>13</sup> Further, it is party to the 1951 UN Convention Relating to the Status of Refugees and its 1967 Protocol, which obliges it to provide protection to persons fleeing their country because of persecution, which may include trafficked persons.<sup>14</sup> The Convention also imposes an obligation on States not to expel or return ('refouler') a refugee to a situation of serious risk, which may be relevant in asylum proceedings of trafficked persons.<sup>15</sup> However, Azerbaijan is not a party to the ILO Convention 97 on Migrant Workers or to ILO Convention 143, both of which address the State's obligation to protect migrant worker rights in more detail than the UN Convention.

With regard to *child rights and rights of persons with disability*, the Republic of Azerbaijan joined the UN Convention on the Rights of the Child on 21 July 1992, and later ratified the Convention's Optional Protocols. The Republic of Azerbaijan also joined the Convention on the Rights of Persons with Disabilities on 2 October 2008.

---

*Institutions and Practices Similar to Slavery*, Adopted by a Conference of Plenipotentiaries convened by Economic and Social Council resolution 608(XXI) of 30 April 1956 and done at Geneva on 7 September 1956, Entry into force: April 1957. Accession by Azerbaijan to all three treaties on 16 August 1996.

<sup>10</sup> *Convention concerning Forced or Compulsory Labour (C029)*, Adopted on 28 June 1930 by the General Conference of the International Labour Organisation at its fourteenth session, Entry into force May 1932 – ratified by Azerbaijan on 19 May 1992; *Convention concerning the Abolition of Forced Labour (C105)*, Adopted on 25 June 1957 by the General Conference of the International Labour Organisation, 40<sup>th</sup> session, Entry into force: January 1959 – ratified by Azerbaijan on 9 August 2000.

<sup>11</sup> *Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (C182)*, Adopted on 17 June 1999 by the General Conference of the International Labour Organization, 87<sup>th</sup> session, Entry into force: November, 2000 – ratified by Azerbaijan on 30 March 2004.

<sup>12</sup> *Convention for the Protection of Human Rights and Fundamental Freedoms*, 213 U.N.T.S. 222, Entry into force September, 1953, as amended by Protocols Nos 3, 5, 8, and 11 which entered into force in September 1970, December 1971, January 1990, and November 1998 respectively – ratified by Azerbaijan on 15 April 2002. The most relevant articles in relation to trafficking include Article 2, right to life, Article 3, prevention of torture, inhuman or degrading punishment, Article 4, prohibition of slavery, Article 5, right to liberty, Article 6, right to a fair trial including in certain circumstances the right to legal assistance, Article 8, right to respect for private and family life and Article 14, prohibition of discrimination.

<sup>13</sup> *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, Adopted by General Assembly resolution 45/158 of 18 December 1990. Accession by Azerbaijan on 11 January 1999.

<sup>14</sup> *Convention relating to the Status of Refugees*, Adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950, entry into force April 1954. *The Protocol relating to the Status of Refugees*, Approved by the Economic and Social Council resolution 1186 (XLI) of 18 November 1966, taken note of by the General Assembly in resolution 2198 (XXI) of 16 December 1966, Entry into force in October 1967. Accession by Azerbaijan on 12 February 1993.

<sup>15</sup> *Convention relating to the Status of Refugees* (1951), Art. 33.

## **B. Trafficking and Forced Labour: Definitions, rights and special concerns**

### **1. Definitions.**

*Definition of trafficking.* The United Nations Convention Against Transnational Organized Crime (UNTOCC) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (UN Anti-Trafficking Protocol),<sup>16</sup> defines the criminal offence of *trafficking* according to three elements:

(1) The *act*: recruitment *or* transportation *or* transfer *or* harbouring *or* receipt of persons,

AND

(2) The *means* used: threat or use of force *or* forms of coercion *or* abduction *or* fraud *or* deception *or* abuse of power *or* abuse of a position of vulnerability *or* the giving and receiving of payments or benefits to achieve the consent of a person who has control over another person,

AND

(3) The *exploitative purpose*: at minimum the exploitation of the prostitution of others *or* other similar forms of sexual exploitation *or* forced labour or services *or* slavery or practices *or* servitude *or* the removal of organs.<sup>17</sup>

According to the protocol, in cases when any of the *means* listed above are used, or if the victim is under 18 years of age, the victim's consent to the exploitation is irrelevant. Further, while trafficking is a criminal offense, attempts to commit trafficking, being an accomplice to or organizing others to commit trafficking are also criminal offenses.<sup>18</sup>

*Definition of forced labour.* The International Labour Organization's (ILO) *Forced Labour Convention*, which the Republic of Azerbaijan ratified on 19 May 1992, defines *forced labour* as "all work or services which is exacted from any person under the menace of any penalty and for

---

<sup>16</sup> Azerbaijan ratified the *United Nations Convention Against Transnational Organized Crime Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* on 30 October 2003, with the following declaration: "The Republic of Azerbaijan declares that it is unable to guarantee the application of the provisions of the Protocol in the territories occupied by the Republic of Armenia until these territories are liberated from that occupation." From [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12-a&chapter=18&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en)

<sup>17</sup> *United Nations Convention Against Transnational Organized Crime Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, Art. 3, from

<http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>.

<sup>18</sup> *UN Anti-Trafficking Protocol*, Art. 5.

which the said person has not offered himself voluntarily.”<sup>19</sup> By ratifying the Convention, States agree to enforce key rights for victims of labour exploitation including migrant workers.<sup>20</sup>

## **2. Forced labour as a form of trafficking**

While many OSCE participating States have documented and developed comprehensive response to trafficking for sexual exploitation, trafficking for the purposes of labour exploitation remains largely invisible.<sup>21</sup> The issue of irregular migrant workers who become victims of trafficking receive even less attention, although poverty and lack of job opportunities in home countries are the most common factors leading to migration throughout the OSCE region. The combination of the increasing demand for work in some OSCE States, and lacking or ineffective regulation of working conditions in the informal market, leads to both the increase of irregular migration and creation of corresponding conditions that are ripe for trafficking persons for labour exploitation. For example, within the OSCE participating States trafficking for labour exploitation is most typical in the service sectors, which are dependant upon unskilled labour, including agriculture and food processing, construction, small manufacturing, maintenance, domestic work and restaurants.

In 2007, ODIHR raised issues of migrant workers trafficked for labour exploitation in 2007 when it presented to the OSCE participating States the *Discussion Paper on Standards and New Developments in Labour Trafficking*.<sup>22</sup> This paper served as a basis for the Ministerial Decision on Labour Trafficking for Labour Exploitation adopted by the OSCE participating States at the Ministerial Council in Madrid on 30 November 2007.<sup>23</sup> Following this, the OSCE Special Representative and Co-ordinator for Countering Trafficking in Human Beings (SR/CTHB) took the initiative of raising the awareness of the OSCE participating States to the issue of trafficking for labour exploitation by covering this topic in her Annual Report for 2011 “Trafficking for Labour exploitation.”<sup>24</sup>

---

<sup>19</sup> *International Labour Organization Forced Labour Convention*, Art. 2 from <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C029>.

<sup>20</sup> ODIHR *Discussion Paper on standards and new developments in labour trafficking* Warsaw, August 2007, pp. 10-11. The paper is available at the ODIHR web site: <http://www.osce.org/odihr/28335> The OSCE/ODIHR maintains that the definition of trafficking has only recently evolved to encompass labour trafficking. Thus, measures to combat trafficking that the Palermo Protocol and Council of Europe (CoE) Anti-trafficking Convention adopted are based predominantly on practice and experience responding to trafficking for the purpose of sexual exploitation. The paper identifies eleven key rights that OSCE/ODIHR advises countries to provide to workers, including migrant labour, including: (a) The right not to be discriminated against; (b) The right to a written statement of employment terms; (c) The right to a pay statement; (d) The right to a national minimum wage; (e) The right not to have unlawful deductions from wages; (f) The right to working time protection; (g) The right to health and safety protection; (h) The right to complain that dismissals or other employer decisions are unfair; (i) The right to participate in union activities; (j) The right to change employer; and (k) The right to social security.

<sup>21</sup> In a survey conducted by the OSCE Special Representative on Trafficking in Human Beings in 2005, the participating States considered trafficking as a problem of forced labour least frequently. (See Background Paper *A summary of Challenges Facing Legal Responses to Human Trafficking for Labour Exploitation in the OSCE Region* for the Alliance Against Trafficking in Persons High Level Conference ‘Human Trafficking for Labour Exploitation/Forced and Bonded Labour, 16-17 November 2006 at 2.)

<sup>22</sup> The discussion paper is available at <http://www.osce.org/odihr/28335>

<sup>23</sup> OSCE Ministerial Council Decision No. 8/07, 30 November 2007.

<sup>24</sup> *Annual Report of the OSCE Special Representative and Co-ordinator on Combating Trafficking in Human Beings*, 2011. The



The report states, “While the awareness of trafficking for labour exploitation is growing, and almost all countries have law and policy instruments in place against it, one thing stands out. There has been very little criminal law enforcement against trafficking offences, with very few prosecutions and convictions throughout the OSCE region, especially if you compare it with the estimated massive scale of the problem and even with the number of identified trafficking victims.”<sup>25</sup> The report concludes: “detection, identification, support, social inclusion and access to justice for persons trafficked for labour exploitation still need to be significantly improved within and beyond the OSCE region.”<sup>26</sup>

The US Department of State, in its recent *US Trafficking in Persons Reports*, has evaluated Azerbaijan for five years in a row as on the verge of being one of the most risky countries in the world for its anti-trafficking practices.<sup>27</sup> The 2011 and 2012 reports cite the State’s failure to address trafficking for forced labour as one of the key reasons for the continued poor rating. For example, the 2011 report states:

*The Government of Azerbaijan does not fully comply with the minimum standards for the elimination of trafficking. The Government of Azerbaijan has not made sufficient progress in investigating, prosecuting, or convicting labor trafficking offenses or in identifying victims of forced labor; therefore, Azerbaijan is placed on Tier 2 Watch List for a fourth consecutive year.*<sup>28</sup>

In the 2012 report, nearly *all* of the recommendations to Azerbaijan refer directly to forced labour. Specifically, the report recommends that Azerbaijan:

*Strengthen efforts to identify victims of forced labor by improving implementation of the national victim referral mechanism and by training labor inspectors on proactive victim identification techniques; demonstrate and report on efforts to vigorously investigate, prosecute, convict, and criminally punish government officials complicit in both sex and labor trafficking; improve quality of labor inspections at construction sites in order to identify victims of forced labor; consider amending legislation governing labor migration to require work permits for migrant construction workers from all countries; enhance victim protection during court proceedings;*

---

report is available at <http://www.osce.org/cthb/86293>

<sup>25</sup> *Idem*, p. 6.

<sup>26</sup> *Idem*, p. 50.

<sup>27</sup> In 2012, Azerbaijan remained on the “Tier-2 Watch” list, along with 41 other countries, including Afghanistan, Angola, the Bahamas, Bahrain, Barbados, Belarus, Burma, Burundi, Chad, China, Comoros, Congo (Republic of), Djibouti, Ecuador, The Gambia, Guinea-Bissau, Haiti, Iraq, Jamaica, Kenya, Lebanon, Liberia, Macau, Malawi, Malaysia, Maldives, Mauritania, Micronesia, Namibia, Niger, Russia, Senegal, Seychelles, Sierra Leone, South Sudan, Suriname, Thailand, Turkmenistan, Uzbekistan and Venezuela. This “Tier-2 Watch” rating ranks Azerbaijan behind 128 other Tier 1 and Tier 2 rated countries including some of the most desperately poor countries on earth, Ethiopia, Mali, and Tanzania. The 17 worst, or “Tier 3” countries are those whose governments do not fully comply with the minimum standards and are not making significant efforts to do so. They include Algeria, Central African Republic, Congo (DRC), Cuba, Equatorial Guinea, Eritrea, Iran, Korea (North), Kuwait, Libya, Madagascar, Papua New Guinea, Saudi Arabia, Sudan, Syria, Yemen and Zimbabwe.

<sup>28</sup> According to the US Department of State, Office to Monitor and Combat Trafficking in Persons, *The US Trafficking in Persons Report*, in 2011, Azerbaijan, from <http://www.state.gov/j/tip/rls/tiprpt/2011/164231.htm>.

*send court verdicts to addresses chosen by the victims; enforce the law against passport withholding; increase provision of victim identification and victim sensitivity training to working-level law enforcement officials; and continue efforts to raise public awareness about both sex and labor trafficking.*<sup>29</sup>

### **3. Child victims of trafficking**

A child victim of trafficking is any person trafficked who is under 18 years of age.<sup>30</sup> In cases when the age of the child is uncertain but there are reasons to believe that the victim is a child, the victim shall be treated as a child, and shall be accorded special protection measures pending verification of his/her age.<sup>31</sup> Thus, in accordance with international law, the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation is *trafficking*, whether or not the means identified in the definition of trafficking apply, i.e. threat or use of force, coercion, fraud, deception.<sup>32</sup>

Further, the identification of a child victim is intended to trigger application of certain specific protection measures, the first being the obligation to provide the child with a guardian. Thereafter, the State is obliged to take the necessary steps to establish the child's identity and nationality, and make every effort to locate his/her family when this is in the best interests of the child.<sup>33</sup> The guiding principle for the State that identifies a child as a trafficking victim is to consider at all times the best interests of the child.<sup>34</sup> Therefore, the State must pay special consideration to a child's needs when providing all the assistance services, be it housing, care, education or other.<sup>35</sup> Notably, the anti-trafficking legislation of Republic of Azerbaijan clearly

---

<sup>29</sup> According to the US Department of State, Office to Monitor and Combat Trafficking in Persons, *The US Trafficking in Persons Report*, in 2012, Azerbaijan, from <http://www.state.gov/j/tip/rls/tiprpt/2012/index.htm>.

<sup>30</sup> *UNTOCC Anti-trafficking Protocol* Art. 3; CRC Art. 1; CoE Convention Art. 4.

<sup>31</sup> CRC General Comment 06 c.31, CoE Convention Art. 10(3).

<sup>32</sup> CoE Convention Art 4(c), Palermo Protocol, Art. 3.

<sup>33</sup> CoE Convention Art. 10(4). The CoE Convention also foresees special protection measures regarding children to prevent media and others from disclosing their identity nonetheless allowing information to be released about child victims' identity where exceptional circumstances justify doing so in order to trace relatives or otherwise secure the wellbeing and protection of the child (Art. 11(2)). The Parties are free to decide what measures to take to prevent the identity, or details allowing identification, of child trafficking victims from being made publicly known. For that purpose, the law of some countries lays down criminal penalties for making publicly known any information that might reveal the identity of victims of some offences. (Explanatory Note to the CoE Convention, para. 143).

<sup>34</sup> CoE Convention Art. 20(3), CRC Art.3(1), also the 2010 UN Global Plan of Action to Combat Trafficking in Persons, para. 37 (A/Res/64/293, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/479/41/PDF/N0947941.pdf?OpenElement>).

<sup>35</sup> See *OSCE Action Plan to Combat Trafficking in Human Beings* (2003), Art. 10; Also 2005 *Addendum to the OSCE Action Plan: Addressing the Special Needs of Child Victims of Trafficking for Protection and Assistance* (PC.DEC/685 of 7 July 2005), which among others recommends the OSCE Participating States to establish policies, also referral and co-ordination mechanisms, as well research and data gathering, to prevent child trafficking, provide and improve assistance measures for children. See also the 2002 OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking, particularly Guideline 8 (E/2002/68/Add.1, <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>). Particularly useful are the 2006 UNICEF Guidelines on the Protection of Child Victims of Trafficking, setting out standards for good practice in relation to protection and assistance to trafficked children. Preceding these in 2003 were the UNICEF *Guidelines for Protection of the Rights of Child Victims of Trafficking in South Eastern Europe*, and the minimum standards therein informed the Council of Europe Convention on Action Against Trafficking in Human Beings, and the Addendum to the OSCE Action Plan to Combat Trafficking in Human

recognizes this principle.<sup>36</sup>

### **C. Domestic legislation and policy documents on victim assistance**

Below is the list of legal and policy documents the Government of Azerbaijan developed to combat trafficking in human beings and assist trafficked persons:

- (1) National Action Plan for Combating Trafficking in Human Beings for 2009-2013 (adopted on 6 February 2009);
- (2) The Law on Combating Trafficking in Persons, adopted in June 2005 (adopted on 29 June 2005);
- (3) Rules on National Referral Mechanisms for Victims of Trafficking, approved by the Decision No 123 of the Cabinet of Ministers of Azerbaijan, 11 August 2009;
- (4) Rules on the Identification of Victims of Trafficking in Human Beings (Indicators), approved by the Decision No. 131 of the Cabinet of Ministers of Azerbaijan, 3 September 2009;
- (5) Rules on Referring Victims of Trafficking to the Special Police Agency, approved by the Decision 21 of the Cabinet of Ministers of Azerbaijan, 1 February 2008;
- (6) Rules on Establishing, Financing, Operating, and Supervision of Special Institutions for Victims of Human Trafficking, approved by the Decision No. 203 of the Cabinet of Ministers of Azerbaijan, 9 November 2005;
- (7) Regulation on Social Rehabilitation of Victims of Trafficking in Human Beings, approved by the Decision No. 62 of the Cabinet of Ministers of Azerbaijan, 6 March 2006;
- (8) Rules on shelters for children victims of trafficking in human beings approved by the Decision No. 180 of the Cabinet of Ministers of Azerbaijan, 19 November 2009;
- (9) Regulation on Assistance Fund for Victims of Trafficking in Human Beings, approved by the Decision No. 68 of the Cabinet of Ministers of Azerbaijan, 12 January 2006;
- (10) Rules on determining the allowance paid to victims of trafficking in human beings during the reintegration Period, approved by the Decision No. 152 of the Cabinet of Ministers of Azerbaijan, 17 June 2006.
- (11) The Decision of the Ministry of Internal Affairs on Internal Rules for Operation of Hotline, 27 October 2007.

---

Beings at <http://www.legislationline.org/download/action/download/id/1445/file/4522acd674ece2d3f441d441e667.pdf>). Also, see Draft basic principles on the right to an effective remedy for trafficked persons, Section 3, Submitted by the UN Special Rapporteur on Trafficking in Persons together with her 2011 Annual Report (A/66/283, at <http://www.ohchr.org/Documents/Issues/Trafficking/A-66-283.pdf>).

<sup>36</sup> *Law on Trafficking in Persons of the Republic of Azerbaijan*, Art. 16.1; Regulations for Accommodation and Maintenance of Child Victims of Human Trafficking in Shelter (Res. no. 180 of the Cabinet of Ministers of 19 November 2009), Sections 2.1-2.3.

#### IV. METHODOLOGY

The Office conducted the assessment, including the review and analysis of the assistance and services available to victims of trafficking and forced labour in Azerbaijan, with the objectives of: identifying gaps and obstacles preventing provision of effective assistance to victims, and of seeking opportunities for improving these aspects of assistance. Specifically, the Office reviewed victim assistance currently available related to the housing, social, medical, psychosocial, legal, physical safety and protection, and reintegration assistance services available in Baku, the capital city of the Republic of Azerbaijan; with a focus on seeking opportunities for improving these aspects of assistance.

This assessment's<sup>37</sup> findings are based on:

- (a) the Office's observations of current practices in Azerbaijan;
- (b) interviews with Government, civil society involved in combating human trafficking and forced labour and tasked to provide services to victims of human trafficking and forced labour under the National Action Plan (NAP); (see the list of interviewed agencies in Annex 2) and
- (c) a desk review of relevant documentation listed in the bibliography at the end of this document. (See the List of reviewed policy documents in Annex 3).

Separate meetings with the MIA's National Co-ordinator for Combating Trafficking, or with the MIA's Anti-trafficking Department did not materialise. Therefore, the information contained in paragraph A of the Chapter V on Findings and Analysis are based on the responses of the Anti-Trafficking Unit of the Ministry of Internal Affairs to the Office's written inquiry.

---

<sup>37</sup> This assessment report does not address the identification of victims. An earlier assessment report on identification and investigation addresses this issue.

## V. FINDINGS AND ANALYSIS

Azerbaijan has solid and elaborate legislation in place regulating the issue of trafficking in human beings. It has a separate law that addresses human trafficking, and numerous sub-statutory regulations dealing with particular matters, as well as a National Strategy and Action Plan for combating trafficking. The Government developed most of the legislation and institution-building initiatives from 2005 to 2009, before and during the major economic gains in the energy sector, when Azerbaijan still had the characteristics of a country of origin and transit.

Commendably, during that period Azerbaijan formally established a National Referral Mechanism, and set up an Interagency Committee for its implementation under the overall guidance of the National Co-ordinator.<sup>38</sup> Azerbaijan has also set up a compensation fund for victims, and has formally adopted indicators for identifying victims. The Government of Azerbaijan assumed an active role in the essential functions of the National Referral Mechanism in its efforts to combat trafficking and assist victims by opening a shelter, a telephone hotline and a post-shelter assistance centre.

Since 2010, impressively, the annual number of victims of trafficking and forced labour the Government identified appears to have declined.<sup>39</sup> The authorities in Azerbaijan credit this decline in the number of victims to the more effective functioning of its anti-trafficking mechanisms and public awareness campaigns.

### A. Co-ordination: Role of the National Co-ordinator and the Inter-agency Committee

*A National Referral Mechanism (NRM) is a co-operative framework through which state actors fulfil their obligations to protect and promote the human rights of trafficked persons, co-ordinating their efforts in a strategic partnership with civil society. The basic aims of an NRM are to ensure that the human rights of trafficked persons are respected and to provide an effective way to refer victims of trafficking to services. In addition, NRMs can work to help improve national policy and procedures on a broad range of victim-related issues such as residence and repatriation regulations, victim compensation and witness protection. NRMs can establish national plans of action and can set benchmarks to assess whether goals are being met. The structure of an NRM will vary in each country; however, NRMs should be designed to formalize co-operation among government agencies and non-governmental groups dealing with trafficked persons. An NRM usually includes a national co-ordinator, who is often a high level government official, and a roundtable made up of senior representatives of government agencies and civil society who develop recommendations for national policy and procedures regarding*

---

<sup>38</sup> Specifications for National Referral Mechanism (NRM) establishment, including a national co-ordinator, are elaborated in the findings section of this document on p. 10, from OSCE/ODIHR, *National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons, A Practical Handbook*, OSCE/ODIHR, 2004 at <http://www.osce.org/node/13967>.

<sup>39</sup> Official statistics report a decline in trafficking victims from 91 victims identified in 2009, to 34 in 2010 and 29 in 2011.

victims of trafficking. NRMs also often include ad hoc working groups that deal with specific issues relating to victims. NRMs are likely to be most effective if they are founded on a formal co-operation agreement among the participants – for example, a memorandum of understanding – that sets out the specific role and duties of each participant. (NRM Handbook)<sup>40</sup>

ODIHR's *National Referral Mechanism: Joining Efforts to Protect the Rights of Trafficked Persons, A Practical Handbook* (the NRM Handbook),<sup>41</sup> presents theoretical concepts and concrete examples for countries of origin, transit and destination of good practices on how best to identify and protect persons trafficked for the sex or labour industries. Protection of victims, which includes comprehensive victim assistance is particularly important for the destination countries, on whose territory the crimes of and rights violations related to trafficking in human beings and forced labour physically occur. As noted above, the NRM Handbook specifically proposes the establishment of a National Co-ordinator to co-ordinate all the processes.

The Government of Azerbaijan established a National Anti-Trafficking Co-ordinator<sup>42</sup> and an Inter-agency Committee in line with its OSCE commitments and related international legal obligations.<sup>43</sup> The main tasks of the National Co-ordinator are to co-ordinate anti-trafficking activities among actors included in the Anti-Trafficking National Action Plan, build and maintain work relations with all actors, including civil society, and submit annual reports to the Government, Ombudsman and the Parliament.<sup>44</sup>

The Strategy of the National Action Plan further specifies that the National Co-ordinator monitors and assesses the work of the Action Plan participants with the purpose of determining gaps and challenges in anti-trafficking and raising these with relevant institutions.<sup>45</sup> Chapter 6 of the Strategy tasks the National Co-ordinator with organizing meetings with all National Action Plan actors. It is clear that the National Co-ordinator organizes regular meetings with representatives of relevant State ministries and institutions. Since the first meeting, which took place in 2009, the National Co-ordinator hosted four meetings to date. The last meeting took place in December 2011.

## **B. Role of civil society**

*States establish "National Referral Mechanisms (NRM) by creating a co-operative*

---

<sup>40</sup> OSCE/ODIHR, *National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons, A Practical Handbook*, 2004, p. 15 at <http://www.osce.org/node/13967>.

<sup>41</sup> OSCE/ODIHR, *National Referral Mechanism: Joining Efforts to Protect the Rights of Trafficked Persons, A Practical Handbook*, 2004 at <http://www.osce.org/node/13967>.

<sup>42</sup> *Law on Combating Trafficking*, Art. 7. Rules on National referral Mechanisms at 2.1.

<sup>43</sup> Through OSCE Permanent Council Decision No. 557, OSCE Action Plan to Combat Trafficking In Human Beings of 24 July 2003, OSCE participating States agreed to implement the NRM concept outlined in the Chapter 3.1, in accordance with the OSCE/ODIHR NRM Handbook of 2004, at. <http://www.osce.org/pc/42708>.

<sup>44</sup> The THB Law, Art. 7.

<sup>45</sup> *Strategy to the National Action Plan on Combating Trafficking in Human Beings of Azerbaijan*, Chapter 3 para 3.

*framework within which participating States fulfil their obligations to protect and promote the human rights of the victims of THB in co-ordination and strategic partnership with civil society and other actors working in this field.” (OSCE Action Plan)<sup>46</sup>*

Thus, for the benefit of OSCE participating States, the NRM Handbook elaborates a policy principle for developing responses to trafficking in a multi-disciplinary forum, which includes civil society, and particularly the institutionalised co-operation between civil society and law enforcement. Governments and presumed and potential victims benefit significantly, when civil society organizations are included as clearly designated, front-line actors in all anti-trafficking activities, as part of a larger NRM structure co-ordinated by Government.<sup>47</sup>

While the Rules on National Referral Mechanisms provide that the representatives of civil society working in the field of anti-trafficking “*could* be invited to the meetings of the Inter-agency Committee”, according Azerbaijan’s National Action Plan, civil society organizations are not included as implementing partners in the activities addressing trafficking in human beings and forced labour. This omission puts civil society activities on these issues beyond the reach of the National Co-ordinator, who technically has the mandate to co-ordinate all activities to address trafficking in human beings and forced labour. As the THB Law and Strategy provide that the Co-ordinator will also monitor the activities of all actors included in the National Action Plan, if civil society is excluded from the National Action Plan, then no provisions exist for the National Co-ordinator to monitor Azerbaijan’s comprehensive activities for fighting these kinds of crimes. This omission also relieves the National Co-ordinator of any obligation to include civil society organizations in meetings, in co-ordination efforts or policy discussions.

In Azerbaijan, civil society members involved in anti-trafficking activities report that they rarely if ever receive invitations to the meetings of the Inter-agency Committee. A representative of the Ministry of Justice (MoJ) explained that they invite civil society members only when specific topics pertaining to the work of civil society are on the meeting agenda. One civil society representative interviewed for this report that has been involved in anti-trafficking for the past ten years in Azerbaijan mentioned that 2010 was the last time when the Government invited civil society members to a Committee meeting. Another representative of a leading civil society organization that provides legal assistance to victims and potential victims of trafficking mentioned that they have never received an invitation to a Committee meeting.

---

<sup>46</sup> OSCE Action Plan, Chapter v Section 3.1.

<sup>47</sup> “Civil society, as one of the main pillars of democratic development, has a key role in the establishment of successful NRMs. NGOs and other civic actors often bring a vast amount of experience based on their work in traditional fields of human-rights protection and victim assistance. In many countries, they have complemented state support or filled gaps when certain social services are not provided by a state. But most importantly, they have played an active role in the democratization process by providing checks and balances to Government structures, monitoring institution-building processes and reform, and, frequently, advocating for a more thorough fulfilment of international human-rights commitments by the state” from *Handbook on National Referral Mechanism*, OSCE/ODIHR, 2004, page 22.

## C. Assistance

### 1. Regulating victim assistance in domestic legislation

*“... consider the need for adopting legislation which will provide the legal basis for rendering assistance and protection to victims of trafficking, especially during pre-trial investigations and in court proceedings.” (OSCE Action Plan)<sup>48</sup>*

*“Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons...” (UNTOCC Anti-trafficking Protocol)<sup>49</sup>*

*“Each Party shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery.” (CoE Convention)<sup>50</sup>*

Azerbaijan has a solid and elaborate legal basis to ensure that trafficking victims will get the assistance they require. The THB Law prescribes the obligation to provide social rehabilitation programmes for trafficking victims, as well as medical and psychosocial assistance,<sup>51</sup> which several Cabinet of Ministers' decrees on the particular forms of assistance will elaborate further in the sections below. Overall, Azerbaijan's formal establishment of a National Referral Mechanism and related legislation is commendable.<sup>52</sup>

### 2. Types of assistance available to victims

*“Establish... shelters, run by Governmental bodies, NGOs, or other institutions of civil society to meet the needs of trafficked persons; these shelters are to provide safety, access to independent advice and counselling in a language known by the victim, first-hand medical assistance, and an opportunity for reflection delay after the experienced trauma... Developing social assistance and integration programmes, including legal counselling in a language known by the victim, medical and psychological assistance and access to health care, to be made available either in shelters or other relevant institutions.” (OSCE Action Plan, Arts. V(4.1,6.1))*

*“...consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-Governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:*

*(a) Appropriate housing;*

*(b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;*

*(c) Medical, psychological and material assistance; and*

---

<sup>48</sup> OSCE Action Plan, Section V(2.1).

<sup>49</sup> UNTOCC Anti-trafficking Protocol, Art. 6(3).

<sup>50</sup> CoE Convention, Art. 12.1.

<sup>51</sup> THB Law, Arts. 95 and 9.6.

<sup>52</sup> Established by Cabinet of Ministers Decree no.123 dated 11 August 2009. The OSCE Action Plan recommends the creation of a National Referral Mechanism for participating States “Establishing National Referral Mechanisms by creating a co-operative framework within which participating States fulfil their obligations to protect and promote the human rights of the victims of THB in co-ordination and strategic partnership with civil society and other actors working in this field. The OSCE/ODIHR Handbook on Guidelines and Principles to Design and Implement National Referral Mechanisms may serve as a useful source of advice and information regarding the role of NRMs in rendering assistance and protection to victims of THB.” (Art. V(3.1).



(d) *Employment, educational and training opportunities.*” (UNTOCC Anti-trafficking Protocol, Art. 6.3)

“...assistance shall include at least:

(a) *standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance;*

(b) *access to emergency medical treatment;*

(c) *translation and interpretation services, when appropriate;*

(d) *counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand;*

(e) *assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders; and*

(f) *access to education for children.*” (CoE Convention, Art. 12.1)

## ***Shelters***

The THB law explicitly prescribes the establishment of State-run shelters, detailing also the types of assistance services, which the Government must make available to victims while at the shelter. In addition to the housing itself, which has to conform to “acceptable living conditions,” State-run shelters must provide food, medicine, first aid, psychological, social and legal assistance as well as security, telephone and communications.<sup>53</sup> The THB law foresees that the MIA's shelter is an interim solution available for 30 days with the possibility of extending the stay. Although the law does not clearly stipulate a limitation for such extension, in practice there appears to be a limit of a second period of 30 days, making the maximum stay at an adult shelter 60 days.<sup>54</sup> In cases involving children, the period of stay in shelters is 60 days with a possibility to extend.<sup>55</sup>

To date, approximately five shelters for trafficking victims exist in Baku, two within the MIA structure, established pursuant to the THB Law, and at least three more established and managed by civil society organizations.

(1) In 2006, the MIA opened a shelter for adults with a capacity of up to 50 inhabitants. To date, the shelter has accommodated only female victims of trafficking for purposes of sexual exploitation; and has never reached full occupancy.

(2) In 2009, The MIA opened a shelter for children, which has a capacity of up to 25 children. To date, this shelter had housed a total of four children, all in 2009.

In addition to the MIA's shelters, at least three specialized civil society organizations in Baku are

---

<sup>53</sup> *The Law on Human Trafficking*, Art.13.1. See also *Establishment, Financing, Operation and Supervision of Special Institutions for Human Trafficking Victims* (CoM no. 203, dated 9 November 2005); *Regulations for Accommodation and Maintenance of Child Victims of Human Trafficking in Shelters* (CoM Decree no 180, dated 19 November 2009); *Rules on National Referral Mechanism on Victims of Human Trafficking* (CoM Decision no. 120 dated 11 August 2009), sections 3 and 6.

<sup>54</sup> *The Law on Human Trafficking*, Art. 13.3; *Decree on Establishment, Financing, Operation and Supervision of Special Institutions for Human Trafficking Victims*, Art.3.3.

<sup>55</sup> *THB Law*, Art. 16. 3; *Decree on Establishment, Operation and Supervision of Special Institutions for Victims of Human Trafficking*, Art. 3.4.

running shelter programmes.

(3) Clean World manages a shelter for victims of trafficking for sexual exploitation.

(4) Azerbaijan Migration Centre manages a shelter for victims of trafficking for purposes of labour exploitation, mostly illegal migrants.

(5) Azerbaijan Children's Union manages a shelter for street children.

Although available information suggests that there are no other shelters equipped to work with trafficking victims, there are a minimum of 11 shelters in the regions, which focus on domestic violence, but in practice could also serve victims of human trafficking.<sup>56</sup>

According to actual case details, “it appears that inconsistencies related to the accurate identification of victims could jeopardize their eligibility for shelter and other assistance services.” Firstly, State authorities demonstrate a tendency to identify and recognize as victims of trafficking only those who have been trafficked for the purposes of sexual exploitation, and are almost exclusively women. Despite a growing influx of migrant workers, who approach civil society organizations, it appears that the State has not yet begun to recognize the occurrences of trafficking involving migrant workers for labour exploitation.<sup>57</sup> Secondly, State authorities rarely identify victims of internal trafficking, e.g. persons trafficked from rural areas to cities within Azerbaijan. Apparently, this inconsistency in identification is a result of a contradiction in the current legislation. Whereby the THB Law uses the international more comprehensive definition of trafficking, the Criminal Code requires the crossing of national borders for an act to qualify as trafficking.

*Shelter for preventing trafficking.* Street children and legally invisible persons, e.g. persons without documents, comprise two groups, who high-risk in their vulnerability to trafficking.<sup>58</sup> Admitting street children into institutional programs appears difficult because under the current

---

<sup>56</sup> For example, the State Committee on Women, Family and Children manages 11 Family Support Centres. Initially a Save the Children project established the Centres. In the meantime, the Committee's structure took over these Centres and funds them currently from the state budget. There are indications that the professional capacity of the Centres' staff is rather limited on issues related to working with victims, including the aspects of confidentiality.

<sup>57</sup> This identification problem is common in countries of destination, as cases of trafficking can initially appear as prostitution, until investigators uncover additional details; and until law enforcement authorities have gained adequate training and experience.

<sup>58</sup> On 17 January 2012, at the review of the Fourth Periodic Report of Azerbaijan on its implementation of the provisions of the Convention on the Rights of the Child, the issue of street children was raised. The delegation of Azerbaijan was asked about the measures taken to resolve the economic exploitation of street children who left school early, and alternatives offered to those young people. The Azerbaijan delegation responded that those responsible for children who begged on the street should be prosecuted. Azerbaijan also stated that new measures introduced by regional police forces had led to the identification of 334 homeless and unsupervised children in 2011. Authorities sent some of those children to orphanages, some to boarding schools and some to rehabilitation facilities for integration back into society. The Representative of Azerbaijan concluded that while street children present a serious problem, the number of street children is small compared to the population size as a whole, and is more a rural problem than an urban one.

[http://www.unog.ch/80256EDD006B9C2E/%28httpNewsByYear\\_en%29/2553A2B079AE740BC1257988005FF977?OpenDocument#](http://www.unog.ch/80256EDD006B9C2E/%28httpNewsByYear_en%29/2553A2B079AE740BC1257988005FF977?OpenDocument#)

law the admission must occur within three hours from the moment the police first detained the child. Thus, in order to place the child into an institution, the police are required to track down the parents or family, and then find a judge during this three-hour window. In practice, it is nearly impossible for the police to accomplish all this in such a short time and in most cases, instead of enabling the children to receive assistance services; the police release the children back onto streets.

The level of vulnerability increases, when multiple risk factors are combined, for example in cases when children who are earning their living on street also lack documentation, as often is the case with their parents. Although the THB Law does recognize the concept of “potential victims,” to date there are no provisions for shelter as a means of prevention of potential trafficking and other crimes.

### ***Services in shelters***

The MIA's shelters offer *housing, food, psychological counselling, social worker's support, education, legal,<sup>59</sup> and medical assistance*. As the MIA shelters do not have lawyers on staff, they refer victims to legal assistance provided by civil society. If a victim needs urgent or specialized medical assistance, the shelter staff takes the victim to a respective medical facility.<sup>60</sup> The attitude among the stakeholders the Office interviewed was that the MoH is performing well. Interestingly, in one case male victims of trafficking for labour exploitation abroad complained that they had not receive the needed medical treatment because the medical staff asked the victims to pay. In this case, the IOM had taken the victims to what appears to be a private clinic, which asked the victims to pay for services not covered by IOM. This instance suggests that there may be room for improvement in the co-ordination of medical assistance for victims.

After identification, MIA pays 200 AZN, equivalent to USD\$250 of statutory *financial support* to victims after identification.<sup>61</sup> While the THB Law foresees this to be a monthly payment, in practice it appears to be a one-time only payment. However, the Victim Compensation Fund, reimbursed victims for other expenses, such as costs for medicines or travel costs to court hearing, and other expenses.<sup>62</sup> The shelters operated by the three civil society organizations offer similar services as the MIA's shelters, except for financial support. Interestingly, MIA upon occasion refers victims from the MIA shelter to the civil society shelters for longer-term support, for example to Clean World's shelter programme.

### ***Services after shelter***

---

<sup>59</sup> A forthcoming sub-section addresses the issue of legal assistance in more detail.

<sup>60</sup> MoH has designated four medical institutions to serve trafficking victims, among others. If victims need specialized medical attention, such as TB or AIDS testing and treatment, the Ministry of Health (MoH) will provide it.

<sup>61</sup> Reportedly, this amount was initially only AZN 33, and when the civil society members were advocating the Government to increase the amount to AZN 500 the Government agreed to AZN 200. See CoM Decision no 152 dated 17 June 2006.

<sup>62</sup> CoM Decision no. 8, dated 12 January 2006 approving Regulations on Assistance Fund to the Victims of Human Trafficking. See Art. 5.1.

When the victim exits the MIA's shelter programmes, MIA refers him or her to the Ministry of Labour and Social Protection's (MoLSP) Victim Assistance Centre. The Victim Assistance Centre, like MIA's shelters, is a specialised institution created under the THB Law.<sup>63</sup> The government established the Victim Assistance Centre already in 2005. It became functional in April 2009 and offers the same services as the MIA shelter, except that the victims benefiting these services no longer live in the MIA shelter. Although the THB Law foresees establishment of additional Assistance Centres, to date there is only one in Baku.

In practice, the services the MoLSP Assistance Centre offers are the same as those that the MIA shelter offers: psychosocial, medical and legal assistance and advice on related legal procedures, also finding employment, continuing education.<sup>64</sup> Such duplication of services between the MIA shelters and the MoLSP Assistance Centre creates confusion and raises questions about the Centre's benefit. Apparently, the initial idea was for the MoLSP Assistance Centre to focus on reintegration services, as opposed to rehabilitation services at the MIA shelters, combined with halfway housing or living space for victims, who after finding employment would also pay a small rent. Ultimately, then these ideas for reintegration services were not accepted. However, civil society members commended the Assistance Centre for enabling access to reintegration services, in particular arranging for vocational education also for potential trafficking victims identified by the civil society members.

Since May 2011, the MoLSP Assistance Centre appears to be largely out of service. After a restructuring within MoLSP in 2010 and 2011, the Centre's loss of status within the structure of the Ministry seems to have compromised the Centre's activities. For example, the Assistance Centre no longer has the authority to send enquiries or formal letters without MoLSP clearance, a process that can take up to a month before the correspondence is sent. Reportedly, MoLSP does not inform Centre about if, when or in what format the MoLSP sent the correspondence.<sup>65</sup> To date, no remedy to this problem is available.

In May 2011, the Centre's staff started what they call a *boycott* or strike, by not coming to work, but MoLSP did not react. According to the Centre's staff, the MoLSP has completely forgotten them, and has failed to provide basic working conditions. The building where they are located has allegedly been under renovation for the past three years and still not finished. The Centre's staff experiences high turnover due to low wages. The international community donated the Centre's office equipment.<sup>66</sup>

Civil society members confirmed that the Assistance Centre is not functioning and therefore from their perspective, referring victims there is not beneficial. The same civil society members do recognize the Centre's achievements to date, specifically in the field of vocational education.

---

<sup>63</sup> *The THB Law*, Arts. 12.1, 14.

<sup>64</sup> *The THB Law*, Art. 14.

<sup>65</sup> With such time delays, the Assistance Centre is unable to respond promptly to time sensitive issues. E.g. in the case of a mentally challenged victim, while the Assistance Centre was waiting for the necessary MoLSP clearance, the victim's mother was abusing and exploiting her, which was especially problematic because the victim also had a child.

<sup>66</sup> OSCE and ILO donated office equipment to the Centre.

Apparently, the Assistance Centre demonstrated success in ensuring vocational training courses for victims via the MoLSP's Employment Service. The Employment Service offers a variety of around 200 different courses, although they require a minimum number of participants enrol in each course. Allegedly, course mentors have at times openly expressed prejudices towards victims.

In addition to the Government institutions and civil society members, the International Organization for Migration (IOM) also has a mandate to assist victims of trafficking. They provide medical assistance with private clinics to ensure quality services, *ad hoc* legal assistance, and return and reintegration services for enabling return of foreign victims to their home countries. In alignment with IOM's larger organizational mandate, their presence in Azerbaijan focuses on the problem of labour migration and trafficking activities in relation to the migration aspect.

### ***Telephone hotlines***

There are at least four telephone hotlines available for victims and potential victims. Hotlines provide information, emergency contact details and legal advice. MIA manages one hotline; and the same civil society members described above, which operate shelter programmes, manage the other three hotlines. All the hotlines are operational 24 hours with the exception of the Azerbaijan Migration Centre hotline, which works from 08:00-19:00.

Interestingly, the MIA's hotline reported that in 2011 more than 500 calls were related to forced begging, whereas only seven calls were related to human trafficking for sexual exploitation. This indicator calls attention to forced begging as a potential new trend in the human trafficking in Azerbaijan. In the first two months of 2012, reportedly the hotline had already received nine calls to the hotline.<sup>67</sup>

### ***Legal assistance and compensation***

The OSCE Action Plan recommends that States provide legal counsel for victims when they are in the process of deciding whether to testify in court. It also provides for States to “ensure that the confiscated proceeds of trafficking are used for the benefit of victims of trafficking and consider establishing a compensation fund for trafficked victims.”<sup>68</sup> To enable victims to take full advantage of opportunities to obtain compensation, States are required to provide information to victims of their rights to claim compensation and the legal and other assistance needed to secure it.<sup>69</sup>

To maximize protection of victims' right to compensation, the OSCE/ODIHR advises NRMs to recognise “compensation payments as a form of justice that can have a positive effect on the

---

<sup>67</sup> The OSCE Office in Baku compiled this information on 22 February 2012.

<sup>68</sup> *OSCE ActionPlan*, Chapter III, s.1.5.

<sup>69</sup> *Council of Europe Convention on Action Against Trafficking in Human Beings*, Art. 15 (Compensation and Legal Redress).

victim's ability to come to terms with what they have experienced.”<sup>70</sup> The THB Law specifies that NGOs working on anti-trafficking will provide legal assistance to victims.<sup>71</sup> The Anti-Trafficking Action Plan of Azerbaijan includes a provision to “involve lawyers in the protection of victims in court proceedings,<sup>72</sup> and a provision for preparing a programme for improving medical, psychological and legal assistance to trafficked persons.”<sup>73</sup> In addition, the National Action Plan requires Government to ensure that legal assistance to victims is efficient, long-term and sustainable.<sup>74</sup>

Currently, three or more civil society organizations provide legal advice to trafficked persons. The MIA's Anti-Trafficking Department refers victims of trafficking for sexual exploitation to Clean World for legal assistance. The Azerbaijan Migration Centre provides information and legal assistance to exploited migrant workers and at times has received referrals from other civil society organizations of victims of sexual exploitation as well. Currently the Citizens' Labour Rights Protection League also assists migrant workers who have compensation claims against employers. In addition, the American Bar Association Rule of Law Initiative offers legal support services in Baku to victims of trafficking. However, these civil society members providing legal assistance rely fully on funding from external donors, which is not a sustainable solution. As has already happened in other countries such as Moldova or Kazakhstan, in time such donors are likely to withdraw from the trafficking sector and require the States take responsibility for their legal aid obligations in accordance with their domestic law.

State legal assistance is also available through the system of court appointed lawyers from a list provided by Azerbaijan Bar Association. However, the State provided legal assistance is notably of poor quality as the State pays such lawyers only 2 AZN per hour, which is equivalent to USD\$2.50, less than a common taxi driver earns in an hour. This low compensation contributes to the lawyers' lack of interest in devoting sufficient time and effort to trafficking cases, especially when they have better paying cases on offer.<sup>75</sup>

**Compensation to trafficked persons** plays a central role in the assistance of trafficked persons. The THB Law foresees compensation from an Assistance Fund that the Government established in 2005 for victims of trafficking and operates since 2008.<sup>76</sup> Usually, the money comes from in-kind contribution and public awareness campaigns.<sup>77</sup> While, the Charter on the Assistance Fund for Victims of Human Trafficking states that forfeited property and seized assets will constitute

---

<sup>70</sup> *NRM Handbook* on compensation and seizure of criminal gains, p 83.

<sup>71</sup> *The THB Law*, Art. 10 para. 2.

<sup>72</sup> *The Anti-Trafficking Action Plan of Azerbaijan for 2009-2013* in Chapter 6 on enhancing prosecution against trafficking crimes.

<sup>73</sup> *The Anti-Trafficking Action Plan of Azerbaijan for 2009-2013* in Chapter 4 on enhancing the work of shelters.

<sup>74</sup> *National Action Plan*, Chapters 4 and 6.

<sup>75</sup> The poor quality of state provided legal aid is an ongoing problem in Azerbaijan the OSCE Office in Baku trial monitoring reports have reiterated repeatedly since 2006. Numerous individuals interviewed for this assessment also noted the poor quality of state appointed legal services.

<sup>76</sup> *THB Law*, Arts. 22, 23.

<sup>77</sup> Charter on the Assistance Fund for Victims of Human Trafficking, adopted by Cabinet of Ministers Decision No.8, 12 January 2006. Chapter IV. On Source of the Fund.

the resources for the Fund to be used for compensation to victims, although this charter provision is not yet implemented.<sup>78</sup> In 2010, the Fund collected 4,000 AZN, an equivalent of USD\$5,000 through public awareness programmes, such as charity concerts and large enterprises. In cases when MIA identifies a person as a victim of trafficking, the Fund gives the victim a lump sum of 200 AZN, or about USD\$250 as financial support, and pays for other needs on a case by case basis, for example travel costs to the court, medicines, school equipment for victims' children, or warm clothes. While Azerbaijan's efforts as one of the few OSCE States managing a Compensation Fund for victims of trafficking warrant commendation, *only* the victims who agree to co-operate with law enforcement have access to the Compensation Fund.

***Barriers to providing assistance to those who need it.***

Overall, exploited migrant workers seem to have significant difficulties accessing both assistance and the courts. The MIA THB Department does not recognize exploited migrant workers as victims of trafficking, no matter what level of deception, coercion or ill-treatment they experience in the hands of their employers. Thus, they are not eligible for any kind of State protection or assistance. Rather, according to MIA, such workers have "labour grievances," and regardless of the severity of the violation of their rights, like everyone else they have the right to sue the employer using the courts' civil or labour proceedings.

Despite the attractiveness of such *de jure* concepts, migrant workers have little if any *de facto* access to courts. As most of them are unauthorised migrants, they usually do not have written contracts or work permits needed in court to prove the causal link between the actions of the employer and intermediary and the damages sustained by the exploited migrant. To the contrary, they fear and are frequently threatened with legal prosecution for having agreed to work without contracts, work or residence permits, or other lacking documentation in the first place, albeit out of sheer desperation. Most come from countries in conflict or with low economic standards, and have only basic levels of education. These migrants usually have no knowledge of Azerbaijani language or legal procedures. Knowledge of how to secure the support of a lawyer, or where to find translation services to enable their access to labour courts, or where to start is beyond their reach.

Further, many of the most vulnerable migrant workers whether trafficked or exploited, have no access to Trade Unions membership. Therefore, they cannot benefit from union assistance although certain unions will pursue remedies for foreign workers regardless of whether or not they have legal status. Reportedly, migrant workers have approached unions for assistance only in few isolated cases. Assistance to exploited migrant workers is limited to those who manage to escape the work place and approach civil society representatives, because civil society members do not have access to work places and where they could do, reach out to such workers.

The Azerbaijan Migration Centre (AMC) addresses this gap and is often successful at negotiating compensation on behalf of victims of trafficking or exploited migrant workers. More recently,

---

<sup>78</sup> Charter on the Assistance Fund for Victims of Human Trafficking, adopted by Cabinet of Ministers Decision No.8, 12 January Chapter IV. On Source of the Fund, 2006.

AMC developed a practice of informing the MIA's Anti-Trafficking Department about cases of unpaid wages or exploitation. The Department follows-up with a phone call to the employer that results in back payment of wages. This is a positive example of co-operation between civil society and a State agency when criminal proceedings are inefficient and the Government does not recognize exploited migrants as victims. The AMC explained for this report that employers are often fearful of potential court appearances, and thus will settle claims for unpaid or underpaid wages or work-related injuries through simple telephone negotiations, outside of the official legal framework. OSCE/ODIHR supports and promotes this practice in its recommendations to States to “explore non-litigious systems of negotiating compensation payments such as mediation.”<sup>79</sup>

The OSCE Ministerial Decision on labour trafficking encourages States to promote outreach strategies “to provide information on trafficking in human beings for labour exploitation to migrant communities and to persons working in low wage labour and particularly vulnerable sectors such as agriculture, construction, garment or restaurant industries, or as domestic workers, in order to improve victims' access to assistance and justice...”<sup>80</sup> This of course can be done jointly by the main anti-trafficking institution, civil society members, including trade unions. Attempts to start co-operation with Trade Unions in Azerbaijan had limited results so far although a dialogue is on-going and supported by international organizations during the past few years.

### **3. Access to information about victims' rights**

Informing victims about their rights facilitates identification and self-identification of trafficking victims and secures their co-operation with law enforcement in criminal proceedings. The OSCE Action Plan and NRM Handbook recommend that Government's support “hotlines” and “drop-in” centres to provide victims with essential information on entitlements and assistance and, where appropriate, to facilitate the anonymous reporting of cases. Azerbaijan's anti-trafficking legislation contains provisions that refer victims' needs for information about their rights.

The National Action Plan for 2009-2013 contains an activity to “Raise awareness of victims and potential victims of trafficking in human beings on the [...] protection measures provided by the State, administrative, criminal, and other measures taken against trafficking in human beings.”<sup>81</sup> The Strategy to the National Action Plan establishes a Special Anti-Trafficking Police Department to secure appropriate “communication with and professional assistance to victims.”<sup>82</sup> The THB Law states that Assistance Centres have a duty to “protect the rights and interests of trafficked persons.”<sup>83</sup> Furthermore, the Rules on National Referral Mechanisms established by Azerbaijan's Cabinet of Ministers provide that “Victims receive information about costs of legal

---

<sup>79</sup> OSCE/ODIHR *Study on Compensation for Trafficked and Exploited Persons*, 2008, p.12.

<sup>80</sup> MC.DEC/14/06 on *Enhancing efforts to combat trafficking in Human Beings, Including for Labour Exploitation, Through a Comprehensive and Proactive Approach*, s.6 (e).

<sup>81</sup> *National Action Plan for 2009-2013*, activity 3.

<sup>82</sup> *The Strategy to the National Action Plan*, Chapter 5.

<sup>83</sup> *The THB Law*, Article 14.



assistance and organizations offering this service from relevant police authorities and NGOs.”<sup>84</sup>

In addition, Azerbaijan’s Cabinet of Ministers’ Rules on identification of trafficked persons of 2009 provide clear indicators for the identification of persons trafficked for labour exploitation.<sup>85</sup> Despite the fact that Azerbaijan has acknowledged nearly all of the indicators described in international legislation for identifying persons trafficked for labour exploitation as victims, there are gaps in the application of the indicators. For example, some of the indicators that a person is a victim of trafficking are as follows:

*“the person is exploited in agriculture, industry, service and entertainment; lives in a group in the workplace and is limited in actions; the workplace does not meet proper standards and is not provided with necessary equipment; doesn’t have identification card or travelling documents as his/her documents are kept by others; the person does not have a labour contract, works above working hours, and earns very little or is unpaid; acts under the instruction of others, works under the terms defined by them; the person is deprived of decent nutrition by the employer; works under the control of the employer; the person is exposed to continuous violence, threats of force, insults, indecent acts and is injured.”<sup>86</sup>*

The MIA shelter provides booklets that inform victims about the risks of trafficking and the organizations that can provide assistance. However, it appears that the MIA Anti-Trafficking Department and staff of State shelters provide victims of sexual exploitation extensive information about existing assistance, including medical, psychological, shelter and legal support; but do not seem to provide victims trafficked for other forms of labour exploitation the same assistance. Further, MIA appears to provide shelter, legal and other assistance only to the victims who agree to co-operate with the MIA Anti-Trafficking Department on criminal proceedings, although some victims refuse such assistance even when they participate in criminal proceedings.

To date the Government authorities do not seem to acknowledge or officially identify as *trafficking* the kinds of cases involving non-sexual labour exploitation, hence exploited migrant workers have insufficient access to information and recourse.<sup>87</sup> The THB Law defines forced

---

<sup>84</sup> The Azerbaijani Cabinet of Minister’s *Rules on National Referral Mechanisms*, para 3.1

<sup>85</sup> The Rules on identification of trafficked persons approved by the Committee of Ministers in 2009, No. 131, provide clear indicators for the identification of trafficked persons.

<sup>86</sup> Ibid.

<sup>87</sup> As noted in the “forced labour as form of trafficking” section of this report on p. 8, this concept is relatively new. According to OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Maria Grazia Giammarinaro, at a regional conference in Tbilisi on 18 May 2011, “Trafficking for labour exploitation is widespread and countries need to take more effective measures to adequately tackle new trends in this form of modern-day slavery...To eradicate human trafficking and forced labour, States should take more effective measures, including with respect to training for public officials likely to come into contact with cases of labour exploitation. Too often these two crimes are wrongly qualified as smuggling of migrants or minor violations of labour law, leaving the criminals with impunity and the victims without due assistance and protection.” From <http://www.osce.org/cthb/77647>.

labour as “illicit coercion of a person into performing certain labour (service),<sup>88</sup> however, the same law does not include migrant workers in the list of those who could be a “potential victim of trafficking.” The list specifies “*people practicing vagrancy or begging, persons of a morally depraved lifestyle, uncontrolled minorities and children who are abandoned and uncared-for (orphans), persons who intentionally evade education, and persons who are addicted to narcotics and psychotropic agents.*”<sup>89</sup> The exclusion of migrant workers from anti-trafficking assistance programmes leaves them uninformed and thus more vulnerable to exploitation. Nevertheless, such inconsistencies between the policy framework and actual practice may be the core reason for the official zero rate of identification of migrant workers trafficked for labour exploitation in Azerbaijan.

Despite the fact that the Government has not yet identified as trafficking victims any migrant workers exploited for labour using coercive methods, the Azerbaijan Migration Centre (AMC) is a key civil society member providing information to migrant workers about their rights through two means. First, AMC distributes booklets that detail the rights of migrant workers to workers at construction sites or other places known for exploitative practices. Second, AMC operates an office and a telephone hotline providing legal assistance, where migrant workers can visit or call after reading the information in these booklets if they believe their rights are being compromised, or if they would like to discuss legal options that may be available to them.

#### **4. Non-criminalization of victims and victim right to seek remedy**

*“Ensuring that victims of trafficking are not subject to criminal proceedings solely as a direct result of them having been trafficked.” (OSCE Action Plan, Ch.III, S.1.8)*

*“Each Party shall ensure that victims have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings in a language which they can understand.*

*Each Party shall provide, in its internal law, for the right to legal assistance and to free legal aid for victims under the conditions provided by its internal law, ( CoE Convention, Chapter III Art 15).*

*“Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so” ( CoE Convention, Chapter IV Art 26).*

The THB Law includes this standard by providing “*Persons who have suffered trafficking in persons are exempted from civil, administrative or criminal liability for offences committed under coercion or intimidation while they were victims of trafficking in persons.*”<sup>90</sup>

Neither State nor civil society noted any case when a trafficked person in Azerbaijan experienced criminal or other proceedings or punishment. However, this assessment uncovered two situations

---

<sup>88</sup> The THB Law, Art 1.1.03

<sup>89</sup> The THB Law, Art. 1.0.10.

<sup>90</sup> The THB Law, Art. 17.7.

that raise concerns about whether potential victims had adequate opportunities to seek legal remedies.<sup>91</sup>

First, during a meeting at the State shelter, a representative of the MIA mentioned a case where former victims exploited in the sex industry had become traffickers upon return to Azerbaijan. It is not clear whether only after the State obligation to provide identification and assistance had failed to protect the victims, and in the conditions of having no other option for informed and authentic consent, they were complying with the coercion and orders of traffickers to avoid a harsher fate. In this case, perhaps such victims would testify against the traffickers if they had the opportunity to do so. In any such case, States and potential new victims would benefit if States took a rehabilitation-oriented approach to providing assistance to former victims, such as social, psychological and legal assistance. This rehabilitation-approach is likely to be more effective as well as humane compared to using a penalty-oriented approach against persons whose sound judgement could be impaired because of having been physically, emotionally, psychologically and otherwise traumatized as trafficking victims.<sup>92</sup>

The second situation pertains to the deportation of migrant workers from Azerbaijan to their countries of origin. Several civil society members and international organizations reported multiple cases when the Government deported migrant workers before they had the opportunity to bring a labour or civil claim against the employer for unpaid or less paid wages or other material and moral damage. Although Azerbaijan still does not identify exploited labour migrants as victims of trafficking, it asserts that this group has the right to take civil or labour claims to court. However, migrant workers cannot exercise this right if before doing so Azerbaijan deports them to their country of origin. A State's failure to enable conditions whereby a victim can file a claim for a just remedy could be a rights violation in itself, as well as an extra State-imposed punishment, which compounds damage incurred by the employer's violation of labour rights, severe working and living conditions, and other forms of abuse in the work place.

## **5. Protection of victims and their families from retaliation or intimidation in criminal proceedings**

*“Taking appropriate measures within participating States’ means, including legislative ones, to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this Action Plan and, as appropriate, for their relatives and other persons close to them.” (OSCE Action Plan, Ch.III, S.4.1)*

*“Each Party shall adopt such legislative or other measures as may be necessary to provide, when necessary, appropriate protection from potential retaliation or intimidation in particular during and after investigation and prosecution of perpetrators, for members of groups, foundations, associations or non-governmental organisations which carry out the activities set out in Article 27, paragraph 3.”( CoE*

---

<sup>91</sup> Both of these cases raise questions regarding the potential of State negligence.

<sup>92</sup> According to experts on the cycle of abuse, *the Stockholm Syndrome* “describes emotionally bonding with an abuser as a survival strategy for victims of abuse and intimidation, which ...develops subconsciously and on an involuntary basis. The strategy is a survival instinct that develops as an attempt to survive in a threatening and controlling environment.” From <http://www.rainn.org/get-information/effects-of-sexual-assault/stockholm-syndrome>.

Threats and intimidation from traffickers is a major concern in trafficking cases. This often leads to victims withdrawing their complaints against the perpetrators or leaving for their home country. The THB Law includes specific safeguards and measures aimed at securing the safety of trafficked persons whereby the representatives of the MIA Anti-Trafficking Department are responsible for informing victims about this right.<sup>93</sup> In addition to the THB Law's provision for issuance of false names to a victim to secure his or her anonymity, the Law on State Protection for Participants of Criminal Proceedings is applicable.<sup>94</sup>

According to civil society, victims in Azerbaijan have never complained of intimidation or threats coming from traffickers outside of criminal investigations. The lawyers interviewed for this report stated that intimidations and threats from perpetrators occur mainly during court proceedings when they come face to face with the victims. Sometimes traffickers also try to intimidate the lawyers. The recourse lawyers have in such cases is to request the court to enter the incident into the protocol of the hearing. However, there have been cases when relatives of perpetrators intimidated or threatened victims before or after a court hearing. In these cases, the lawyers filed complaint with the Anti-Trafficking Department that subsequently addressed these issues by calling the relatives of the perpetrator to give evidence in this regard. This action always stopped any further threats or intimidation.

Civil society organization lawyers described the negative impact on and re-traumatisation of victims, which can occur when victims face traffickers in court. Such experiences can reverse the results of weeks of psychological counselling and therapy. In many cases, the victims respond by withdrawing their complaints and stopping the proceedings.

While lawyers noted that courtrooms do not offer equipment, which would enable victims to participate in hearings without being in the direct view of the perpetrators, a Ministry of Justice (MoJ) representative stated that the court could use video conferencing to protect the identity of victims. In Azerbaijan, there are five courts adjudicating trafficking in human beings cases, which are serious crimes. It is the judge's duty to arrange the necessary technical equipment. The MoJ representative added that the World Bank is implementing a project on modernising court buildings, which include the introduction of new information technology equipment as a means of witness protection during court proceedings, including protection of trafficked persons in court.<sup>95</sup>

Civil society members that assist migrant workers in Azerbaijan also stated that they provide protection to those migrants, who come forward to report exploitative practices at their

---

<sup>93</sup> The *THB Law*, Art. 17.

<sup>94</sup> The *THB Law*, Art. 17, Para. 3.

<sup>95</sup> It was not possible to determine for this report in how often, how many or in what kind of trafficking cases the Government used protection measures. The representative of the MoJ stated that the statistics on this matter are secret and cannot be disclosed.

workplaces. Usually these workers are the ones who inform other workers about the assistance provided by civil society. Typically, employers try to intimidate and threaten the workers who initially raise the issue of mistreatment and rights violations rather than trying to remedy the grievances. To protect such workers, civil society members place them in apartments in undisclosed locations until their status in the country is legalised or they can return home safely. Because Azerbaijan does not consider as victims of trafficking exploited migrant workers, this group cannot access State protection and is fully dependant upon civil society for it.

## **6. Data protection and victim's privacy**

*“Ensuring data protection and the victim's right to privacy, also in the course of data collection and analysis.” (OSCE Action Plan, Chapter III, S.4.3)*

*“Each Party shall protect the private life and identity of victims. Personal data regarding them shall be stored and used in conformity with the conditions provided for by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108).*

*Each Party shall adopt measures to ensure, in particular, that the identity, or details allowing the identification, of a child victim of trafficking are not made publicly known, through the media or by any other means, except, in exceptional circumstances, in order to facilitate the tracing of family members or otherwise secure the well-being and protection of the child.” (CoE Convention, Chapter III, Art.11)*

The OSCE Action Plan recommends that States ensure data protection and the victim's right to privacy including by refraining from public disclosure of the identity of trafficked persons. Further, the Government of Azerbaijan gives special attention to the issue of privacy protection and confidentiality. The THB Law requires that only the decision of a prosecutor or the court can authorize the disclosure of personal data of a trafficked person.<sup>96</sup> Disclosure of information about a victim who co-operates with law enforcement is subject to liability under the legislation of Azerbaijan.<sup>97</sup>

As specified in the section above, during court proceedings the identity of trafficked persons is not protected. Furthermore, civil society reports that inconsistent protection of victim's privacy appears more in regions outside of Baku, where NRM participants lack adequate training and understanding of standards related to the regulation of private information and confidentiality in trafficking cases. Civil society members interviewed for this report stated that representatives of the MoLSP and social institutions that are in contact with trafficked persons can not protect the confidentiality of trafficked persons, because they have not received sufficient instruction and trainings on victim identity protection.

Clearly further study is needed to determine how lacking protection of privacy impacts victims of trafficking and forced labour in Azerbaijan, may compromise the Government's witness protection objectives, and thereby hinder the Government's effective prosecution of traffickers.

---

<sup>96</sup> THB Law, Art. 17.

<sup>97</sup> Criminal Code of Azerbaijan, Art. 316-1.

## **7. Reflection period**

*“Consider... introduction of a reflection delay to give the victim due time to decide whether or not to act as a witness.” (OSCE Action Plan, V (8.1))*

*“Each Party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim. Such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities.” (CoE Convention, Art. 13.1)*

*“Provide victims of trafficking in persons with an adequate period of time to recover and the opportunity to consult with appropriate advisers to assist in decision-making regarding cooperation with law enforcement and their participation in judicial proceedings.” (UN Global Action Plan, para.43)*

Azerbaijan’s legislation does not specify a reflection period for the victim.

In practice, if a civil society member identifies a victim and the victim does not want civil society to refer the case to MIA, then civil society members refrain from doing so. Subsequently civil society assistance programmes can admit victims and refer them as needed to other civil society providers of additional assistance services without MIA’s knowledge.

When the MIA identifies a person as a trafficking victim then the person has the right to interim shelter for a minimum of 30 days with a possibility of extension. While the law is clear that the first 30 days is an unconditional period for stay in the shelter, it is unclear whether MIA can condition the victim’s access to shelter upon the victim’s agreement to co-operate with the authorities. In any case, a victim can leave the State shelter and ask for assistance from civil society at any time. In practice, it appears that MIA refers victims from its shelter directly to civil society.

## **8. Temporary residence**

*“Considering on a case-by-case basis, if appropriate, the provision of temporary or permanent residence permits, taking into account such factors as potential dangers to victims’ safety.” (OSCE Action Plan, V(8.2))*

*“[E]ach State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.” (UNTOCC Anti-trafficking Protocol, Art. 7.1)*

*“Each Party shall issue a renewable residence permit to victims, in one or other of the two following situations or in both:*

- a. the competent authority considers that their stay is necessary owing to their personal situation;*
- b. the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.” (CoE Convention, Art. 14.1)*

In Azerbaijan, foreigners and persons without Azerbaijani citizenship who have identified as

trafficking victims do have a statutory right to temporary residence in the country for up to one year.<sup>98</sup> The person can apply for temporary residence permit for that period.<sup>99</sup> Officially, it is possible for the foreign victim to stay beyond one year if s/he cooperates with the authorities investigating the case in which instance s/he can stay until the court delivers a final decision in the criminal.<sup>100</sup> Importantly, the law declares explicitly that foreigners or persons without citizenship, who have become trafficking victims, shall receive the same protection and assistance as citizens of Azerbaijan.<sup>101</sup>

In practice, the MIA notes that foreign victims have received such temporary residence in only two cases, which involved Moldovan and Uzbek citizens. In both cases, the victims received one-year residence permits, but left before the expiry of the term. The MIA claims that permits have not become an issue as in most cases the victims wish to leave at the soonest time.

Due to increasing economic prosperity of Azerbaijan, the fact that the authorities do not recognize or address as human trafficking any of the cases involving migrants trafficked for forced labour is a growing problem. On one hand, the State claims that they are not trafficking victims and thus are not eligible for State assistance, and thus the State treats these persons as illegal labour migrants. On the other hand, civil society members working with labour migrants including some who are human trafficking victims according to international legislation have documented that the numbers of these people are increasing in Azerbaijan. Pursuant to these civil society member claims, the MIA is manifesting new tolerance by tacitly agreeing to the factual residence of these people while they are beneficiaries to civil society assistance programmes.

## **9. Return and repatriation**

*“When a State Party returns a victim of trafficking in persons to a State Party..., such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.” (UNTOCC Anti-trafficking Protocol, Art. 8.1, 8.2)*

*“When a Party returns a victim to another State, such return shall be with due regard for the rights, safety and dignity of that person and for the status of any legal proceedings related to the fact that the person is a victim, and shall preferably be voluntary.” (CoE Convention, Art. 16)*

Azerbaijan’s legislation is not elaborate on the issue of return and repatriation. There is a rule that forbids deportation of child victims, allowing for return to their country of origin only if the deporting country can exclude the possibility of the child becoming a trafficking victim again.<sup>102</sup> Return to the home of the child's parents is possible if the child is ten or older, depending upon the child’s opinion.<sup>103</sup> If the case involves an adult victim’s voluntary return, the State provides

---

<sup>98</sup> *The THB Law*, Art. 20.1.

<sup>99</sup> *The THB Law*, Art. 20.5.

<sup>100</sup> *The THB Law*, Art. 20.2.

<sup>101</sup> *The THB Law*, Art. 17.8.

<sup>102</sup> This includes all victims under the age of 18.

<sup>103</sup> *The THB Law*, Art. 20.3.

the person assistance in obtaining documentation, pays for his/her transportation and other costs, and gives advice on how to minimize risks of becoming a victim again.<sup>104</sup> Regarding the voluntary return of foreign victims to their home countries, MIA does co-operate with IOM in providing for the costs. However, the return of labour migrants who claim they have been exploited, but who MIA does not recognize as trafficking victims is less clear. In these cases, it seems that the Government is likely to consider such claims “labour grievances” and to penalize such claimants with fines and administrative expulsion for failure to have work and residence permits, as violations of Article 339 of Azerbaijan’s code of administrative offenses

MIA’s return practices regarding its efforts prepare return conditions through civil society partners organizations in the receiving countries seem particularly commendable. Regarding Azerbaijan’s receipt of its own citizens from abroad, there seems to be less practice. MIA claims that IOM requested MIA's presence only once when the returning victim was un-cooperative.

---

<sup>104</sup> *The THB Law* Art. 20.4.



## VI. RECOMMENDATIONS FOR THE REPUBLIC OF AZERBAIJAN

The following section contains 35 recommendations based on international and domestic legislation applicable in Azerbaijan, and best practices from OSCE participating States, which the OSCE Office in Baku kindly suggests to members of the National Referral Mechanism for improving Azerbaijan's comprehensive assistance to presumed, actual and potential victims of trafficking in humans whether for sexual or labour exploitation.

### **A. Co-ordination and co-operation**

#### *Regular inclusion of civil society*

Some State counterparts raised the issue of the commendable quality of work and trustworthiness of civil society. In order to build mutually fruitful co-operation, the Office in Baku would advise that the State commence the regular and intentional involvement of civil society members into its anti-trafficking co-ordination and co-operation efforts. For example, the National Co-ordinator could consistently involve relevant civil society community in the work of the Inter-Agency Committee, regarding the co-ordination and adjustment of the functioning of the National Referral Mechanism. The legal grounds for involving civil society members in such co-ordination in anti-trafficking field are already in place. Only by creating such partnerships will the State derive the significant benefits in improved success, effectiveness and cost-efficiency that solid civil society partners can bring to complement the State's best efforts.

Furthermore, the Office recommends that the National Co-ordinator lead the Inter-Agency Committee to:

- (1) Amend the last sentence of the Rule 2.4 of the Rules on National Referral Mechanisms to include the obligation of inviting the leading anti-trafficking civil society members to the meetings of the Inter-agency Committee.
- (2) Expressly include civil society members as implementing partners in the table of the National Action Plan.
- (3) Ensure that the Inter-agency Committee invites leading anti-trafficking civil society members and international organizations to meetings, allowing them to propose agenda topics, and offering them time during meetings to raise specific issues that require attention and political, legal, or practical follow-up.
- (4) Hold more frequent meetings of the Inter-Agency Committee with participation of members of the National Action plan, including relevant civil society actors; and starting with an initial focus on improving co-ordination.
- (5) Revise the current mechanism of collecting and presenting trafficking-related data in order to ensure that the collected figures reflect all aspects of the authorities' and civil

societies' actions against trafficking.

### ***Ministry of Education (MoEd) focal point***

Office recommends that the MoEd:

- (6) Consider appointing a single Anti-Trafficking Focal Point for the whole Ministry to be in charge of trafficking issues in relation to that Ministry's mandate; and
- (7) Enable the MoED focal point to co-ordinate inputs from the multiple MoED departments responsible in the current system.

### **B. Access to assistance**

#### ***Recognizing internal trafficking as trafficking***

Office recommends that the Parliament of Azerbaijan:

- (8) Enable the legal and institutional recognition of the phenomenon of internal trafficking as trafficking. This would benefit the State significantly, as it would enable harsher penalties commensurate with the severity of the trafficking as a serious criminal offense. In order to clear up misunderstanding and misinterpretation, the State could amend the current Criminal Code to remove the reference to “crossing borders” in the definition of trafficking (Article 144). Subsequently the State could correct all training programmes for its officials accordingly. This change would be in the victims’ best interest, because as presumed victims of trafficking they would be eligible for the State’s assistance services.

#### ***Recognizing potential risks due to greater influx of migrant workers***

- (9) Support the legal and institutional recognition of the crime of trafficking of migrant workers for labour. Although State authorities have not officially confirmed any such finding so far, they cannot expect to uncover this kind of trafficking until the legal framework is consistent in recognizing it and charging the traffickers responsible for it with the crime of trafficking rather than charging the victims for illegal migration.
- (10) Require State institutions and officials to address the crime of trafficking in internal and/or migrant workers for labour. For example, the State could increase focus on building professional capacity and skills of State Migration Service, and Employment Inspection,<sup>105</sup> as well as the police and the judiciary. The State could also reach out to trade unions in this matter and encourage the latter to increase their outreach work. The

---

<sup>105</sup> *The US Trafficking in Persons Report*, also recommends that Azerbaijan “increase efforts to inspect construction sites for potential victims of forced labor.” US Department of State, Office to Monitor and Combat Trafficking in Persons, *The US Trafficking in Persons Report*, Azerbaijan, from <http://www.state.gov/j/tip/rls/tiprpt/2011/164231.htm>.

increased attention of these actors to trafficking for labour exploitation, whether of citizens or migrants could contribute greatly to Azerbaijan's fight against trafficking by increasing avenues for identifying victims, assisting them,<sup>106</sup> investigating cases and prosecuting traffickers.

- (11) Launch an initiative to amend the Anti-Trafficking Law to introduce the group of migrant workers in the definition of "Potential victims of trafficking."

The Office recommends that the relevant members of the Inter-Agency Committee:

- (12) MoLSP. Initiate a discussion with relevant Governmental and civil society counterparts, including trade unions, to increase effectiveness of protection of rights of persons trafficked for purposes of labour exploitation. Optimally, the MoLSP would begin documenting existing practices of negotiating or mediating compensation of unpaid wages. This would raise the awareness of the authorities and victims of trafficking, as well as ensure that exploited migrant workers have access to adequate remedies, including assistance, protection and compensation.
- (13) Initiate a discussion with relevant counterparts to develop a mechanism to enable identification of trafficked persons for labour exploitation among those deported or voluntarily returned to their countries of origin to enable their access to courts and compensation.
- (14) Increase communications with trade unions and encourage them to consider launching activities to reach out to migrant workers informing them of trafficking risks and available remedies.

### ***Recognising the problem of street children and legally invisible persons***

Street children and legally invisible persons, those without any kind of identification or documentation do exist in Azerbaijan. To date, the State authorities have not recognized these persons as a particularly vulnerable group, which other countries have confirmed. In order to understand the scope of this phenomenon, the State is advised to objectively assess the nature of the risks this population faces and also poses in Azerbaijan and then to develop response mechanisms.

The Office recommends that the relevant members of the Inter-Agency Committee:

- (15) Consider in-depth measuring of the scope of the phenomenon of street children. An

---

<sup>106</sup> *The US Trafficking in Persons Report*, also recommends that Azerbaijan "sustain efforts to ensure identified victims of forced labor are provided access to government-funded victim assistance." US Department of State, Office to Monitor and Combat Trafficking in Persons, *The US Trafficking in Persons Report*, Azerbaijan, from <http://www.state.gov/j/tip/rls/tiprpt/2011/164231.htm>.

analysis involving specialised civil society members would optimally analyse the current practices of authorities in relation to street children, and propose potential alternatives ways for addressing this phenomenon.

### ***Recognizing the rights of legally invisible persons***

The Office recommends that the MoJ and MIA:

- (16) Consider a thorough analysis of the phenomenon of legally invisible persons, i.e., those who have no personal documentation. Again, it is in the State's interest to first measure the scope of this phenomenon in order to determine an informed best possible course of action.

### ***Mechanism to determine victim status***

The Office recommends that the relevant members of the Inter-Agency Committee:

- (17) Consider revising the decision-making mechanism for determining who is granted the status of trafficking victim to enable at minimum all of the following actors to make the determination in their specific areas of competence respectively; the MIA, MoLSP, SMS, the State Border Service, the Police, courts and their representatives at the regional level in cases outside of Baku.

### ***Training for Governmental officials***

The Office recommends that the Government:

- (18) Provide technical skill-building trainings on identification of all forms of trafficking and working with victims to local police, Detention Centre staff, Border Service; and consider involving civil society members in the process of identification.
- (19) Consider introducing a system of certification so that only certified police officers who have undergone specialised training regarding treatment of victims and children, in a manner, which does not further traumatize them, can be engaged in cases of suspected trafficking.
- (20) Provide training to Employment Inspectors with particular focus on effective identification of labour trafficking.
- (21) Provide training to State Migration Service staff with particular focus on effective identification of labour trafficking among migrants.
- (22) Consider providing specialised training to the staff of the State Committee on Family, Women and Children (SCWFC's) 11 Family Support Centres, with particular focus on

skills of working with trafficking victims in addition to domestic violence cases.

- (23) Provide training to MIA shelter staff. Since trainings for the staff in 2010 and earlier, exploitation methods have evolved, and MIA has new staff. Professional level reciprocal exchanges with other countries as well could bring to Azerbaijan new and useful knowledge of best practices in other OSCE participating States.
- (24) Provide MoEd Education and Extracurricular Department, and De-institutionalisation and Child Protection Department basic training on anti-trafficking issues and response mechanisms in Azerbaijan.

### ***Public awareness raising activities***

The Office recommends that the Government:

- (25) Continue with Public Awareness campaigns across the country raising awareness about also other forms of trafficking, such as labour trafficking.<sup>107</sup> Publish and distribute information leaflets and other suitable campaign materials through which provide information to migrant workers about their rights and where to find assistance.

### **C. Assistance and protection**

#### ***Reflection period***

- (26) Amend the legislation and National Referral Mechanism (NRM) to define the minimum reflection period for victims as the Council of Europe Convention recommends.

#### ***Rehabilitation assistance***

- (27) Expand State assistance and access to shelter to those persons who do not receive the status of trafficked victim from the MIA and do not co-operate with police on trafficking case, but who are identified as trafficked by civil society members or other organizations.  
108

#### ***Reintegration assistance***

---

<sup>107</sup> *The US Trafficking in Persons Report*, also recommends that Azerbaijan “continue efforts to raise public awareness about both sex and labor trafficking.” US Department of State, Office to Monitor and Combat Trafficking in Persons, *The US Trafficking in Persons Report*, Azerbaijan, from <http://www.state.gov/j/tip/rls/tiprpt/2011/164231.htm>.

<sup>108</sup> *The US Trafficking in Persons Report*, also recommends that Azerbaijan “continue to provide initial assistance to domestic victims without requiring them to file a formal complaint with police.” US Department of State, Office to Monitor and Combat Trafficking in Persons, *The US Trafficking in Persons Report*, Azerbaijan, from <http://www.state.gov/j/tip/rls/tiprpt/2011/164231.htm>.

- (28) Revise the current capacity of the Victim Assistance Centre in order to enable it to perform its functions under the existing legislation. This would include reviewing its current mandate and tasks in order to achieve maximum benefit to complement the support by the MIA shelter, SCWFC, as well as by specialised civil society members. The initial concept of the Victim Assistance Centre as halfway social housing providing specific reintegration-oriented services is still useful. Provide the Victim Assistance Centre with all necessary equipment needed for their work.
- (29) Support the State Committee on Family, Women and Children (SCWFC) to consider utilizing the eleven Family Support Centres to promote public awareness about the risks of trafficking.

### ***Legal assistance and protection***

- (30) Launch an initiative to develop a system of legal assistance for trafficked persons, including for exploited migrant workers;
- (31) Consider issuing a circular letter to respective Governmental counterparts, such as the MoJ, courts and prosecutors offices, as a reminder about the need to respect procedural rights of trafficked persons.
- (32) Use existing mechanisms and legislation to enhance the protection of trafficked persons during criminal investigation and court proceedings against the retaliation or threats coming from traffickers.
- (33) Provide training to lawyers provided to assist victims on issues of victims rights, including on the right to pro-actively request from the police effective protection measures for victims and lawyers who are intimidated or threatened by traffickers.
- (34) Jointly with MIA review the strengths and weaknesses of the currently very centralized anti-trafficking law enforcement response mechanism and how it links with the current judiciary system which foresees that grave crimes such as human trafficking can be tried in five courts, i.e. also outside Baku.

### ***Compensation***

- (35) Expand the coverage of the Victim Compensation Fund to all persons who MIA or others identify as victims of any form of human trafficking, whether or not they agree to co-operate with the law enforcement in the prosecution of traffickers.

## **ANNEX I: Good Practices of the OSCE participating States on co-ordination of victim assistance**

### **1. Romania**

Romania created a separate Agency to prevent Trafficking in Human Beings and Monitor the Assistance to Victims of Trafficking (the Agency) with a staff of 95 persons.<sup>109</sup> The Agency has a substantial role in combating trafficking in human beings. It co-ordinates, evaluates and monitors all the activities related to combating trafficking in human beings and the way in which public institutions implement the anti-trafficking policies. The President of the Agency is at the same time the National Anti-trafficking Co-ordinator and consequently the Agency is responsible for considerable tasks such as:

- drafting the National Strategy against trafficking in persons;
- drawing the national standards in the field;
- monitoring the activities developed by public institutions against trafficking in persons and ensuring co-ordination with civil society members;
- developing programmes and projects in the field of prevention of trafficking in persons, including assistance to the victims of trafficking and providing other institutions with needed support in running programmes, on request; and
- submitting proposals for the amendment and completion of the legislation in the field;

The Agency also plays the role of National Rapporteur and in this regards it:

- collects, stores, and processes and analyses statistical data and information regarding the trafficking in persons,
- makes public and disseminates official data and information regarding trafficking in persons,
- establishes the indicators and criteria for the evaluation of the phenomenon;
- conducts surveys and research on the diagnosis and evolution of the trafficking in persons, and
- issues the Annual Report on the evolution and dimensions of trafficking in persons in Romania , which is submitted for Government's approval.

The Agency made its work transparent and accessible through a website that it updates regularly with drafts of the documents in process as well as final versions of all reports. This way, organizations and institutions working on anti-trafficking with an interest in taking part in the political decisions have access to these documents any time and they can send their reviews, comments and ideas directly to the Agency so that they are considered and discussed during subsequent meetings.

---

<sup>109</sup> The Government Decision of Romania provides for the Agency's work modalities, No 460 from May 2011.

## **2. The Netherlands**

A ministerial decree guides the work of the Dutch Rapporteur on Combating Trafficking in Human Beings, who the Minister of Justice appoints for a four-year renewable term.<sup>110</sup> The Government Gazette published the decree in December 2009 when the National Rapporteur received a new mandate to also report on combating child pornography.

The first Article of the decree states that there is a National Rapporteur on trafficking in human beings. Article 2 states that the Rapporteur is supported by a Bureau, which includes a team of staff members. Article 3 states that the National Rapporteur provides for his/her own working methods as well as those of the Bureau. Article 4 assigns the tasks of the Rapporteur to:

- assess the extent and character of trafficking in human beings and child pornography and the effectiveness of policy measures in combating trafficking and child pornography;
- provide for yearly planning;
- advise the Government on preventing and combating trafficking in human beings and child pornography; and
- submit yearly reports to the Government through the Minister of Justice.

Article 5 requires that the content of the reports include, at minimum: i) accountability of research methods; ii) results of research and conclusions; iii) recommendations to enhance the prevention and combating trafficking in human beings and child pornography. Further, the National Rapporteur can address recommendations to the central Government, local Government and other official organs, to international organisations and to non-Governmental organisations. Subsequently, the Minister of Justice sends the reports to the two chambers of Parliament. In practice, the National Rapporteur offers the reports to the Minister during an official meeting, and then publishes them. The independence of the Rapporteur's institution is assured by the fact that there is no formal consultation between the National Rapporteur and the Ministry, nor any requirement for the Ministry's consent before publication is published for public access.

## **3. Serbia**

Serbia was one of the anti-trafficking frontrunners that began setting up a national referral mechanism in 2002. In 2003, ODIHR based its Handbook on NRM on the Serbian model, among others.

Serbia also established an Agency for Co-ordination of Protection of Trafficking Victims<sup>111</sup> within the Institute for the Upbringing of Children and Youth in Belgrade through a joint project of the Ministry of Social Policy and OSCE Mission to Serbia and Montenegro. Since March 2004, the Agency has played the main role in the National Referral Mechanism. The main task of the Agency is to act as a co-ordination centre in the organization of assistance and protection of

---

<sup>110</sup> The decree is available only in Dutch language. The appointment of the Rapporteur is addressed in Art. 6. of the Decree.

<sup>111</sup> The document that regulates the work of the Agency is the *Instruction on the Agency for the Co-ordination of Protection of Victims of Trafficking*.



trafficked victims in Serbia, although it does not provide direct assistance itself nor can it alone identify a trafficking victim. It provides information on available victim assistance services in the country and abroad. With only two staff members, the Agency addresses the entire territory of Serbia.<sup>112</sup>

Serbia shows good practices in the field involving civil society organization into inter-agency co-ordination process, and provision of assistance to trafficking victims. Concretely, civil society organizations are part of the State-managed anti-trafficking policy-making and policy co-ordination mechanisms, dubbed the Republic Team. Of the four specialized working groups within the Republic Team, civil society organizations lead two: the working group on child trafficking, and the other on prevention and education. Further, specialised civil society organizations are fully involved in providing direct assistance to trafficking victims. In fact, these organizations have developed programs specialised for trafficking victims. The State maintains a co-ordinating role within the referral mechanism, but not in providing direct trafficking-victim specific assistance programs.

What makes such State practice particularly noteworthy is the fact that such co-ordination and co-operation between State and civil society organizations is not an obligation foreseen under Serbian law. Instead, the tradition of involving civil society organizations has been developing over the past 11 years since the start of the anti-trafficking efforts by the Serbian Government. The only formal document foreseeing civil society organizations' involvement in State's anti-trafficking efforts is the National Strategy of 2006<sup>113</sup> and the subsequent National Action Plan.<sup>114</sup>

---

<sup>112</sup> Report *Human Trafficking in Serbia for the years 2000-2010* published by the Serbian long-standing anti-trafficking NGO "ASTRA, available at <http://www.astra.org.rs/eng/wp-content/uploads/2008/07/palermo-2010-ENG-web.pdf>

<sup>113</sup> *Official Gazette of Republic of Serbia*, no 111/06.

<sup>114</sup> Conclusion of the Government of Republic of Serbia no. 021-10196/2006-4 dated 30 April 2009. Both the Strategy and National Action Plan in fact prescribe the requirement to formalise cooperation between Governmental, non-Governmental, and international actors by signing protocols of cooperation that would define roles and responsibilities of each actors involved.

## **ANNEX II: List of interviewed agencies and organizations**

1. The Ministry of Labour and Social Protection of the Republic of Azerbaijan
2. The Ministry of Health of the Republic of Azerbaijan
3. The Ministry of Education of the Republic of Azerbaijan
4. The Ministry of Justice of the Republic of Azerbaijan
5. The State Committee of Family, Women and Children Problems of the Republic of Azerbaijan
6. The Shelter for victims of human trafficking under the Ministry of Internal Affairs of the Republic of Azerbaijan
7. The Hotline under the Ministry of Internal Affairs of the Republic of Azerbaijan
8. International Organization for Migration
9. The Azerbaijan Migration Center
10. Clean World Public Union
11. The Azerbaijan Children Union
12. Citizens' Labour Rights Protection League

### **ANNEX III: The list of reviewed documents**

1. The Law on Combating Trafficking in Persons, adopted in June 2005 (adopted on 29 June 2005);
2. National Action Plan for Combating Trafficking in Human Beings for 2009-2013 (adopted on 6 February 2009);
3. Rules on National Referral Mechanisms for Victims of Trafficking, approved by the Decision No 123 of the Cabinet of Ministers of Azerbaijan, 11 August 2009;
4. Rules on the Identification of Victims of Trafficking in Human Beings (Indicators), approved by the Decision No. 131 of the Cabinet of Ministers of Azerbaijan, 3 September 2009;
5. Rules on Referring Victims of Trafficking to the Special Police Agency, approved by the Decision 21 of the Cabinet of Ministers of Azerbaijan, 1 February 2008;
6. Rules on Establishing, Financing, Operating, and Supervision of Special Institutions for Victims of Human Trafficking, approved by the Decision No. 203 of the Cabinet of Ministers of Azerbaijan, 9 November 2005;
7. Regulation on Social Rehabilitation of Victims of Trafficking in Human Beings, approved by the Decision No. 62 of the Cabinet of Ministers of Azerbaijan, 6 March 2006;
8. Rules on shelters for children victims of trafficking in human beings approved by the Decision No. 180 of the Cabinet of Ministers of Azerbaijan, 19 November 2009;
9. Regulation on Assistance Fund for Victims of Trafficking in Human Beings, approved by the Decision No. 68 of the Cabinet of Ministers of Azerbaijan, 12 January 2006;
10. Rules on determining the allowance paid to victims of trafficking in human beings during the reintegration Period, approved by the Decision No. 152 of the Cabinet of Ministers of Azerbaijan, 17 June 2006; and
11. The Decision of the Ministry of Internal Affairs on Internal Rules for Operation of Hotline, 27 October 2007.