



Submission by the United Nations High Commissioner for Refugees

For the Office of the High Commissioner for Human Rights' Compilation Report -

Universal Periodic Review:

AZERBAIJAN

I. BACKGROUND INFORMATION

Azerbaijan is a State party to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (hereinafter referred to jointly as the *1951 Convention*). Azerbaijan also acceded to the *1954 Convention on the Status relating to Stateless Persons* and to the *1961 Convention on the Reduction of Statelessness*. The country is also a State party to key international and European instruments on human rights.

The Government of Azerbaijan's main focus is the issue of internal displacement resulting from the unresolved conflict over the Nagorno-Karabakh region. The conflict, dating back 20 years, produced over 600,000 internally displaced persons (IDPs) and some 250,000 ethnic Azeri refugees from Armenia, who were recognized as *prima facie* refugees in 1992 and naturalized in 1998. IDPs live in all 76 administrative districts of Azerbaijan, with the majority settled in the capital Baku and its surroundings. While many IDPs initially lived largely in IDP camps in the south, the Government has completed the construction of new settlements in different regions of the country. As a result, the last tented camp was demolished in 2007.

The current caseload of refugee and asylum-seeker population comprises 1,823 persons, mainly Chechens (about 50%) and Afghans (about 40%), whereas the rest are Pakistani, Iranians, Iraqis, Palestinians and others from the Middle East.

The Government of Azerbaijan does not allow access to the national asylum procedure to citizens of the Russian Federation who have fled the conflict in the Chechen Republic. However, it should be noted that the presence of Chechen asylum-seekers in the country is tolerated, and the Government has accepted UNHCR's role to provide for their protection and humanitarian needs. Asylum-seekers from other countries have access to the national asylum procedure, but very few have been able to secure formal recognition of refugee status. The Government grants refugees and asylum-seekers "territorial protection" and subscribes to the principle of *non-refoulement*.

The State Migration Service (SMS) is the main body of the Government in charge of asylum matters, migration and statelessness. The SMS is also in charge of irregular migration and views asylum-seekers predominantly as economic migrants who come to Azerbaijan for better economic prospects. The recognition rate remains extremely low. Appeal procedures are in place, but there is no specialized judiciary system dealing with refugees and asylum seekers.

II. ACHIEVEMENTS AND BEST PRACTICES

1. Internally Displaced Persons (IDPs)

Azerbaijan has a national legislation on the protection and assistance of IDPs, the 1999 law on the status of refugees and IDPs and 1999 Law on the Social Protection of Internally Displaced Persons and Persons Equated to Them. Specific presidential decrees have also been adopted to improve access to employment and protect IDPs from eviction. UNHCR welcomes the Government's substantial efforts to improve the plight of IDPs. The Government assumed full responsibility for improving the conditions of IDPs and has embarked on the implementation of an ambitious and comprehensive State programme designed to alleviate the current needs of IDPs. Over 20 years, the Government constructed about 70 new settlements, which provided housing to some 110,000 refugees from Armenia and IDPs. While gaps still remain, it should be noted that the Government has made efforts to provide its IDP population equal treatment to other citizens, while at the same time according them privileges as a result of their special status. This is demonstrated through a multitude of legal provisions concerning IDPs in the national level. UNHCR also appreciates the pledges made by Azerbaijan at the Ministerial Intergovernmental Meeting in Geneva in December 2011, according to which the Government committed itself to "participate in the preparation and adoption of the international document concerning the protection of rights and freedoms of internally displaced persons; and to contribute to increasing on the global scale, public awareness of the problems faced by internally displaced persons." Similar commitment has also been expressed during the 63rd session of UNHCR's Executive Committee.

2. Protection against *refoulement*

UNHCR welcomes the Government's informal agreement to provide territorial protection to persons who are not refugees, *stricto-sensu*, but who are nevertheless in need of international protection, as they cannot return to their countries of origin due to prevailing conflicts, massive violations of human rights and/or situations of generalized violence. Many asylum-seekers from Afghanistan and Iraq fall under UNHCR's extended mandate (as they meet the broader refugee definition). Despite the lack of legislative framework providing for complementary forms of protection, the Government has been so far tolerant to their stay in the country, thus effectively protecting this category of refugees from *refoulement*. The Government also extended this protection to all ethnic Chechens who were not admitted to the national asylum procedure.

3. Statelessness

UNHCR welcomes Azerbaijan's pledge to undertake a comprehensive study of the statelessness situation in the country, which will be an important step towards clarifying the magnitude and impact of statelessness in the country.

4. New Legislation on Domestic violence

UNHCR commends the Government's adoption of the Law on Domestic Violence in 2010. The law incorporates mechanisms and actions related to combating and preventing domestic violence (DV), as well as protecting and assisting victims. The law defines the terms of DV and the forms of violence; explains the status of victims of DV and their social, economic and legal protection guarantees; lists mechanisms and instruments for combating DV; details ways of identifying and eliminating DV; and provides for protective orders and procedures for their issuance and appeal. In 2011, the Government also amended the Criminal and Family Code to criminalize some forms of DV, including forced and early marriages. The law envisages the importance of undertaking social measures for the prevention of DV, such as provision of assistance to victims in their reintegration into society through vocational and other educational programmes, as well as employment support. However, the implementation mechanisms for the Criminal and Family Code still need to be developed.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Issue 1: Internally displaced persons

The main concern of the Government in the field of displacement remains the protracted large-scale problem of IDPs resulting from the unresolved conflict over the Nagorno-Karabakh region. A significant number of IDPs continue to live in inadequate conditions in public buildings such as schools, hostels and dormitories and in old rural settlements. The majority of the IDPs lives in settlements and is registered at their specific place of residence according to their place of origin. The choice of residence is affected by the current system regulating government assistance to IDPs, which is based on a certain IDP population per region. IDPs that change their district of residence are therefore often not included on the Government assistance lists in the new district. IDPs also face continuous threats of eviction, including due to privatization and public works.

General awareness among IDPs of rights and obligations remains low, with many IDPs not being able to identify legal problems and violations of their rights. IDPs in isolated rural areas, vulnerable groups and disadvantaged urban IDPs have difficulties accessing the limited legal assistance available.

Furthermore, there is an evident lack of employment and income opportunities in the rural regions and urban areas outside Baku, which is another factor impeding self-reliance. In fact, the overcrowded living conditions, lack of employment, lack of opportunities for IDP women to achieve self-reliance are reasons contributing to the increase of domestic violence among the IDP population. The lack of participation of IDPs in the Government IDP programs, as well as the heavy dependence of IDPs on Government assistance are additional protection concerns.

Recommendations:

- Enhance current living conditions of IDPs, prioritizing vulnerable families in sub-standard housing conditions,
- Improve implementation of existing national legislations relevant to the protection of IDPs and ensure full access to remedies by supporting and encouraging the role of NGOs to work on legal assistance and counseling.

- Ensure full implementation of guarantees against forced eviction, including by developing a comprehensive housing strategy that can provide practical housing alternatives and schemes and involves IDPs in decision-making.
- Strengthen support to IDPs in the field of income generation, in particular to vulnerable families (such as female-headed families, elderly and disabled persons), IDPs located in urban areas outside of Baku or those in rural areas,
- Implement the Law on Domestic Violence and establish protection mechanisms, such as shelters, hot-lines and other social services for victims and potential victims of domestic violence.

Issue 2: Integration of refugees and asylum-seekers

Despite the accession by the Government of Azerbaijan to the *1951 Convention* in 1993, there remain significant gaps in the implementation of the provisions relating to the protection of refugees. Following its review of Azerbaijan at its 59th session in March 2012, the Committee on the Rights of the Child addressed some of these shortcomings in its concluding observations and recommendations.¹

At the Ministerial Meeting in December 2011 the Government of Azerbaijan stated its intention “to continue the close cooperation with UNHCR for the elimination of the protection gaps, strengthening the protection regime and asylum system” (...) as well as to facilitate “the participation of refugees in the labour market.”

As mentioned above, the Government continues not to allow Russian citizen from the Republic of Chechnya access to its asylum procedure due to geo political sensitivities. The existing judicial process also continues to negatively impact the asylum environment in Azerbaijan. Up to the end of June 2012 and consistent with previous years, there has not been a single positive court decision on asylum appeals.

Moreover, the Government has not yet assumed responsibility for the legal protection and subsistence of refugees and asylum-seekers in its territory. Refugees and asylum-seekers, including those recognized by the Government, do not have full access to legal employment, public health or other social services due to the existing legislative gaps and implementation delays. The Azerbaijani refugee legislation entitles asylum-seekers and recognized refugees to obtain medical care.² While citizens of the country enjoy access to basic medical care free of charge, refugees and asylum-seekers can obtain medical services only in private clinics. Consequently, the entire asylum population is fully dependent on limited legal, financial and medical support provided by UNHCR, which cannot cover all the needs of persons of concern.

Due to the restrictions and limitations on legal employment, the overwhelming majority of the asylum population cannot afford quality accommodation and nutrition. According to refugee

¹ Committee on the Rights of the Child, 59th session, 12 March 2012, see in particular paragraphs 66-68, available at the following link: http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-AZE-CO-3-4_en.pdf, see also the annex to this document for further reference.

² Article 6 and 11 of the Law on Refugees.

polyclinic statistics, the poor economic situation of the majority of refugees also contributes to malnutrition and anemia.

Refugees and asylum-seekers also face obstacles in accessing their civil rights. Registration of marriages remains a serious area of concern. The Decree of the Cabinet of Ministers No 145 requires foreign citizens willing to marry nationals of Azerbaijan to produce to the Civil Act Registration Office a valid passport and celibacy certificate confirming one's bachelor status issued by an official body of the country of origin. Refugees and asylum-seekers often do not possess or do not have access to such documents, due to the very nature of their status, and no exceptions are granted to them, thereby disregarding the provisions contained in Article 25 of the 1951 Refugee Convention.

Recommendations:

- Adopt a legislative framework providing for complementary forms of protection to persons fleeing their countries of origin due to the generalized violence and risk of serious human rights violations, but who do not meet the formal criteria for protection as refugees under the *1951 Convention*.
- Adopt a national programme to facilitate integration (accommodation, orientation, medical and psychosocial support) for refugees with specific needs, including survivors of SGBV, victims of torture, persons with disabilities and etc.
- Admit ethnic Chechen asylum-seekers to the national refugee status determination procedure.
- Establish an independent asylum procedure free from political considerations and with a functioning impartial juridical review.
- Remove existing restrictions and limitations on legal employment and ensure free access of refugees, asylum-seekers and stateless persons to State social services in the same conditions as Azerbaijan citizens.
- Ensure that civil rights of refugees and asylum-seekers, including the right to marriage, are respected.
- Respect the principle of *non-refoulement* at all borders.

Issue 3: Stateless persons

Azerbaijan acceded to the *1954 Convention on the Status relating to Stateless Persons* and the *1961 Convention on the Reduction of Statelessness* in 1996. However, the Government has not as yet established formal statelessness determination procedures, which limits its ability to fully comply with its commitments under the 1954 Convention. In the absence of such procedures, stateless persons remain without a legal status and have no access to basic rights, including the right to benefit from public medical services, the right to formal employment and social rights.

As a successor state of the USSR, Azerbaijan is believed to host a sizeable, yet unknown number of former USSR citizens affected by statelessness. According to the data of the Ministry of Interior, there are 1,741 stateless persons in the country. However, the real figure is believed to be significantly higher than this. A database of some 3,000 families affected by statelessness, who do not possess any valid document attesting effective nationality, has been provided to UNHCR through a national NGO. The largest population of stateless persons consists of ethnic

Azeris from Georgia, many of whom came to Azerbaijan in the late 1980s and early 1990s due to civil unrest in Georgia. There are also a few other persons who following the replacement of the old USSR passports in 1999-2003, were refused issuance of new ID cards.

Furthermore, the authorities refuse to register the birth of children of asylum-seekers and refugees on the basis of a number of legal and bureaucratic requirements. Birth registration helps prevent statelessness by establishing a legal record of where a child was born and who his or her parents are. As such it serves as a key form of proof of whether a person has acquired nationality by birth or by descent. Foreigners, presumed to enjoy the protection of their own States, are expected by the Azerbaijan authorities to resolve civil registration issues in consultation with their own governments and/or embassies. However, refugees and asylum-seekers are unable to contact the authorities of their country of origin, i.e. the country in which they were persecuted, as this may cause serious hardship or put them – as well as potentially family members – at renewed risk. The failure to facilitate registration of all children at birth born on State territory, regardless of nationality or immigration status, thus puts these children at risk of statelessness.

Recommendations:

- Implement a statelessness status determination procedure to identify stateless persons in the country and grant them a legal status, which would give them full access to the rights set out in the 1954 Convention.
- Establish measures to ensure the registration of all children born on State territory, regardless of their nationality and immigration status, including the children born to asylum-seekers, refugees and stateless persons.

**Human Rights Liaison Unit
Division of International Protection
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ANNEX

Excerpts of Concluding Observations and Recommendations from UN Treaty Bodies and Special Procedures' Reports

- Universal Periodic Review:

AZERBAIJAN

We would like to bring to your attention the following excerpts from UN Treaty Monitoring Bodies' Concluding Observations and Recommendations and the recommendations contained in reports of Special Procedures mandate holders, relating to persons of concern to UNHCR with regards to Azerbaijan.

1. Treaty Body Reports

Committee on the Rights of the Child

CRC/C/AZE/CO/3-4, 59th session

12 March 2012

Allocation of resources

17. While noting that the State party has increased its financial resource allocations for health, education, and addressing the needs of children in an internally displaced situation, the Committee is concerned that the overall level of resources allocated for social services remains low. It is further concerned at the absence of a child-rights approach to allocations in the State party's national, regional and local budgets.

18. Emphasizing articles 2, 3, 4 and 6 of the Convention, the Committee recommends that the State party increase the level of financial resources allocated to its social services with a view to raising it, at minimum, to correspond with the average levels of the member States of the Organization for Economic Cooperation and Development. Furthermore, it recommends that the State party establish a child-friendly budget process at the national, regional and municipal levels, with clear allocations to relevant sectorial areas such as health care, education and child protection, as well as specific indicators and a tracking system. In addition to this, the Committee recommends that the State party establish mechanisms to monitor and evaluate the efficacy, adequacy and equitability of the distribution of resources allocated to the implementation of the Convention for all children.

23. While noting as positive the State party's establishment of a children's rights website and the mandatory training on the Convention for law professionals, the Committee remains concerned that awareness and knowledge of the Convention remains limited, particularly among education professionals.

24. The Committee recommends that the State party include mandatory modules on human rights and the Convention in its school curriculum and training programmes for all professionals working with or for children, particularly in rural areas and in situations concerning asylum-seekers, refugees and internally displaced persons. The Committee further recommends that the State party increase media engagement in raising awareness

of the Convention in a child-friendly manner, in particular through greater use of the press, radio, television, the Internet and other media, and the active involvement of children in public outreach activities.

Birth registration

38. The Committee is concerned about the significant proportion of births that remain unregistered, both among newborn infants as well as persons currently under the age of 18. The Committee is particularly concerned about the situation of children born to parents in situations of socio-economic marginalization and/or living in remote regions, as well as to mothers who have been subject to underage marriage and are consequently often not officially registered as married. Furthermore, it is concerned at the prevalence of corruption in the birth registration process and the resulting inadequacy and inconsistency in the provision of registration services in the State party, particularly in its rural and outlying territories.

39. The Committee recommends that the State party undertake all necessary measures to ensure the availability of universal birth registration for all children regardless of the circumstance of birth, and/or the marital and/or migration status of the child's parent(s). It also recommends that the State party consider taking specific measures to facilitate birth registration for children of underage mothers and/or mothers in rural areas. Furthermore, the Committee also recommends that the State party take specific measures, including legislative measures, to combat corruption among authorities responsible for the provision of birth certificates.

Asylum-seeking and refugee children

66. The Committee notes with appreciation the significant measures taken by the State party to improve the situation of internally displaced persons in its territory. However, the Committee is deeply concerned about the situation of asylum-seeking children. In this context, the Committee is concerned that:

- (a) There is no mechanism to provide specific measures of protection and assistance to unaccompanied and separated children seeking asylum, and that there is no application of a consistent and child-sensitive interpretation of the refugee definition;
- (b) The current refugee legislation does not explicitly provide for complementary forms of protection for persons, including children of Chechen origin, who are not formally recognized as refugees and who are unable to return to their country of origin due to unsafe conditions;
- (c) The State party does not assume responsibility for the legal protection and welfare of asylum-seekers in its territory as envisaged in the 1999 Law on the status of refugees and internally displaced persons. Specifically, asylum-seekers and their children in its territory do not have adequate and reliable access to public health, education, social services or an adequate standard of living, due to existing legislative gaps and delays in implementation;
- (d) The State party does not provide for the birth registration of infants in an asylum-seeking situation at birth, putting them at risk of statelessness;
- (e) The State party's new draft migration code lacks provisions on complementary forms of protection and humanitarian status, which would constitute a significant obstacle to children in such situations with regard to accessing necessary social services.

67. The Committee urges the State party to take urgent and necessary measures to adequately address the situation of asylum-seeking children and, in doing so, take every necessary measure:

(a) To ensure that due consideration is given to asylum claims submitted by children, including under a refugee status determination procedure which takes into account the specific needs and rights of children and pays particular attention to unaccompanied and separated children seeking asylum, and ensure that such procedures are child-friendly and in compliance with international refugee and human rights law;

(b) To provide protection for children, including those of Chechen origin, not formally recognized as refugees and unable to return to their country of origin due to, inter alia, severe disturbances of the public order or armed conflict;

(c) To fully implement the 1999 Law on the status of refugees and internally displaced persons and other related legislation and ensure adequate and sufficient access to food, shelter, health care and education for children in an asylum-seeking situation;

(d) To provide for all children born on the territory of Azerbaijan, regardless of status, to be registered at birth and receive all necessary documentation;

(e) To consider seeking legal expertise and comments in the drafting process, including from the Office of the United Nations High Commissioner for Refugees (UNHCR), in order to assist the Government in seeking permanent solutions for refugee-related issues.

68. In considering the above recommendations, the Committee draws the State party's attention to the Guidelines on International Protection: child asylum claims under articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees issued by UNHCR in December 2009.

77. The Committee also recommends that the State party ensure, through adequate legal provisions and regulations, that all children who are victims and/or witnesses of crimes, for example, child victims of abuse, domestic violence, sexual and economic exploitation, abduction and trafficking, and witnesses of such crimes, are provided with the protection required by the Convention and that the State party take fully into account the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20, annex).

Committee on the Rights of the Child: Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography

CRC/C/OPSC/AZE/CO/1, 59th session

12 March 2012

Législation

10. Tout en notant que l'État partie a adopté une loi sur la lutte contre la traite des êtres humains (2005), le Comité constate toujours avec préoccupation:

a) Que le Protocole facultatif n'a pas encore été pleinement incorporé dans la législation de l'État partie et que la législation en vigueur ne porte pas expressément sur toutes les infractions visées par le Protocole facultatif;

b) Que, malgré l'augmentation du nombre des infractions visées par le Protocole facultatif qui sont commises via Internet et avec/à travers les téléphones portables, il n'existe pas dans l'État partie de législation concernant expressément les contacts à visées sexuelles et l'exploitation via Internet et d'autres moyens de télécommunication, y compris les téléphones portables.

11. Le Comité prie instamment l'État partie de poursuivre ses efforts pour harmoniser la législation nationale avec le Protocole facultatif. Il recommande en particulier à l'État partie:

a) Conformément à ses obligations découlant des articles 1er, 2 et 3 du Protocole facultatif, de définir et d'interdire tous les cas de vente d'enfants, prostitution des enfants et pornographie mettant en scène des enfants, pratiques qui s'apparentent, mais ne sont pas identiques à la traite des personnes;

b) D'envisager de promulguer une législation pour s'attaquer spécifiquement au phénomène de plus en plus répandu des infractions commises contre des enfants à partir d'Internet et/ou des téléphones portables, notamment au problème des contacts à visées sexuelles.

Plan national d'action

12. Le Comité se félicite de l'adoption, en 2004, d'un Plan national d'action contre la traite des êtres humains, puis, en 2009, d'un nouveau plan pour la période 2009-2013. Toutefois, il regrette qu'aucun plan d'action spécifique ne traite de façon exhaustive tous les domaines couverts par le Protocole facultatif.

13. Le Comité recommande à l'État partie de veiller à ce que la stratégie et le programme d'ensemble prévus pour la mise en oeuvre de la Convention (CRC/C/AZE/CO/3-4, par. 13 et 14) incluent un programme d'action complet et distinct portant spécifiquement sur toutes les questions considérées dans le Protocole facultatif et de dégager les ressources humaines, techniques et financières nécessaires à sa mise en oeuvre. Ce faisant, l'État partie devrait porter une attention particulière à l'application de toutes les dispositions du Protocole facultatif, en tenant compte des Déclaration et Programme d'action et de l'Engagement mondial adoptés respectivement au premier, au deuxième et au troisième Congrès mondial contre l'exploitation sexuelle des enfants à des fins commerciales, tenus à Stockholm en 1996, à Yokohama en 2001 et à Rio de Janeiro en 2008.

Coordination et évaluation

14. Le Comité relève avec préoccupation que l'État partie ne dispose pas de mécanisme chargé de la coordination, de la surveillance et de l'application générales du Protocole facultatif. Tout en saluant la création d'un groupe de travail réunissant des organismes gouvernementaux pour lutter contre la traite des êtres humains, le Comité regrette que ce groupe de travail ne puisse être considéré comme un mécanisme effectif de coordination de l'application générale du Protocole puisqu'il ne s'occupe pas des autres questions relatives à la vente d'enfants, la prostitution des enfants et la pornographie mettant en scène des enfants.

15. Renvoyant à ses recommandations concernant le mécanisme de coordination de l'État partie pour la mise en oeuvre de la Convention (CRC/C/AZE/CO/3-4, par. 12), le Comité recommande à l'État partie de renforcer la coopération et la coordination entre la Commission nationale pour les mineurs et le Comité d'État aux affaires de la famille, des femmes et des enfants, en particulier, ainsi qu'entre les autres ministères et organismes gouvernementaux compétents, en ce qui concerne l'application du Protocole facultatif. Il recommande également à l'État partie de veiller à ce que ces organismes soient dotés de moyens humains, techniques et financiers suffisants pour pouvoir s'acquitter de leurs fonctions dans le cadre de l'application du Protocole facultatif.

Formation

18. Le Comité prend note avec satisfaction des programmes de formation prévus par l'État partie dans le domaine de la lutte contre la traite des êtres humains. Mais il regrette qu'aucune activité de formation ne porte expressément sur toutes les dispositions du Protocole facultatif, notamment en ce qui concerne la vente d'enfants.

19. **Le Comité recommande à l'État partie d'allouer des ressources à des programmes pluridisciplinaires de formation conçus avec la participation des communautés concernées et d'autres parties prenantes et portant sur tous les domaines visés par le Protocole facultatif. Ces formations devraient être dispensées à tous les groupes professionnels concernés et au personnel des ministères et des institutions travaillant avec et pour les enfants. Le Comité prie en outre instamment l'État partie de procéder à une évaluation systématique de tous les programmes de formation relatifs au Protocole facultatif en vue d'améliorer leur impact et leur pertinence.**

Mesures adoptées pour prévenir les infractions visées par le Protocole facultatif

22. Le Comité prend note avec satisfaction des informations fournies par l'État partie concernant l'adoption de la loi sur la lutte contre la traite des êtres humains et la création d'un Comité d'État aux affaires de la famille, des femmes et des enfants qui a organisé des activités de sensibilisation sur la traite des enfants et le problème des enfants des rues. Il regrette toutefois que ces efforts aient porté uniquement sur la traite et que les mesures prises pour lutter contre les autres infractions visées par le Protocole facultatif demeurent insuffisantes.

23. **Le Comité recommande à l'État partie:**

a) **De veiller à ce que les activités menées par la Commission nationale pour les mineurs, le Comité d'État aux affaires de la famille, des femmes et des enfants, les organes chargés du maintien de l'ordre et les centres de protection sociale pour prévenir, détecter, réprimer et éliminer les infractions visées par le Protocole facultatif soient planifiées et mises en oeuvre d'une façon coordonnée;**

b) **De renforcer les mesures de réduction de la pauvreté et de protection sociale destinées aux familles économiquement défavorisées afin d'éviter que leurs enfants ne deviennent victimes d'infractions visées par le Protocole facultatif;**

c) **De mener des travaux de recherche complets et pluridisciplinaires dans les différents groupes socioéconomiques et culturels sur la nature et l'ampleur de la vente d'enfants, de la prostitution des enfants et de la pornographie mettant en scène des enfants et, à partir des résultats de ces travaux, d'adopter une stratégie globale et ciblée de prévention et de répression des infractions visées par le Protocole facultatif;**

d) **De renforcer ses mécanismes de contrôle de l'adoption d'enfants.**

Lois et réglementations pénales en vigueur

26. Tout en notant que l'État partie a inclus dans son Code pénal l'article 144-1 sur la traite des êtres humains, le Comité relève avec inquiétude que cette disposition ne couvre pas toutes les infractions visées par le Protocole facultatif. Il constate en outre avec préoccupation que, si l'article 171 interdit l'implication d'adolescents dans la prostitution et que l'article 242 interdit la production et la distribution de matériels pornographiques, le Code pénal ne prévoit pas de dispositions interdisant expressément la pornographie impliquant des enfants.

27. **Le Comité recommande à l'État partie de réviser son Code pénal pour le mettre pleinement en conformité avec les articles 2 et 3 du Protocole facultatif et de veiller à ce que**

la loi soit appliquée dans la pratique et que des sanctions appropriées soient prononcées à l'égard des responsables, afin de lutter contre l'impunité. L'État partie devrait, en particulier, incriminer:

a) La vente d'enfants, consistant à offrir, remettre ou accepter un enfant, quel que soit le moyen utilisé, aux fins d'exploitation sexuelle de l'enfant, de transfert d'organe de l'enfant à titre onéreux ou de soumission de l'enfant au travail forcé, ou à obtenir indûment, en tant qu'intermédiaire, le consentement à l'adoption d'un enfant, en violation des instruments juridiques internationaux relatifs à l'adoption;

b) Le fait d'offrir, d'obtenir, de procurer ou de fournir un enfant à des fins de prostitution;

c) Le fait de distribuer, d'importer, d'exporter, d'offrir, de vendre, de détenir ou de consulter ou visionner, en toute connaissance de cause, des matériels pornographiques mettant en scène des enfants, y compris des matériels virtuels ou des représentations suggestives d'enfants qui ne dépeignent pas des enfants se livrant à une activité sexuelle explicite (représentations érotiques mettant en scène des enfants); et

d) Le fait de produire et diffuser des matériels encourageant l'un quelconque de ces actes.

Mesures adoptées pour protéger les droits et les intérêts des enfants victimes d'infractions visées par le Protocole facultatif

34. Le Comité note avec satisfaction que l'État partie a établi, en 2009, un Centre d'assistance aux victimes de la traite des êtres humains sous les auspices du Ministère du travail et de la protection sociale. Il relève avec préoccupation, cependant, que le pouvoir et les programmes du Centre se limitent aux seules victimes de la traite et qu'aucune information n'est fournie sur les mécanismes éventuellement mis en place pour identifier et protéger les victimes d'infractions visées par le Protocole facultatif. Il s'inquiète en outre de l'absence d'informations concernant la réparation prévue pour les victimes d'infractions visées par le Protocole facultatif.

35. **Le Comité recommande à l'État partie de renforcer les mesures propres à protéger les droits et les intérêts des enfants victimes d'infractions visées par le Protocole facultatif, quelles qu'elles soient, et en particulier de veiller à la mise en place et au bon fonctionnement de mécanismes relatifs à l'identification et à la protection des victimes d'infractions visées par le Protocole facultatif, et de veiller à ce que les enfants victimes de telles infractions ne soient pas traités comme des délinquants. Le Comité recommande en outre à l'État partie de prendre des mesures pour garantir à tous les enfants victimes l'accès à des procédures leur permettant, sans discrimination, de réclamer réparation du préjudice subi aux personnes juridiquement responsables, en application du paragraphe 4 de l'article 9 du Protocole, et d'établir un fonds pour l'indemnisation des victimes, pour les cas où ces dernières ne peuvent obtenir réparation auprès de l'auteur de l'infraction.**

36. Le Comité recommande également à l'État partie, conformément aux obligations qui lui incombent au titre de l'article 8 du Protocole facultatif, de faire en sorte, en adoptant les dispositions législatives et les règlements voulus, que tous les enfants victimes d'actes criminels, tels que sévices, violence familiale, exploitation sexuelle et économique, enlèvement et trafic, ou témoins de tels actes, bénéficient de la protection exigée par le Protocole facultatif, et de tenir pleinement compte des Lignes directrices en matière de justice dans les affaires impliquant les enfants victimes et témoins d'actes criminels (résolution 2005/20 du Conseil économique et social, annexe).

Rétablissement et réinsertion des victimes

37. Le Comité se félicite des Règles relatives à la réadaptation sociale des victimes de la traite des êtres humains adoptées par l'État partie le 6 mars 2006, qui définissent des mécanismes de réadaptation sociale pour ces victimes. Il se félicite également de l'adoption des Règles relatives au placement et à l'hébergement dans des foyers des enfants victimes de la traite des êtres humains (résolution no 180 en date du 19 novembre 2009). En dépit de ces efforts, le Comité est sérieusement préoccupé par le fait que les mesures de rétablissement et de réinsertion sont réservées aux victimes de la traite et ne prennent pas suffisamment en compte les besoins des victimes des infractions de vente d'enfants, de prostitution des enfants et de pornographie mettant en scène des enfants visées par le Protocole facultatif. Le Comité est en outre préoccupé par l'insuffisance critique de foyers publics pour les enfants victimes et par le fait que tous les enfants identifiés comme victimes n'ont pas accès aux soins, à l'assistance et aux recours nécessaires.

38. **Le Comité engage instamment l'État partie à :**

- a) **Établir un mécanisme qui permette de fournir des services de rétablissement et de réadaptation aux enfants victimes des infractions, quelles qu'elles soient, visées par le Protocole facultatif;**
- b) **Adopter toutes les mesures nécessaires, y compris en envisageant des programmes de formation à l'intention des professions médicales sur la manière de repérer et de traiter les victimes d'infractions visées par le Protocole facultatif, pour que les enfants victimes de telles infractions reçoivent l'assistance nécessaire, notamment aux fins de leur pleine réinsertion sociale et de leur plein rétablissement physique et psychologique;**
- c) **Solliciter l'assistance technique de l'UNICEF et de l'Organisation internationale des migrations aux fins de l'application de ces recommandations.**

Committee on the Rights of the Child: Optional Protocol on the Involvement of Children in Armed Conflict

CRC/C/OPAC/AZE/CO/1, 59th session
8 March 2012

Measures adopted to protect the rights of child victims

23. The Committee regrets the lack of information in the State party report concerning refugees and asylum-seeking children who have fled armed conflict, including former child soldiers. The Committee is concerned about the situation of asylum-seeking children who are under a different categorization than refugee children, and that there have been asylum seeking children who may have been in need of protection, recovery and reintegration support during the time when the Optional Protocol has been in force. The Committee is further concerned about the lack of procedures aimed at the identification of such children who have been victims of crimes under the Optional Protocol and the lack of awareness in the State party about the need for such identification.

24. **The Committee recommends that the State party pay special attention to identifying refugee and asylum-seeking children who have been subject to conflict related trauma and displacement and provide them with special support and assistance, including psychological treatment. It further calls upon the State party to take all necessary measures to ensure that all children, including those who may not benefit from refugee status, be entitled to a**

special protection status if there is any danger that they might become victims of crimes under the Optional Protocol upon return to their home countries.

Committee Against Torture

CAT/C/AZE/CO/3, 43rd session

8 December 2009

11. Trafficking

20. While noting with satisfaction the adoption of legislative and policy measures taken regarding trafficking in human beings, the Committee remains concerned at the prevalence of the phenomenon in Azerbaijan (arts. 2, 10, 12 and 16).

The State party should ensure that legislation on trafficking is fully enforced and should continue its efforts to investigate, prosecute, convict and punish persons found responsible, including Government officials complicit in trafficking.

13. Non-refoulement

22. The Committee is concerned at cases of extraordinary rendition, such as the rendition of Chechens to the Russian Federation, based on bilateral extradition agreements, and Kurds to Turkey, where they may face a real risk of torture. The Committee regrets the lack of data provided on asylum applications and refugees, the number of expulsions, refoulement and extradition cases, as well as on the number of cases subjected to judicial administrative review. The Committee also regrets the absence of information on diplomatic assurances and any post-return monitoring procedure established for such cases (art. 3).

The State party should ensure that no person is expelled, returned or extradited to a country where there are substantial grounds for believing that he or she would be in danger of being subjected to torture, and that persons whose applications for asylum have been rejected can lodge an effective appeal with suspensive effect. The State party should compile and provide the Committee with detailed statistical data, disaggregated by country of origin, on the number of persons who have requested asylum or refugee status, and the outcomes of these applications, as well as the number of expulsions, deportations or extraditions that have taken place and the countries where individuals were returned to. The State party should take all measures to ensure that individuals who may face a risk of torture in their countries of origin are not returned, extradited or deported to these countries. The State party should avoid the systematic use of diplomatic assurances, and should provide detailed information on the content of any such agreements and the minimum standards of guarantee they provide.

Committee on the Elimination of Racial Discrimination

CERD/C/AZE/CO/6, 75th session

7 September 2009

3. While acknowledging the efforts of the State party to find a peaceful solution to the conflict over Nagorny Karabakh, the Committee is deeply concerned about the persistence of this conflict

and its negative influence, at the national and regional levels, on the exercise and full enjoyment of the rights enshrined in the Convention, in particular by internally displaced persons.

5. While noting that significant progress has been made by the State party in protecting the economic, social and cultural rights of persons affected by internal displacement, as well as asylum-seekers and refugees, the Committee is still concerned that asylum-seekers, refugees and internally displaced persons continue to experience discrimination in the areas of employment, education, housing and health. The Committee notes with concern that internally displaced women and children remain in a particularly vulnerable and marginalized situation. The Committee further observes that, while the State party generally endeavours to comply with the standards of the Convention relating to the status of refugees, some asylum-seekers, including Russian citizens from Chechnya, are allegedly excluded from the refugee determination procedure of the State party.

The Committee calls upon the State party to ensure the non-discriminatory implementation of each of the rights and freedoms referred to in article 5 of the Convention for all groups of the population. The Committee requests the State party to include, in its next periodic report, information on measures taken in this regard, and draws the attention of the State party to its general recommendation No. 30 (2004) on discrimination against non-citizens. Furthermore, the Committee requests the State party:

(a) To ensure equal opportunities for displaced persons, and to allow for their enhanced participation in the formulation of State policies and programmes concerning their interests, in particular with regard to the planning of new settlements, improved access to employment, housing, health care and quality education, and measures to encourage mixed schooling with local children. In this respect, it recommends the State party pay special attention to the situation of women and children;

(b) To ensure that all refugees and asylum-seekers receive equal treatment and to remedy the difficulties encountered by some asylum-seekers, including Russian citizens from Chechnya, in accessing refugee status determination procedures and residence registration (*propiska*) in order to access employment, health, and other social and economic rights. The Committee also recommends that the State party consider granting a temporary form of protection for persons who are requesting refugee status under the 1951 Convention Relating to the Status of Refugees, but who nonetheless are in need of international protection during consideration of their request. The Committee also recommends that the State party provide training to public officials and law enforcement officers with the aim of avoiding any tendency towards discriminatory conduct.

7. While acknowledging the efforts of the State party to combat human trafficking, including foreign victims, especially through adoption of the National Plan of Action on Combating Trafficking in Human Beings (2009-2013) and the creation of a relief fund for victims of human trafficking, the Committee is concerned that human trafficking remains a serious problem (art. 5). **The Committee requests that the State party effectively implement the National Plan of Action to Combat Trafficking in Persons and ensure that the Law on Combating Trafficking in Persons is fully enforced and that perpetrators are effectively prosecuted and punished. It recommends that the State party address the root causes of trafficking by increasing its efforts to improve the economic situation of typical victim groups, in**

particular of women, thereby eliminating their vulnerability to exploitation and traffickers. The Committee also recommends that the State party take measures for the rehabilitation and social integration of victims of exploitation and trafficking.

Committee on the Elimination of Discrimination against Women

CEDAW/C/AZE/CO/3, 37th session

2 February 2007

17. The Committee continues to be concerned about the prevalence of violence against women in Azerbaijan. While noting the elaboration of the draft law on domestic violence, it is concerned about delays in its adoption and lack of information about its scope and content. The Committee is further concerned about the current definition of rape in the Criminal Code.

18. **The Committee urges the State party to speedily enact the draft law on domestic violence and ensure that it encompasses provision for the prosecution and punishment of offenders, adequate access to justice for victims as well as protection and rehabilitation measures. It requests the State party to make it widely known to public officials and society at large. The Committee calls upon the State party to ensure that all women who are victims of domestic violence, including rural, refugee and internally displaced women, have access to immediate means of redress and protection, including protection orders, and access to a sufficient number of safe shelters, as well as to legal aid. It calls on the State party to ensure that public officials, especially law enforcement personnel, the judiciary, health-care providers and social workers, are fully familiar with all forms of violence against women and applicable legal provisions to adequately respond to them. It urges the State party to conduct research on the prevalence, causes and consequences of all forms of violence against women, including domestic violence, to serve as the basis for comprehensive and targeted intervention and to include the results of such research, and of the impact of follow-up action taken, in its next periodic report. The Committee also calls on the State party to ensure that the definition of rape in the Criminal Code penalizes any sexual act committed against a non-consenting person, including in the absence of resistance.**

19. While welcoming the efforts undertaken by the State party to combat human trafficking, the Committee remains concerned about the persistence of trafficking in women and girls, and the exploitation of prostitution, and about the lack of measures aimed at rehabilitating women victims of trafficking.

20. **The Committee requests the State party to effectively implement the National Plan of Action against Trafficking in Human Beings and to ensure that the Law to Fight against Trafficking in Persons is fully enforced, in particular by effectively prosecuting and punishing offenders. It recommends that the State party address the root cause of trafficking by increasing its efforts to improve the economic situation of women, thereby eliminating their vulnerability to exploitation and traffickers, as well as taking measures for the rehabilitation and social integration of women and girls who are victims of exploitation and trafficking. The Committee also calls on the State party to take all appropriate measures to suppress the exploitation of prostitution in the country.**

31. While welcoming the State Programme on the Settlement of the Problems of Refugees and Internally Displaced Persons, the Committee notes with concern that refugee women and girls and internally displaced women and girls remain in a vulnerable and marginalized situation, in particular with regard to access to education, employment, health and housing.

32. The Committee urges the State party to implement targeted measures for refugee women and girls and internally displaced women and girls, within specific timetables, to improve access to education, employment, health and housing and to monitor their implementation. The Committee requests the State party to report on the results achieved in improving the situation of these groups of women and girls in its next periodic report.

33. The Committee encourages the State party to accept, as soon as possible, the amendment to article 20, paragraph 1, of the Convention, concerning the meeting time of the Committee.

34. The Committee urges the State party to utilize fully, in its implementation of its obligations under the Convention, the Beijing Declaration and Platform for Action, which reinforce the provisions of the Convention, and requests the State party to include information thereon in its next periodic report.

35. The Committee also emphasizes that a full and effective implementation of the Convention is indispensable for achieving the Millennium Development Goals. It calls for the integration of a gender perspective and explicit reflection of the provisions of the Convention in all efforts aimed at the achievement of the Millennium Development Goals, and requests the State party to include information thereon in its next periodic report.

36. The Committee notes that States' adherence to the seven major international human rights instruments enhances the enjoyment by women of their human rights and fundamental freedoms in all aspects of life.

37. The Committee requests the wide dissemination in Azerbaijan of the present concluding comments in order to make the people, including government officials, politicians, parliamentarians and women's and human rights organizations, aware of the steps that have been taken to ensure de jure and de facto equality of women, as well as the further steps that are required in that regard. In particular, the Committee encourages the State party to convene a public forum involving all State actors as well as the civil society to discuss the presentation of the report and the content of the concluding comments. The Committee requests the State party to continue to disseminate widely, in particular to women's and human rights organizations, the Convention, its Optional Protocol, the Committee's general recommendations, the Beijing Declaration and Platform for Action and the outcome of the twenty-third special session of the General Assembly, entitled "Women 2000: gender equality, development and peace for the twenty-first century".

2. Special Procedure Reports

PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT

Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin

Addendum: Mission to Azerbaijan
Human Rights Council, Eighth Session
A/HRC/8/6/Add. 2
15 April 2008

VI. CONCLUSIONS AND RECOMMENDATIONS

59. The main cause of problems encountered by internally displaced persons in Azerbaijan is the absence of a peaceful and lasting solution to the conflict over Nagorny Karabakh and adjacent occupied territories. As a consequence, they are unable to exercise their right to return voluntarily to their former homes in safety and dignity. While some have rebuilt their lives elsewhere in Azerbaijan, most continue to live in precarious temporary arrangements and have not yet found a durable solution to their plight.

60. The Representative calls on the international community to renew and intensify its efforts to achieve a peaceful solution and to implement Security Council resolutions calling for the withdrawal of occupying troops and for supporting the return of displaced persons on both sides to their places of origin in safety and dignity. He calls on all parties to put humanitarian concerns before political considerations in order to end the suffering of displaced civilians. He encourages the Government of Azerbaijan to pursue further its chosen path of improving the living conditions of internally displaced persons at their current place of residence or elsewhere in the country, pending a solution to the conflict.

61. After a long period of responses to the needs of internally displaced persons that were insufficient for diverse reasons, the Government, in accordance with the Representative's predecessor's recommendations made during the latter's mission to Azerbaijan in 1998 and in accordance with its responsibility to provide protection and humanitarian assistance to internally displaced persons as recalled by Guiding Principle 3, has begun to implement comprehensive strategies to ensure that all human rights of the displaced are respected and their basic needs met. Given the magnitude of the problem of forced displacement in Azerbaijan, the Representative was impressed by the Government's achievements, which compare very favourably with national responses in many other countries affected by internal displacement. The Government's unqualified recognition of its responsibility for the protection of and assistance to the displaced, its extensive investment in improving their welfare, the priority it places on the issue as demonstrated by the anchoring of main responsibilities and coordination in the Deputy Prime Minister's office, and its smooth cooperation with the international community should all be acknowledged.

62. The Representative calls on the Government of Azerbaijan to proceed with and strengthen its implementation of the 2004 State programme. He encourages the international community to support the Government's effort in this regard. At the same time, the Representative recommends that the Government and international and non governmental organizations continue to deliver direct humanitarian assistance, grant allowances in cash and in kind, and exempt displaced persons from payments for public services. Such benefits have gone a long way to alleviating the often very difficult situation of internally displaced persons, removing them would probably put displaced persons in a situation significantly worse than that of the resident population.

63. Significant progress has been made in resettling internally displaced persons from some of the most precarious shelters to specifically constructed compact settlements. However, the majority of displaced persons continue to live in substandard shelters, including in tents, mud huts and railway cars.

64. The Representative encourages the Government to realize its intention to close remaining tent and railway camps by the end of the year. In order to increase the success of its resettlement programme, the Representative recommends that the Government invite persons to be resettled, including women, to participate in the planning of the location, design and equipment of new compact settlements, and that competent authorities inform communities of internally displaced persons in advance of the conditions awaiting them. The location of new settlements should be chosen so as to avoid endangering the physical security of displaced persons due to proximity to the ceasefire line. Likewise, internally displaced persons should not be cut off from their current places of employment. The Representative also suggests revisiting settlements already in use to take stock, in consultation with their inhabitants, of outstanding challenges to be addressed. He encourages international agencies to lend their expertise and other support for this purpose.

65. Many internally displaced persons living in urban centres continue to suffer from substandard conditions of buildings, in particular the lack of sanitation and harmful overcrowding. The Representative welcomes the Government's plan to address the needs of urban internally displaced persons whose basic needs are not met and who are not targeted by the resettlement programme. It may be expedient to adopt a comprehensive programme for displaced persons in urban areas, centering on the rehabilitation of collective shelters and the provision of appropriate alternative accommodation.

66. Building on the Government's ongoing efforts to address prevailing housing problems, the main challenge now is the creation of livelihoods for internally displaced persons, particularly in rural areas, where employment opportunities are scarce. The Representative observed that many displaced persons seemed to be suffering from dependency syndrome. Experience has shown that displaced persons who have been idle for many years lose their capacity to become productive members of society again and to rebuild their lives once return is possible.

67. The Representative urges the Government to ensure that new settlements are suitable for agricultural purposes and that economic opportunities are foreseen in the planning. He reiterates his predecessor's recommendation that efforts be made to create, improve and expand income generating activities, skills training and microcredit programmes for internally displaced persons, with particular attention to be paid to women, with the aim of reducing their vulnerability, increasing their self-reliance and preparing them for return and reintegration. The Representative appeals to the Government and to international agencies to ensure that the needs and concerns of internally displaced persons are adequately reflected in general policies and programmes, including those for poverty reduction.

68. The Representative welcomes the Government's new policy of moving forward from segregated schools for internally displaced persons in urban areas. Although there are indications that such persons attending separate schools are disadvantaged, despite notable Government efforts, by an overall lower quality of education provided to them, and that displaced children may make less use of higher education opportunities than the resident population, the absence of reliable data does not permit unambiguous conclusions nor, more importantly, targeted reforms.

69. The Representative supports a suggestion by the Minister for Education that the level and quality of education of internally displaced persons be studied, with the aim of filling remaining gaps through specific programmes implemented in cooperation with the international community. He encourages mixed schooling with local children wherever feasible.

70. The Representative noted with concern that the special needs of elderly, traumatized and mentally ill displaced persons were insufficiently addressed. Elderly internally displaced persons seemed to be at a disadvantage compared to their non-displaced peers, owing to a variety of factors, such as difficulties in adjusting and diminished family support due to the impoverishment of their children. The Representative observed that serious mental health issues were prevalent among the displaced population. He received indications that, in addition to trauma caused by the violence that triggered the displacement, feelings of insecurity, homelessness and anxiety about the future, as well as severe poverty and stressful, overcrowded living conditions lay at their origin; however, he was informed that reliable relevant data did not exist.

71. The Representative concluded that specific surveys and needs assessments, meeting international standards, into the situation of elderly and mentally ill internally displaced persons and their access to counselling and appropriate medical care needed to be conducted. He encouraged the Government, in close cooperation with competent international agencies, to take the lead in designing effective responses, and welcomed donor interest in funding programmes based on reliable data. Both general and specific Government programmes should pay special attention to particularly vulnerable groups among internally displaced persons, including by continuing and increasing humanitarian assistance to persons unlikely to become self-sufficient on their own.

72. The Representative welcomes the Government's early return planning and is encouraged by the intention of competent United Nations agencies as well as donors to support the plan. He shares the realistic view of the Government that return will not be possible immediately and should be conducted through a phased approach. He reiterates that, in accordance with international law, eventual return and local integration are not mutually exclusive, but rather reinforce each other, as productive, active members of society are more likely to muster the strength and possess the skills needed to rebuild their communities of origin.

73. The Representative welcomes the Government's affirmation of the principle of voluntary return in safety and dignity, as well as its readiness to shoulder the burden of mine clearance and reconstruction of the occupied territories, and of facilitating the return and reintegration of the displaced. He urges all concerned actors to plan and implement any return-related activities on the basis of international law, including those as set out in the Guiding Principles on Internal Displacement. A peaceful solution to the conflict is of paramount importance, as renewed hostilities are likely to engender additional displacement and would complicate the already daunting tasks of mine clearance and reconstruction. Mechanisms for property restitution, reconstruction or compensation should be put in place at an early stage. The participation and the informing of affected individuals and groups must be ensured during all phases of planning and implementation of the return process, including when return is not yet imminent, in order to keep the expectations of displaced persons realistic.

74. Despite the assumption of many responsibilities, the Government informed the Representative of the necessity of continued international support, to a lesser extent in the form of financial contributions and more in the areas of technical expertise and capacity building. The Representative encourages the international community to continue to support the Government in making sure that the outstanding needs of internally displaced persons are fully addressed. Humanitarian assistance may continue to be required to a lesser extent as the Government scales up its own investment. The Representative sees the main role of international and non governmental organizations as contributing technical expertise, monitoring progress and providing technical assistance, for example for needs assessment surveys, in particular in the areas of livelihoods and economic opportunities for the displaced; in health, including mental health; and in education. He also feels that international actors, in particular the United Nations country team, have an important role to play in assisting the Government and advising on a rights based approach in its return planning.

Implementation of General Assembly Resolution 60/251 of 15 March 2006 entitled "Human Rights Council"

Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir

Addendum: Mission to Azerbaijan
Human Rights Council, fourth session
A/HRC/4/21/Add.2

18 October 2006

B. Acts of Religious Intolerance and other form of persecution of religious minorities

47. In Nakichevan, the situation of religious communities is slightly different from the one on the mainland. The Special Rapporteur received a number of reports disclosing acts of persecutions of small religious communities by the authorities. She received reports of harassment, intimidation and expulsion of individuals and groups by the authorities in Nakichevan.

48. It was reported that two Wahabi Muslim groups were on two different occasions “chased out” of Nakichevan by the police. The authorities in Nakichevan did not deny that these groups were ordered to leave the province, but justified their action on the grounds that these were foreigners with links to militant religious groups. Nevertheless, their expulsion was reportedly not carried out in accordance with the law.

D. Censorship

57. The control of religious groups or other communities of belief, in particular those which have a foreign link, is often carried out through a meticulous scrutiny of their literature. In most cases such literature comes from abroad and, according to the authorities, constitutes a means to disseminate religious propaganda that is either critical or insulting of other religions, goes against the interests of the State, or even incites to acts of terrorism. While the authorities are reluctant to use the word “censorship”, they consider such control as necessary and justified. The Special Rapporteur was told in this respect that religious propaganda is not part of the right to manifest one’s religion as protected by relevant international instruments.

58. Regarding the import of religious literature, almost every religious group complained of unnecessary delay and harassment by custom officials. Several incidents of corruption and arbitrariness by customs officials were reported to the Special Rapporteur.

G. Immigration policy

73. Article 1 of the law “On freedom of faith” of 1992 prohibits foreigners and persons without citizenship from conducting “religious propaganda”. To the extent that “propaganda” refers to an element of the right to manifest one’s religion, namely the propagation of religion, it appears that this provision provide for restrictive rights to foreigners, which may not be compatible with international human rights law.

74. Moreover, it was reported to the Special Rapporteur that the Government had a selective immigration policy regarding foreign preachers. The Government generally discourages immigration of foreign missionaries and there were reports of deportation of foreign preachers but a selective few are tolerated or even officially permitted to preach in the country.

VII. Recommendations

93. In particular, the Special Rapporteur urges the Government to give special attention to any form of religious intolerance towards religious minorities and take the appropriate

measures to address and prosecute all forms of incitement to religious hatred in accordance with article 20 of the International Covenant on Civil and Political Rights and other relevant human rights provisions, including when these acts are perpetrated by the media.