



Fight against Trafficking in Human Beings and Organised Crime – Phase 2 (THB/IFS/2)

Assessment of the National Referral Mechanism for Victims of Trafficking in Azerbaijan

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1. List of abbreviations

ACU – Azerbaijan Children Union

Clean World – Clean World Support to Women Public Union

CoE – Council of Europe

CoE THB Convention – Council of Europe Convention on Action against Trafficking in Human Beings

CM – Cabinet of Ministers of the Republic of Azerbaijan

Relief Fund – Relief Fund to Support Victims of Trafficking in the Republic of Azerbaijan

ICMPD – International Centre for Migration Policy Development

ILO – International Labour Organisation

IOM – International Organisation for Migration

MoE – Ministry of Education of the Republic of Azerbaijan

MoH – Ministry of Health of the Republic of Azerbaijan

MIA – Ministry of Internal Affairs of the Republic of Azerbaijan

MIA CTHB – Main Counter-Trafficking Department of the Ministry of Internal Affairs of the Republic of Azerbaijan

MoLSP – Ministry of Labor and Social Protection of Population of the Republic of Azerbaijan

NGO – Non-Governmental Organisation

NRM – National Referral Mechanism

OSCE – Organisation for Security and Co-operation in Europe

SCFWCA – State Committee for Family, Women and Children Affairs of the Republic of Azerbaijan

SMS – State Migration Committee of the Republic of Azerbaijan

Tamas – “Tamas” Regional NGO in Ganja

THB – Trafficking in Human Beings

THB Law- Law on Trafficking in Human Beings of the Republic of Azerbaijan

UN – United Nations

UNTOCC – United Nations Transnational Organized Crime Convention

VAC – Victim Assistance Centre under the Ministry of Labour and Social Protection of Population of the Republic of Azerbaijan

USAID – United States Agency for International Development

2. Introduction

Over the past years, the Government of Azerbaijan has made significant efforts to improve the normative and legislative regulations on the issues related to combating trafficking in human beings and to provide assistance to trafficking victims. The recent improvements are reflected in the Government's amendment of its legal framework in 2013 in order to align it with the good practices and recommendations provided by the international community. The developments also include adoption of rules for repatriation of trafficking victims, social rehabilitation and reintegration of children and enhanced co-operation with international organisations in the area of combating human trafficking.

In an effort to further support Azerbaijan in its efforts to combat trafficking in human beings, ICMPD initiated an assessment of Azerbaijan's National Referral Mechanisms for Trafficked Victims in the framework of the EU-funded project *Fight against Trafficking in Human Beings – Phase 2* (THB/IFS/2).

This report assesses the situation of trafficking in human beings, in particular the mechanisms for identification, referral, assistance and protection of the rights of trafficked persons. The scope of the Report does not cover the prevention and prosecution of trafficking in human beings.

The overall objective of the report is to assist the Republic of Azerbaijan in strengthening its mechanisms to ensure effective identification, referral and assistance of trafficked victims and the protection of their rights. While the assessment is focused on the effectiveness of the NRM in Azerbaijan, it also sought to assess the emerging trends in the types and forms of human trafficking and country's preparedness to effectively address it.

Based on the findings, the Report presents a set of recommendations in the following three key areas: (1) Identification of trafficked victims; (2) Referral and assistance to trafficked victims; and (3) Return and repatriation of trafficked victims.

3. Methodology

The study commenced with open source research, which included a review of legislation, policy documents, reports and studies provided by the Main Department for Countering Trafficking in Human Beings and the ICMPD National Project Officer in Baku. The assessment was followed by an analysis of the responses to the written inquiry and meetings with the relevant government department with responsibilities for implementing the National Referral Mechanism for Victims of Trafficking in Human Beings.

The assessment also involved the visits to the shelters and interviews with victims accommodated in the civil society operated shelters for trafficking victims to gather richer qualitative data about the needs of trafficking victims and evaluate the available services to address them. Interviews with victims were conducted based on the publication “Listening to Victims: Experiences of identification, return and assistance in South-Eastern Europe” published by the International Centre for Migration Policy Development (ICMPD) in 2007.

In assessing Azerbaijan’s National Referral Mechanism, this report aims to provide a picture of the current position of Azerbaijan in terms of victim identification, assistance and protection and propose a set of recommendations for improving the referral and array of assistance for victims of human trafficking.

4. Background

4.1. International legal obligation

Azerbaijan has signed and ratified most of the key international treaties that provide a legal framework to combat human trafficking. Azerbaijan is a signatory of the *UN Transnational Organized Crime Convention and Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (UNTOCC Anti-Trafficking Protocol). In addition, Azerbaijan ratified the Council of Europe (CoE) *Convention on Action Against Trafficking* on 23 June 2010 which 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 is a party to the *ILO Conventions 29 and 105 prohibiting forced labour*, and *ILO Convention 182* outlawing the worst forms of child labour. 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. 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 workers' rights in more detail than the UN Convention.

4.2. Bilateral and multilateral agreements

Azerbaijan has signed a number of bilateral and multilateral co-operation agreements related to the fight against trafficking in human beings and to general co-operation in criminal and legal matters. Azerbaijan signed an agreement with the CIS Participating States on co-operation in the field of combating trafficking in human beings and illegal trade of human organs and tissues. Other multilateral agreements relevant to combating THB by which Azerbaijan is bound include: the Agreement of Governments of the Member States of the Black Sea Economic Cooperation Organisation on co-operation in combating crime, especially its organised forms; the CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases; the Agreement between the Republic of Azerbaijan, Georgia and the Republic of Turkey on co-operation in the fight against terrorism, organised crime and other serious crimes; the Agreement on co-operation among the Governments of the Organisation for Democracy and Economic Development (GUAM) Participating States in the field of combat against terrorism, organised crime and other dangerous types of crimes; and the Agreement between the CIS Participating States on co-operation in combating crime.¹

5. National legislation and policy documents

Azerbaijan has solid legislation in place which regulates the issues of trafficking in human beings. It has a separate Law on Countering Human Trafficking that addresses human trafficking and a number of sub-statutory regulations dealing with particular matters adopted in

¹ Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Azerbaijan, CoE GRETA (2014)9

2005. In 2014, Azerbaijan adopted its third National Action Plan (NAP) on Combating Trafficking in Human Beings which is planned to be implemented until 2018. The new NAP envisages new activities with a major focus on elimination of child labour and improvement of legislation in alignment with international commitments.

Among the significant changes in recent years are the measures to ratify the Council of Europe Convention on “*Protection of Children against Sexual Exploitation and Sexual Abuse*”, which was signed on November 17, 2008 and to improve the legislation to ensure children’s internet and mobile safety and increase parental responsibility for children. Pursuant to the recommendations received from the international community, the new NAP also envisages to strengthen control over labour migration and adopt “*legal-normative acts governing the legal status of people, deprived of permanent place of residence, released from penitentiary institutions, and found refuge in streets, railway stations, railway wagons*”².

The Government adopted most of its legislation and policy documents in countering human trafficking from 2005 to 2009 when Azerbaijan still had the characteristics of a country of origin.

Currently, counter-trafficking activities in Azerbaijan are regulated by the acts listed below:

- Constitution of the Republic of Azerbaijan;
- Criminal Code of the Republic of Azerbaijan;
- Criminal Procedure Code of the Republic of Azerbaijan;
- Labour Code of the Republic of Azerbaijan;
- Migration Code of the Republic of Azerbaijan;
- Presidential Decree of August 4, 2005 on Implementation of the Law on Fight against Trafficking in Persons (June 28, 2005);
- Law on State Protection of Persons Participating in Criminal Proceedings (December 11, 1998);
- Rules on Establishing, Funding, Functioning and Oversight of Activities of the Special Institutions for Victims of Trafficking approved by the Cabinet’s Decision #203 (November 9, 2005);
- Regulations on Relief Fund for Victims of Trafficking approved by the Cabinet’s Decision #8, (January 12, 2006);
- Rules of Social Rehabilitation for Victims of Trafficking approved by the Cabinet’s Decision #6 (March 6, 2006);
- The Cabinet’s Decision #152 on Determination of the Amount of Allowance to Be paid to Victim of Trafficking during Reintegration Period (June 17, 2006);
- Regulations on Hot-line Providing Services to (Potential) Victims and Persons Suspected to Be Victims of Trafficking approved by Order #590 of the Ministry of Internal Affairs (October 12, 2007);

² National Action Plan of the Republic of Azerbaijan to Fight Human Trafficking for the period of 2014-2018

- Rules for Handing over Victims of Trafficking to the Special Police Agency approved by the Cabinet's Decision #21 (February 1, 2008);
- Rules of National Referral Mechanism for Victims of Trafficking approved by the Cabinet's Decision #123 (August 11, 2009);
- Rules (Indicators) for the Identification of Victims of Trafficking approved by the Cabinet's Decision #131 (September 3, 2009);
- Rules on Accommodation and Staying Child Victims of Trafficking in Shelter approved by the Cabinet's Decision #180 (November 19, 2009);
- Program on Elimination of Social Problems Contributing to Trafficking in Persons approved by the Cabinet's Decision #81 (May 20, 2011);
- National Program for Action to Raise Effectiveness of the Protection of Human Rights and Freedoms in the Republic of Azerbaijan approved by the Presidential Decree #1938 (December 27, 2011);
- Law on Social Services (December 30, 2011) and Presidential Decree on implementation of this Law (March 14, 2012);
- Law on Changes to the Criminal Code of the Republic of Azerbaijan (April 19, 2013) (additions and modifications were made to articles 99-4.6, 144-1, 144-2 and 243, new provisions of the article 144-3 (illegal actions with documents for the purpose of trafficking in persons) were approved);
- List of documents confirming difficult living conditions of the person (family) under the grounds for consideration difficult living conditions approved by the Cabinet's Decision #111 (June 10, 2013);
- Rules on Repatriation of Victims of Trafficking approved by the Cabinet's Decision #252 (September 10, 2013);
- Rules on Accommodation of the Person (Family) in Difficult Living Conditions in State Social Service Institutions approved by the Cabinet's Decision #32 (November 5, 2013);
- Program on Social Rehabilitation and Reintegration of Child Victims of Trafficking approved by the Cabinet's Decision #37 (February 6, 2013);
- Secured Amount of the Social Assistance Provided to the Person (Family) in Difficult Living Conditions approved by the Cabinet's Decision #108 (April 22, 2014).

Commendably, in light of the recommendations of the international community such as the OSCE, Council of Europe, and IOM, Azerbaijan made significant amendments and improvements to its legal framework to counter human trafficking. In 2013, the Government amended its Counter-Trafficking Law and Criminal Code by (1) aligning the definition of human trafficking both in the Counter-Trafficking Law and the Criminal Code; (2) adding a 30 day reflection period for trafficking victims; and (3) criminalising retention of passports. It further adopted rules on repatriation of trafficking victims and a programme on social rehabilitation and reintegration of child victims.

6. National Referral Mechanism

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, coordinating their efforts in strategic partnerships 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 to services.³

Azerbaijan developed its National Referral Mechanism in 2009 through the Cabinet of Ministers Decision No. 123 on the “Rules of National Referral Mechanism on victims of trafficking in human beings”. Azerbaijan’s National Referral Mechanism comprises six articles which define rules for implementation of the referral mechanisms of trafficking victims. The document is based on the principles of rights and freedoms of victims; protection, rehabilitation and reintegration assistance tailored to the victims’ needs. The document ensures the co-ordination and co-operation among State and non-State agencies, as well as regional and international co-operation. The NRM is carried out by an inter-agency commission comprising the following fourteen members⁴ headed by the National Co-ordinator for Countering Human Trafficking which meet at least once a year:

- Ministry of Internal Affairs
- General Prosecutor’s Office
- Ministry of Justice
- Ministry of Foreign Affairs
- Ministry of Labour and Social Protection
- Ministry of Education
- Ministry of Health
- Ministry of National Security
- State Committee on Family, Woman and Child Issues
- State Migration Service
- State Border Service
- State Customs Committee
- Ministry of Youth and Sport
- Ministry of Culture and Tourism.

The NRM recommends that the co-operation between law enforcement and civil society or service providers in the identification and referral of trafficking persons should preferably be set out in formal co-operation agreement between the parties defining the roles and responsibilities of the different actors.

According to paragraph 6.8 of the Rules of National Referral Mechanism for Victims of Trafficking, NGOs may be involved in the reintegration of victims into society. In respect to the above recommendation and as prescribed in the Article 10 of the Counter-Trafficking Law, the

³ National Referral Mechanisms: Joining Efforts to Protect the rights of Trafficked Persons, OSCE/ODIHR, A Practical Handbook 2004, p15 www.osce.org/node/13967

⁴ Cabinet’s Decision #123 on Rules of National Referral Mechanism for Victims of Trafficking, Art 2. Implementation of the NRM on victims of human trafficking, 2009

Main Department for Countering Trafficking in Human Beings of the Ministry of Internal Affairs has signed a Memorandum of Understanding with 44 civil society organisations, which are grouped under the Anti-Trafficking Coalition.

However, only two members of the coalition, Clean World Public Union and Azerbaijan Children Union have provided direct victim assistance and shelter services, while other members have focused on prevention through public awareness activities.

6.1. Identification

At the core of an NRM is the process of identification. The identification of trafficking victims in Azerbaijan is conducted by the Main Department for Combating Human Trafficking of the Ministry of Internal Affairs through police operations/raids and the operation of a hotline. Another way of identifying victims is through information received from civil society organisations and the international community. According to the Article 7 of the Cabinet of Ministers Decision No 21 of 2008 on “*Rules on referring victims of human trafficking to the special police unit on combating trafficking in human beings*”, a person suspected to be a victim of trafficking must be referred to the special police unit within 24 hours.

In September 2009, the Government of Azerbaijan adopted *Rules (Indicators) for the Identification of Victims of Trafficking* approved by the Cabinet’s Decision No. 131 which gives the guidance (questions and clues) comprising, for example, place and conditions where the person was discovered, psycho-physical condition of the person, and possession of identity documents, among others.

Raids to locate trafficking victims are conducted by the Main Department for Countering Human Trafficking, the State Migration Service and the State Labour Inspection Service. In 2008 the State Migration Service signed two joint action plans with the State Border Service and Ministry of Internal Affairs with a view of preventing violations of the migration law in the territory of Azerbaijan. Their knowledge and skills with regard to victim identification and treatment are therefore crucial in order to ensure victims receive adequate treatment.

Identification interviews are conducted by the officers of the Division for work with Victims of Trafficking of the MIA CTHB Department to establish the presence of indicators. The civil society respondents suggest, however that these interviews are not strictly compliant with the guidelines on identification procedures as in practice all indicators prescribed therein must be in place to establish the victim status.

According to the annual reports of the National Co-ordinator for Combating Trafficking in Human Beings, the vast majority of identified victims are Azerbaijani women exploited abroad. However, the official report of Azerbaijan’s State Migration Service classifies Azerbaijan as country of destination for migrants, albeit Azerbaijani Counter-Trafficking Law does not identify migrants as potential victims for trafficking in human beings. The International Organisation for Migration, in conjunction with the European Union, published a report in 2014 that provides the following details of migration flows in Azerbaijan:

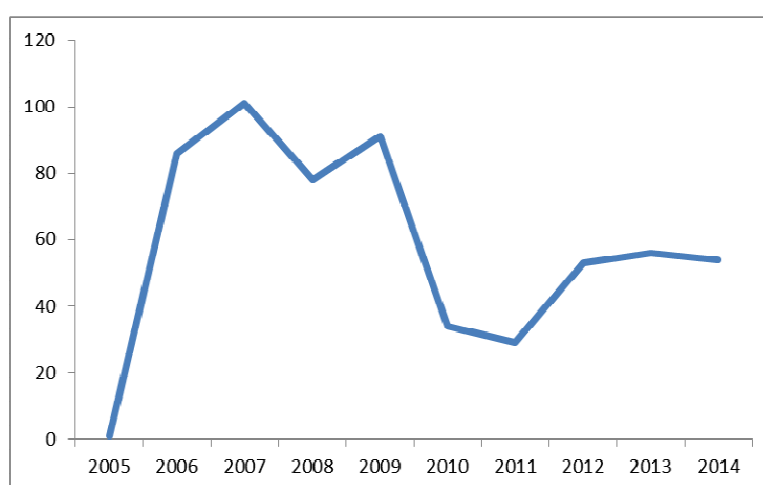
“the increase in inward migration largely stemmed from migrant workers being drawn in by the growth in investment by oil companies, which resulted in the recruitment of cheap labour from South-East Asia. Initially, most of migrants came from Pakistan, but they were subsequently followed by others from India, Iran,

Bangladesh and the Central Asia, mostly from Uzbekistan and Turkmenistan. The development of energy sector fuelled a boom in construction, which further encouraged inward economic migration and continues to do so⁵.

According to the State Migration Service, the relevant divisions of the State Migration Service take actions to identify potential victims of trafficking while conducting inspections compliant with rules on employment of a foreign labour force. During these inspections, some observations are made, labour migrants are questioned and possible cases of their abuse by employers are examined. Availability of work permits for gainful employment and labour contracts are checked.

From 2012 to 2014, the Government of Azerbaijan identified 163 victims of trafficking, the majority of whom were victims of sexual exploitation. Chart I reflects the fluctuations in the number of victims officially identified by the Government of Azerbaijan.

Chart I. Number of Identified victims of human trafficking in Azerbaijan from 2005 to 2014⁶



6.2. Hotline

A hotline for trafficking victims was launched in October 2007 by the Main Department for Countering Trafficking in Human Being of the MIA which is managed by members of the civil society organisations selected by the Department. It is a three digit and seven digit numbers (152 and/or 562-21-12), which are reachable within Azerbaijan only. There are three more hotlines, one operated by the Victim Assistance Centre under the Ministry of Labour and Social Protection and two operated by civil society organisations. All the hotlines are operational 24 hours a day to provide information, emergency contact details and legal advice.

Nevertheless, the hotline numbers are widely unknown to the public at large, since they have not been advertised on TV or in the press, and have never been placed in the areas of major movements, such as airports, sea ports and border control check points.

⁵ Review and Needs Assessment of Accommodation for Vulnerable Migrants, IOM

⁶ Main Department for Countering Human Trafficking of the Ministry of Internal Affairs of the Republic of Azerbaijan

6.3. Shelters

Article 13.1 of the Law on Combating Human Trafficking of 2005 and Sections 6 and 9 prescribe the establishment of State-run shelters, detailing also the types of assistance services which the Government must provide and ensure for victims while at the shelter. In addition to the housing itself, which has to meet “acceptable living conditions”, the State-run shelters must provide food medicine, first aid, psychological, social and legal assistance as well as security, telephone access and other means communications.

To date, there are five shelters for trafficking victims in Azerbaijan, four in Baku and one in Ganja city. Two of these shelters (for adult and child victims) were established by the MIA CTHB Department, pursuant to the THB Law, in 2006 and 2009 and are operated by the members of the civil society organisations selected by the MIA Counter Trafficking Department. These shelters are funded by the State budget and the salaries of the employees are paid by the CTHB Department. Both shelters are located in one building.

The other three shelters were established by NGOs. They are independent and were previously funded by USAID through the OSCE. Two of them are located in Baku: one shelter for female victims established and operated by Clean World and one shelter for children established and operated by Azerbaijan Children Union. The third shelter is for female victims and located in Ganja. It was established by Tamas Regional NGO with the support of the Victims Assistance Center under the Ministry of Labour

Pursuant to Paragraph 2.3 of the Cabinet of Minister’s Decision No. 203, one shelter was established by the Ministry of Labour and Social Protection in 2013 in Ganja as a support centre and is currently operated by the “Tamas” Regional NGO. It has so far accommodated only female victims of trafficking. While the Decision prescribes that “all logistics of the support centres shall be provided at the expense of the national budget and other sources specified in the legislation”, so far, the established centre has been dependent on the funding support and donations of international organisations.

Article 13 of the THB Law stipulates that victims of THB can stay in the state shelter for up to 30 days regardless of their will to co-operate with law-enforcement agencies. However, in practice, the state run shelter in Baku has so far accommodated only victims of THB who agreed to co-operate with the authorities. These victims can be placed in the shelter only once the criminal proceedings have started, and they may stay from three to thirty days, which can be extended for another thirty days upon the request of the victim. The shelter has a capacity to accommodate 54 victims at a time however there has not been a case of full occupation of the shelter since its establishment in 2006. The child shelter which was established on the third floor of the same building in 2009 has so far only accommodated two child victims since its establishment.

“Rules on Placing and Keeping Child Victims of Human Trafficking” adopted by the Cabinet of Ministers Decision 180 in 2009 and Programme on “Social Rehabilitation and Reintegration of Child Victims of Trafficking” approved by the Cabinet’s Decision No 37 in 2013 are the two main documents that set minimum requirements for shelters for child victims. After a child placed in the shelter, the MIA CTHB should inform the State Committee for Family, Women and Children Issues.

Victims are not allowed to leave the state shelter unaccompanied. They are considered to be under the “protection of the state”. As such, the police claim that their whereabouts must be

accounted for at any point of time and their security has to be ensured. Thus, in practice, victims leave the shelter in the company of staff only for appearance in court or for other administrative procedure. According to the MIA CTHB Department “37 victims of trafficking (23 women and 14 men) out of 54 identified in 2013 and 38 victims of trafficking (35 women and 3 men, including 3 foreigners) out of 54 identified in 2014 were accommodated in the shelter and received protection and other necessary assistance”.

As mentioned above, in addition to the MIA and MOLSP VAC shelters, there are currently two specialized civil society organisations in Baku running shelter programmes:

- (1) Clean World Public Union manages a shelter for female victims of trafficking for sexual exploitation;
- (2) Azerbaijan Children Union manages a shelter for street children as a potential target group for trafficking.

According to information collected during interviews, there are no other shelters equipped to work with trafficking victims and the Ministry of Labour and Social Protection plans to open a second shelter in the south of Azerbaijan. However, there are eleven “Family Support Centres” established throughout Azerbaijan by the State Committee for Family, Women and Children Issues which are supposed to also serve as assistance centres for vulnerable persons, including victims of domestic violence and human trafficking, but have not been utilized for presumed or potential victims of trafficking.

6.4. Reflection period

Azerbaijan’s amended legislation of 2013 now specifies a reflection period for the victims of trafficking for 30 days as required by the Article 13.1 of the CoE Convention.

Once the MIA identifies a person as a trafficking victim, the person has the right for reflection period after his/her stay in the MIA shelter. However, there are no procedures in place to specify how and where the reflection period shall be practiced. Currently, some female victims of trafficking are referred to Clean World for their reflection period. According to Clean World, the organisation has already proposed that the National Co-ordinator should officially take over the reflection period for female victims of trafficking.

6.5. Civil society organisations

Numerous domestic non-governmental organisations (NGOs) have taken up the cause of human trafficking and are addressing the issue from multiple angles ranging from direct service to policy research. Although there are allegedly more than forty domestic NGOs dealing with counter-trafficking, only a few domestic NGOs have formed for the explicit purpose of serving trafficking victims and providing direct assistance. Other organisations, such as those which signed MoUs with the MIA Anti-Trafficking Department, implement projects that focus more on prevention of human trafficking through public awareness campaigns. These organisations may be funded by the State Council to Support NGOs and/or privately funded through various organisations. Nevertheless, the funding remains the key impediment to the smooth provision of civil society led assistance services. During interviews, the NGOs pointed out the need for co-operation to grow and evolve, as presently they are faced with a “one-way partnerships” with the government authorities. NGOs promptly address government requests by receiving and assisting victims identified by state authorities but are not receiving support for a more independent role in providing outreach and assistance services.

There are a few existing, but typically inactive formal agreements codifying co-operation between NGOs and government authorities. Against this context, NGOs have had to develop informal networks of co-operation to ensure appropriate responses to cases of trafficking. Respondents pointed out that they have had to rely on their own personal contacts and known partners to develop support for cases of trafficking, especially for cases that require repatriation and reintegration services (including employment, continuing education and care of the children of trafficking victims).

As specified in Section 3, there are currently three civil society led shelters in Azerbaijan; two operating in Baku and one in Ganja. From 2012 to 2014, these shelters received funding support from the Organisation for Security and Co-operation in Europe (OSCE) with the financial grant agreement signed between the OSCE and the United States Agency for International Development (USAID). However, the completion of the fund agreement in 2014 put the shelters in difficult situation. Currently, the civil society shelters are the only rehabilitation service providers for trafficking victims and constantly receive victims referred by the MIA Counter –Trafficking Department. Besides some financial support received through the Council for State Support to NGOs however, these shelters are largely dependent on external funding.

In addition, NGOs currently face a major problem with registering funds received from external sources.

On February 3, 2014, November 16, 2014, and November 20, 2014, changes were made to the Law on Grants, the Law on State Registration of Legal Entities and the State Registry and the Code of Administrative Offences, which have the potential to significantly impair the work of both Azerbaijani and foreign organisations. They introduce many obligations for organisations, including new registration requirements, and rules regarding receiving and using grants and reporting to the government. In addition, the new changes establish harsh penalties for those who violate both new and previously existing obligations under the law. The new law also includes a number of provisions, such as the requirement for NGOs to provide an application letter and notarized copy of any grant agreement to the Ministry of Justice within 30 days of the date of the grant agreement. Cash donations (under 200azn) can be received only by NGOs whose statutory purposes include charitable purposes. Anonymous donations are prohibited. There is a lack of clarity in the process for registering grant agreements, which makes it difficult for NGOs to register their grants and receive them. The requirement for individuals to register their grants with the MoJ on the same grounds and rules as registered NGOs makes it difficult for non-registered NGOs to receive grants. Donations must also be registered at the MoJ. Moreover, the new amendments established a requirement for donor-organisations to seek approval from the Ministry of Finance and Ministry of Justice prior to providing any grants to NGOs. More detailed regulations on the registration of grants and process for receiving approval for donor-organisations are expected in the upcoming regulations by the Cabinet of Ministers. Up to the present date, no single grant agreement has been registered with the Ministry of Justice, due to the Cabinet of Ministers not issuing any new regulations governing the process.

While the Rules on National Referral Mechanisms provide that representatives of civil society organisations working in the field of anti-trafficking 'could' be invited to the meetings of the Inter-agency Committee, none of the NGOs have so far participated in any of the above-mentioned meetings, except those that are initiated by the MIA Counter-Trafficking Department solely for the purpose of co-ordination of activities with civil society organisations.

The interview findings also note the lack of co-operation between and among the civil society organisations. NGOs may claim to have more support from the media than their partner organisations and complain over the climate of competition around referral and placement of victims in the shelters.

The adoption of the Law on Social Services of 2012 established a mandatory licensing of NGOs which provide assistance to domestic violence victims. No such licensing is required for the shelters for trafficking victims. The civil society operated shelters have been able to extend the assistance to victims of domestic violence as well as main potential group for human trafficking.

Although some government agencies expressed their dissatisfaction with the civil society operated shelters' condition and rehabilitation services, there are no formal procedures or criteria for operating shelters which NGOs should abide by.

As a whole, regardless of their specific focus or mission, NGOs play an extremely important role in the referral and assistance for trafficking victims in Azerbaijan.

6.6. Victim assistance centre

Pursuant to Articles 12.1 and 14 of the Anti-Trafficking Law, the Victim Assistance Centre was established within the Ministry of Labour and Social Protection (MoLSP) in 2005. The Centre became operational in 2009 and is the specialized institution to provide post-shelter assistance to trafficking victims. Nevertheless, the Centre provides the same services as those provided by the MIA shelter: psychological and medical care and advice on legal procedures. The only service different from the MIA shelter is the assistance in finding employment and continuing education.

The Centre has eight staff members: a director, two lawyers, a social worker, psychologists, an accountant, a logistics manager and a cleaner. Although the Centre's statute provides for the provision of legal assistance and representation in court to trafficking victims, in practice, the Centre has never represented a victim in the court nor provided a legal assistance.

In addition, the Centre's statute stipulates the provision of assistance to self-identified victims who directly seek assistance from the Centre. However, all the victims receiving the Centre's services are those referred by the MIA Counter-Trafficking Department, as well as by Clean World Public Union and Azerbaijan Children Union. Since 2012, the Centre provided assistance to 142 victims of human trafficking, mainly in finding employment and continuing their education. All the victims cited above were referred by the MIA Counter-Trafficking Department.

The Centre has been commended by a number of civil society organisations for enabling access to reintegration services, in particular arranging for vocational education for potential trafficking victims identified by civil society organisations as well as for maintaining good co-operation with civil society.

Meanwhile, high staff turnover remains the main shortcoming of the Centre, in particular, the recent change in the management of the Centre raises concern over the efficiency and the future of state support for the referral for trafficking victims. In the context of recent disturbing developments affecting NGO and donor funding, this change may jeopardize the referral of trafficking victims to assistance services.

6.7. Social welfare and healthcare

This section provides an overview of the health and educational support provided for trafficking victims in Azerbaijan.

The Ministry of Education is one of the main stakeholders involved in providing rehabilitation and reintegration assistance for trafficking victims. The Ministry has the mandate to provide social rehabilitation and continuing education for trafficking victims. It has two departments and seven divisions within the Institute of Education Problems to work with trafficking victims, compared to other stakeholders which have one distinct department with one or two members as main focal points.

Despite the number of departments and divisions liable to provide assistance, the Ministry is considered by the respondents as one of the weakest points in the assistance chain.

The civil society organisations criticized the Ministry's delayed response to assistance inquires to assist with the continuing education for presumed, actual and potential victims of trafficking. Another major concern is the Ministry's weak response to inquiries to facilitate assistance for children of trafficking victims. According to NGOs, there is only one kindergarten school that is currently allocated to accommodate children of trafficking victims. The kindergarten is located far from the shelters for trafficking victims, and has also been unresponsive and accused of creating obstacles to accommodate the above mentioned children.

According to the response of the Ministry to the written inquiry submitted, the Ministry does not maintain statistics on the number and details of assisted victims. It is, however, in process of developing a monitoring tool and statistics to assess the situation of child negligence and school non-attendance as required by the NAP on Countering Human Trafficking.

The provision of healthcare, on the other hand, is considered by the respondents as one of the most operational and responsive assistance mechanisms for trafficking victims. There are currently nine medical points, the majority of which are hospitals in Baku, which are tasked to serve trafficking victims. Thus, in cases of victims requiring a medical examination and treatment, the NGO that assists the victim sends a written request to the relevant hospital. The victim is then accompanied by a social worker of the shelter to receive the necessary medical assistance. In cases where the victim is residing in a rural area, the NGO sends a written inquiry to the Ministry of Health, which advises about the clinic or hospitals where the trafficking victim can check in.

6.8. Non-punishment of victims

Article 177 of the THB Law stipulates that "Persons, who have suffered human trafficking, are exempted from civil, administrative or criminal liability for offences committed under coercion or intimidation while they were victims of trafficking."

Victims of trafficking may break immigration and labour laws by unlawfully crossing borders and residing and working in the country of destination without official permits. The civil society organisation interviewed during this assessment reported a case of a migrant worker who was returned to their home country without having an opportunity to appeal the court decision. Another similar case of a migrant worker was also reported to have the same implications of denial of the rights prescribed by the Law.

6.9. Data protection and victim privacy

Article 17 of the THB Law requires that only the decision of a prosecutor of the court can authorize the disclosure of personal information about trafficked person. The Criminal Code of Azerbaijan penalizes the disclosure of information about a victim who co-operates with an investigation.

Nevertheless, civil society organisations interviewed during the assessment reported violations of these provisions caused by judicial officials sending letters and court decisions directly to victims. Due to the stigma in society that victims of human trafficking may face, in particular for victims of sexual exploitation, these groups often have a preference for discretion regarding their personal situations. The practice of the judiciary sending letters directly to victims may place them at risk of being punished by family members.

Furthermore, recent media reports about a particular case of domestic servitude⁷ harshly violated the protection of victims' confidentiality by posting the victim's photo and details.

6.10. Legal assistance and compensation

Article 10 of the THB Law specifies that the NGOs working on countering human trafficking will provide legal assistance to victims. This has been the case since the establishment of counter-trafficking mechanisms in Azerbaijan in 2005. Nevertheless, the recent changes to the Law on Legal Assistance require mandatory membership of the Bar Association for lawyers defending victims in criminal cases. Civil society organisations have noted this has caused an impediment to providing legal assistance for victims in court proceedings. In addition, the quality of the legal assistance and representation is at risk due to the lack of a specialized lawyer on THB in the Bar Association.

In a situation where civil society organisations are fully dependent on external sources of funding, the funding of legal assistance for trafficking victims remains another concern.

In regard to the issue of providing compensation for trafficking victims, Azerbaijani legislation foresees three ways through which trafficking victims may be awarded compensation:

- (1) **Through the Relief Fund;**
- (2) **Through one-time compensation** from the state budget;
- (3) **By filing a civil claim** for pecuniary and non-pecuniary damages caused by the trafficker.

Restitution for victim of trafficking is made under the procedural legislation at the expense of the trafficker's property or by the Relief Fund under the court's decision if the trafficker's property is not sufficient.

Article 22 and 23 of the THB Law foresees compensation for trafficking victims through the Relief Fund for Trafficking Victims that the Government established in 2005. The Fund has

⁷ See <http://www.aznews.az/index.php?c=news&id=74566> and <http://www.meydan.tv/az/site/opinion/5304/Mehriban-Zeynalova-m%C9%99hk%C9%99m%C9%99-h%C3%B6km%C3%BCn%C3%BC-gizl%C9%99tmi%C5%9Fdi.htm>

been operational since 2008. According to the CM Decision No. 8 on the Relief Fund for Trafficking Victims, the source of the funding shall be constituted from the forfeited property and seized assets of traffickers, however in practice the source of funding has so far been collected through in-kind contributions and charity events. The Fund is liable to pay 100 AZN (approximately 80 EUR) for each victim as a one-time lump sum compensation. According to information of the MIA CTHB, from 2013 to 2014, 53 victims received material support from the Relief Fund.

Compensation paid by the Relief Fund does not limit the victim's right to claim compensation for moral and material damages caused by crimes committed against him/her. Compensation is paid to victim either in cash or via bank transfer depending on his/her will.

Article 190 of the Criminal Procedure Code ensures the right of victims to receive compensation for the damage caused to him/her by an act provided for in criminal law. According to article 191 of the Criminal Procedure Code, the compensatory mechanism is initiated via an application for compensation submitted by the victim. When the court includes a decision to pay compensation to a victim from the state budget in its indictment, it also states the amount to be deducted from the convicted person in favour of the state budget.

According to the Law on Fight against Trafficking in Persons, all proceeds generated from trafficking in persons (real estate, funds, securities and other assets) are confiscated under the court decision and transferred to the Relief Fund for victims of trafficking as it is provided for in relevant legislation. Proceeds accumulated in the Relief Fund for victims of trafficking are used to pay compensation to victims as well as for their social rehabilitation and to reimburse their medical and other necessary expenses.

The Cabinet of Minister's Decision No. 152 on "Determination of the Amount of Allowance to be paid to Victim of Trafficking during a Reintegration Period" was adopted in 2006 and amended in 2010 and 2013. The Decision currently envisages 400 AZN (approximately 335 EUR) as a one-time compensation for victims of trafficking during the reintegration phase of their assistance.

In cases of civil claim, the claimant is responsible for providing and carrying the burden of proof. In 2013, the Clean World NGO carried out research on the criteria for assessment of moral and material damages caused to trafficking victims. The research also aimed to provide an assessment of financial damage to the state budget.

A civil society organisation⁸ previously developed the practice of pursuing back-payment of wages from employers' to a deceived and exploited worker through the MIA CTHB. The practice successfully settled the claims for unpaid and underpaid wages outside of the official legal framework.

6.11. Return and repatriation

Pursuant to Article 16 of the CoE Convention, which stipulates that "*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*

⁸ Response of the Azerbaijan Migration Centre to the written inquiry

victim, and shall preferably be voluntary”, Azerbaijan adopted “Rules for Repatriation of Trafficking Victims” through the Cabinet of Minister’s Decision No. 252 in 2013.

The main objective of these Rules is to co-ordinate the activities of relevant state agencies for the repatriation of foreigners and stateless persons who are victims of THB and to prevent their re-victimization.

According to the Paragraph 1.3 of the Rule, the repatriation of victims is provided on the basis of the principle of voluntariness. The rule stipulates that victims of trafficking are not subject to administrative deportation (expulsion) outside the borders of Azerbaijan and in cases of foreigners and stateless persons identified as trafficking victims, are given a 1 year temporary residence permit at their request after the end of the recovery and reflection period.

Azerbaijan’s Migration Code, which was adopted on 1 August 2013, provides means to grant work and residence permit to foreigners. However, the Code lacks clarity in regard to legal definitions, as well as missing provisions designating a national agency responsible for the area of detention and return of irregular migrants. There are no clearly established mechanisms for voluntary return based on the free decision of returnees⁹.

Article 4 of the Rules on Repatriation states conditions for the provision of residency permits and/or the non-execution of administrative expulsion (deportation) which is connected to the victim’s co-operation with the investigation.

According to Migration Code, the voluntary and forced return decision might be accompanied by entry ban of up to 5 years. It is however unclear if the court can decide about imposing an entry ban in cases when a foreigner is expelled from the country or whether the State Migration Service needs to decide on this.

Furthermore, current legislation allows for voluntary departure only, and not for voluntary return in the sense of providing sufficient time for the returnee to make voluntary and informed decision to return. It is strongly advised therefore to establish mechanisms for assisted voluntary return programmes for victims of trafficking. These programmes provide administrative, logistical, financial and reintegration support to returning migrants unable or unwilling to remain in their host country. In addition, the procedures should clearly state what the time frame for appealing administrative expulsion decisions is in order to enable the returning victim the change to appeal a decision.

The recent dispute between two civil society organisations on the involvement of the Relief Fund for Trafficking Victims in the expulsion of a Filipino victim of domestic servitude as a facilitated returnee in 2015 raises concern over how return and repatriation processes are conducted, as well as whether the Fund resources are being utilised for their intended purpose.

⁹ Review and Needs assessment of Accommodation for Vulnerable Migrants, IOM

7. Conclusions and recommendations

While Azerbaijan has made commendable developments in the area of combating human trafficking, in particular in developing its legal framework to protect the rights of trafficking victims, the following areas require further assistance and improvement:

Identification of victims of human trafficking

The findings of the assessment conclude that a major gap remains in timely and accurate identification of victims of human trafficking. This is partially linked to the lack of proactive identification in places where victims are likely to be found; the lack of civil society organisations involved in the process of identification interviews conducted with the alleged or presumed victims of trafficking and the will of the victim to co-operate with the investigation.

Female victims trafficked for sexual exploitation overwhelmingly remain the largest group of identified cases despite continuous acknowledgement among stakeholders and the international community of the existence of other forms of trafficking. These include labour exploitation involving labour migrants, forced begging involving children and the elderly, domestic servitude involving migrant women and internal trafficking for the purpose of forced prostitution.

Although Azerbaijan has a formal list of indicators to effectively identify trafficking victims, the responders have emphasized the need to develop standard procedures for identification for each of the institutions involved in the implementation of the National Action Plan for Combating Human Trafficking.

The report further highlights the necessity to broaden the range of actors involved in identification to include non-governmental organisations as key stakeholders with the experience and practical knowledge to identify and assist trafficking victims.

Recommendations:

- 1) Develop multi-agency involvement in identification of trafficking victims by reinforcing the role and input of the specialized NGOs, labour inspections, trade unions and migration officers;
- 2) Develop Standard Operating Procedures on the identification of trafficking victims which will provide a unique step-by-step instruction for front line officers among local police, labour inspectors, social workers, medical and teaching personnel and migration and border officers;
- 3) Develop outreach systems to those involved in high risk activities such as begging and sex work;
- 4) Include vulnerable migrants as a potential group at risk of human trafficking by amending the paragraph 1.0.10 of the Art of the THB Law;
- 5) Design a set of indicators separately for all phases of human trafficking.

Referral and assistance for victims of trafficking

The assessment identified several shortcomings with respect to the referral, rehabilitation and reintegration mechanisms and practices used for trafficking victims. Minimum standards for shelters and other support services for victims are not in place. Victims are usually placed

inadequately regardless of their age and the gender. The major concern remains the placement of adult victims (both women and men) in the child shelter run by the Azerbaijan Children Union, which mostly focuses on assisting street children. Men are a key group for whom there are not, in many cases, any services available. There is also a gap in support for longer term reintegration, especially the almost complete lack of services to support employment and to secure long-term economic independence for victims. The NGOs raised issues of economic empowerment on many occasions however their concern still remains unaddressed. The THB Law encourages entrepreneurs to recruit potential victims of trafficking (para 11.2.5, Art 11, Chapter III, THB Law) to prevent their victimization. The law does not elaborate however on the economic empowerment of trafficking victims through developing entrepreneurship activities to promote their self-sustainability, thus improving their socio-economic situation which contributed to their vulnerability to trafficking in the first place, and preventing their re-victimization.

The assessment findings also emphasise the urgent funding need of the NGO-led shelters operated by Clean World Public Union and Azerbaijan Children Union. Despite the lack of financial support to these shelters, the NGOs should be commended for continuing, despite the difficult conditions, to provide assistance to the victims referred by the Government agencies, media and identified by their own outreach workers.

While there are a number of decisions and policy documents that regulate the work of the institutions for victims and provide a framework for assistance, there is no standard procedure for referral and assistance for each of the organisations involved in the process. The referral process also lacks a clear procedure for evaluation the victims needs and monitoring the provision of assistance.

A licensing and certification of NGOs, shelters and centres working for trafficking victims seems to be inevitable. This is necessary in order to ensure that victims are properly assisted by these specialised organisations, and in turn to ensure that these specialised organisations are supported by the State's funding to support the activities that envisage assistance to trafficking victims.

Recommendations:

- 1) Develop standards for shelter assistance;
- 2) Develop standard procedures separately for referral and assistance for each of the agencies and organisations involved in the process;
- 3) Develop services for economic development and entrepreneurship mechanisms for trafficking victims;
- 4) Develop mechanisms/criteria for evaluation of victims needs prior to designing rehabilitation programmes;
- 5) Urgently improve the work of the Ministry of Education in regard to their mandate to support trafficking victims;
- 6) Introduce shelter certification and licensing;
- 7) Ensure the referral and shelter placement of the victim is in alignment with her/his age and gender;
- 8) Develop monitoring and evaluation mechanisms to assess the quality of support provided to trafficking victims;
- 9) Develop mechanisms for free legal aid for trafficking victims by expanding the coverage of the Relief Fund for Trafficking Victims;

- 10) Train and develop a list of specialized lawyers/members of the Bar Association who would represent the victims during criminal and administrative proceedings;
- 11) Provide specialized training for lawyers and members of the Bar Association on human trafficking mechanisms including indicators for identification of trafficking victims, victims' rights and implementation of non-punishment provision of the legislation in regard to victims of trafficking to ensure quality legal assistance to trafficking victims.

Return and Repatriation of Trafficking Victims

This area of assistance is relatively new in Azerbaijan as the Migration Code of Azerbaijan, as well as the relevant Rules¹⁰, have only recently been adopted to regularise this area. Nevertheless, Azerbaijan's economic development in the energy sector has made and will likely continue to make the country attractive to migrant workers in search of good employment. Therefore, this stage of assistance requires thorough development.

Despite the new Rules that provide co-ordination for the repatriation of trafficking victims, there is a need to have a more detailed procedure that would standardise the actions to be taken by each of the responsible agencies. As described in Section 11 on Return and Repatriation, the funding utilised for this purpose should have a clear mandate to do so. The return of the trafficking victims should be voluntary based on the informed decision of the concerned person.

According to the IOM, in 2015, the Organisation reached an agreement with the Government of Azerbaijan to organize and implement an assisted voluntary return programme for all the vulnerable migrants, including trafficking victims.

Recommendations:

- 1) Develop standard operating procedures for return and repatriation of trafficking victims;
- 2) Develop risk assessment tools and mechanisms with due regard to the returned and/or repatriated of victims' safety;
- 3) Develop a reintegration plan for returned trafficking victims to prevent their re-victimization.

¹⁰ The Cabinet's Decision #252 on Rules on Repatriation of Victims of Trafficking, September, 2013

8. Annexes

Annex I. List of reviewed documents

- 1) Criminal Code of the Republic of Azerbaijan;
- 2) Labour Code of the Republic of Azerbaijan;
- 3) Migration Code of the Republic of Azerbaijan;
- 4) Presidential Decree of August 4, 2005 on Implementation of the Law on Fight against Trafficking in Persons (June 28, 2005);
- 5) Law on State Protection of Persons Participating in Criminal Proceedings (December 11, 1998);
- 6) Rules on Establishing, Funding, Functioning and Oversight of Activities of the Special Institutions for Victims of Trafficking approved by the Cabinet's Decision #203 (November 9, 2005);
- 7) Regulations on Relief Fund for Victims of Trafficking approved by the Cabinet's Decision #8, (January 12, 2006);
- 8) Rules of Social Rehabilitation for Victims of Trafficking approved by the Cabinet's Decision #6 (March 6, 2006);
- 9) The Cabinet's Decision #152 on Determination of the Amount of Allowance to Be paid to Victim of Trafficking during Reintegration Period (June 17, 2006);
- 10) Regulations on Hot-line Providing Services to (Potential) Victims and Persons Suspected to Be Victims of Trafficking approved by Order #590 of the Ministry of Internal Affairs (October 12, 2007);
- 11) Rules for Handing over Victims of Trafficking to the Special Police Agency approved by the Cabinet's Decision #21 (February 1, 2008);
- 12) Rules of National Referral Mechanism for Victims of Trafficking approved by the Cabinet's Decision #123 (August 11, 2009);
- 13) Rules (Indicators) for the Identification of Victims of Trafficking approved by the Cabinet's Decision #131 (September 3, 2009);
- 14) Rules on Accommodation and Staying Child Victims of Trafficking in Shelter approved by the Cabinet's Decision #180 (November 19, 2009);
- 15) Program on Elimination of Social Problems Contributing to Trafficking in Persons approved by the Cabinet's Decision #81 (May 20, 2011);
- 16) Law on Social Services (December 30, 2011) and Presidential Decree on implementation of this Law (March 14, 2012);
- 17) Law on Changes to the Criminal Code of the Republic of Azerbaijan (April 19, 2013) (additions and modifications were made to articles 99-4.6, 144-1, 144-2 and 243, new provisions of the article 144-3 (illegal actions with documents for the purpose of trafficking in persons) were approved);
- 18) Rules on Repatriation of Victims of Trafficking approved by the Cabinet's Decision #252 (September 10, 2013);
- 19) Rules on Accommodation of the Person (Family) in Difficult Living Conditions in State Social Service Institutions approved by the Cabinet's Decision #32 (November 5, 2013);
- 20) Program on Social Rehabilitation and Reintegration of Child Victims of Trafficking approved by the Cabinet's Decision #37 (February 6, 2013).

Annex II. List of interviewed agencies and organisations

- 1) Main Counter-Trafficking Department, Ministry of Internal Affairs of the Republic of Azerbaijan
- 2) Victim Assistance Centre, Ministry of Labour and Social Protection of Population
- 3) State Migration Service of the Republic of Azerbaijan
- 4) State Committee for Family, Women and Children Affairs of the Republic of Azerbaijan
- 5) The Ministry of Education of the Republic of Azerbaijan
- 6) The Ministry of Health of the Republic of Azerbaijan
- 7) Clean World Public Union
- 8) Azerbaijan Children Union
- 9) Azerbaijan Migration Centre
- 10) International Organisation for Migration