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## **CARIM EAST – CONSORTIUM FOR APPLIED RESEARCH ON INTERNATIONAL MIGRATION**

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# ***The Legal Framework for Circular Migration in Azerbaijan***

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This report describes circular migration in Azerbaijan, state policy for this pattern of migration and the impact of this policy on migrants.

## 1. Current Situation

The term “circular migration” is rarely used in Azerbaijan and it is not defined by national legislation: though more than twenty legislative acts regulating migration processes have been adopted in Azerbaijan, none of them include “circular migration” or explicitly regulate this pattern of migration.

Most of the remittances that significantly contribute to the economic growth of the country are sent to Azerbaijan by circular migrants. Most construction companies in Azerbaijan are foreign companies. They typically bring foreign labour migrants to Azerbaijan with tourist visas and later involve them in construction projects there<sup>1</sup>.

No detailed reports on current internal and external migration processes in Azerbaijan are available. Reports developed by the State Statistic Committee include those who left the country after de-registration from their places of residence and this data is provided by the Ministry of Internal Affairs.

As migrant workers, citizens of Azerbaijan are mainly employed abroad on a temporary basis.

As migrants employed in Azerbaijan come mainly with three-month tourist visas, they have to leave the country, obtain new tourist visas and return every three months. Those who do not follow these rules are subject to the administrative penalty imposed by the State Migration Service.<sup>2</sup> As for citizens of the CIS countries, they do not need visas but they have to leave Azerbaijan prior to expiration of the ninety-day period and then return again. This procedure is usually implemented by employers. This practice threatens national security in terms of employers’ wrongdoing, migrant workers’ well-being and the violation of national legislation.

Since 2007 the state migration policy of Azerbaijan has gradually become tougher. The State Migration Service, which implements state migration policy, takes severe action against migrants. It is though not severe against employers who ignore laws ensuring the rights of employees<sup>3</sup>.

## 2. National Legal Framework

The main legislative acts regulating foreigners’ entry to and exit from Azerbaijan as well as grounds for obtaining visas are the following: the Law on Exit, Entry and Passports; Regulations on Rules of Foreigners and Stateless Persons’ Transit through Azerbaijan; Regulations on Implementation of the Law on Exit, Entry and Passports; as well as bilateral agreements on visa-free regime between Azerbaijan and other countries.

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<sup>1</sup> Today in Azerbaijan almost all big constructions (for example, Shah-Dag winter-summer Tourist Complex in Gusar region, the “Flame Towers” Complex, the Crystal Hall constructed for Eurovision Song Contest) are run by foreigners and they in their turn have brought labour migrants to Azerbaijan with tourist visas who have undertaken construction activities. Hundreds of such labour migrant has applied to the “Azerbaijan Migration Center” Public Union in 2011-2012 and the lawyers of Public Union have applied to different state bodies concerning these appeals.

<sup>2</sup> See web-site of the State Migration Service: [www.migration.gov.az](http://www.migration.gov.az).

<sup>3</sup> Though according to the quota established by the Cabinet of Ministers 11,900 migrant workers should be employed at the national labour market, while the number of foreigners involved in the construction sector exceeds this figure many times over.

## 2.1 Freedom of Movement

Every Azerbaijani citizen has the right to exit from and enter the country freely through the checkpoints established for these purposes<sup>4</sup>. Citizens of Azerbaijan cannot be deprived of the right to exit from and enter their country<sup>5</sup>.

The citizens' right to exit from and enter the country, in line with the procedure provided by the current legislation, is exercised only upon availability of his/her passport and permit to enter another country, i.e. a visa issued in accordance with international treaties<sup>6</sup>.

Foreigners and stateless persons are allowed to enter and exit from Azerbaijan, as specified by law, when they pass through special checkpoints while holding personal passports and permits i.e. visas issued in accordance with international treaties. Foreigners having permission to live in Azerbaijan on a temporary or permanent basis are allowed to enter and exit from Azerbaijan only with their passports (or any other border crossing document). They need too the temporary or permanent resident card issued by the relevant executive authority<sup>7</sup>.

## 2.2 Visa Policy

In accordance with intergovernmental agreements to which Azerbaijan is signatory and under the proposals put forward by President, the Parliament establishes a visa-free (simplified) procedure for entering Azerbaijan for foreigners with passports. A visa-free regime was established with the following CIS countries: the Russian Federation, Ukraine, Belorussia, Moldova, Armenia, Georgia, Kazakhstan, Kirgizstan, Uzbekistan and Tajikistan.

The duration of the foreigner's temporary stay in Azerbaijan is one indicated in a visa issued to him/her. The duration of the foreigner's temporary stay in Azerbaijan under the visa-free regime does not exceed 90 days.

In order to obtain a visa, a foreigner is to submit his/her written application indicating purpose of visit and date of entry with the required documents including receipt on the duly paid visa fee<sup>8</sup>. This must be submitted to embassies/consulates or (in cases established by the relevant executive authority) directly to the MFA of Azerbaijan.

According to Paragraph 30 of the Regulations on the Implementation of the Law on Exit, Entry and Passports, a foreigner, who has been expelled from Azerbaijan, shall have no right to return to that country again.

In May 2012 Azerbaijan introduced a simplified visa regime for the EU citizens from 1 May - 1 June 2012 while hosting the Eurovision Song Contest. In addition negotiations between EU and Azerbaijan on visa free regime for the EU citizens travelling Azerbaijan are underway.

## 2.3 Citizens of Azerbaijan Residing Abroad

Citizens of Azerbaijan employed abroad are indicated in national legislation as "countrymen living permanently abroad", "Azerbaijanis residing abroad", "stateless ethnic Azerbaijanis living abroad"<sup>9</sup>.

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<sup>4</sup> Article 28 of the Constitution of AR.

<sup>5</sup> Article 2 of the Law on Exit, Entry and Passports.

<sup>6</sup> Article 2 of the Law on Exit, Entry and Passports.

<sup>7</sup> Article 12 of the Law on Exit, Entry and Passports.

<sup>8</sup> Article 14 of the Law on Exit, Entry and Passports.

<sup>9</sup> Law on Policy on Azerbaijanis Living Abroad.

The Law on Labour Migration includes terms and conditions for Azerbaijani citizens' employment abroad. According to this Law (Article 12), citizens of Azerbaijan, when 18 and older, have a right to perform remunerated labour activities in foreign countries. A citizen of Azerbaijan may be employed abroad by a foreign legal entity or a natural person, through the mediation of a legal entity registered officially in Azerbaijan or in an individual manner. Article 22 of the "Law on Labour Migration" stipulates that legal entities and physical persons shall be responsible for violation of this Law in accordance with the legislation of the Republic of Azerbaijan. However, in the national legislation there is no implementation mechanism, nor any sanctions for the violation of abovementioned provisions.

In this context, it should be noted that according to Article 14 of the "Law on Labour Migration", the limitation of labour migration for Azerbaijani citizens in certain qualifications may be determined by higher executive powers. This provision too can be interpreted as a restriction on the circular migration of Azerbaijani migrant workers.

Moreover, the non-adoption of Law on dual citizenship in Azerbaijan negatively affects circular migration. However, provisions of the current law of Azerbaijan "On citizenship of the Republic of Azerbaijan" allow Azerbaijani citizens to get citizenship in any other foreign country. Thus, for example, a citizen of the Republic of Azerbaijan residing in Russia can get Russian citizenship. Despite this Azerbaijan does not recognize the affiliation of its citizens to the citizenship of any foreign country<sup>10</sup>.

## 2.4 Foreigners in Azerbaijan

Under Article 6 of the Law on Labour Migration, even foreigners and stateless persons and holders of individual permits for labour activities in Azerbaijan, cannot be considered as circular migrants. This is so as these permits do not give them right for multiple entries to and exit from the country so they need a new visa for every entry/exit until they are issued a temporary residence permit. Annual individual work permits allows their holders to work in Azerbaijan and serve as a basis for their single entry to and exit from the country.

Presently, only those persons who have been granted immigrant status in Azerbaijan may be employed in Azerbaijan without work permits. They are also allowed to exit from and enter the country without a visa by presenting their passports and immigrant identity document. Although there is no limitation on the duration of the immigrant's stay out of Azerbaijan, his/her absence in the country for more than six months during a year serves as a basis to discontinue that status<sup>11</sup>.

The Law on Labour Migration includes some provisions on near-border migration which are more or less similar to circular migration. According to this Law, near-border labour migration is regulated by international treaties to which Azerbaijan is signatory. Such treaties' provisions on near-border labour migration are only applied to the border areas of Azerbaijan<sup>12</sup>. However Azerbaijan has not yet signed this kind of treaty with any of its neighbouring countries. Apart from Article 20 other rules established by the above mentioned Law are not applicable in the case of near-border labour migration.

According to the Law on Labour Migration (Article 8 of the Law) a foreigner employed by a legal entity or a natural person may enter Azerbaijan in accordance with the procedure defined in their legislation. A work permit issued for that migrant worker at the same time is considered his/her temporary residence permit. That migrant worker should leave Azerbaijan when his/her work permit expires or when his or her labour contract terminates. If the labour contract is cancelled for reasons not

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<sup>10</sup> Article 10 of the Law "On citizenship of the Republic of Azerbaijan".

<sup>11</sup> Article 13 of the Law on Immigration.

<sup>12</sup> Article 20 of the Law on Labour Migration.

depending on the migrant worker, costs for the return of that migrant and his/her family members are to be covered by the employer<sup>13</sup>. There is a general opinion that this law needs to be amended and that a work permit should not be issued for one year as at present. Rather the period would be better tailored to suit the work performed by the migrant. For instance, work permits in the construction sector should provide multiple entries/exits for its holder.

A former work permit holder can apply for a new work permit in Azerbaijan after residing outside of Azerbaijan for at least one year since completion of his/her last employment<sup>14</sup>. Such a provision impedes circular migration.

Usually a person who becomes a citizen of any other country without discontinuation of citizenship of Azerbaijan is regarded as a foreigner and should obtain a visa to enter Azerbaijan.

Non-recognition of dual citizenship by national legislation<sup>15</sup>, and lack of simplified procedures for granting citizenship and issuing permanent residence permits to ethnic Azerbaijanis living abroad further impedes circular migration. Although more than 90% of foreigners entering Azerbaijan are migrant workers almost half of these migrants are either citizens of the ex-USSR who lived in Azerbaijan in Soviet times or ethnic Azerbaijanis living now in other countries: there is no simplified procedure for them to enter or exit from Azerbaijan. It is almost impossible for members of these two groups to leave Azerbaijan for a long period without losing their residence permits. Holders of individual work permits have no right to multiple entries to/exits from the country. Usually foreigners come to Azerbaijan with tourist visas and obtain individual work permits for 1 year. The mentioned permit serves only as a ground for allowing its holder to stay in the country.

## Conclusion

Considering the facts described above, Azerbaijan should be interested both in adopting legal and regulatory acts and in concluding bilateral or multilateral agreements on circular migration. After all, circular migration is a temporary, renewable, periodical (freedom of movement should be provided for every period), legal process that ensures respect to migrants' rights and that matches the labour demand of one country with supply in another<sup>16</sup>.

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<sup>13</sup> Article 8 of the Law on Labour Migration.

<sup>14</sup> Article 9 of the Law on Labour Migration. Under paragraph 3.1 of "The rules on providing foreigners with individual permission for realization paid labour activity", as a rule individual work permission is issued for one year and each time it can be prolonged for one year, but should not exceed four years in general.

<sup>15</sup> Article 10 of the Law on Citizenship of Azerbaijan.

<sup>16</sup> <http://www.carim.org/index.php?callContent=238>