



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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**Committee against Torture**  
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**Written replies by the Government of Azerbaijan  
to the list of issues (CAT/C/AZE/Q/3) to be taken  
up in connection with the consideration of the  
third periodic report of Azerbaijan  
(CAT/C/AZE/3)\***

[9 September 2009]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

**Information from the Government of the Republic of Azerbaijan on questions posed by the United Nations Committee against Torture in connection with the consideration of its third periodic report on the implementation of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

**Articles 1 and 4**

1. *According to the State party's report (paras. 143 and 146), article 133 of the Criminal Code entitled "Torture" is in full accordance with the wording of article 1 of the Convention. However, the definition of article 133 of the Criminal Code omits the references to the purposes of torture outlined in the Convention, such as "for any reasons of discrimination of any kind". Please explain the reasons for this omission and whether the State party has taken measures to amend the definition of article 133 to fully address the definition of torture provided in article 1 of the Convention, including discrimination. Please also provide information on the measures taken by the State party to ensure that article 133 of the Criminal Code is applied in practice to acts carried out by individuals or groups of persons acting with the consent or acquiescence of State authorities.*

2. *With reference to paragraphs 143–145 of the State party's report, please clarify the criminal provisions concerning offences such as: (a) attempted acts of torture, (b) order to commit torture by a person in authority, and explain the precise penalties imposed for these offences.*

As pointed out in Azerbaijan's third periodic report, all aspects of torture set out in the Convention against Torture are covered by the relevant articles of the Criminal Code.

Article 1 of the Convention specifies that it is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 133 of the Criminal Code is in keeping with article 1 of the Convention, because it is of wider application and refers to all forms of torture inflicted for any reason.

With regard to the omission in article 133 of the Criminal Code of references to the purposes of torture outlined in the Convention, such as "for any reason based on discrimination of any kind", it should be pointed out that when an offence is committed for reasons of national, racial or religious enmity or fanaticism, it is regarded as an aggravating circumstance pursuant to article 61.1.6 of the Criminal Code.

In accordance with article 133.3 of the Criminal Code, the infliction of severe physical pain or mental suffering through systematic beatings or other violent acts by officials taking advantage of their official position or by others acting at their instigation for the purpose of obtaining information from the victim or from other persons, forcing them to make a confession or punishing them for acts they have committed or are suspected of having committed is punishable by deprivation of liberty for a period of from 5 to 10 years. Pursuant to article 293.1, the coercion of suspects, accused persons, victims or witnesses into giving evidence in the course of interrogation or the coercion of experts into giving findings through the use of threats, blackmail, insults or other unlawful acts performed by or at the bidding of procurators, investigators or persons conducting initial inquiries is punishable by deprivation of liberty for a period of up to three years. When such acts involve the use of torture, they are punishable by deprivation of liberty for a period of between 5 and 10 years.

Pursuant to article 32 of the Criminal Code, the instigation of the commission of a crime and aiding or abetting in its commission are regarded as forms of complicity. Thus, article 133.3 of the Criminal Code, which refers to article 32 of the Code, makes it an offence not only for an official to commit such an illegal act but also to instigate or aid and abet its commission.

With regard to attempted acts of torture, which are covered in article 133 of the Criminal Code, it should be noted that, in accordance with article 29 of the Code, the attempted commission of an offence is regarded as an intentional act (act or omission) directly aimed at the commission of an offence if the offence was not carried out for reasons independent of the perpetrator. Article 133, with reference to article 29, provides for criminal responsibility for an inchoate offence.

## Article 2

3. *The State party's report (para. 3) mentions the adoption of a Plan of Action to implement the recommendations of the Committee against Torture within the Ministry of Justice. What are the main components of the Plan of Action and how is it being implemented? What are the outcomes of its implementation? In its follow-up letter of 21 April 2006 the Committee recommended the creation of an independent body outside the system of law enforcement, justice and prosecution. Please clarify whether the above-mentioned Plan of Action includes the establishment of such body.*

On 27 September 2003, a presidential order was issued on the implementation of the recommendations made by the Committee against Torture following its consideration of Azerbaijan's second periodic report. In accordance with the order, a special working group, comprised of representatives of the presidential office, Parliament, the Constitutional Court and the ministries of justice, internal affairs, national security and public health, was set up to act on the recommendations.

On 5 June 2003, the Ministry of Justice signed a special order on the functions of the judicial authorities in giving effect to the comments and recommendations made by the Committee against Torture in connection with Azerbaijan's second periodic report.

On 24 October 2003, the Ministry of Justice approved a comprehensive and integrated plan of action to ensure that the bodies answerable to it implement the above-mentioned presidential order of 27 September 2003 and the recommendations of the European Committee for the Prevention of Torture.

The plan gives instructions for defining additional necessary measures for carrying out tasks stemming from the presidential order: taking steps to prevent incidents and ill-treatment of inmates by prison staff, implementing the recommendations of the International Committee of the Red Cross on visits to places of deprivation of liberty, acting to improve conditions for the detention of suspects and convicted persons, especially women and children, protecting the right of arrested persons to immediate and unimpeded access to a lawyer as well as medical care, speeding up work on the submission of proposals for the establishment of an inspectorate for oversight of enforcement of sentences and preparing draft regulations on that and other bodies.

4. *Please provide information whether the members of civil society and human rights defenders carry out monitoring of penitentiary institutions and detention facilities in the country. What are the guarantees that they will be granted access to such establishments without prior notice?*

22. *Paragraphs 308–312 of the State party's report mention that a "Public Committee" has been established to monitor the penitentiary institutions. What is the composition and*

*mandate of this Committee? How are their recommendations implemented by the State party? Please give examples.*

In reply to questions 4 and 22, it should be stressed that measures taken to implement the recommendations of international organizations and representatives of non-governmental organizations (NGOs) resulted in the creation of an effective system for monitoring penal institutions. Under this system, representatives of the International Committee of the Red Cross, the European Committee for the Prevention of Torture and the Ombudsman as well as members of the Public Affairs Committee, which is made up of well-known human rights defenders, have unimpeded access to penal institutions for monitoring purposes.

Between 2000 and the first six months of 2009, representatives of the International Committee of the Red Cross conducted more than 332 visits to Azerbaijan's prisons, meeting with 76,946 persons.

Between 2006 and 2009, members of the Public Affairs Committee and NGOs conducted more than 180 monitoring visits to prisons.

The European Committee for the Prevention of Torture (CPT) conducted two periodic and three ad hoc visits to Azerbaijan. Its most recent visit was in December 2008.

In the course of 2008 and the first half of 2009 alone, the Ombudsman and members of his office conducted 91 visits to facilities within the jurisdiction of the Ministry of Justice.

Reports are drafted on the findings of the visits conducted by these organizations and on the relevant recommendations, and appropriate measures are taken.

To improve transparency and public oversight of the prison system, on 25 April 2006 the Minister of Justice approved Rules governing participation by civil society in the rehabilitation of convicts and public oversight of prisons. Pursuant to these Rules, in September 2006 a specially created Selection Board appointed the members of the first Public Affairs Committee.

The Public Affairs Committee is responsible for ensuring participation by civil society in the rehabilitation of offenders and oversight of penal institutions. All members of the Committee have a special pass issued by the Ministry of Justice allowing them unimpeded and unannounced access to prisons. Authorization is valid for one year, after which the Selection Board appoints a new membership of the Public Affairs Committee. The procedure is carried out by an assessment and analysis of the activities of the Committee members on the basis of individual reports submitted and consideration of the programmes and suggestions referred by NGOs as a contribution to the work of the Committee in its new composition.

The membership of the second Public Affairs Committee was decided on 31 October 2007, and the third on 11 November 2008. The Committee is currently made up of 11 prominent human rights defenders and NGOs representatives.

In its nearly three years of existence, the Committee has regularly conducted monitoring of its choosing at prisons around the country, with the number of visits growing every year. Whereas in its first year of existence, it carried out more than 75 visits, the number increased to 90 in its second year. As noted above, since the beginning of its work, the Committee has conducted more than 180 monitoring visits. In addition to the members of the Committee, other participants in the monitoring visits include representatives of the media and NGOs not part of the Committee's structure. Reports elaborated on the basis of the findings of the visits are the subject of careful study and are used in deciding on measures to reform the prison system. To make submission of the reports more efficient,

the Ministry of Justice has produced a special survey containing questions relating to public oversight, including on torture and abuse.

The members of the Committee regularly conduct confidential interviews with convicted offenders, acquaint themselves with their prison conditions, everyday needs, medical care and the work of prison staff, and play an active part in acts of clemency, amnesties etc. They also hold “Legal Assistance Days” in penal institutions to provide inmates with legal assistance. In recent years, their reports have noted improvements in the prison conditions of inmates and efforts to rehabilitate them, the correction of most of the shortcomings observed during earlier prison visits and the implementation of many proposals and recommendations. The Ministry of Justice takes the necessary measures on the basis of the recommendations of the Committee members, and detailed information in that regard is communicated to human rights defenders on an ongoing basis.

The Public Affairs Committee holds regular meetings which are attended by the Minister of Justice and senior ministry officials.

These meetings serve as a forum for discussing the findings of the monitoring visits and the situation in prisons and for posing questions about the work of the Committee. Information is provided on action taken on its recommendations.

An Internet website has been put in place for the Committee, and its information booklets have been published. On 16 July 2009, the Committee, with the participation of senior ministry officials, held a seminar at the Judicial Academy for journalists reporting on the functioning of the prison system. The journalists were briefed on domestic legislation and international norms regulating the serving of sentences and on reforms carried out in the prison system in recent years.

The question of broadening public oversight over the protection of the rights of accused persons and convicted offenders is reflected in the 2009–2013 State programme for the development of the Azerbaijani justice system, which was approved by a presidential order of 6 February 2009. Paragraph 5.2 of the programme contains instructions for making wide use of the possibilities offered by civil society to monitor protection of the rights of accused persons and convicted offenders, hygienic conditions, everyday needs and other aspects of detention.

*5. Please provide information on the mandate of the Ombudsperson and its compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (General Assembly resolution 48/134 of 20 December 1993, annex). Please also indicate how many investigations into allegations of torture have been initiated by the Ombudsperson and what are the outcomes of such investigations? How are the recommendations of the Ombudsperson implemented? Please also provide data on the number of complaints on allegations of torture received by the office of the Ombudsperson as well as on the number of visits to detention and remand centres carried out by the Ombudsman.*

The mandate of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan was defined by the Constitutional Act on the Commissioner for Human Rights (Ombudsman) of 28 December 2001.

Pursuant to this Act, the Ombudsman is responsible for restoring the human rights and freedoms enshrined in the Constitution and international treaties which have been violated by State bodies, local bodies and officials (Constitution, art. 1.1). The Ombudsman is not empowered to monitor the activities of the President of Azerbaijan, members of Parliament or judges (Constitution, art. 1.3).

The Ombudsman considers complaints of human rights violations in connection with bureaucratic red tape, loss or delayed delivery of documents in courts of law and delays in the execution of court judgements.

The activities of the office of the Ombudsman, which is an independent, non-judicial body, are based on the principles of openness, transparency, legality, justice and impartiality (Constitution, art. 1.7).

The Ombudsman is independent and subordinate solely to the Constitution and the laws of the Republic of Azerbaijan (Constitution, art. 5.1). The Constitution provides the following guarantees of the Ombudsman's independence:

- Irremovability from office

The Ombudsman is appointed for a single, non-renewable term of office of seven years (Constitution, arts. 4.1 and 4.2).

- Immunity

The Ombudsman enjoys immunity during his term of office (Constitution, art. 6.1).

Interference in the work of the Ombudsman by any State body, local body or official is prohibited.

Obstacles to the work of the Ombudsman — restricting or interfering in his work — constitute grounds for prosecution under Azerbaijan's legislation (Code of Administrative Violations, art. 310-1).

The declaration of a state of emergency or martial war neither suspends nor restricts the work of the Ombudsman (Constitution, art. 5.3).

The Constitution stipulates that complaints addressed to the Ombudsman from persons in prison, remand centres or temporary holding facilities must be delivered within 24 hours (Constitution, art. 8.5).

Pursuant to article 12.2 of the Constitution, during the investigation of complaints of human rights violations the Ombudsman is entitled:

- To have access, without hindrance and without prior notice, to State bodies, local bodies, military units, prisons, remand centres and temporary holding facilities; to meet with and interview individually persons in prisons and remand centres; and to consult documents confirming the legality of their detention in such facilities
- To receive any necessary information, documents and materials, within 10 days, from any State bodies, local bodies or officials
- To consult enforceable court rulings on criminal, civil and administrative cases, as well as decisions to terminate criminal proceedings
- To receive written explanations from officials during investigation of a complaint
- To instruct the relevant bodies to examine the circumstances surrounding the complaint (with the exception of bodies or officials whose decision or act (omission) is the reason for the complaint)
- To instruct the relevant State bodies and organizations with the task of preparing an expert opinion
- To be immediately received by the heads or other officials of State bodies or local bodies, heads of military units and directors of prisons, remand centres and temporary holding facilities

In cases of special public importance, with the consent of the person whose rights have been violated, and in cases involving the interests of persons unable to defend their rights themselves, the Ombudsman may carry out an investigation on his own initiative (Constitution, art. 12.3).

Pursuant to article 13.2 of the Constitution, if, as the result of an investigation of the complaint, the Ombudsman finds that a human rights violation has occurred, he may take the following measures:

- He may demand that State bodies, local bodies or officials restore the human rights violated as a result of their decision, act or omission
- If there are indications that an offence has been committed, he may ask the authorities concerned to institute criminal proceedings
- He may apply to persons entitled to file additional cassational complaints
- He may submit proposals to the relevant bodies on instituting disciplinary procedures against officials who have violated human rights as a result of their decision, act or omission
- He may inform the media of the results of investigations into human rights violations
- If a violation of human rights takes on special public importance, and if the means at his disposal are insufficient to restore those rights, the Ombudsman may apply to the President of the Republic of Azerbaijan or speak before Parliament on the matter
- He may apply to a court of law to restore rights violated as a result of a decision, act or omission by a State body, a local body or an official

Not later than two months after the end of each year, the Ombudsman must submit an annual report to the President of the Republic of Azerbaijan on the situation of human rights in the country and present the report in Parliament (Constitution, art. 14.1). The annual report must indicate State bodies, local bodies and officials that have violated human rights and failed to comply with the demands of the Ombudsman and the measures taken in that regard (Constitution, art. 14.2), and it must contain general views and recommendations concerning the situation of human rights (Constitution, art. 14.3).

The report must be submitted to the Cabinet of Ministers, the Constitutional Court, the Supreme Court and the Procurator General (Constitution, art. 14.4).

The Ombudsman may submit to Parliament motions for the adoption or review of legislation with a view to ensuring the protection of human rights, as well as motions for amnesties (Constitution, art. 1.5).

The Ombudsman may submit motions to the President to grant pardons, citizenship and political asylum (Constitution, art. 1.4).

The Ombudsman may request the Constitutional Court to investigate violations of human rights resulting from existing law (Constitution, art. 13.2.8).

The legal, organizational, analytical, informational, technical, financial and budgetary requirements of the Ombudsman are covered by the administrative body set up under article 17.1 of the Constitution. The Ombudsman has four regional offices.

Given that the mandate and activities of the office of the Ombudsman are fully in keeping with the Paris Principles adopted on 20 December 1993, the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights gave it its highest status (“A status”) on 27 October 2006.

As a national human rights institution with A status, the office of the Ombudsman participates in the preparation of reports on international human rights instruments to which Azerbaijan is a party.

The office of the Ombudsman has a department which deals with the protection of the human rights of prisoners and whose main tasks are to investigate complaints received from prisoners or their families, hold monitoring visits to prisons and heighten the awareness of prisoners and prison staff about legal questions.

With OSCE assistance, the office of the Ombudsman has set up a task force and a hotline to help investigate violations of human rights and work to redress them. The Ombudsman has a special adviser on torture and the protection of the rights of prisoners. The adviser regularly conducts legal assessments of national legislation and international legal instruments in specific areas, the situation in the country in that regard and complaints and requests referred to the Ombudsman.

The Ombudsman and his staff routinely carry out monitoring visits to detention facilities, meet with convicts, look into their problems and complaints and deal with them on site where possible, issue instructions and make proposals and recommendations to prison directors for addressing existing deficiencies and shortcomings; where necessary, they contact the relevant ministry, and in the vast majority of cases, the shortcomings are eliminated. There were 300 such monitoring visits in 2008 and 209 in 2009, and more than 1,500 since the office came into existence. The State bodies concerned have issued special orders and instructions defining the conditions for unimpeded visits by the Ombudsman and his staff to prisons and detention centres, including police stations, remand centres and psychiatric clinics.

In working to prevent torture, the Ombudsman has four main tasks:

- Conducting regular visits, on his own initiative and without prior notice, to prisons, detention centres and military units
- Investigating complaints and information sent to the office or collected in interviews
- Preparing proposals on amendments to existing legislation
- Conducting extensive awareness-raising initiatives for law enforcement officers and the population at large, in particular with vulnerable population groups

The activities of the Ombudsman in preventing torture as well as progress made, problems encountered and perspectives envisaged are set out in his annual report.

Since its creation, the office of the Ombudsman has received complaints of torture. Every complaint has been investigated, and requests have been sent to the Ministry of Internal Affairs, the Ministry of Justice, the Ministry of Defence and the procurator's office, including the Procurator General, to elucidate violations and punish them in conformity with the law. Appropriate measures have been taken with regard to the guilty parties, and criminal, administrative or disciplinary proceedings have been instituted in a number of cases. In 2008 alone, 134 cases of violations of human rights were uncovered, and 154 officials of various levels within the Ministry of Internal Affairs, 6 prison directors and 26 staff members of the procurator's office were severely punished.

In the first half of 2009, the Ombudsman received 97 complaints from citizens in connection with harsh and degrading treatment, unjustified arrest and remand in police custody, and detention conditions. Each complaint has been investigated, and requests have been sent to the Ministry of Internal Affairs, the Ministry of Justice, the Ministry of Defence, the Procurator General and other bodies concerned to elucidate and punish violations in conformity with the law.



In keeping with the request from the Ombudsman, a thorough investigation is being conducted on every case.

According to the information of the Ombudsman, the Ministry of Internal Affairs has taken measures under applicable legislation in 73 cases (28 for harsh treatment of citizens, 19 for unjustified detention, 12 for unjustified remand in police custody and 14 for other reasons) with regard to 120 members of the Ministry of Internal Affairs; criminal proceedings have been instituted against 4 of these persons, 7 have been dismissed from the police force, 18 have been transferred to another service, 1 has been demoted and 90 have been punished following administrative proceedings.

The Ombudsman works closely with State bodies, law enforcement bodies and NGOs in order to deal effectively with problems which arise during the assessment of complaints and reports.

Joint oversight and monitoring, seminars and training courses, public hearings and interactive discussions are conducted around the country with the involvement of State bodies, executive authorities, municipalities, law enforcement authorities, the courts, NGOs and the media.

The Ombudsman also helps State bodies implement recommendations made by international organizations after monitoring visits, and it actively involves non-governmental organizations and other representatives of civil society in this work.

6. *With reference to paragraphs 150–160 of the State party's report, please elaborate how the provisions of the national legislation to provide detainees with immediate legal and medical assistance and to inform their relatives of their detention on time is applied in practice. Please give examples. How does the State party ensure the right of a detainee to request a medical doctor whose independence is ensured? Is the right of a detainee to request and receive a medical examination ensured in the absence of a request by authorities? Please provide information how such a right is guaranteed in practice. Please update the Committee on the functioning and independence of the medical service, which has been transferred from the Central Department for the Enforcement of Judicial Decisions to the Ministry of Justice.*

When persons placed in a remand centre so request, the administration immediately informs their relatives or other persons indicated by the detainees. This is done by telephone or by letter.

In accordance with the law, persons placed in remand centres undergo a compulsory medical examination to determine the presence of illnesses or signs of torture, beatings or other abuse. For persons who have been detained a second time, a medical record is established following an examination. Persons found to be ill are given free medical assistance, and if necessary they are placed in the detention centre's medical facility. A record is kept of any signs of torture, beatings or other abuse, their origins are determined, and the documents are sent to the procurator's office for investigation. Medical assistance is then provided at the request of the detainee himself or other persons.

Every penal institution has a medical ward; in all, 131 physicians and 88 middle-level medical staff members are assigned to such facilities.

In 2004, medical staff working in penal institutions were transferred from the authority of the prison service, which in the past had been under the jurisdiction of the Department for the Enforcement of Judicial Decisions, to that of the Central Medical Authority, which reports directly to the Ministry of Justice and was given the status of a central department in 2007.

Every detainee receives an initial medical examination by a physician within 24 hours of arrival in the remand centre. Detainees are given an X-ray and are screened for tuberculosis, and they are asked to undergo a voluntary lab test for AIDS. Details on illnesses detected are entered in the detainee's medical record.

In 2007, a new type of medical record for convicted offenders was introduced which includes a section for recording the presence of old physical injuries on the skin surface and a separate page to register torture and ill-treatment.

Following the transfer from one facility to another, the convict is given a second medical examination, and the findings are recorded in a special register. All inmates are entitled to a medical examination at any time while serving their sentence. In addition, they are periodically examined by the penal institution's medical staff. In the course of 2008, physicians in penal institutions conducted 62,417 examinations of inmates, and middle-level medical staff saw 39,169 prisoners. If a chronic illness is detected, the inmate is registered in a clinic and, depending on his condition, is examined on a regular basis.

Two hospitals in penal institutions provide medical services to inmates. One is a polyclinic (550 beds), and the other is specialized in the treatment of tuberculosis patients (900 beds). In the course of the past year, 5,684 inmates were admitted for examinations and treatment at the polyclinic and 1,336 at the specialized facility.

A special team of volunteer physicians regularly conducts a wide range of medical examinations on inmates in prisons. The team includes a general practitioner, a surgeon, a neurologist, a psychiatrist, a tuberculosis specialist, an ophthalmologist, a urologist and other physicians.

The question of medical care for inmates is anchored in national legislation. Articles 93.5 and 93.6 of the Penal Enforcement Code make provision for medical examinations for inmates outside the prison and for the use of medical staff from the private sector. Pursuant to article 93.6 of the Code, inmates may request to be referred to other medical facilities for consultation and treatment. In order to obtain a more exact diagnosis, during the first six months of 2009, 14 inmates were sent to be examined by physicians on equipment at medical facilities outside prisons, and 47 inmates were examined in prison by physicians at their request.

In accordance with article 170.1 of the Code, if inmates are unable to serve their sentence due to illness, they may be released following a court decision in conformity with the law. In the first six months of 2009, one convict who had stomach cancer was released on the basis of an assessment by physicians.

The bill on the protection of the human and civil rights of persons detained in temporary holding facilities, which is now in third reading in Parliament, specifies that medical examinations may be carried out not only by the medical staff of the detention centre but also by public or private medical institutions at the request of the suspect or the accused or his defence counsel.

*7. Please elaborate on the implementation in practice of article 85 of the Criminal Procedure Code, which guarantees access to a counsel from the moment of arrest. Please also provide information on measures of cooperation between the new bar association and the Ministry of Justice and Ministry of Internal Affairs to ensure that there is a sufficient number of qualified and independent attorneys to serve detainees, that detainees know and act upon their rights to obtain access to counsel, and that attorneys have unimpeded contact with their clients. Please provide specific information concerning the stage at which the counsel has been provided for detainees, and whether attorneys have access to persons during the phase of preliminary investigation. Please also update on the status of the new Law on the Bar.*

In conformity with the law, the administration informs persons taken into custody of their rights and obligations, including their right to legal assistance, and of the relevant rules and regulations. Attorneys have access to remand centres upon presentation of an identification document and credentials. No restrictions are placed on the number or time of the visits, which take place in private.

Pursuant to the presidential directive on the modernization of the judicial system of 19 January 2006, the Bar must take the necessary steps to increase the number of attorneys and improve the quality of legal assistance. Penal institutions in Azerbaijan make broad use of the practice of having inmates receive legal assistance from human rights defenders and representatives of non-governmental organizations.

As explained earlier, members of the Public Affairs Committee organize Legal Assistance Days in prisons and detention centres.

8. *In previous recommendations by the Committee, as well as by the Special Rapporteur on the question of torture, it was suggested to transfer the remand centre of the Ministry of National Security to the Ministry of Internal Affairs or close it. According to paragraphs 161–168 of the State party's report, the transfer would be inefficient and impede the investigation process, however the change of its status would be considered within programmes of reforms of places of detention and penitentiary institutions. Please inform the Committee whether further consideration has led to any measures to change the status of the remand centre of the Ministry of National Security. What is the envisaged status? Please clarify the jurisdiction of the Ministry of National Security as compared to the Ministry of Internal Affairs.*

Bearing in mind the complexity of criminal cases under the competence of the Ministry of National Security, the need to protect State secrets and the interests of national security, the fight against terrorism, and the level of the public danger of such offences and persons suspected of committing them, it is considered advisable to keep the remand centre under the jurisdiction of the Ministry of National Security.

9. *According to article 157.3 of the Criminal Procedure Code of Azerbaijan, a person may not be held in temporary detention facilities for more than 24 hours before being transferred to a remand centre for investigation. Please provide information on how this period is respected in practice. Please also indicate covering the reporting period the total number of persons in temporary detention.*

Pursuant to articles 147 and 148 of the Code of Criminal Procedure, persons suspected of having committed an offence may not be detained in a temporary holding facility for more than 48 hours. If restrictive measures are taken with regard to such persons (arrest), they must be transferred to a remand centre of the Ministry of Justice within 24 hours. In the course of the first six months of 2009, 5,834 persons were detained in temporary holding facilities.

10. *Please elaborate on the mandatory registration of a person at the moment of apprehension. Is a central register maintained? What are the measures taken if the rules and procedures are not followed? Has any official been disciplined or sanctioned for failure to register detainees? Are there any exceptions to the mandatory registration?*

All suspects brought to a police station are registered at the front office in a special register, in which the time of arrival, the reason for detention, the measures taken and the time of release are recorded.

11. *With reference to paragraphs 169–186 of the State party's report on the judicial reform, please comment on the findings of the Human Rights Committee concerning irregularities during the selection of judges as well as lack of security of tenure of judges. Please inform how the State party addresses these issues in light of the recent reforms.*

During the judicial reform process, in March 2004 representatives of the executive and judicial branches as well as experts from the Council of Europe formed a joint Azerbaijan-Council of Europe working group on the independence, selection and appointment of judges and the assessment of their activities.

The following years witnessed the enactment of the Act on amendments to the Courts and Judges Act, which provides for a new, multistage procedure for the selection of judges and transparency in the work of the courts, and the Judicial Council Act. Terms of reference were decided for the Judges' Selection Committee, and rules were introduced for the selection of aspirant judges for vacant judgeships. A Judicial Council (an independent standing body which has the function of a self-regulating judicial power) and the Judges' Selection Committee were set up, and improvements were made to the statutes of the judges' voluntary associations.

In accordance with paragraph 2.2 of the rules for the selection of aspirant judges for vacant judgeships, the selection of candidates for such posts is by a written and oral examination to determine the level of knowledge, professional preparation and general outlook of the candidates; a final interview follows.

Under the new rules, two competitive examinations were held in which more than 1,752 candidates took part, of whom 157 were admitted. That enabled the number of judges to be increased by 50 per cent. The first two stages of the third competitive examination were held in 2009 with the participation of international organizations, NGOs and media representatives. A total of 213 candidates out of 440 passed the first stage of the examination (multiple choice). The second stage, a written examination, was held on 30 June 2009 and was monitored by approximately 25 observers from international organizations, NGOs and the media.

Under the new legislation, appointments to and dismissals from the post of judge are solely on the basis of proposals by the Judicial and Legal Council. The President takes these decisions for judges in courts of first instance, and Parliament for judges in other courts.

The independence of judges is ensured by their non-involvement in political matters, irremovability from office, professional immunity and a special selection procedure for their appointment, prosecution, dismissal and suspension, as well as safeguards for their personal security. Legislation guarantees the independence of the judiciary, the administration of justice in conformity with the law and the inadmissibility of any restrictions on or interference in legal proceedings.

Legislation has established criminal liability for interference in the activities of the courts aimed at obstructing justice and for attempts on the life of a judge, murder threats, causing harm to the health of a judge or destroying or damaging a judge's property.

The Judicial and Law Enforcement Officials (State Protection) Act was enacted in order to protect the life, health, home and property of judges.

In view of the particular importance attached to the material and social security of judges, their salaries have been increased 25-fold since 2000, and their working conditions have improved considerably. Two associations of judges have been created and are now functioning in the country.

A presidential order of 6 February 2009 approved the State Programme for the development of the judicial system, 2009–2013, which introduces a set of measures to strengthen the independence of the judicial system, bring the functioning of the courts into line with modern requirements and make their work more transparent.

The referendum of 18 March 2009 on amendments to the Constitution contained provisions to ensure that the Constitution reflects even more fully questions relating to the administration of justice and the independence of the judiciary. The amendments entered into force on 31 March 2009.

*12. Please provide information on measures taken to ensure that judges are able to establish when evidence or confessions are obtained by means of torture. Please clarify whether judges may order medical examinations. If so, how often has this happened and what are the results?*

Pursuant to the Code of Criminal Procedure, confessions made by persons in the course of criminal proceedings may not be obtained by use of force, threat, deception or other illegal acts which violate their rights. Moreover, documents and materials obtained as evidence in criminal proceedings by the use of violence, threat, deception, torture or other cruel, inhuman or degrading treatment are not admissible.

As already pointed out in Azerbaijan's country report, on 10 March 2000 the Plenum of the Supreme Court, in a decision on the activities of courts in the area of the protection of rights and freedoms during the administration of justice, concluded that if a court finds that instances of torture, abuse or physical or psychological coercion have occurred, they must give rise to legal action, since these are criminally punishable offences and no exceptional circumstances can serve to justify them. Evidence obtained by unlawful means cannot form the basis of a judgement.

If such instances come to light during a court hearing, the victim is given a medical examination, his personal record comes under review, and witnesses are questioned, and if there are legal grounds for so doing, criminal proceedings are instituted or the procurator is notified in conformity with law.

In accordance with the Supreme Court decision, persons detained in remand centres, temporary holding facilities or penal institutions have the right to obtain medical assistance when necessary. If medical assistance is deliberately withheld for the purpose of torture, the courts are to take steps to prosecute the guilty party.

Pursuant to article 331 of the Code of Criminal Procedure, if an expert opinion was produced during the pretrial procedure, the findings are examined during the judicial examination. Once it has obtained the findings, the court, having heard the views of all parties, may ask for a second or an additional opinion at the request of the parties or on its own behalf. If an expert opinion was not commissioned during the pretrial investigation, the parties may request it during the court proceedings.

Article 449.3 of the Code of Criminal Procedure stipulates that persons who have been tortured or ill-treated during detention have the right to lodge a complaint in court or to challenge the ruling of the body in charge of the criminal proceedings.

The court must ensure that an expert opinion is produced to establish the cause of death or the degree of seriousness and the nature of the bodily injury if the preliminary investigation has failed to do so.

*13. Please provide information on the State party's efforts to prevent violence against women. What is the status of the draft law on domestic violence, and how will it be implemented? Please provide data on the number of complaints on domestic violence and the results. What measures are taken to prevent domestic violence? Have there been any awareness-raising campaigns?*

Azerbaijan's legislation contains a mechanism for the criminal prosecution of persons who commit violence against women.

The Criminal Code provides for punishment for various degrees of bodily injury, beatings, torture, the threat of murder, serious harm to health, rape, coercion of sexual acts and other offences of this nature. The constituent elements of these offences are set out in Chapter 22 of the Criminal Code (Offences against juveniles and family relations).

The Republic of Azerbaijan has joined the Council of Europe Campaign to Combat Violence against Women, including Domestic Violence, which was launched in November 2006, and on 21 December, its Parliament adopted a declaration on combating violence against women, including domestic violence.

The national plan of action for the protection of human rights, adopted by a presidential order of 28 December 2006, instructs the State bodies concerned to step up the fight against violence against women, including domestic violence, to provide victims of violence with legal aid, compensation, rehabilitation, and medical and psychological assistance and to organize a large-scale public-awareness campaign.

On 25 January 2007, the Cabinet of Ministers issued a decree approving a comprehensive programme to combat day-to-day violence in Azerbaijan's democratic society, in the context of which measures were envisaged to prevent violence against women, improve legislation and promote cooperation with international organizations.

In conjunction with the United Nations Population Fund, the State Committee on the Family, Women and Children prepared a bill on the prevention of domestic violence which was submitted for consideration to the Commission on Social Policy of Parliament.

Starting in January 2008, the State Committee on the Family, Women and Children, the Geidar Aliev Fund and the United Nations Population Fund launched a joint project to combat violence against women in the twenty-first century, which is aimed at protecting women and children from domestic violence, creating fresh opportunities for women to enjoy their rights, preventing violence and early marriage and reducing their effect on children.

As part of the project, public awareness campaigns and seminars have been conducted, particularly at regional level, documents have been published on human rights and gender equality, strategies have been developed to provide services to victims of gender-based violence, and documentaries on the subject have been broadcast on radio and television.

Three commercials on the subject have been screened on the three national channels. A website has been set up under the project at [www.azwomenviolence.org](http://www.azwomenviolence.org). The site refers to national and international regulations and standards, as well as to an online forum where everyone can discuss any subject concerning violence against women.

To educate the population about women's rights, there has been active cooperation with recognized international organizations, including the Office of the United Nations High Commissioner for Human Rights, the Council of Europe, the European Union, the German Agency for Technical Cooperation (GTZ), the American Association of Jurists and the European Public Law Centre.

### **Article 3**

*14. Paragraphs 190–194 of the State party's report cover the issue of extradition of persons, where there are substantial grounds for believing that they would be in danger of being subjected to torture, but does not cover return or expulsion of persons who face the same risk. Please indicate what legal guarantees have been established to meet the requirements of article 3 of the Convention in cases of expulsion or return of foreigners. Which department of the Government is responsible for taking decisions on matters of*

*expulsion or return? What are the procedures in place to challenge such decisions? In this regard please provide statistical data on the number of deportations and expulsions, the countries to which these persons were expelled and the number of persons who successfully challenged any expulsion or return.*

In accordance with article 27 of the Act on the legal status of foreigners and stateless persons, foreigners and stateless persons who do not have the status of immigrant and have committed serious violations of legislation on the legal status of foreigners and stateless persons as well as in other cases covered by legislation, may be deported in accordance with the law.

Pursuant to article 13 of the Immigration Act, expulsion decisions do not extend to family members.

Immigrants who commit a serious or a very serious offence may be deported in accordance with article 52 of the Criminal Code.

Foreigners or stateless persons who do not have immigrant status and who are considered to be victims of trafficking in persons are not subject to administrative deportation for a period of one year. If, upon expiry of this period, foreigners or stateless persons have been assisting the prosecuting authorities in a criminal case relating to trafficking in persons, their administrative deportation is suspended until the completion of the criminal proceedings. Children who have been victims of trafficking are not subject to administrative deportation from Azerbaijan.

In accordance with part 2, article 5, of the Status of Refugees and Internally Displaced Persons Act, refugees may not be sent or forcibly deported to a country in which their life or liberty is in danger, for reasons set out in article 1 of the Act.

Foreigners and stateless persons who do not have the status of immigrant may be deported from Azerbaijan on the basis of decisions by the Ministry of Internal Affairs or the State Migration Service or by court decision. Such decisions may be challenged in court.

The State Migration Service has taken 38 administrative deportation decisions with regard to foreigners who have violated regulations governing their stay or residence in the country. To date, however, there have not been any cases of administrative deportation of foreigners who were in danger of being tortured in the country to which they were sent.

*15. Please provide information covering the entire reporting period on the number of asylum requests registered and granted; the number of rejected asylum-seekers and undocumented migrants who are held in administrative detention.*

Since the beginning of 2008, 142 foreigners and stateless persons have applied to the State Migration Service for the status of refugee. Two applications (concerning five persons, including family members) were approved; 48 applicants did not have the necessary identification papers. Nevertheless, all the applications were considered in accordance with the requirements of national legislation, and appropriate decisions were taken.

*16. Please also indicate whether Azerbaijan has sought diplomatic assurances from countries where individuals are to be extradited, returned or expelled. If so, which are these countries? What monitoring mechanisms exist to assess if the assurances have been honoured? Please provide examples. Please inform whether Azerbaijan entered into judicial cooperation agreements with other countries.*

*17. What steps have been taken by the State party in relation to the case of Mr. Elif Pelit, where the Committee found a violation of both articles 3 and 22?*

With regard to questions 16 and 17, it should be pointed out that the Republic of Azerbaijan is a party to the European Convention on Extradition, 1957, its Additional Protocols of 1975 and 1978, the European Convention on Mutual Assistance in Criminal Matters, 1959, the United Nations Convention against Transnational Organized Crime, 2000, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, and its Protocols, and the Minsk Convention on Legal Assistance and Legal Relations in Civil, Family, and Criminal Matters, 1993, which contain provisions on the extradition of persons who commit offences. In addition, Azerbaijan has concluded bilateral agreements on extradition with Kyrgyzstan, the Islamic Republic of Iran, Bulgaria, China, Jordan and the United Arab Emirates.

Agreements on legal cooperation in criminal matters (most of which contain provisions on extradition) have been concluded with Turkey, the Russian Federation, Uzbekistan, Kyrgyzstan, Kazakhstan, the Islamic Republic of Iran, the United Arab Emirates, Bulgaria, Georgia and Latvia.

Azerbaijan also cooperates with the member States of the Commonwealth of Independent States (CIS) in the framework of the Minsk Convention on Legal Assistance and Legal Relations in Civil, Family, and Criminal Matters of 22 January 1993.

Cooperation on extradition with countries with which Azerbaijan is not bound by treaty obligations is on the basis of the Act on the Surrender (Extradition) of Persons who Commit Offences, which was elaborated in accordance with international legal norms, and in the framework of international conventions as well as the United Nations Model Law on Extradition. The Act takes into account all basic principles of international law and human rights protection.

The Act does not allow extradition if there are sufficient grounds for assuming that, as a result of extradition, the requested person will be subjected to torture or cruel, inhuman or degrading treatment or punishment in the requesting State.

A procedure for obtaining diplomatic assurances is applied for the extradition of persons who have committed an offence. When the decision was taken on the extradition of the Turkish citizen Elif Pelit, Azerbaijan took into consideration cooperation in the fight against terrorism, official assurances by the Turkish authorities concerning compliance with the obligations of the Convention with regard to extradited persons, and the assurance that she would be prosecuted only for incriminating or other material acts. Before extraditing Elif Pelit, the Ministry of Justice requested the Turkish authorities to allow Azerbaijan to monitor the protection of her rights after her extradition, and the positive response to this question was taken into account in deciding to extradite her to Turkey. After obtaining agreement on the question, Azerbaijan's Ministry of Foreign Affairs issued the necessary instructions to the Embassy of Azerbaijan in Turkey.

Following extradition, Elif Pelit's conditions of detention and the protection of her rights were closely monitored by a representative of Azerbaijan. A private interview was held with her in the absence of the Turkish authorities, in the course of which she stated that she had not been tortured or subjected to other forms of degrading treatment. She was assigned a lawyer, was sent parcels and periodically received printed matter. She was permitted to use the telephone and was allowed visits from members of her family. She was given a medical examination when she entered the facility, in the course of which she stated that she did not have any health complaints.

The representative of Azerbaijan closely examined Elif Pelit's conditions of detention first-hand and noted that she was held with other persons in wing A-3, which consists of two floors and two rooms. The first floor, which has a television and a refrigerator, is for recreational use, and the sleeping quarters are on the second floor. The



rooms have lighting and windows which can be opened. The cell also has toilet facilities with hot and cold running water.

The Office of the United Nations High Commissioner for Refugees was informed of the results of the monitoring. The Office gave a positive assessment of detention conditions, concluded that Elif Pelit's rights had not been violated and noted that Azerbaijan's approach to the question could be taken as a model for other States.

For the Committee's information, it should be pointed out that on 12 April 2007, following a decision by the Istanbul Serious Offences Court, Elif Pelit was released and is now out of prison.

## **Articles 5, 6 and 7**

*18. Please provide information on domestic legislation establishing universal jurisdiction over the offence of torture and explain if such legislation complies with the requirements of the Convention.*

With regard to persons who have committed torture, the national legislation of the Republic of Azerbaijan is in conformity with the requirements of universal jurisdiction under the Convention.

Thus, foreign citizens and stateless persons who have committed crimes against the peace, crimes against humanity, war crimes, crimes of terrorism, torture and other offences punishable under international instruments to which Azerbaijan is a party are criminally liable and punishable in accordance with article 12.3 of the Criminal Code, irrespective of where the crime was committed.

*19. What are the procedures when Azerbaijan refuses to extradite an individual to another country where a person is suspected of actions falling under the definition of article 1 and article 4 of the Convention? Which agencies review such cases? Please indicate if there has been any such case.*

Article 8 of the Act on the Surrender (Extradition) of Persons who Commit Offences sets out a general procedure for considering extradition requests. No provision is made for a special procedure under specific articles of the Criminal Code or for acts under articles 1 to 4 of the Convention.

The Serious Offences Court hears extradition requests submitted by other States and takes reasoned decisions on them. The decision may be challenged or appealed in accordance with the procedure established under legislation on criminal procedure.

The relevant body of the executive power (Ministry of Justice) informs the competent authorities of the requesting State when an extradition request is denied.

There have not been any cases of requests for extradition for acts under articles 1 to 4 of the Convention.

## **Article 10**

*20. Please provide information specifically on training of forensic doctors and medical personnel dealing with persons in detention, or with asylum-seekers and refugees to detect physical and psychological signs of torture. Please inform whether the staff of detention facilities and penitentiary institutions has been trained on the contents and use of the Istanbul Protocol? Has it been utilized?*

Pursuant to the Act on Conditions of Service in Judicial Bodies, persons hired as prison staff are now required to undergo a three-month initial preparation under a specially approved programme at the Prison Service Training Centre of the Ministry of Justice. The programme includes a special course on human rights in addition to other classroom disciplines. The course lasts 30 hours, and there is a final examination. Participants learn about international instruments on the treatment of detainees and the prohibition of torture, as well as the provisions of the Istanbul Protocol. Classes to upgrade the qualifications of prison staff also address issues relating to human rights, the treatment of detainees and the prohibition of torture.

It should also be noted that the Judicial Academy holds courses for the medical staff of penal institutions on international instruments prohibiting torture and ill-treatment. The courses include lectures on forensic medical examinations of injuries caused by torture and signs of psychological torture. The courses are to be repeated in autumn 2009.

The three-month advanced training courses for medical staff organized by the Prison Service Training Centre offer classes on international legal instruments on the protection of detainees (20 hours), as well as on human rights, prison psychology and conflict management.

The syllabus of advanced training courses organized at the Academy of Justice for staff of the Ministry's Central Medical Authority who have had higher education also includes subjects relating to torture.

Five training seminars were held for medical staff during the year as part of the project launched by the Council of Europe on "Support for Prison Reform in Azerbaijan 2008–2009". One of the seminar topics was on ways of ensuring the mental and psychological health of convicts.

For the submission of specific information regarding cases of torture and ill-treatment of detainees, the Ministry of Justice has signed a special order whose implementation is monitored on a regular basis.

At a meeting attended by medical professionals, the Istanbul Protocol was discussed, analysed and circulated among the participants in Azeri translation as part of a project carried out in 1998 by the Government of Azerbaijan in conjunction with the Office of the United Nations High Commissioner for Human Rights.

The manual *Human Rights and Prisons* was translated into Azeri and distributed among medical professionals under the project "Strengthening capacities and infrastructure for human rights protection and promotion", which was conducted by the Government of Azerbaijan in cooperation with the Office of the United Nations High Commissioner for Human Rights.

The new medical registers for convicted persons introduced in 2007 pursuant to the requirements of the Istanbul Protocol include special pages for the findings of medical investigations of cases of torture and ill-treatment.

## **Article 11**

*21. Please provide information on the rules and procedures concerning the interrogation methods. What are the measures in place to review such methods, rules or instructions?*

In accordance with the requirements of legislation on criminal procedure, the bodies responsible for criminal proceedings must ensure for all persons concerned the human and civil rights enshrined in the Constitution.

The rules governing the interrogation of suspects and accused persons are set out in articles 232–234 of the Code of Criminal Procedure, pursuant to which suspects and accused persons must be interrogated when they are arrested or charged. At the time of their arrest, suspects and accused persons have the right to make a confession in the presence of a lawyer.

The investigator must ensure in advance that the defence counsel is present during interrogations for cases covered by article 92.3 of the Code of Criminal Procedure (if the suspect or accused person so requests; for persons who are deaf, dumb or blind or suffer from other serious impairments as well as mental deficiency or disability; for persons who do not understand the language in which the criminal proceedings are conducted; for juveniles; for persons in active military service; for persons charged with having committed a particularly serious offence; for compulsory placement of a suspect or an accused person in a psychiatric facility; for the detention or arrest of a suspect or an accused person when there are conflicts between the legal interests of accused persons, one of whom has a defence counsel; for criminal proceedings conducted against a person suspected or accused of having committed a criminal act in a state of legal insanity; or if the suspect or the accused is legally incompetent). The investigator has the right to use audiovisual, video or other recording equipment.

Before questioning the suspect or the accused person, the investigator must explain the nature of the suspicion or accusation and the rights of the suspect or the accused, including the right not to make a confession and the right to be assisted by a defence counsel. The questioning of juveniles and of accused persons who are deaf, dumb or blind or suffering from a serious illness must take place in the presence of a defence counsel, a legal representative and a specialist. The silence of the accused may not be interpreted as an admission of guilt. A protocol must be kept during the questioning and must be signed by the parties to the criminal proceedings. The use of physical or psychological coercion is not permitted and is subject to criminal prosecution.

*23. With reference to paragraphs 14–30 and 209–303 of the State party's report, please provide information on how many places of detention and penitentiary institutions have been renovated and have improved conditions, such as reduced occupancy rate, adequate heating and light, essential hygiene products, improved quality of food and others. According to information before the Committee, no ventilation system is installed in penitentiary institutions in Bayil and Ganja. What are the measures taken by the State party to improve conditions of detention, especially in so far as it concerns ventilation systems in places of detention?*

New, modern penal institutions are currently under construction that meet the requirements of international instruments on the treatment of detainees. This will significantly improve conditions for both accused detainees and convicted offenders.

In April 2008, a new prison began operating in Nakhichevan, and the first section of the new remand centre's custodial blocks — for persons awaiting trial — began functioning in May 2009. The new facility complies with all the requirements under international instruments for the treatment of detainees. The cells are properly ventilated and heated with a modern heating system, and they have hot and cold running water and separate toilets. The medical ward has modern medical equipment and meets all conditions for the full and effective treatment and care of detainees. Persons held at the new remand centre can take fresh air for several hours.

In June 2009, detainees at Bayil Remand Centre No. 1 were transferred to the new Baku Remand Centre, and Bayil Remand Centre No. 1 was closed down. By the end of 2009, it is planned to complete construction work at the new facility and to begin using it

for detainees, including those who are to be transferred there from Shuvelyan (Baku) Remand Centre No. 3.

Construction on other prisons is continuing in Şäki (capacity 900) and Lenkaran (capacity 1,000), and new remand centres are being built on their grounds; once they are completed, it will not be necessary to transfer detainees under investigation, and relatives can visit them in a suitable environment.

Construction has started on a new prison near Ganja, and preparatory work has begun on the construction of another near Kurdamir. All new prisons will include remand centres to replace the old ones, including at the Ganja facility.

Work is also continuing on the construction of a prison near Baku (Umbaki, Karadag district) for convicted offenders, including persons who have received a life sentence. The conditions at the new prison will be in keeping with international standards.

Thanks to the modern infrastructure of these facilities, and detention in room-like cells, convicts are more likely to attend classes, engage in useful work and sport and take sufficient fresh air.

In recent years measures have been taken at all penal institutions to improve detention conditions and the quality of food.

In accordance with decision No. 154, issued by the Cabinet of Ministers on 25 September 2001, dietary standards were adopted and provision made for the everyday needs of convicts. Addendum No. 24 specifies that each convict is to receive toilet soap, detergent, laundry powder, and a toothbrush and toothpaste once a month. Higher standards for the distribution of items for personal hygiene apply for convicted minors, female prisoners who have a child living with them and convicted offenders receiving in-patient hospital treatment. Proposals are in preparation for amending the above-mentioned decision in order to improve the provision of items for personal hygiene.

Parliament is in the final stage (third reading) of passing a bill on the protection of the rights and freedoms of persons in temporary detention centres, which will regulate questions relating to the conditions of detention of persons awaiting trial, including ventilation and heating.

Measures to improve prison conditions are also reflected in the State Programme for the development of the judicial system, 2009–2013, which aims to update legislation on detention conditions and regulations for convicts, bring penal institutions and remand centres into line with international standards and improve prison conditions in order to comply with the recommendations of international organizations and the requirements of the European Prison Rules.

In 2003, as a means of keeping detainees occupied, a fully equipped modern gymnasium was installed in the remand centre of the Ministry of National Security, in which inmates are able to play sport in addition to taking their daily exercise. The cells in the remand centre are equipped with radios on which detainees can listen to broadcasts. Those detainees who so wish may, in accordance with the law, be employed in the remand centre to carry out repair work and to clean and tidy the facility. Detainees are issued with reading material, including works of fiction, religious texts and other books, daily newspapers and board games, and arrangements are made for them to perform religious activities. Meetings with relatives, interviews with investigators, lawyers, doctors and the facility administration also considerably reduce the amount of time that the detainees actually spend in their cells.

*24. Please provide information on the conditions of detention of persons sentenced to life imprisonment, including with regard to lighting, shutters, heating, and medical care.*

In accordance with the Criminal Code and the Penal Enforcement Code, persons sentenced to life imprisonment serve their sentence in prison and are held in cells. To ensure security and prevent assaults, escapes and other undesirable acts, the cells are equipped with special iron doors, which have small windows, opened from the exterior, to hand in food, reading material, documents etc. Each inmate has at least four square meters of cell space; there is a bed, a table, a chair and a toilet with a wash-basin. All cells have windows measuring one meter by 90 centimetres to let in light and fresh air and can be opened from inside by the inmates themselves. An opening set in the wall opposite the windows and above the door, and measuring 30 centimetres by 15 centimetres, provides for circulation. All cells, including those of persons serving life imprisonment, are heated by means of hot water circulating in heating pipes that pass through the cells. The cells have electric lamps in addition to natural light.

Every custodial block has a special enclosure in which all prison inmates are allowed to take fresh air for at least one hour every day.

The Act on Amendments to the Penal Enforcement Code and the Code of Criminal Procedure of 24 June 2008 significantly improved the legal situation of inmates sentenced to life imprisonment. The number of annual visits allowed was doubled (from three short visits to six and from one longer visit to two), as was the number of packages and parcels permitted (from four to eight); the number of telephone conversations allowed was increased four-fold (from 6 to 24), and the duration of telephone calls was increased from 10 minutes to 15. The allowance for the purchase of basic necessities and food products was increased nearly eight-fold (from 3.3 manats to 25, i.e. from 4 US dollars to 30).

The conditions of detention of persons sentenced to life imprisonment may be improved if they have obeyed the rules and worked conscientiously and if they have served at least 10 years of their sentence. In such cases, they may be allowed to have a larger monthly allowance for food products and basic necessities, they are allowed two short visits and one longer visit per year, and they may receive two packages, parcels or deliveries annually and two telephone calls.

The above-mentioned Act abolished the prohibition on taking vocational training or watching television broadcasts for persons serving life sentences, and all cells housing inmates in this category have been equipped with televisions.

In 2006, the prison at which persons sentenced to life imprisonment are held was renovated and its medical unit (40 beds) was modernized. The medical unit has x-ray equipment and dental offices, a pharmacy, a laboratory for independent clinical and bacteriological analyses, an operating room, an obstetric room, and 3 offices for physicians, 1 for a medical assistant and 11 for treatment.

The examination rooms and wards of the medical unit have new furniture and medical equipment. To improve examinations and treatment, over the past three years the medical unit has been supplied with 25 medical devices and accessories, an x-ray machine has been installed in the dental office, and the administrative offices have been equipped with a computer.

Prison staff has been increased in order to improve medical care; staffing for medical assistants and physicians has been doubled. To address shortages in the medical staff, physicians have been seconded to the prison from other medical institutions.

In June 2009, a team of nine physicians specialized in various fields examined 456 prisoners during the latest comprehensive medical check-up at the prison. In May 2009, an ophthalmologic examination was carried out, and 22 prisoners were provided with glasses.

A new dental office has been opened at the prison and is staffed by an experienced dentist; 20 inmates serving life sentences have been fitted with prosthetic appliances.

As already pointed out, in the framework of the State Programme for the development of the judicial system, 2009–2013, provision has been made (paragraphs 1.6 and 5.5 of the plan of action to implement the Programme) to elaborate proposals for further improving the rules and conditions of detention of inmates in order to ensure a broader protection of their human rights and fulfil the requirements of the European Prison Rules and implement the recommendations of the Council of Europe, the European Commission and the European Committee for the Prevention of Torture. These measures include an assessment of penal enforcement legislation, during which the rules for persons sentenced to life imprisonment and their conformity with Council of Europe Recommendation Rec(2003)23, will be closely examined.

25. *With reference to paragraph 302 of the State party's report, the issue of psychological services in penitentiary institutions has been solved. Please elaborate how this matter has been solved and how many penitentiary institutions provide psychological services.*

In accordance with the Act of 24 June 2008, inmates are entitled to psychological services.

A psychological service was set up in 2002 at several prisons for juveniles and women and in a maximum security facility. In 2007, posts for psychologists were created at all prisons. Today there are posts for 25 psychologists in the prison service, 2 in the administration and 23 in penal institutions of various categories, including detention centres. However, only 6 posts in penal institutions are filled; the other 17 are vacant.

Under an agreement concluded between the Academy of Law and the Office of the Federal Service for the Enforcement of Sentences, six staff members of the prison service have been studying since 2007 in a department of the Academy's faculty of psychology; in 2009, they were joined by another eight colleagues. Applications are still being accepted from persons wishing to work in the prison system, including for the post of psychologist.

26. *Please provide information on the existence of non-custodial measures. Are they applied in practice?*

Azerbaijan is actively promoting a policy aimed at reducing the number of prison inmates, primarily by applying the wide range of alternatives to imprisonment recommended by international instruments. The Plenum of the Supreme Court, in section No. 4 of its ruling of 27 December 1996 on court sentences and section No. 4 of its ruling of 23 June 2003 on judicial practice in sentencing, recommended that, before handing down prison sentences, courts must consider the possibility of more lenient alternatives. Accordingly, and given the adoption of a new Criminal Code and a new Code of Criminal Procedure, in recent years increased use has been made of the possibility of imposing alternate forms of punishment.

The new Criminal Code, which came into force on 1 September 2000, provides for a number of forms of punishment (i.e. alternatives to imprisonment) in which the convicted person is not isolated from society, and they are actively applied in practice. The Code enumerates five such alternatives, of which two are new: community service, and restriction of liberty:

- Fines (specified in 225 of the 906 articles of the Criminal Code); up to 10,000 manats, or US\$ 12,000 (up to 600 manats for juveniles)
- Deprivation of the right to hold certain posts or work in certain areas (in 104 articles of the Criminal Code) for up to five years
- Community service (in 48 articles of the Criminal Code) for between 60 and 240 hours (between 40 and 160 hours for juveniles)

- Correctional labour (in 166 articles of the Criminal Code) for up to two years (one year for juveniles)
- Restriction of liberty (in 76 articles of the Criminal Code) for between one and five years

The Criminal Code also makes provision for suspension of sentence (article 70), which is often applied by the courts. The Ministry of Justice is responsible by law for the enforcement of sentences which do not entail removal of the convicted person from society.

Court statistics for the years 2004 to 2008 on the application of alternative sentencing confirm the gradual decline in the number of custodial sentences. The following figures indicate alternative sentences as a percentage of all sentences:

- Fines – 20.5 per cent
- Deprivation of the right to hold certain posts or work in certain areas – 0.1 per cent
- Community service – 5.1 per cent
- Correctional labour – 12.2 per cent
- Restriction of liberty – 6.3 per cent
- Suspension of sentence – 10.5 per cent

## Article 12

*27. Please provide detailed information on the procedures of investigation into complaints of torture and other ill-treatment. Please give examples of such cases. Please also provide detailed information on the status, mandate and responsibilities of the Inspectorate established within the Ministry of Justice to monitor the enforcement of sentences in penitentiary institutions and detention facilities.*

The presidential decree on the implementation of the Penal Enforcement Code envisaged the establishment of a body to monitor the enforcement of sentences.

In view of the recommendations of international organizations, it was decided to establish an inspectorate for that purpose under the Ministry of Justice, and a department was set up in accordance with the order of the Ministry of Justice of 15 December 2004.

Since then, the inspectorate has taken determined steps to eliminate violations of the law within the prison system and to address the reasons and conditions for their occurrence, as well as to impose sentences that do not entail removing convicted persons from society.

In accordance with the order of the Ministry of Justice of 30 November 2007, regulations on the structure of the inspectorate were approved in order to organize its work in keeping with the requirements of new legislation.

Pursuant to those regulations, the purpose of the inspectorate is to monitor the enforcement of prison sentences, as well as sentences that do not entail removal of the convicted person from society.

The inspectorate monitors the activities of institutions and bodies responsible for the enforcement of sentences, including conditions of detention, and for the supervision of persons on probation, parole or a deferred sentence, the timely and correct execution of acts of pardon and amnesty, and participation in measures aimed at preventing torture and ill-treatment in prisons and detention centres.

In order to fulfil these duties, the inspectorate may:

- Conduct monitoring visits to institutions and bodies responsible for the enforcement of sentences, make requests to State bodies and non-governmental organizations and receive information from them
- Visit prisons unimpeded and without prior notice, meet with inmates, conduct interviews in private, have access to documents and verify the legality of a person's detention at a facility
- Where necessary, demand information concerning monitoring visits and investigations relating to these prisons, as well as other necessary materials and documents
- Receive explanations and written information from the staff and officials of institutions and bodies responsible for the enforcement of sentences and for the operation of remand centres, from law enforcement personnel and from soldiers guarding prisons or escorting prisoners, as well as from prisoners and detainees themselves
- Look into the medical care of imprisoned convicts and make recommendations in that regard
- Take part in the discussion of questions relating to the enforcement of sentences, make proposals and carry out other tasks within its remit

28. *Please provide updated statistical data covering the reporting period regarding application of articles 133 (torture), 293 (coercion to testify), 308 (abuse of authority), 309 (exceeding authority) and 314 (negligence) of the Criminal Code of Azerbaijan. Further to the information contained in the State party's report, please provide data on the number of people who were convicted under article 293 of the Criminal Code and how many of these persons were specifically prosecuted for the crime of torture. Please also provide information on the nature of sanctions brought against officers who were convicted of torture and the number of allegations of torture that have been submitted and investigated during the reporting period.*

According to statistical data for the years 2001 to 2008, 161 persons were convicted under article 133 (torture), 220 under article 308 (abuse of authority), 113 under article 309 (exceeding authority) and 214 under article 314 (negligence) of the Criminal Code. There were no convictions under article 293 (coercion to testify).

29. *Notwithstanding the detailed information provided by the State party regarding deaths in detention, according to information before the Committee there have been several cases of torture and death in custody as a result of torture, where the investigation did not confirm torture because of alleged tampering with the results of medical and post-mortem examinations. Two such cases are the deaths of Rahimov Mahammad Ali oglu, resident of Goranboy region and Mammadov Zaur Golmammad oglu, resident of Lenkaran city, Veravul region. Please comment on these cases and allegations. What has been done to prevent such practices?*

Reports that these deaths were the result of torture or other forms of ill-treatment are not true. The actual facts are as follows.

On 31 August 2008, Rahimov Mahammad Ali oglu, resident of Delimamedli, Goranboy region, beat up Iegana Kazymova gizi, with whom he is in a common law marriage, at their home while inebriated and threatened to kill her.

Upon being notified, police officers Gasanov Ashraf Mamed ogly and Guseinov Nizami Gachai ogly went to Rahimov's residence and ordered him to come with them to the police station. On the way there, however, Rahimov's health suddenly deteriorated, and



despite receiving medical assistance, he died of cardiovascular insufficiency, as confirmed by the findings of a forensic examination.

In view of the absence of a crime, there having been no evidence of the use of force, the procurator's office of Goranboy region decided not to institute criminal proceedings.

The Procurator-General overturned that decision and, an exhumation and the appointment of a forensic investigation commission having been ordered, the file was returned to the regional procurator's office for review. In the absence of elements of a crime in the material under review, it was again decided not to institute criminal proceedings.

On 21 October 2008, police officers of the Lenkaran internal affairs office arrested Mammadov Zaur Golmammad oglu, resident of Lenkaran city, Veravul region, who was found to be in possession of 0.202 grams of heroin.

Criminal proceedings were then instituted under article 234.1 of the Criminal Code (illegal possession of narcotic substances without intention to sell).

On 25 October 2008, Mammadov was found hanging by a metal wire in a toilet at the police station. He was still conscious, but despite the prompt arrival of medical personnel and the medical assistance received, he died in the ambulance on the way to the hospital.

Thereupon, the Lenkaran regional procurator's office instituted criminal proceedings in accordance with article 125 of the Criminal Code.

During the investigation, all police officers were questioned who had been in contact with Mammadov on that day, and a report was received from the Judicial Expertise Centre confirming that the 0.202 grams of narcotic substance found in Mammadov's possession was heroin. Other investigative action was also taken, but the allegation that violence had been in play was not corroborated.

On 4 March 2009, the Lenkaran regional procurator's office issued a decision to close the criminal proceedings due to the lack of evidence that a crime had been committed.

*30. Please comment on the allegation that there is a pattern of torture in remand centres under the Ministry of Internal Affairs. Please comment on what measures have been taken to examine such charges and to prevent any such practices.*

The allegation of a pattern of torture in remand centres under the Ministry of Internal Affairs is contrary to fact.

The Ministry of Internal Affairs only has authority over temporary holding facilities, at which detainees must undergo a medical examination upon arrival. Bodily injuries identified and complaints made are recorded in a special register, which is periodically checked by the supervising procurator.

It should also be noted that the Commissioner for Human Rights (Ombudsman) and representatives of non-governmental organizations have the right, without prior notification of the authorities at the ministry, to visit temporary holding facilities, whose directors must immediately receive the Ombudsman and representatives of non-governmental organizations and create the necessary conditions for meeting with detainees and inspecting the documents substantiating the grounds for detention.

### **Article 13**

*31. With reference to paragraphs 201–204, please explain the measures taken by the State authorities to ensure that the investigations into the complaints against police and*

*prison staff misconduct are effective and impartial. Which authorities are competent to receive such complaints?*

32. *Please provide information regarding mechanisms to monitor the procedures which deal with complaints from inmates. Please provide statistical data on the number of complaints received, investigated and prosecuted. As it was in its follow-up letter of 21 April 2006, the Committee recommended the establishment of an independent body to ensure impartiality of investigations. Please clarify whether any measures have been taken to create this body and the procedures by which the torture complaints can be received in practice.*

In reply to questions 31 and 32, it should be pointed out that by law, inmates, like all citizens of Azerbaijan, have the right to address suggestions, reports and complaints to the State authorities. Article 14 of the Penal Enforcement Code sets out the rules for so doing and for their examination. The suggestions, reports and complaints of inmates serving prison sentences are forwarded via the administration. Any complaint by an inmate which has been sent for investigation to a higher authority — the Prison Service or the Ministry of Justice — is looked into by senior officials, a special verification file is created, and the allegations contained therein are checked within one month. A detailed statement is taken from the inmate during the investigation in order to specify more clearly the allegations contained in the complaint and other circumstances of the case, and the necessary steps are then taken. The findings of the investigation are forwarded to the senior officials concerned and a decision is taken. The inmate is then informed in writing of the findings. If an inmate does not agree with them, he may refer his case to court. Inmates also have the right to take legal action without first applying to higher State authorities.

Complaints by inmates are investigated by a special body – the Department of Internal Investigations, which reports directly to the Deputy Minister of Justice-Director of Prison Services, by the inspectorate for oversight of enforcement of sentences, which reports directly to the Ministry of Justice, and by the Human Rights and Public Relations Office, which has overall responsibility for questions concerning the protection of human rights in the judicial system. In 2008 and the first half of 2009, the Department of Internal Investigations examined 16 complaints of human rights violations submitted by inmates serving life sentences. The findings of the investigation did not confirm the allegations.

Senior officials at the Ministry of Justice constantly monitor investigations of complaints and reports from inmates and other citizens. The question is systematically discussed at least once a year in the central administrative board of the Ministry of Justice. It was addressed at such a meeting on 23 April 2009, and the decision taken specifically referred to the need to ensure that legal requirements on the investigation of reports from citizens, including prison inmates, are strictly complied with, that the investigation is conducted in an objective fashion and that decisive action is taken if it is established that the rights of the petitioners have been violated.

In the course of 2008, the Prison Service received 244 reports and 105 complaints, and 85 reports and 38 complaints in the first half of 2009. All reports and complaints were promptly investigated or forwarded to the competent authority. The petitioners were informed in writing of the results of the investigation.

In 2008, the inspectorate for oversight of enforcement of sentences investigated 216 reports and communications from convicted offenders, and 70 in the first half of 2009.

Also in the first half of 2009, the Ministry's Central Medical Authority received nine reports, four of which had been sent by inmates themselves and five by family members. Eight of the reports have been investigated, and one is still under investigation; four reports were investigated in court.

Impartial investigation of allegations of torture and ill-treatment in penal institutions are conducted by the inspectorate for oversight of enforcement of sentences in the framework of its responsibilities and by the Human Rights and Public Relations Office of the Ministry of Justice, the Ombudsman, the International Committee of the Red Cross and the Public Affairs Committee, which ensures the participation of civil society in the rehabilitation of convicts and provides for public oversight of penal institutions.

*33. Please provide information on the procedures in place to guarantee the confidentiality of complaints and to protect complainants of acts of torture from possible reprisals. Please provide information on any witness-protection programme for victims of torture and cruel, inhuman or degrading treatment.*

Legislation on criminal procedure has introduced a reliable mechanism for guaranteeing the confidentiality of complaints and protecting complainants of acts of torture from reprisals.

Pursuant to article 83 of the Penal Enforcement Code, inmates may send an unlimited number of letters and telegrams. In accordance with the Act of 24 June 2008, censorship of the correspondence of inmates is prohibited. Correspondence, except between the inmate and his defence counsel or other persons providing legal assistance in conformity with the law, may be subject to censorship only to prevent an imminent crime, safeguard criminal proceedings, ensure conditions for the enforcement of sentence or protect life and guarantee security.

Suggestions, reports and complaints addressed to the prison monitoring authorities, the Ombudsman and the European Court of Human Rights are not subject to censorship and must be sent to the addressee within one day (not counting weekends and holidays).

On 11 December 1998, the Parliament passed the Parties to Criminal Proceedings (State Protection) Act, which defines the set of measures envisaged for the protection and defence of victims, witnesses testifying in a criminal trial and other parties concerned. In accordance with the Act, persons for whom the executive authorities have decided to take protective measures are called protected persons. This includes persons who have informed the law enforcement authorities about a crime or who have participated in the elucidation, prevention or investigation of a crime, victims in a criminal trial and their legal representatives, special prosecutors and their representatives, suspects and accused persons and their defence counsels and representatives, claimants and respondents and their legal representatives, official and other witnesses, experts, specialists and interpreters. With regard to criminal investigations and pending trials, the provisions of the Act also cover the security of protected persons in remand centres and prisons. In order to protect these persons, measures such as the transfer from one remand centre or prison to another, detention in a separate or individual cell and changes in the rules on preventive measures under the legislation on criminal procedure are permitted.

## **Article 14**

*34. Please provide information on cases of compensation ordered by the courts and provided to victims of torture or cruel, inhuman or degrading treatment. What rehabilitation services are in place for such victims?*

Pursuant to the Harm Caused to Individuals by the Unlawful Actions of Initial Inquiry and Pretrial Investigation Authorities, the Procurator's Office and the Courts (Compensation) Act of 29 December 1998, compensation must be paid for harm caused to individuals as a result of illegal arrest or placement by force in a medical or correctional facility, as well as detention in custody for longer than the fixed period without legal

justification or illegally subjecting an individual to compulsory procedural measures during criminal proceedings.

In accordance with the Code of Criminal Procedure, victims are entitled to the following compensation for harm caused by acts defined in criminal law:

- For a very serious crime: 330 manats
- For a serious crime: 165 manats
- For a crime not of a serious nature: 55 manats
- For a crime not constituting a major public danger: 11 manats

The question whether compensation is to be paid from the State budget of the Republic of Azerbaijan to victims for harm caused by acts defined under criminal law is decided by a court on an application from the victim.

## Article 15

35. *In light of paragraph 5 of the State party's report, please provide examples of any cases where the courts have declared statements inadmissible on the grounds that they have been obtained through torture.*

With a view to providing methodological assistance to the courts in the proper application of legislation and convention-based international rules against torture, the Supreme Court of the Republic of Azerbaijan has consolidated judicial practice in this area, as a result of which a decision was adopted reflecting the recommendations of the Committee against Torture and indicating in particular that when instances of the use of torture, cruel treatment or physical or mental violence are found to have occurred, they must give rise to legal action, since these are criminally punishable offences and no exceptional circumstances can serve to justify them. Evidence obtained by unlawful means cannot form the basis of a judgement.

Since 1 September 2000, the Supreme Court has examined four criminal proceedings pursuant to article 133 (Torture) of the Criminal Code with regard to four convicted persons on the basis of cassational appeals. During consideration of the appeals, it came to light that the convicted persons had committed acts of violence against family members.

Criminal proceedings involving R. Mamedov, an enlisted man in the "N" military unit, are currently being heard in the division of the Supreme Court covering military tribunal cases. It should be noted that when the case was examined by the Agdam Military Tribunal, it came to light that during the preliminary investigation into the case by the investigator, acts of a coercive nature had been used against witnesses and that witnesses had been pressured when giving testimony. As it was demonstrated in the course of court proceedings that these acts had in fact taken place, the Agdam Military Tribunal ruled that the witness testimony given during the preliminary investigation was inadmissible, and it rendered a decision on the basis of evidence obtained in impartial judicial proceedings. Thereupon, the court of first instance, in a special ruling, decided to take the necessary action in connection with acts diminishing the value of witness testimony committed by the investigator of the military procurator's office, and the investigator was handed over to the Procurator-General of the Republic of Azerbaijan.

36. *Does the criminal justice system rely on confession as evidence? How many cases have been decided solely on the confession of defendants?*

Pursuant to the Code of Criminal Procedure, the confessions of suspects and defendants are taken as evidence in criminal proceedings. A defendant's confession to a crime may be used as a basis for a verdict only if it is supported by all the evidence.

## Article 16

37. *According to information before the Committee, tuberculosis remains a major health problem in the penitentiary system of Azerbaijan. Please explain the situation and measures taken to address it.*

In cooperation with the International Committee of the Red Cross, targeted therapy has been organized for inmates with tuberculosis. Since 1995, in keeping with the recommendations of the World Health Organization, therapy for such inmates has been based on the Directly Observed Treatment, Short-Course (DOTS) programme.

During this period, 9,608 inmates were treated under the programme with first-line anti-TB drugs, of whom 5,324 (55 per cent) became ill again, and 4,364 (45 per cent) were treated a second time. The tuberculosis mortality rate in 2008 declined by about 17-fold compared to 2005.

In 1998, a special therapy centre was opened for comprehensive diagnosis and treatment of tuberculosis in the prison system. The structure and functions of the centre's various departments make it possible to isolate patients from each other on the basis of bacterial discharge and resistance indicators and thus help ensure full implementation of measures to control the infection.

In 2007, the prison system was the setting for the use, for the first time ever in the country, of a DOTS-Plus treatment with second-line anti-TB drugs. As of 1 July 2009, 161 patients with a resistant form of tuberculosis have been treated. The treatment of 23 has been completed, and they are regarded as cured. The programme is continuing successfully.

Thanks to the measures taken, the structure of cases of illness detected has changed significantly. The number of new cases has declined, as has the number of persons who have been found to have a positive reaction to tuberculosis resistant bacteria in a sputum smear. Whereas 604 (62 per cent) of the 972 persons undergoing a course of DOTS treatment in 2000 were new patients, of whom 456 (46.9 per cent of all patients) had had a positive reaction to tuberculosis resistant bacteria in a sputum smear, 363 (or 49 per cent) of the 745 persons undergoing treatment in 2008 were new patients, of whom 168 (or 22.5 per cent of all patients) had had a positive reaction. Currently 455 patients at the special treatment centre are receiving first-line anti-TB drugs, and 112 are receiving second-line drugs.

As a result of the steps taken to combat tuberculosis, and with the support of the ICRC, the special therapy centre has created a unique bacteriological laboratory.

In order to broaden the reach of laboratory tests in the prison system and decentralize this service, bacteriological laboratories were set up at Baku Prison in 2006 and at its new Remand Centre in 2009. In 2007, Penal Institution No. 5 and Remand Centre No. 2 concluded agreements with the Salyan Dispensary for Tuberculosis Control and the Ganja Dispensary for Pulmonary Illnesses to conduct microscopic analyses of sputum samples taken at a distance from Baku.

Comprehensive measures are being taken for the early detection and timely treatment of prisoners with tuberculosis. Each remand centre has new modern stationary digital photofluorographic equipment. Mobile equipment of this kind is used for periodic comprehensive testing in penal institutions. Inmates must fill out a special questionnaire

upon arrival in prison. Anyone suspected of having contracted tuberculosis is given a sputum test and receives treatment following an examination by a tuberculosis specialist.

It is worth noting that international experts have applauded and set great store by the measures taken to combat tuberculosis in Azerbaijan's prison system.

In the accounts of international experts active in the area, as well as in the context of international campaigns, Azerbaijan's activities in combating tuberculosis in the prison system are regarded as a model for other countries.

In addition to the above efforts, work has been under way since 2008 on introducing a single electronic database known as the "Tuberculosis Electronic Manager" in order to modernize databases on tuberculosis patients.

With a view to further improving activities in the area and addressing existing problems, the Ministry of Justice elaborated a tuberculosis project and presented it at the ninth round of the Global Fund. In addition to enhancing current efforts to combat tuberculosis, the project contains proposals for establishing a thoracic surgery service for tuberculosis patients, conducting research in the field, working with patients released from prison whose treatment has not been completed, given the unique experience gathered by the special therapy centre and the conditions created there, and operating a training centre for the staff of prisons in the region.

38. *Please comment on the allegations that there are consistent acts of violence against human rights defenders, journalists and other media workers by law enforcement officials or by unknown persons. Investigations allegedly are not conducted in a comprehensive manner. What measures have been taken to investigate such cases and prevent future occurrences? Has the State party conducted prompt and impartial investigations into such allegations and what are the results?*

Azerbaijan disagrees with the allegations of acts of violence against human rights defenders and media workers.

We consider it important to point out that these allegations are most probably the result of disinformation and do not constitute an objective reflection of the actual situation with regard to certain persons who have committed criminally punishable acts and have been sentenced to prison terms of various lengths on the basis of enforceable judicial rulings. These rulings are in no way related to the journalistic activities of those persons and in all cases are based on the principle of equality of all before the law, regardless of a person's position or occupation.

In view of the important role played by the media in modern society, special attention is given to the interrelationship between law enforcement agencies and the media and to the need to broaden cooperation between them in order to heighten public awareness of the results of efforts to promote law and order and fight crime, and thus encourage an unbiased opinion of the law enforcement authorities.

It is unacceptable that the law enforcement authorities should be hindered in any manner in the performance of their professional duties by representatives of the media, regardless of their political views or affiliation. It should also be pointed out that allegations are the subject of a line-of-duty investigation, and that the necessary action is taken without delay if police officers are found to have committed illegal acts.

39. *Please comment on the findings of the Special Rapporteur on the right to freedom of opinion and expression, Ambeyi Ligabo, regarding the use of excessive force by the police in Azerbaijan during public protests. Please elaborate on the rules and procedures for the conduct of police officers in cases of public protests and gatherings.*

The functions and powers of police officers in ensuring public order and security are regulated in articles 4 and 18 of the 1999 Police Act. Pursuant to article 26 of the Act, a police officer who makes illegal use of physical force or other special measures against citizens is punishable in conformity with the law.

In addition, the Code of Ethical Conduct of the Police of 8 April 2005 defines rules of conduct for persons acting in an official capacity as well as in everyday life, in line with national legislation and generally accepted ethical and other legal standards on the protection of human rights and freedoms.

In accordance with article 4 of the Code, members of the police force are required to make use of their powers only within the limits of the law, to respect the legal rights of detainees suspected of having committed criminal acts or of having violated the rights of others, to refrain from exceeding their powers when it is necessary to use physical force against such persons, and to be capable of taking appropriate action in such cases.

*40. Please comment on the absence of data on trafficking of persons, especially children and women, as well as on sexual exploitation. Please elaborate on steps taken to prevent trafficking of persons, especially children and women as well as sexual exploitation.*

In 2004, a presidential order enacted a national plan of action to combat trafficking in persons in the Republic of Azerbaijan, which sets out the basic responsibilities of State bodies in combating this phenomenon and addresses questions of cooperation between State bodies, non-governmental organizations and international organizations with regard to implementing their activities, as well as the harmonization of these bodies by the National Coordinator.

Pursuant to the national plan of action, and on the basis of the corresponding order by the Ministry of Internal Affairs of 27 October 2007, a hotline providing information and consultation services was set up within the office for combating human trafficking in order to obtain information on such crimes and afford prompt assistance to the victims.

In 2005, the Suppression of Human Trafficking Act was enacted to establish the legal and organizational foundation for combating and preventing the phenomenon, define the legal status of victims and regulate questions relating to their protection and assistance.

In accordance with the Act, shelters and help centres were put in place at which victims of trafficking can receive food and medical, psychological, social and legal assistance.

Help centres are being set up to inform victims of human trafficking of the administrative and legal procedures that exist to protect their rights and interests, to provide medical, psychological and other assistance and to help them to reintegrate into society. Anyone who claims to be a victim of human trafficking may request assistance from these centres regardless of conduct or willingness to cooperate with the prosecution authorities.

In 2006, an individual social rehabilitation programme was devised for every victim in accordance with the rules on the social rehabilitation of victims of trafficking in persons approved by decision of the Cabinet of Ministers.

That same year, a decision of the Cabinet of Ministers confirmed the statute of the Support Fund for Victims of Trafficking in Persons, which exists primarily to cover victims' expenses and, within the limits of its authority, finance other activities relating to the social rehabilitation of victims of trafficking.

Also in 2006, the Cabinet of Ministers adopted a decision on the determination of the subsidies payable during reintegration to victims of trafficking. This sets the reintegration benefit at 30 times the standard accounting unit.

The 2009–2013 national plan of action to combat trafficking in persons in Azerbaijan was adopted by order of the Head of State in 2009 for the purpose of continuing current efforts, improving the legal framework and institutional mechanisms, and enhancing the effectiveness of State bodies. The plan sets out measures to boost prosecution of human trafficking, enhance victims' safety and offer improved rehabilitation, cooperation, coordination and public information.

As part of the measures introduced under the plan of action, bills on rules for a reorientation mechanism in connection with victims of trafficking in persons and on regulations for the definition of victims of trafficking in persons have been drafted and referred to the Cabinet of Ministers for consideration.

Work has been carried out in conjunction with non-governmental organizations and other representatives of civil society active in the country. In accordance with the new national plan of action of 17 March 2009, a memorandum of understanding on cooperation was signed between the Ministry of Internal Affairs and the Coalition against Human Trafficking, which is made up of 45 non-governmental organizations.

In order to promote the fight against such offences and gather experience in the area, officials from the office for combating human trafficking have taken part in training and educational programmes in Austria, Serbia, Finland, Georgia, Ukraine and Turkey, and meetings have been held with a United Nations expert on gender equality, the head of the United Nations representation in Azerbaijan, an expert from the International Labour Organization on the training of law enforcement officers and a representative of the United States embassy in Azerbaijan, at which problems relating to the fight against trafficking in persons were discussed.

It should be pointed out that in 2005 amendments were made to the Criminal Code, and punishment was defined for trafficking in persons (art. 144–1), forced labour (art. 144–2) and the disclosure of confidential information about victims of trafficking in persons (art. 316–1).

In the years 2006 to 2008, 177 persons were convicted pursuant to article 144–1 of the Criminal Code.

*41. Please comment on the information that persons below 18 are often tried as adults, and held in pretrial detention for long periods and not always detained separately from adults despite the existing legislation which prohibits detaining minors with adults. What measures are being taken to prevent such practice?*

In conformity with national legislation, juvenile offenders (between 14 and 18 years of age) are held in pretrial detention separately from adults. Juveniles currently in pretrial detention at Remand Centre No. 2 (Ganja) and Remand Centre No. 3 (Baku) are held in a separate block and on a separate floor of the building.

Construction of a separate block for juveniles meeting all necessary conditions will be completed at the Baku Remand Centre by the end of 2009. The new remand centre will also hold juveniles separately from adults. A decision has recently been taken to build a new modern prison for convicted juveniles near the new remand centre. To prevent contact with adults, the new prison will also have a remand centre for juveniles on its grounds.

*42. Please comment whether the practice of corporal punishment at home is an accepted measure of discipline, although it is prohibited in schools and in the penal system. What measures to prevent child abuse have been established, such as a hotline or a duty of a schoolteacher to report signs of domestic abuse of children?*



In accordance with the legislation of Azerbaijan, corporal punishment is not an accepted form of discipline. This is reflected in the Rights of the Child Act and in other legislation.

Pursuant to article 12 of the Act, ill-treatment of children by parents or other persons, psychological or physical violence against children or the violation of children's rights, as defined in national legislation, constitute grounds for termination of parental rights as well as administrative or criminal prosecution.

Teachers, psychologists and school staff investigate cases of corporal punishment, since they are in direct contact with children and have the right to submit reports on such occurrences. Commissions that work with juveniles can take similar action with the executive authorities of their region.

The comprehensive programme to combat day-to-day violence in Azerbaijan's democratic society has been in effect since 2007 to address the phenomenon of violence. Under the programme, a State committee holds training classes for children in schools and society and for paediatricians. Initiatives are conducted at help centres for children and the family. As part of a project, a Children's Rights Clinic has been set up which children who are victims of violence can turn to.

*43. Please provide information on any independent inspections of psychiatric institutions and their follow-up and indicate the agencies undertaking these activities.*

Monitoring of the activities of psychiatric institutions is conducted by the office of medical assistance and the chief psychiatrist of the Ministry of Health and by senior physicians at major hospitals.

Psychiatric assistance for the population is provided by psychiatric hospitals, neuropsychiatric units and the psychiatric offices of major regional hospitals.

Currently 19 psychiatric facilities are operating in Azerbaijan, of which 8 are psychiatric hospitals and 11 are neuropsychiatric units; there is also a centre for forensic psychiatric examinations within the Ministry of Health.

In recent years, greater attention has been given to the training of psychiatric experts.

Coverage by psychiatric experts is as follows:

- Five higher-level doctors of medical science, including one specialized in practical psychiatry
- Ten doctors of medical science, including 3 specialized in practical psychiatry

The following action has been taken to follow up the recommendations made by the European Committee for the Prevention of Torture after its last visit to Azerbaijan in December 2008:

- The children and adolescents ward of National Psychiatric Hospital No. 1 of the Ministry of Health has begun operating again after major renovation and the purchase of furniture and equipment.
- The hospital's department of psychiatric illnesses, the auditorium, the entrance hall and the custodial chamber have been renovated.
- A furnace has been installed.
- The kitchen facility has been reconditioned and has begun operating again (capacity: 1,800 patients).
- New equipment has been provided for the laundry room.

- The hospital's bathhouse and sanitation and cleaning service have been transformed and have begun operating again.
- The department for compulsory treatment has been completely renovated and equipped and has begun operating again.
- Work is being carried out to landscape and illuminate the 56 hectares of hospital grounds, on which more than 4,000 ornamental and fruit trees and flowers were recently planted.
- The sewage disposal systems at five hospitals have been rebuilt and have begun operating again.
- Patients have been provided with hospital clothing for each season of the year.
- The hospital has been provided all necessary medications and provisions.
- All hospital wards have been equipped with complaint and suggestion boxes, and most wards now have radios and televisions.
- The hospital uses a form in which incoming patients give their consent to treatment, an information sheet on the type of treatment received and completed and a form if patients decide to stop treatment.
- The hospital is holding training courses to improve the qualifications of lower and middle-level medical staff. The hospital management, in conjunction with the Association of Psychiatrists of Azerbaijan and the non-governmental organization Global Initiative, has recently prepared a project for improving the qualifications of middle-level medical staff, and training has begun.
- Major renovations are being carried out at four hospitals.

The old block of Psychiatric Hospital No. 2 has been entirely renovated, and a new administrative facility has been built. The hospital has received modern furniture, and a new furnace has been installed. There are no problems with the supply of medications or food.

One of the recommendations of the European Committee for the Prevention of Torture following its visit to Azerbaijan in December 2008 was that a national strategy should be drawn up in the area of psychiatric health.

A draft national strategy on psychiatric health, prepared by leading specialists in response to that recommendation, has been analysed and given a favourable assessment by experts of the World Health Organization and other international organizations.

The strategy is in the process of being approved by the Government.

## **Other issues**

*44. Please provide information on the legislative, administrative and other measures the State party has taken to respond to the threat of terrorist acts, and please describe if, and how, these measures have affected human rights safeguards in law and practice. Please describe the number and types of convictions under such legislation.*

The Criminal Code provides for criminal responsibility for crimes committed pursuant to articles 214, 214-1 and 216 (terrorism, financing of terrorism, and deliberately false reports of acts of terrorism). These crimes, by their nature and the level of danger to society, constitute serious and particularly serious offences, and they are punishable by between 10 to 15 years' imprisonment or a life sentence.

Pursuant to criminal legislation, other acts of a terrorist nature also entail criminal responsibility. These crimes concern the acts set out in articles 102, 120.1, 206.2, 206.3, 215, 218, 219, 219–1, 226–229, 232, 277, 279 and 282 of the Criminal Code.

In accordance with presidential decree No. 293 of 14 September 2005, the Ministry of National Security, as the sole central executive body, is responsible for prosecuting crimes such as terrorism, financial terrorism and deliberately false reports of acts of terrorism. The procurator's office and the courts, within the framework of their authority, conduct extra-departmental monitoring of compliance with the norms of legislation in the area. In 2008 and the first half of 2009, no one was convicted in criminal proceedings, the preliminary investigation of crimes of a terrorist nature having been conducted by the Ministry of National Security. At the present time, the Serious Offences Court is considering a number of cases which have been the subject of preliminary investigations by the Ministry of National Security and which concern acts of terrorism, preparation of acts of terrorism and other offences. All told, 32 persons have been charged in these cases, including 7 for acts of terrorism and preparation of acts of terrorism.

With a view to implementing United Nations Security Council resolutions 1368 of 12 September 2001 and 1373 of 28 September 2001, the Republic of Azerbaijan has ratified all major United Nations conventions and protocols concerning the fight against terrorism.

At regional level, Azerbaijan has acceded to the Council of Europe's European Convention on the Suppression of Terrorism, 1977, the Council of Europe Convention on the Prevention of Terrorism, 2005, and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, 2005. By the Act of 22 February 2008, Azerbaijan ratified the Additional Protocol to the Council of Europe's European Convention on the Suppression of Terrorism, 1977.

45. *Azerbaijan ratified the Optional Protocol to the Convention against Torture in January 2009. What measures have been taken to implement the Optional Protocol and what national prevention mechanisms have been established so far?*

Azerbaijan acceded to the Optional Protocol to the Convention against Torture on 2 December 2008. Pursuant to the presidential decree of 13 January 2009 on the implementation of the Optional Protocol, the Commissioner for Human Rights (Ombudsman) is the authority responsible for carrying out the functions of a national prevention mechanism pursuant to the Protocol.

The powers which are to be given to national prevention mechanisms in accordance with the Protocol are consistent with the mandate of the Ombudsman.

In order to ensure effective action by the national prevention mechanism and enhance the Ombudsman's work on preventing torture, on 15 January 2009 the Commissioner for Human Rights signed an internal order to set up an Office of the Ombudsman for the Prevention of Torture.

In accordance with this order, the necessary organizational measures have been taken, and discussions have been held with the broad participation of representatives of various State bodies, non-governmental organizations, international organizations and the media, whose proposals have been analysed and consolidated. Drawing on national and international experience, a plan of action has been drafted, and a list of rules has been produced for the 200 compulsory detention centres for prisoners and persons to whom measures of restriction of liberty apply; the rules also regulate the subsequent organization of regular visits and inspections.

As part of these activities, various initiatives have been conducted in homes for the elderly, orphanages and other facilities, including at regional level.

It is planned to set up a new division within the Ombudsman's office to rationalize the work of the prevention mechanism. To that end, a draft decree has been prepared authorizing the elaboration of rules for the national prevention mechanism and changes in the staff structure and budget of the Ombudsman's office and regional branches. Proposals and calculations have been forwarded to the Ministry of Finance and the Cabinet of Ministers for approval and ratification.

Efforts are continuing to establish the national prevention mechanism and to enhance its work.

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