

**The Commissioner for Human Rights
(Ombudsman) of the Republic of Azerbaijan**

R E P O R T

**ON THE ACTIVITY OF
THE NATIONAL PREVENTIVE
MECHANISM
FOR THE PREVENTION OF TORTURE**

(2012)

Baku – 2013

The report covers the activities carried out by the National Preventive Mechanism in 2012, as well as the relevant proposals and recommendations.

The report includes statistical data, photos, as well as the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Regulations of the Department for the Prevention of Torture of the Office of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan.

ISBN: 978-9952-8220-5-2



Organization for Security and
Co-operation in Europe
Office in Baku

This report was prepared by the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan, translated and published with the financial support of the OSCE Office in Baku. The views expressed in the report are the author's own and do not necessarily reflect the official opinion of the OSCE Office in Baku.

Foreword

Firstly, it should be mentioned that the establishment of an institution to function as the National Preventive Mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (NPM), being the continuation of the statehood process, derived from the government's willingness to support international standards ensuring the protection of human rights at higher level and the commitments undertaken thereunder. The incorporation of the requirements of the ratified documents into the national legislation has resulted in the designation of the Institute of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan as the NPM, by taking into consideration its primary experience and capacity in this field.

The elimination, in 2012, of the difficulties caused by the logistical deficiencies in the previous years has resulted in the organization of the NPM's work at a higher level and its outstanding as a good example among the relevant agencies of other countries.

The Commissioner's mutual relationships with state agencies, civil society representatives, mass media, international organizations, as well as foreign Ombudsmen have ensured the NPM's successful operation from the first day and enabled the organization of constructive dialogues, necessary support, useful training sessions, and exchange of experiences.

During the short term of its operation, the Azerbaijani NPM has established distinctive reputation among the relevant specialized organizations and the general public due to its contributions to the improvement of the prevention of torture in the country from both the legislative and institutional perspectives.

The current report, which covers the activity carried out by the Commissioner as the NPM in 2012, comprises the measures undertaken for the improvement of the NPM's operation, cases revealed during preventive visits, presented recommendations and suggestions and the state of their implementation, as well as other activities undertaken by the NPM and proposals and recommendations derived from the conducted analyses.

I would highly appreciate your comments regarding the report.

Professor Elmira SULEYMANOVA
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Definitions and Abbreviations Used in the Text

AIDS - acquired immunodeficiency syndrome

Commissioner- the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan

Constitutional Law-the Constitutional Law of the Republic of Azerbaijan on the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan

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

CPO-a city police office

CPT- Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

CC - the Criminal Code of the Republic of Azerbaijan

Department - Department for the Prevention of Torture of the Office of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan

Deprivation of liberty - any form of detention or imprisonment or the placement of a person in a public or private custodial setting, which that person is not permitted to leave at will by order of any judicial, administrative or other authority

Detainee - a person deprived of his/her liberty

DPD-a district police department

DPO-a district police office

EPC - the Execution of the Punishment Code of the Republic of Azerbaijan

HIV - Human immunodeficiency virus

IDR – the Internal Disciplinary Rules of Penitentiary Institutions approved by Decision No. 7 of 29 December 2011 of the Plenary Board of the Ministry of Justice

MD-the Ministry of Defense of the Republic of Azerbaijan

ME-the Ministry of Education of the Republic of Azerbaijan

MH-the Ministry of Health of the Republic of Azerbaijan

MI- the Medical Institution of the Penitentiary Service of the Ministry of Justice of the Republic of Azerbaijan

MIA- the Ministry of Internal Affairs of the Republic of Azerbaijan

MJ- the Ministry of Justice of the Republic of Azerbaijan

MLSP- the Ministry of Labor and Social Protection of Population of the Republic of Azerbaijan

MNS - the Ministry of National Security of the Republic of Azerbaijan

MSU – a medical sanitary unit

NPG – the National Preventive Group for the Prevention of Torture under the Office of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan

NPM - the national preventive mechanism provided for by the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

OMP - the Office of the Military Prosecutor of the Republic of Azerbaijan

Office - the Office of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan

OPCAT - the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

OSCE - the Organization for Security and Co-operation in Europe

PCS - a penal colony settlement of the Penitentiary Service of the Ministry of Justice of the Republic of Azerbaijan

PI - a penitentiary institution

Place of detention-any place where a person is detained or may be detained without permission to leave at will

PS- the Penitentiary Service of the Ministry of Justice of the Republic of Azerbaijan

PU – a police unit

Subcommittee - A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture

TDP- a temporary detention place

Torture- torture and other cruel, inhuman or degrading treatment or punishment

UN – the United Nations

CHAPTER 1.

DEVELOPMENT OF THE NPM IN AZERBAIJAN

1.1. Requirements of the OPCAT and national legislation

It should be primarily mentioned that the main requirement of the OPCAT¹ is to establish a system of regular visits undertaken by independent international and national bodies to places of detention² in order to prevent torture. As an innovative treaty, embracing international and national efforts to prevent torture, the OPCAT emphasizes the importance of a constructive dialogue, and specifies that not a reactive approach – an approach based on reaction, but a preventive approach – an approach aimed at preventing shall be applied to the regulated relations. The innovativeness of the OPCAT also appears in envisaging no new rights or restoration of infringed rights but the prevention of the violation of the existing standard - the right not to be subjected to torture.

The principle idea of the mentioned document is to establish, as a an effective tool for the prevention of torture, a system of independent and regular visits to be carried out with the purpose of monitoring the detention conditions and treatment of persons kept in places of detention. In accordance with the OPCAT, international and national bodies with a torture prevention mandate – the Subcommittee and NPMs – are set up. The Subcommittee established at the international level, being a subcommittee of the UN Committee against Torture, is a new generation treaty body of the UN.

Pursuant to Article 17 of the OPCAT, each State Party shall maintain, designate or establish, at the latest one year after its entry into force or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. The NPM's mandate consists of the followings at least:

- *to regularly examine the treatment of the persons deprived of their liberty in places of detention;*
- *to make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture, taking into consideration the relevant norms of the United Nations;*

¹ Which was adopted with the UN General Assembly Resolution No 57/199 of 18 December 2002, and entered into force after 20 States ratified it on 22 June 2006.

²Pursuant to Para 2 of Article 4 of the OPCAT, for the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

- to submit proposals and observations concerning existing and draft legislation.³

*In order to enable the national preventive mechanisms to fulfill their mandate, the State Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.*⁴

The OPCAT also recognizes the following rights for the NPMs:

- *Access to all information concerning the number of persons deprived of their liberty in places of detention, the treatment of those persons, their condition of detention, the number of places of detention and their location;*

- *Access to all places of detention;*

- *The opportunity to have private interviews with the persons deprived of their liberty without witnesses, as well as with any other person who may supply relevant information;*

- *The liberty to choose the places they want to visit and the persons they want to interview;*

- *The right to have contacts with the Subcommittee on Prevention, to send information and to meet with its representatives.*⁵

The OPCAT was acceded by the Republic of Azerbaijan on 15 September 2005 and ratified by the Law of 2 December 2008.⁶ The OPCAT entered into force in the Republic of Azerbaijan by the publication of the aforementioned law on 15 January 2009. On the same date the President of Republic of Azerbaijan issued a Decree designating the Commissioner as the institution to perform the functions of the National Preventive Mechanism.⁷

The Commissioner's special attention to the prevention of and combat against torture, organization of preventive measures, as well as awareness raising activities has served as foundation for the NPM's work, and this institute's reputation of being independent, impartial and "A" category national human rights institute in accordance with the "Paris Principles" was one of the factors grounding its designation as the NPM.

Naturally, the new and quite serious responsibilities assigned to the Commissioner required more efficient and quality activities which resulted in the expansion of her mandate, as well as her staff's competence.

³ OPCAT, Article 19

⁴ OPCAT, Article 18(1)

⁵ OPCAT, Article 20

⁶ The Law of the Republic of Azerbaijan on Approval of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (02.12.2008, № 724-IIIQD)

⁷ The Law of the Republic of Azerbaijan on Ensuring the Implementation of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (13.01.2009, № 112)

The additions and amendments made to the Constitutional Law, by taking into consideration proposals and recommendations presented by the Commissioner, as well as by international organizations, national human rights organizations and human rights defenders, served this purpose.⁸ Thus, the Commissioner's powers, as well as her independence have been adjusted to the level of the authority of the NPM as provided for by the OPCAT. Also in order to ensure the Commissioner's activities as the NPM, based on the principles of transparency, an NPG has been created and the obligations, rights and guarantees of the members of the NPG have been enacted.

According to the Constitutional Law, the Commissioner and the National Preventive Group have the right to have access, at anytime, without hindrance and prior notification, to police stations, temporary detention facilities, investigation isolators, penitentiary institutions, military detention places, psychiatric institutions and other places where detainees are not permitted to leave at will, meet and interview detained persons, as well as any other persons who may provide relevant information, in private or when deemed necessary with participation of a specialist or interpreter; get acquainted with and obtain copies of all documents confirming the lawfulness of detention, as well as relating to treatment of detainees or detention conditions; draw up acts, and minutes to document the flow and results of undertaken actions.⁹ The Commissioner's right to make recommendations to relevant authorities and receive responses to those recommendations within the specified time limit has also been stipulated in the aforementioned law.¹⁰

It should be noted that in order to ensure the NPM's smooth operation other legislative acts have been amended, too. Thus, the provisions specifying the Commissioner's and NPG's aforementioned powers have been incorporated into the EPC, the Law on Psychiatric Care and the Regulations of the Garrisons and Guard Services of the Armed Forces of the Republic of Azerbaijan, the Regulations of the Garrisons and Guard Services of the Armed Forces of the Republic of Azerbaijan, the Sample Regulations of Open and Closed Special Correctional Institutions, the IDR,¹¹ the newly

⁸ The Constitutional Law of the Republic of Azerbaijan on the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan, (24.06.2011, № 163-IVQD)

⁹ Constitutional Law, Article 12.2.1; 18-1.2.1

¹⁰ Constitutional Law, Article 12.2.1

¹¹ The Law of the Republic of Azerbaijan on Making Amendments to the Execution Punishment Code (20.04.2012, № 324-IVQD); the Law of the Republic of Azerbaijan on Making amendments to the Law on Psychiatric Care (20.04.2012, № 325-IVQD); The Law on Making Amendments to the Annex 4 of the Regulations of the Garrisons and Guard Services of the Armed Forces of the Republic of Azerbaijan which was confirmed by Law No 886 of 23 September 1994. (20.04. 2012); № 326-IVQD); The Decision of the Cabinet

adopted Law on Ensuring the Rights and Freedoms of the Individuals Held in Detention Facilities, and the Rules for Safeguarding and Escorting Persons Detained in Temporary Detention Places of Police Bodies accordingly.¹²

According to the amendments, the suggestions, applications and complaints the inmates address to the NPG are not subject to censorship. They are sent out to the relevant authorities within one day.¹³ It is also commendable that, an inmate's right to use a PI's account for sending his/her application to the NPG, in absence of his/her own financial means, has also been stipulated.¹⁴ The mentioned provisions used to cover only applications addressed to the bodies supervising PI's operation, the Commissioner and the European Court of Human Rights in the past.

Alongside the above mentioned, *it is advisable to include a provision to prohibit censorship in respect of the correspondence sent to the NPG in the Law on Ensuring the Rights and Freedoms of the Individuals Held in Detention Facilities,¹⁵ and the Sample Regulations of Open and Closed Special Correctional Institutions,¹⁶ too.*

1.2. Organizational issues

After being designated as NPM, the Commissioner, in order to ensure successful implementation of the new duties assigned to her, has undertaken necessary measures to improve organizational issues. At the outset, by the Commissioner's order¹⁷ a Working Group consisting of four employees of

of Ministers of the Republic of Azerbaijan on Making Amendments to “ the Sample Regulations of Open and Closed Special Correctional Institutions approved by Decision No 65 of the Cabinet of Ministers dated 13 May 2003” (04.07.2012, № 148); The Decision of the Plenary Board of the Ministry of Justice of the Republic of Azerbaijan on “Making Amendments to the Internal Disciplinary Rules of Penitentiary Institutions approved by Decision No. 7 of 29 December 2011 of the Plenary Board of the Ministry of Justice” (13.07.2012, № 3-N).

¹² The Law of the Republic of Azerbaijan on the rights and freedoms of individuals kept in detention facilities (22.05.2012, № 352-IVQ); The Decision of the Ministry of Internal Affairs on “the Rules for Safeguarding and Escorting Persons Detained in Temporary Detention Places of Police Bodies” (14.01.2013, № Q1-001-13)

¹³ EPC, Article 83.5; IDR, para 28.6

¹⁴ IDR, para 28.11

¹⁵ Law of the Republic of Azerbaijan on the rights and freedoms of individuals kept in detention facilities (22.05.2012, № 352-IVQ), Article 18.1

¹⁶ The Sample Regulations of Open and Closed Special Correctional Institutions, (Approved with Decision No 65 of the Cabinet of Ministers of the Republic of Azerbaijan ,13.05.2003), para. 1.6

¹⁷ The Decree of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan on Ensuring the Implementation of the Optional Protocol to the UN Convention

the Ombudsman's Office was established and tasked to prepare recommendations on the organization of the NPM's work. The Working Group conducted discussions with the Commissioner's supervision and participation, combined the recommendations received from state agencies and international organizations, at the same time studied international best practices in this field and prepared an action plan, also prepared a list of the places of deprivation of liberty, and carried out other corresponding tasks.

It was determined that in order to more effectively organize the work of the NPM, the most important step was to adjust its mandate to the requirements of the OPCAT and establish a special unit in the Office. With this purpose, the Commissioner's mandate had been analyzed in the light of the OPCAT and relevant additions and amendments to the Constitutional Law had been prepared and sent to the Parliament (Milli Majlis), as well as the new department's draft structure, its proposed regulations and the staff list, and the required budget having been prepared were agreed with the corresponding agencies.

Until the funds required for the establishment of the new unit was allocated, the NPM's work had been performed by the Office's current five employees. Later on an NPM Group consisting of eight employees within the two sub-groups – Subgroup on Visits and Subgroup on Preparation of Documents and Reports was established under the direct supervision of the Commissioner.¹⁸ In order to improve the Group's scope of activities, the Subgroups were abolished in December 2010 and instead, by including employees from the Commissioner's regional centers, the Group expanded its members to 17.¹⁹ Finally, after the allocation of the respective funds,²⁰ the Department consisting of the Visits Unit and Legal Analysis and Reports

against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the Ombudsman (15.01.2009, № 214)

¹⁸ The Decree of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan on the Establishment of the National Preventive Mechanism Group for the Prevention of Torture, Other Cruel, Inhuman or Degrading Treatment or Punishment under the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan (19.01.2010, № 222)

¹⁹ The Decree of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan on the National Preventive Mechanism Group for the Prevention of Torture, Other Cruel, Inhuman or Degrading Treatment or Punishment under the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan (28.12.2010, № 226)

²⁰In accordance with Para 8 of Article 119 of the Constitution of the Republic of Azerbaijan issuance of the Decree by the Cabinet of Ministers of the Republic of Azerbaijan on the Implementation of Presidential Decree No1674 of 8 August 2011 on "Application of the Law on Making Amendments to Constitutional Law of the Republic of Azerbaijan, No 163-IVKQD of 24 June 2011 on "the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan" (11.09.2012, № 244s).

Unit (altogether 10 employees) was established at the Office.²¹ The employees of the Department are also the members of the NPG.²²

The main operational directions of the Department, which adheres to the principles of respect for human rights and freedoms, publicity, transparency, legality, justice, impartiality, humanism and confidentiality, are the followings:²³

- To organize the Commissioner's work as the NPM;
- To ensure the improvement of torture prevention activities;
- To promote the prevention of torture.²⁴

1.3. Directions of activity

The Azerbaijani NPM performs its activities in the following four directions:

- Preventive visits – regular, scheduled or ad-hoc, unannounced visits to places of detention;

- Legal analysis – the theoretical and practical analysis of the performed activities, as well as information collected during the course of such activities, relevant proposals and recommendations received, and effective or draft, and compilation of conclusions and preparation of corresponding proposals;

- Legal education work – with the purpose to promote the prevention of torture, the organization of legal awareness work for the staff of the Office, members of the NPG, personnel of detention places, as well as persons detained in those places, students of relevant educational institutions and academies, and preparation and distribution of related manuals;

- Public relations and international cooperation – the arrangement of exchange of information with local, regional and international organizations and foreign NPMs, mutual participation at events and organization of joint events, and disseminate information on the NPM's activity in the mass media.

Along with the abovementioned, it should be noted that the NPM's activity has been interlinked with the Commissioner's mandate to receive

²¹ The Decree of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan on Improvement of the Structure of the Human Rights Commissioner's (Ombudsman's) Office and of the regional centers" (14.09.2012, № 247)

²² Regulations of the Department for the Prevention of Torture of the Office of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan was approved with the Decree of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan on Improvement of the Structure of the Human Rights Commissioner's (Ombudsman's) Office and of the regional centers" (14.09.2012, № 247)Para. 1.9

²³ *Ibid*, para 1.3

²⁴ *Ibid*, para 2

applications. Thus, information collected during the examination of the applications received by the Commissioner and the special weight of complaints by each agency and entity were used as a driving force in the planning of preventive visits.

The results of the Commissioner's activities in the mentioned spheres, achievements reached, and proposals and recommendations made are reflected in the Commissioner's special reports. The reports prepared in 2009-2010, as well as in 2011 were translated into English and published in both the Azerbaijani and English languages with the support of the OSCE Office in Baku. More than hundred proposals and recommendations aimed at improving the current legislation have been enumerated in the reports submitted so far.

CHAPTER 2.

PREVENTIVE VISITS

2.1. Organization of preventive visits

As it is known, to conduct regular preventive visits to places where people are deprived of their liberty is the key direction of the NPM's activity. According to the OPCAT's requirements, visits are conducted in the establishments, the list of which is drawn up and constantly renewed based on the information submitted by the relevant bodies about the places of detention in their jurisdiction in response to the questionnaires sent to them. As in previous years, in 2012 as well, corresponding agencies provided necessary conditions required by the legislation to enable the NPG to undertake visits.

All preventive visits undertaken by the NPG are conducted without making prior notification and are divided into two groups:

- Scheduled visits;
- Ad-hoc visits.

Scheduled visits: Scheduled visits are undertaken according to a confidential monthly schedule approved by the Commissioner. The decision about including a certain establishment in the visit schedule and determining the sequence of visits are taken based on the specifications of the given establishment, as well as prior cases reported on the detention conditions and treatment in the mentioned establishment and its location. Depending on the establishment's size and the number of persons kept there, a scheduled visit may last up-to 3 days.

Ad-hoc visits. These visits are undertaken for checking the state of the implementation of the recommendations given during previous visits, preventing prosecution against the persons who have communicated some information to the NPM Group in this or another form, investigating information given by interviewed detainees about the establishments they were previously held at, as well as meeting the need for increasing attention to certain establishments, which has derived from the examination of the applications and complaints sent to the Commissioner, also on the Commissioner's own initiative.

In order to ensure that the visits of the NPM are conducted successfully, each visit is completed through the following three stages:

- preparation for the visit;
- undertaking the visit;
- analyzing the visit results.

Preparation for the visit lasts two days and covers review of the corresponding establishment's legal framework, relevant international standards, applications and complaints addressed to the Commissioner, information collected through the mass media, as well as information submitted to the Commissioner or distributed publicly by an international organization or an NGO, facts discovered on previous visits, and proposal and recommendations made, identification of the scope of the issues to focus on, preparation of visit and interview questions, and determination of the members of the visiting group.

Undertaking the visit encompasses, with the purpose of receiving answers to pre-identified questions, the organization of confidential private and collective conversations with the management of the establishment, its personnel, persons detained there, and their visitors, monitoring of detention conditions, medical care, nutrition and leisure activities, review of the documents confirming the lawfulness of detention, as well as relating to treatment, obtaining their copies if deemed necessary, and drawing up reports, and protocols to document the flow and results of the actions undertaken.

During visits to places of deprivation of liberty, interviews with persons detained there are vital for obtaining essential information with regard to the treatment of detainees and therefore those conversations should be conducted according to the special rules and by ensuring confidentiality.

Analysis of visit results covers the comparison of theoretical and empiric information obtained, identification of the reasons causing the discovered shortcomings and preparation of corresponding recommendations and their dispatch, oversight of their implementation, organization of recurrent visits in case when deemed necessary, and finally preparation of press releases on the results of the visit.

In 2012, the NPG conducted 411 visits, out of which 322 were scheduled and 89 were ad-hoc visits. Out of the mentioned visits, 276 visits were carried out to the establishments under the MIA, 115 to the establishments under the MJ, 2 to the establishments under the MNS, 5 to the establishments under the MD, 8 establishments under the MH, 3 to the establishments of ME, 2 to the establishments of the MLSPP.²⁵

During the visits private talks were conducted with 510 detainees kept in temporary detention places, 1028 detainees kept in investigation isolators and penitentiary institutions, 100 persons kept in other places that detainees were not permitted to leave at will, as well as with 130 staff members of those establishments.

²⁵ See: Appendix 1

As in previous years, in order to eliminate the deficiencies and shortcomings revealed during 2012 visits and to improve detention conditions relevant proposals and recommendations were submitted to the **administrations** of the establishments concerned and to the relevant Ministries. . Commissioner was informed about appropriate measures taken by the state bodies with regard to each recommendation given by her.

2.2. Establishments of the MIA

Firstly, it should be mentioned that, in order to create appropriate conditions according to international standards in temporary detention places of police bodies, new establishments have been built.

It is commendable that by taking into consideration the Commissioner's proposals, additional six cells complying with modern standards have been built in Shirvan DPD TDP. Thus, overcrowding created by the detention, in this establishment, of the persons belonging to the jurisdiction of Shirvan Appellate Court and other specialized courts has been eliminated. Besides, old beds have been replaced with new ones and bedside tables corresponding to the number of beds have been installed in the cells.

Also, in 2012, new temporary detention places for Baku City Nizami District, Sumgayit and Lankaran City police bodies were built and put into operation, and construction of new buildings for temporary detention places of Surkhani, Ganja, Gazakh, Ismayilli, Zagatala, Zardab and Yardimli district police bodies started. According to the information given from the MIA, required standards are met during the construction of the mentioned buildings.²⁶

The MIA has undertaken corresponding measures in order to improve the level of the protection of human rights by law enforcement bodies and to adjust it to international standards and recommendations of the UN Committee against Torture, determined the duties to be performed and assigned certain tasks to district police bodies in order to ensure that police officers strictly follow human and citizens' rights, and paid special attention to ensure the rule of law and protection of human rights and freedoms when a person is apprehended, detained, or brought to criminal responsibility.

Alongside the aforementioned, in order to prevent illegal actions, as well as ill-treatment against detained persons and improve security system, the alarm systems in 64 TDPs were renewed, and modern video surveillance systems were installed in 61 TDP.

²⁶ Azərbaycan Respublikasının Nazirlər Kabinetinin 2001-ci il 30 iyul tarixli 130 nömrəli Qərarı ilə təsdiq edilmiş "Azərbaycan Respublikası polis orqanlarının xüsusi təchiz olunmuş binalarla təmin edilməsi Normaları"

Persons taken into police custody and detained there have an opportunity to be informed of their rights and freedoms stipulated in the Constitution of the Republic of Azerbaijan, and of the rights and obligations derived from international standards, also through the boards placed in the administrative buildings, also, extracts from the relevant orders of the MIA having been translated into Russian and English, have been posted on the walls of TDP. Besides, there are banners showing the list and numbers of lawyers in the administrative buildings of district police bodies.

Although the applications on alleged cases of torture and other inhuman treatment addressed to the MIA did not find their confirmation through the investigations undertaken by the Commissioner, 3 police officers were brought to disciplinary punishment, 2 police officers were severely reprimanded, and 1 officer was reprimanded as the violation of the requirements of the corresponding laws and legal acts were discovered with regard to 3 facts.

Regarding the police officers' actions on duty, the facts described in 5 applications were confirmed, shortcomings were discovered on 4 submitted facts, and consequently, disciplinary measures were taken with respect of 10 officers, 2 out of whom were dismissed from law enforcement service, 3 officers were given warning on "their partial unsuitableness to the positions held", 3 officers were severely reprimanded and 2 officers were reprimanded.

Under the jurisdiction of the MIA, there are 117 places where detainees are not permitted to leave at will²⁷ and 276 visits were conducted to those places in 2012. Except PU No. 38 of the Garadagh DPO, the NPG, during all the undertaken visits, was provided with full access as provided for by the legislation.

With regard to the application sent by the Commissioner on the impediments made against the visit of the NPG members to PU No. 38 of the Garadagh DPO, the MIA conducted investigation and reprimanded the Deputy Chief of the PU and the district inspector, gave a strong notification to the district police chief and police investigator, and the Chief of the Garadagh DPO was tasked to take disciplinary measures with respect to the assistant on duty.

According to the conclusions made based on the findings of these visits it can be mentioned that the general situation in these establishments, detention conditions, and treatment of detainees are satisfactory and in general these establishments meet the standards. Alongside the above mentioned, during the visits several shortcomings were revealed and necessary measures were taken.

²⁷ See, Appendix 1.

During the visit to Gabala DPD's TDP, it was observed that 11 detainees were kept in the place where the detention threshold was 8 persons and that administratively arrested persons were kept in the same cell with the accused. The officers of the CPD explained this with the repair works in the Ismayilli DPD's TDP. Nevertheless, it is not acceptable when 2 detainees have one bed for sleeping. With regard the above mentioned, the Commissioner has appealed to MIA and according to the response letter, there was an instruction that in connection with the repair works in Ismayilli DPD's TDP, the accused persons, inmates and administratively arrested persons of this establishment had to be settled in Gabala DPD's TDP. However, the Gabala DPD's officers on duty and the Chief of the TDP were brought to disciplinary measures with regard to the discovered facts that 11 eleven detainees were kept in the cells where the conditions allow to keep only 8 detainees and that administratively arrested persons were kept in the same cell with the accused.

During the visits to Shamkir, Gadabay and Yardimli DPDs, irregularities in the registration of detainees and unsatisfactory conditions were observed. Thus, although one person was kept in the waiting room of the Duty Station of the Shamkir DPD for more than 2 hours and another person was kept in Gadabay DPD for more than 7 hours, the respective registry books did not have any record showing this, also the TDP did not have a registry for recording the release from the cell, and in Yardimli DPD, registration documents had inconsistencies.

Alongside the mentioned, in Shamkir and Gadabay DPDs' TDPs, the medicines of first aid had expired, in Gadabay DPD's TDP the meeting room was not equipped accordingly, in Shamkir and Yardimli DPDs' TDPs the number of the existing chairs did not correspond to the number of the beds, problems with running water existed, Yardimli DPD's TDP lacked the lavatory and the mattress and beds were in bad conditions, the water heater in the bathroom was broken, natural light in the cells and interrogation room was weak.

The Commissioner appealed to the MIA with regard to the each issue mentioned above, and in the response received it was stated that because the person detained in the Shamkir DPD did not possess an identity card during the apprehension, it was not possible to register him in the Registry of the persons apprehended in city, district and line police bodies at the outset, but after his identity had been determined the corresponding records were made. In Gadabay DPD, the person was kept in the waiting room at his own will, therefore no record was made in the registry. From the response, it was clear that the medicines with expired usage were replaced with new ones, Gadabay's DPD TDPs' waiting room was equipped accordingly, additional

chairs were installed in the cells of Shamkir and Yardimli DPDs' TDPs, the running water problem had been fixed, as well as necessary measures for eliminating other deficiencies observed in Yardimli DPD TDP have been undertaken. It was also informed that the construction of a new administrative building for Yardimli DPD and a new TDP had started.

Along with the above mentioned, due to the failure to properly perform their duties, the chiefs of Shamkir and Gadabay DPDs' TDPs, Deputy Service Chief of Yardimli DPD, also the head of the security unit and the district police chief temporarily performing obligations of the officer on-duty thereof were reprimanded, and Yardimli DPD was instructed to take disciplinary measures with the regard to the other officer on duty of Yardimli DPD and the chief of the TDP.

The MIA also demanded the chiefs of the corresponding DPDs to increase supervision and responsiveness with regard to the registration of the persons apprehended to police departments, improvement of the service in the TDPs, adherence to the rule of law, and protection of detainees' rights.

In 2012, the Commissioner was concerned about the information that one of the detainees in Masalli DPD's TDP committed suicide, and she appealed to the MIA and the Office of Prosecutor General of the Republic of Azerbaijan with request to examine the case. The conducted investigation clarified that the mentioned detainee hanged himself tying the linen to the iron bars of the window. Due to the failure to properly perform their duties in ensuring the mentioned persons security, the Deputy Chief of Masalli DPD's and Head of Public Security Unit thereof were severely reprimanded, the officer on duty of the mentioned body was given warning on "his partial unsuitableness to the position held" and a police officer of the TDP was dismissed from the law enforcement service.

2.3. Establishments of the MJ

Under the jurisdiction of the MJ, there are 38 places where detainees are not permitted to leave at will²⁸ and the NPG conducted 115 visits to those places in 2012. Necessary conditions were provided to realize the visits as required by law.

The letters received from the MJ and the conclusions of the follow-up visits undertaken by the NPM revealed that the Ministry have taken under its control the issues indicated in the Azerbaijani NPM's previous reports and, after subsequent investigations, taken necessary measures to solve them. In order to improve detention conditions in the penitentiary institutions, safeguard the rights and freedoms of accused and convicted persons, increase

²⁸ See: Appendix 1

the discipline among the personnel and improve their expertise, necessary measures have been undertaken.

In order to adjust the detention conditions of inmates to national and international standards, repair and reconstruction works in existing establishments, as well as strengthening their technical capacity, also based on the CPT's recommendations, the construction of new penitentiaries continued in 2012. To facilitate the adjustment of existing detention conditions in PCSs to the requirements of national and international legislative acts, respective agencies have been addressed with the proposal of amending certain provisions of existing legislation.

With the purpose of improving medical care in Investigation Isolator No. 3 of the PS, 2 doctors were temporarily sent to the establishment's MSU, as well as 2 doctors recruited by the mentioned establishment. Alongside this, a new dentistry cabinet equipped with all the necessary tools was set up in the isolator. At the same time, in order to become competent for the provision of first aid, the PS's personnel passed a specialized course. With purpose of providing medical care to inmates during Sundays as well, a special schedule for doctors was created.

To facilitate the creation of permanent work places for inmates, as well as stimulate engagement in individual labor activity, necessary measures were undertaken in PIs and as a result, inmates' engagement in public works increased by 25.2% in 2011-2012.

In 2012, a new composition of the Guardian Council of the Correctional Facility was approved. According to the MJ, the improvement of the mentioned Council's work is in the center of attention of the PS.

Alongside the aforementioned, the MJ has organized regular seminars and training sessions to increase the knowledge of the personnel of the corresponding institutions on the Convention, OPCAT, relevant domestic law, as well as national and international documents about the treatment of inmates, and their application during service, and distributed awareness raising material, including the Commentary of the EPC and a compilation of international and national punishment execution documents to the personnel of the PS and to the libraries of those establishments.

According to the aforementioned, as well the conclusions made based on the findings of the conducted visits, it can be mentioned that the general situation in the establishments of the MJ, detention conditions, and treatment of detainees are satisfactory and in most establishments meet the standards. Alongside the above mentioned, during the visits several shortcomings were revealed and necessary measures have been undertaken.

Firstly, it should be mentioned that the Commissioner taking into consideration the observed difficulties in provision of running water,

electricity and gas which derived from the extreme cold weather in winter months, appealed to the PS expressing her concern over the heating problems in the PIs. In the response letter received, it was stated that taking into consideration the mentioned issue, central heating systems were installed in PIs No. 2, 5, 7, 8, 9, 12, 13, 16 and in the MI, and heaters were used in other institutions.

The Commissioner, taking into consideration difficulties in detention conditions of inmates which might occur because of hot weather in summer months, appealed to the PS with the recommendation to keep under control the ventilation of dormitories and punishment isolators and ensure inmates' access to drinking water. Bearing in mind the recommendations, the PS, with the purpose of improving the ventilation of the dormitories and investigation isolators during hot summer months and ensuring inmates uninterrupted access to drinking water, undertook necessary measures, and short interruptions in provision of running water, caused by accidents, were eliminated by the corresponding service sectors promptly.

Along with the above mentioned, during the reporting period the Commissioner inquired about the detention conditions of disabled persons, drug addicts and persons with HIV/AIDS, hepatitis, tuberculosis, and diabetes or persons suffering from other severe diseases and diagnosis and treatment of these persons, also appealed to the PS with the request to keep under control all the activities related to these persons. The response letter received informed that there were, along with the inmates with HIV/AIDS, hepatitis, diabetes, tuberculosis and drug addicts, 458 disabled inmates in the PS at the beginning of 2012. Some of the inmates with HIV/AIDS receive antiretroviral therapy according to the World Health Organization's recommendations. Inmates diagnosed with tuberculosis disease are treated in the Specialized Medical Institution. Drug addicted inmates receive mandatory treatment in the establishment they are detained or in the MI, based on a court decision.

The inmates, who suffer from the abovementioned diseases are registered in dispensaries of MSUs, pass routine medical check-ups and are kept under a doctor's control. By the order of PS's management, inmates with diabetes are provided with dietary food. The PS also ensures that ill and disabled inmates' nutrition contains more kilocalories²⁹ and keeps this issue under constant control. According to the requirements of the EPC, disabled inmates of the I and II groups, when released, can be sent to Homes for

²⁹ Decision No.154 of the Cabinet of Ministers of the Republic of Azerbaijan "On Approval of Nutrition and Material-Living Norms for Detainees" of 25 September 2001

Disabled and Elderly by the MLSP based on either their own application or the PI management's recommendation.

During the visit to the *Prison*, it was discovered that inmates sentenced to life imprisonment spent 23 hours of a day in the cell (only 1 hour is allowed for an outdoor exercise), which raised concerns and it was concluded that in order to better arrange inmates leisure time necessary measures needed to be undertaken. It was also discovered that some cells of the punishment isolator were not of the appropriate size.

The response letter sent by the MJ regarding the mentioned cases informed that a modern prison complex constructed in Umbaki District, Baku will have stadium and production sites for inmates. In order to increase inmates' outdoor exercise time, a separate walking site is being constructed for each cell. The current problems existing in punishment isolator will find their solution in the new establishment.

The NPG keeping the Prison in focus, visited it for the second time during the year, and relayed the Commissioner's recommendations about improving conditions in the waiting room at the Prison's entrance, as well as in the cells which were used to be punishment isolators, making conditions in the punishment isolators' cells less cramped by removing additional beds, conducting therapeutic talks with inmates inclined to commit suicide, and increasing the number of phone lines which were allocated for inmates' use. The PS, taking into consideration the recommendations, ensured cosmetic repair works in the waiting room. The renovation of the punishment isolator, as well the cells used to serve as a punishment isolator has been included in the list of renovation works to be performed in 2013, and additional beds have been removed accordingly. The inmates inclined to commit suicide or inflict self-injury have been identified and along with the organization of rehabilitative and psychotherapeutic activities, the control over them has been increased. The PS also intends to increase the number of phone lines which are considered for inmates' use.

During the visit to PI No. 1, it was observed that the floors in the dormitories were not made of wood, the number of phone lines used by inmates were not proportionate to the number of inmates, and the stairs of the MSU, which was located on the second floor, were iron and therefore endangered the life of the inmates treated there. As a result of the Commissioner's appeal to the MJ, the number of phone lines used by inmates has been increased to four, and it was noted that in order to replace the dormitories' floors with wooden cover, a deficiency act has been prepared, and depending on the availability of funds, the realization of the mentioned action, as well as repair of the MSU's stairs will take place.

During the visit to PI No. 2, it was monitored that, the MSU, bathing facilities and quarantine room and club required repair, and the size of the walking area in the punishment isolator did not correspond to the capacity of the isolator. Regarding this, the Commissioner appealed to the PS, and accordingly, the renovation of the mentioned buildings and the expansion of the walking area have been included in the PS's current maintenance plan. The use of the punishment isolators, which did not meet the required standards, was stopped as a result of the NPG visits.

During the visit to PI No. 5, it was determined that the MSU's building was in an emergency situation, no action had been undertaken after the previous visit, and equipments in the dentist's room were broken. During the talks with the NPG, the inmates expressed their dissatisfaction with the provided medical service. According to the information given from the MJ, in order to replace the dormitories' floors with wooden cover, a deficiency act has been prepared, and depending on the availability of funds, the mentioned work would be implemented. Also, it has been decided to construct new building for the MSU. Alongside the mentioned, the MSU's operation has been examined and due to the discovered shortcomings and the failure to properly perform his duties, the chief of the MSU has been severely reprimanded.

The Commissioner is concerned that the MSU of the PI is in an inappropriate condition for a long period and unfortunately the issue has not been resolved yet.

During the visit to PI No. 6, it was observed that the sanitary facilities were not proportionate to the numbers of inmates, the punishment isolators' cells did not completely correspond to modern standards, foreigners had difficulties in understanding regime rules, for religious activities only a mosque existed, which hindered worshipping of the inmates belonging to other religions. In the mentioned establishment, the application of placement into punishment isolators was used excessively. In the letter received in reply to the Commissioner's appeal, it is stated that corresponding space has been allocated for setting up sanitary facilities and they will be built soon, and the cells of the punishment isolator have already been repaired and the condition thereof have been improved. It is also derived from the letter that a separate room has been assigned for exercising worshipping activities by the 9 inmates pursuing other religions. During the publication of the IDR together with new amendments, its translation into the languages mostly used by inmates will be ensured.

The PS has also analyzed the inmates' disciplinary status and informed the Commissioner that the placement in punishment isolator was applied to those inmates who did not rectify their behavior after several warnings were

made. In the first quarter of 2012, 149 breaches of the regime were recorded, whereas in the first quarter of 2011 this figure was 209. In respect of 52 out of those inmates (93 in the corresponding period of 2011) the placement in punishment isolators was applied, however solitary confinement punishment was not applied at all (in 2011- 43). With most of the regime violators correctional talks had been conducted, in respect of other such inmates, lighter punishments – namely, warning or reprimand was applied.

The Commissioner commends that the recommendations made during the visit to PI No. 6 were implemented during a very short period of time, and thinks that this kind of approach should be brought to other establishments' managers consideration.

During the visit conducted to PI No. 7, compared to last visits, improvement in the provision of medical services was noticed. It also was observed that the floor in some dormitories were not made of wood, the number of phone lines used by inmates were not proportionate to the numbers of inmates, and difficulties existed in defining some inmates' disability status. In order to solve the mentioned problems, the Commissioner has applied to the MJ and MLSPP, and for safeguarding inmates' right to use phone correspondence as stipulated in the legislation, additional four telephone lines have been allocated, replacement of the floors with wooden cover has been included in the list of maintenance work, as well as necessary measures have been undertaken for defining the relevant inmates' disability status.

The NPG appreciated the organization of inmates' leisure time as observed during the visit to *PI No 9*. During the visit it was however discovered that the sanitary facilities were not proportionate to the numbers of inmates, and existence of only one doctor in the MSU raised concern. In the reply letter received from the MJ, it is informed that, taking into consideration the Commissioner's recommendation, the PS has given an instruction to the management of the establishment to increase the number of sanitary facilities. Besides, the MJ's Head Medical Office informed that the dentist of the mentioned establishment was sent to PI No. 4 two times a week, a male nurse position was vacant and an instruction was given to take necessary measures for filling the position.

In the visit conducted to PI No. 10, the issue that most dormitories' floors were not made of wood raised concern. The Commissioner applied to the PS and thus, a deficiency act had been prepared, and repair work for covering the floors with wood started. Besides, the task given to the establishment's management has been accomplished and the regime rules translated into three languages were displayed in visible places. Also, unlike

other establishments, in the cells of the punishment isolator of the mentioned establishment a separate cell is allocated for non-smoker inmates.

After the visit made to **PI No. 14**, taking also into consideration the inmates requests, the Commissioner has presented recommendations to the MJ to eliminate the existing overcrowding in the establishment, to provide the punishment isolators with appropriate beds, to increase the number of refrigerators for keeping inmates' food, to fill the vacant positions in the MSU, and to improve recreational activities, and the PS and MJ Head Medical Office have undertaken necessary measures accordingly. Unused beds have been removed from the dormitories, thus the place has become more spacious, the punishment isolators have been provided with appropriate beds, additional 10 refrigerators have been given to the establishment, and necessary measures have been undertaken to nominate a doctor to the vacant position of physician. Also the PS has informed that in order to improve inmates' recreational activities, a TV set has been installed in the club of the establishment and the issue of creation of a separate TV room is under consideration. A new sport facility has been equipped with gears and finalization works are underway. Football, volleyball, chess, backgammon competitions are organized among inmates. In order to ensure artistic activities, amateur ensemble consisting of inmates, as well as reading and poetry clubs function, and radio, as well as a library possessing six thousand books are in use of the inmates. There are vocational courses teaching the professions of constructor and carpenter, as well as computer skills in the establishment. For the inmates engaged in individual labor activity, possibilities of the enlargement of the existing workshop are discussed.

Another issue raising concern in PI No. 14, is that, as a result of violation of the environmental requirements, dust drifts (especially, during windy weather) from the quarry located in the vicinity of the establishment, which poses threat to the health of the establishment's personnel and of the inmates, and the Commissioner has appealed to the MJ, as well as to the Ministry of Ecology and Natural Resources, and Garadagh Executive Power. The Ministry of Ecology and Natural Resources investigated the case promptly on the site and during the monitoring of the quarry located in the vicinity of the establishment discovered that required re-cultivation works had not been fully implemented in the sites the exploitation of which had finalized, irrigation required for the elimination of dust emissions during operation was not done, the motor mechanisms of the wagons were not controlled accordingly, and as a result the dust drifted to the neighborhood. With regard to the abovementioned, an act was prepared in respect of the responsible companies and the managements of those companies were given compulsory assignments to eliminate the observed shortcomings within the

given period of time and the implementation of the given assignments were kept under supervision.

However, this issue has not been solved yet. The Commissioner calls the relevant bodies to consider the case seriously. At the same time the Commissioner suggests that the MJ keeps under control the investigation of the cases of self-injury by inmates.

During the visit conducted to **PI No. 15**, it was discovered that the number of phone lines used by inmates, as well as the number of the showers in the bathing facility were not proportionate to the numbers of inmates. After the appeal made to the MJ, additional phone lines have been allocated and additional twelve showers have been installed in the bathing facility.

A number of shortcomings in material conditions and medical care were discovered during the visit undertaken to **PI No.17**. Although, each cell of the punishment isolator possessed four beds, only 2 chairs were available therein, dormitory conditions of the inmates working in the canteen were unsatisfactory, meeting rooms lacked necessary gears, some of the rooms were in bad conditions, a recreational facility was in poor condition, outdoor facility was not suitable for walks as sewage waters were leaking thereto, and in the main corpus of the establishment the sanitary facilities were of an inadequate number. In addition, it was discovered that some water taps were broken in some premises, which was immediately fixed due to the Commissioner's request. It was observed that two phone lines used by the inmates were not sufficient, and thus created some hardships for the inmates.

During the visit, some inmates stated that they were not received by the MSU, although they were sick. As a result of the conducted investigation, a number of shortcomings in the work of the MSU was discovered, which also included negligence towards the inmates with self-injuries, and shortcomings in the storage of medicines.

Based on the findings of the visit, the Commissioner has appealed to the MJ and consequently, the cells of the punishment isolator have been provided with chairs corresponding to the number of the beds, additional beds have been removed from the canteen rooms, and appropriate conditions have been created. The rooms for a long-term visit have been equipped with bedside tables and chairs, the water collected in the outdoor facility has been drained and the facility cleaned, broken water taps have been repaired. The heating systems of the cells of the punishment isolator and general dormitory have been reinstalled as a result of which adequate temperature has been ensured, since with the existing two phone lines the inmates' right to use phone correspondence as stipulated in the legislation is ensured, no new phone lines has been allocated. Repair works in the rooms for short and long-term visits, which include the installation of wooden floors, creation of additional

sanitary facilities for dormitories, increasing the number of water taps, and repair of the roof, have been included in the list of current maintenance work. The MJ informed that 79 inmates serving their term in the establishment were placed in medical institutions, and 6 inmates were placed in the MSU in order to undertake necessary treatment, whereas 215 inmates received out-patient treatment. The MSU of the establishment has been provided with different types of medicines. It was also found out that the inmates inflicting self-injuries had neurological problems, which was kept unnoticed. Those inmates have been taken under the MSU's control as persons prone to self-injury.

The NPG keeping the mentioned establishment in focus visited it repeatedly during a year. It was determined that the access to water with interruptions, overcrowding in some dormitories, and the phone lines shortages raised inmates concern. The Commissioner has appealed to the MJ, and the water problem has been resolved, unused beds have been removed from the dormitories and the place has become more spacious, and an additional telephone line has been installed in the establishments.

The Commissioner is concerned that during the application of physical power, as well as of special means, sometimes adequacy is not respected. At the same time, the replacement of two chiefs in the mentioned establishment is a sign of the MJ's efforts in resolving existing problems.

During the visit to PCS No. 5 it was revealed that detention threshold was exceeded, irregularities occurred in registration documents, and conditions in dormitories were unsatisfactory, and the findings of the visit were reported to the MJ. The response letter stated that although, due to the discovered shortcomings, the establishment's chief deserved a disciplinary measure in his respect, he was issued a warning instead regarding that he had been newly appointed to the position he held, and he was given concrete instructions to eliminate the shortcomings.

The commissioner is of the opinion that in order to prevent the repetition of similar cases in future, stricter measures should be applied.

During the visit to PCS No. 14 it was revealed that the detention threshold was exceeded, serious irregularities occurred in the registration documents, and the conditions in dormitories were unsatisfactory. The establishment's management was insincere toward the visiting group. The Commissioner appealed to the MJ with the request to investigate the mentioned issues, as a result the MJ's Inspectorate Supervising the Execution of Punishment conducted an administrative investigation and corresponding decision was made based on the conclusions of the investigation. Thus, with the PS's order, due to the serious violations in fulfilling his duties, overstepping his duties, and breaching the code of conduct of justice bodies, the Acting Chief of the establishment has been dismissed from justice bodies,

due to failure in performing their duties and not-showing integrity, breaching the justice bodies' code of conduct, an Assistant on Duty has been given a warning on his partial unsuitableness to the positions held, Senior Inspector (team leader) and Senior Inspector of Operational Regime Department (Operational Investigator) have been severely reprimanded.

It should be mentioned that, this visit was undertaken together with the members of the Public Committee ensuring public control over and civil society participation in inmates rehabilitation work.

Waiting rooms for accused persons of Baku City Court for Grave Crimes was the one of the places the NPM visited in 2012. During the visit it was observed that material conditions of the rooms did not meet modern requirements; ventilation and lighting were not adequate. The Commissioner has sent an appeal to the Baku City Court for Grave Crimes to facilitate additional measures for adjusting the conditions of the waiting rooms to modern standards until the Court's new administrative building is constructed. The response letter indicates that using the available funds, some repair works have been undertaken in the waiting rooms: the corridor's walls, and ceilings, as well as its wooden floor have been painted, and the ventilation's capacity has been increased. Because of the impossibility of having natural light and fresh air in this place as the windows cannot be opened (since it is a semi-basement), additional lighting devices have been installed. Also, it is planned to use the 2013 budget for the court's maintenance costs to further undertake repair works and renew the ventilation system with the one meeting modern standards.

The NPG plans to visit all court waiting rooms and cars transporting persons deprived of their liberty in the upcoming years.

2.4. The MNS's Temporary Detention Place and Investigation Isolator

Under the jurisdiction of the MNS, there is 1 place where detainees are not permitted to leave at will – the MNS Temporary Detention Place and Investigation Isolator. The NPG conducted 2 visits to the mentioned place in 2012. The necessary conditions foreseen with the legislation were provided with regard to the undertaken visits.

During the visits, the establishment's material conditions, treatment of detainees therein, as well as nutrition and medical care were evaluated as satisfactory, thus no shortcomings were discovered.

In 2012, the MNS, along with the measures undertaken in the direction of safeguarding human rights and freedoms of persons participating in criminal prosecution process and preventing the cases of violation of rights, carried out wide public awareness work. Thus, the National Action Program

for Increasing Effectiveness of Protection of Human Rights and Freedoms in the Republic of Azerbaijan has been announced in the Ministry by issuing an internal order, and in order to ensure the implementation of the provisions relating to the Ministry's activity, the respective units have been assigned certain tasks. In this regard, the Convention and the OPCAT are studied and other awareness raising works are carried out in the bodies and organizations included in the MNS system, as well as in the MNS Academy named after Haydar Aliyev.

2.5. Establishments of the MD

There are 11 places, in the jurisdiction of the MD, which detainees are not permitted to leave at will³⁰ and 5 visits were conducted to these places in 2012. Necessary conditions were provided to realize the visits as required by law. Relevant actions have been taken to eliminate the deficiencies and shortcomings revealed during the visits.

It should be primarily mentioned that it is highly appreciated that the OMP has promptly addressed the issues revealed as a result of the visit conducted to the **Disciplinary Military Unit** and reflected in the previous report of the NPM and taken relevant actions. As such, the OMP has inspected the state of the observance of the law and military charters when executing punishments in the given establishment and it has been discovered that the requirements of the EPC and Regulations of the Disciplinary Military Unit³¹ were seriously violated. It has been revealed that the new inmates brought to the military unit, instead of being placed in the quarantine section for 15 days, were settled in the disciplinary section from the first day, which minimized the efficiency of the preventive measures, and as a result 44% of those soldiers were subjected to a disciplinary punishment for the offences they committed during the quarantine period.

Besides, it has been discovered that because a guardroom was not organized in the given establishment in breach of the law, a convicted soldier who had committed a serious disciplinary offence, in contradiction to Annex 4 on Guardrooms of the Regulations of the Garrisons and Guard Services of the Armed Forces of the Republic of Azerbaijan, was sent to a garrison guardroom to serve his punishment and detained for 10 days in a usual cell with other soldiers serving a disciplinary punishment. In order to eliminate the mentioned and other breaches of law revealed during the inspection, a recommendation has been sent by the OMP to the MD.

³⁰ See: Appendix 1

³¹ Approved by Order No. 382 NQ of 28 October 2001 of the MD

During the visit conducted to the ***Guardroom of the Military Police of Ganja Garrison*** it was found out that the establishment lacked natural lighting, cells were not supplied with necessary devices, floors of the cells and service rooms were concrete, and extreme humidity was felt in the establishment. It was also discovered that the registration and placement of detainees were improperly performed in the establishment. The Commissioner has addressed an appeal to the MD with regard to the above mentioned and as a result, regarding that the given establishment did not meet modern standards, capital renovation of the guardroom has already started.

During the visit conducted to the ***Guardroom of the Military Police of Barda Garrison*** it was determined that the floors of the cells and canteen were concrete, and there were no sanitary facilities and an alarm system for immediately contacting guards. The Commissioner addressed an appeal to the MD with regard to the above mentioned and capital renovation of the guardroom was realized.

During the visit conducted to the ***Guardroom of the Military Police of Sumgayit Garrison*** in order to get information on the state of the implementation of the recommendations given in previous years it was discovered that the functioning of the establishment was stopped as it did not meet the effective standards.

It should be noted that though no information has been received about ill-treatment in the above mentioned guardrooms, because the detention conditions in those establishments cause concern, the Commissioner appreciates the closing of such establishments for bringing them into conformity with modern requirements. The persons kept in the given guardrooms have been transferred to newly-built modern guardrooms in Baku.

2.6. Establishments of the MH

There are 18 places, in the jurisdiction of the MH, which detainees are not permitted to leave at will³² and 8 visits were conducted to these places in 2012. Necessary conditions were provided to realize the visits as required by law. Relevant actions have been taken to eliminate the deficiencies and shortcomings revealed during the visits.

It should be firstly mentioned that the MH took several purposeful actions during the year 2012 to eliminate the deficiencies mentioned in the previous report. As such, the treatment of patients by medical personnel, behavior of the latter, and prevention of violence among patients have been taken under strict control of the relevant bodies and management of

³² See: Appendix 1

psychiatric hospitals. The MH has also developed new guidelines on the application of restraints to patients in psychiatric hospitals and their isolation. Also, in 2012 more than 20 units of the mental hospitals were renovated and new buildings were built and provided for the use of 4 units. The units have been supplied with modern medical devices, beds, beddings, garments for patients, soft furniture, and TV sets. As well as, the quality of the daily nutrition of patients has been improved. The relevant structures of the MH have taken the application of new measures for the improvement of detention conditions in psychiatric hospitals and nutrition of patients, and immediate elimination of restraints and other unpleasant cases under regular control.

During the reporting period the MH also took awareness raising actions; family members of every patient were provided with booklets about the internal rules of hospitals and patients' rights, and a group of doctors and middle medical personnel was sent to Lithuania for practice.

During the visit conducted to ***Gazakh District Psychiatric Hospital*** it was revealed that the sanitary facilities in the establishment were unfit for use, the canteen and kitchen were in insanitary conditions, patients were given meals which did not contain enough calorie as found out when reviewing the daily menu, also, very little meat was given, as well as the rooms where male patients were kept on the second floor of the hospital did not meet the minimum standards, though there were 2 renovated rooms, patients were not transferred to those rooms, and in the office of nurses and hospital attendants there were items not related to their service. At the conversation held with the Head Doctor of the hospital at the end of the visit the above mentioned cases were reported and relevant proposals were made to eliminate the deficiencies within the shortest time period. During the follow-up visit to the hospital at the end of the year it was observed that most of the mentioned deficiencies had been eliminated and corresponding actions were being taken to renovate wards for male patients.

During the visit conducted to ***Ganja City Psychiatric Hospital*** it was determined that the building of the establishment was constructed in 1935 and the last time was capitally renovated in 1982, and current repair works in the establishment were conducted with the internal funds of the establishment and aids received from humanitarian organizations.

As informed by the establishment, very little financing was allocated for the nutrition of patients, which did not allow to provide patients with quality food on a daily basis, and consequently hindered their treatment and psychological rehabilitation. Moreover, the shortage of medicine necessary for the treatment of patients also remained as a problem. Because there were a few specialized doctors in the establishment, every 15 patients were treated by 1 doctor, which contradicted the requirements of the standards in force

and decreased the efficiency of treatment. Since the position of radiologist was vacant in the establishment, the X-ray room did not function.

During the visit it was also revealed that the conditions of the sanitary facilities and bathrooms of the 2 units intended for male patients were unsatisfactory, and 2 units were heated by the centralized heating system and the other 2 with various electrical devices.

Alongside with the aforementioned, the operation of music, drawing, sewing, and sport circles in the establishment, as well as the existence of a worshipping room, table games, and outdoor volleyball court, and installation of mail boxes in each unit are highly appreciated.

It should be noted that during the NPG's visit to *Mingachevir Psycho-Neurological Dispensary* it was determined that the daily food norm and expenses for medicine allocated for patients did not meet the demand.

Generally, that the persons kept in the relevant hospitals without permission to leave at will stay indoors all day long is one of the issues causing the Commissioner's concern. The Commissioner also delivering a speech at the discussion of the draft budget for the next year at the Parliament of the Republic of Azerbaijan, proposed to increase the funds intended for the nutrition and treatment of patients in a hospital during a day.

2.7. Establishments of the ME

There are 41 places, in the jurisdiction of the ME, which detainees are not permitted to leave at will³³ and 3 visits were conducted to such places in 2012. Necessary conditions were provided to realize the visits as required by law.

During the visit conducted to **Guba Special Vocational School** the NPG got acquainted with the state of dormitories, classrooms, correctional and recreation rooms, library, kitchen, canteen, bathroom and administrative offices, as well as detention conditions, treatment, education, and organization of leisure time, conducted private conversations with the children kept in the establishment and explained them their rights.

As the ME provided information on the actions taken with regard to the issues raised during the visits and in the previous reports of the Azerbaijani NPM, several purposeful measures had been undertaken in the relevant directions. As such, relevant actions had been taken to ensure the specific work conditions of the school located in the building built during tsarist Russia and adjusted later and functioning as Guba Special Vocational School for the correction of juveniles that had committed various offences. Current repair works had recently been carried out in different rooms to improve the

³³ See: Appendix 1

conditions of detention of children in the school, and all rooms had been supplied with necessary devices and inventory. The dormitory of the school was heated by a heating system but other service rooms were heated with firewood. There was enough wood in the school for the winter season of 2012-2013 and a water heater had been installed to supply the dormitory with hot water. The school lacked a sewerage system. When the sewerage and water systems of Guba Town are renewed, the school will also get an opportunity to join these systems.

Students, after being accepted to the given school, are taken under psychological and medical control, a special confidential file is opened to track the degree and dynamics of their rehabilitation, which includes the biographic indicators of every student, awards and reproaches received at the school, information on the breach of the regime, behavioral motives, psychological traits, style of behavior, characteristics, inclination for bad habits, and other indicators, as well as attitude towards education, vocation, public work, co-students, parents, and personnel of the school.

The medical unit of the school supervises and is responsible for the protection of the health of students, their treatment, undertaking of preventive measures, maintenance of appropriate sanitary and hygiene conditions at the school, proper nutrition of students, and timely execution of personal hygiene measures. The students of the school are from time to time fully examined by medical personnel. The medical unit is supplied with enough stock of medicine and bandage.

Children's meetings with parents are not restricted and students may at any time contact their parents or relatives through telephone or mail correspondence.

Alongside with the above mentioned, it was also found out that though there was a vacant position of psychologist, the position remained unoccupied due to the shortage of a qualified person, which does not allow to ensure the proper organization of psychological service at the school. The difficulties connected with obtaining identity cards for the children and low salaries of the staff of the establishment raise concern.

2.8. Establishments of MLSPP

There are 8 places, in the jurisdiction of the MLSPP, which detainees are not permitted to leave at will³⁴ and 2 visits were conducted to these places in 2012. Necessary conditions were provided to realize the visits as required by law.

³⁴ See: Appendix 1

As the MLSPP has provided information on the actions taken with regard to the issues raised in the previous reports of the Azerbaijani NPM, an appeal has been addressed to the Cabinet of Ministers of the Republic of Azerbaijan to add new staff to the current staff list in order to improve the quality of the service provided by the social service establishments operating under the Ministry and bring those establishments in conformity with modern standards.

As the MLSPP has informed, persons kept in the social service establishments receive first medical aid on a regular basis and they are sent to the relevant medical institutions and sanatoriums to receive in-patient treatment or rehabilitation when necessary.

Taking into consideration the age and personal traits, an individual work plan has been developed for every child kept in the social service establishments for mentally handicapped children and children are treated according to those plans.

The MLSPP has also involved the social service staff of all the social service establishments in its jurisdiction in awareness raising events and training sessions aimed at increasing their professional qualifications and learning new practices in the relevant field.

During the visits conducted to *Shagan Boarding House No.3 for Mentally Handicapped Children* and *Saray Boarding House No.7 for Mentally Handicapped Children* it was discovered that the logistics of these establishments had been completely renewed by Heydar Aliyev Foundation and brought into conformity with modern standards. During the visits the NPG got acquainted with the state of the dormitories, bathrooms, sanitary facilities, classrooms, sewing class, music halls, kitchens, food warehouses, as well as new sport facilities, and held conversations with the children able to speak. It has been determined that necessary conditions have been created in these establishments.

Alongside the aforementioned, the Commissioner deems that the staff of such establishments should be regularly updated on the preventive measures to be taken in respect of the children that are inclined to use self-injury and relevant best practices should be learned.

The Commissioner also feeling concerned about the deaths that occurred at Goygol Specialized Mental Boarding House No.8 under the jurisdiction of the MLSPP, calls the relevant bodies to thoroughly investigate the mentioned cases.

CHAPTER 3.

LEGAL ANALYSIS

The theoretical and practical analysis of the information collected during the course of the undertaken activities, including the cases revealed during the investigation of this or another application or complaint by the Office and the reasons and conditions that have caused those cases, as well as received relevant proposals, recommendations and effective and draft legislative acts, and the summarization of the achieved results constitute one of the main directions of the Azerbaijani NPM's activity. This also includes regular analysis of international best practices and work style and achievements of NPMs of various countries and application of advanced tools to the NPM work.

As a result of the conducted legal analysis, the Commissioner regularly sends her proposals and recommendations with regard to both legislative and organizational issues to the relevant state bodies, which are eventually settled. As in previous years, in 2012 the preparation of proposals to strengthen the legal framework with regard to the Commissioner's NPM mandate was a part of the mentioned work. Though there are still some issues which need to be resolved³⁵, important achievements were made in this direction in the reporting period³⁶.

Moreover, the year 2012 is remarkable for the improvement, based on the Commissioner's proposals among others, of the effective normative legal acts to more reliably ensure prevention of torture. It should be primarily mentioned that the Commissioner, both in her previous NPM report and relevant correspondences, has stated that it was important to ensure more comprehensive legal regulation of the establishments where suspected and accused persons are detained, as well as the rights and freedoms of the individuals held in those places, as such it was necessary to accelerate the adoption of the relevant law. Ultimately, on 22 May 2012 the Law on Ensuring the Rights and Freedoms of the Individuals Held in Detention Facilities³⁷ was enacted. This Law defines detained, arrested, and convicted persons, specifies the types of detention facilities and regime rules in those facilities, and regulates the legal status of individuals held in detention facilities, regime, and state and public control. The Law also has effective

³⁵ E.g. proposals regarding the Code of Administrative Offences of the Republic of Azerbaijan.

³⁶ See: Chapter 1.1 hereof.

³⁷ Law of the Republic of Azerbaijan on Ensuring the Rights and Freedoms of the Individuals Held in Detention Facilities (22.05.2012, No. 352-IVQ)

leverage for combating torture. Article 22 of the given Law stipulates that immediately after entry to a detention facility a detained or arrested person's complaint about their bodily injuries or any torture, inhuman or degrading treatment they had been subjected to before admittance to the detention facility shall be recorded, they shall be examined by the medical personnel of the detention facility within 24 hours from the detention, the findings of the examination shall be recorded accordingly, complaints about torture, inhuman or degrading treatment, as well as written information on the bodily injuries discovered during medical examination and presumed to be inflicted as a result of torture, inhuman or degrading treatment shall be sent to the prosecutor in charge of the procedural aspects of the investigation, medical examination can be conducted by a public or private medical establishment upon a motion of detained or arrested persons or their defense counsels, and so on.

The given Law has also specified, for the first time, the legal regulation of the transfer of a detainee from an investigation isolator to a temporary detention place. As such, when it is necessary to conduct investigative acts in a place situated far from the residential settlement where the investigation isolator is located or it is required to ensure the arrested person's participation in judicial proceedings and it is impossible to transport him/her every day, an arrested person may be transferred from an investigation isolator to a temporary detention place for not more than 10 days a month based on a substantiated decision by the court. The period may be extended upon a motion of the concerned individual until the end of the judicial proceedings based on a substantiated decision by the court. The person shall be subjected to medical examination when transferred from an investigation isolator to a temporary detention place and back. The Law also prohibits the transfer of an individual from an investigation isolator to a temporary detention place for investigation-search measures³⁸.

The Law describes some rights of detained or arrested persons specified in the Criminal Procedure Code of the Republic of Azerbaijan in more details, particularly the rights not to be subjected to torture, inhuman or degrading treatment or punishment; to be treated in an ethical manner; to be provided in a plain written form and familiarize themselves with their own rights and duties, internal disciplinary rules, including regime of the detention place, and submission of suggestions, applications and complaints immediately after the entry to a place of detention and during detention, and keep such written information with themselves; to be received by the

³⁸ Law of the Republic of Azerbaijan on Ensuring the Rights and Freedoms of the Individuals Held in Detention Facilities (22.05.2012, No. 352-IVQ), Article 8

management of the detention place; to submit suggestions, applications and complaints about the legality and reasonableness of detention or violation of their lawful interests; to be taken out for daily walking everyday for not less than 2 hours (earlier normative legal acts provided for an hour); to receive psychological assistance; to use literature, including special literature; to perform religious rites, etc. In addition, the Law also specifies detainees' rights to meet with their close relatives or other persons, to contact with whom is of lawful interest, for up to 4 hours 4 times a month under decent conditions and under supervision; to subscribe to newspapers and magazines; to receive and send to close relatives money; to enter into or annul a marriage; to talk on the phone for up to 15 minutes twice a week; to watch TV, etc.³⁹

The adoption of this Law has also facilitated the initiation of several other normative legal acts⁴⁰, as well as some acts in force have been amended⁴¹. Moreover, it is expected that the Cabinet of Ministers will shortly approve the Internal Disciplinary Rules in Detention Facilities as developed by the MJ.

The next effective step made within the legislation to prevent torture was the amendment made to the CC to more broadly define an offence of torture in compliance with the Convention. After the amendments, Article 293, which stipulates criminal responsibility for compulsion to give evidence, has been given in new wording. As such, an official or anyone acting in an official capacity, or other persons at the instigation of or with the consent or acquiescence of an official, shall bear criminal liability for inflicting torture, as well as subjecting an individual to cruel, inhuman or degrading treatment or punishment in connection with performance of his/her official duties. Alongside the above mentioned, that it is unacceptable to apply to a person,

³⁹ Law of the Republic of Azerbaijan on Ensuring the Rights and Freedoms of the Individuals Held in Detention Facilities (22.05.2012, No. 352-IVQ), Articles 15, 19.6, 19.7.

⁴⁰ Decision of the Plenary Board of the Ministry of Justice of the Republic of Azerbaijan on the Approval of the "Guidance on the Rules for Escorting Detainees and Convicts" (29.12.2012, No. 31-N); Decision of the Plenary Board of the Ministry of Justice of the Republic of Azerbaijan on the Approval of the "Guidance on Detention Conditions and Force Feeding of Convicts and Detainees that Refuse to Eat in Penitentiary Institutions" (29.12.2012, No. 32-N); Decision of the Plenary Board of the Ministry of Internal Affairs of the Republic of Azerbaijan on the Approval of the "Guidance on Safeguarding and Escorting Persons Detained in Temporary Detention Places of Police Bodies" (14.01.2013, No. Q1-001-13);

⁴¹ Decision of the Plenary Board of the Ministry of Justice of the Republic of Azerbaijan on the Amendment of the "Guidance on the Organization of the Registration of Accused and Convicted Persons in Investigation Isolators and Prisons" approved by Decision No. 7-N of 29 December 2011 of the Plenary Board of the Ministry of Justice of the Republic of Azerbaijan (29.12.2012, No. 34-N);

that has committed a crime, punishment and other criminal - legal measures that are of torture or other cruel, inhuman or degrading nature or purpose has been defined as a constituent part of the CC and the principle of humanism which is one of the principles of criminal liability.⁴²

As a result of the numerous talks held with detainees during the visits conducted in 2012 and analysis of the relevant legislation it has been determined that it is necessary to reform the legal regulation of contacts between convicts and their relatives and other persons taking into consideration that maintaining social relationships has a positive impact on the rehabilitation of convicts.

It should be firstly mentioned that although there is no direct instruction in this regard in the EPC, the IDR does not allow inmates serving their sentences in different penitentiary institutions to meet with each other⁴³. However, it is deemed that, irrespective of organizational difficulties that might arise, *it is worthwhile to arrange meetings of inmates with other inmates that are their close relatives.*

With regard to meetings, it should also be mentioned that *it is deemed more appropriate for both inmates and persons visiting them to eliminate the practice of determination of the time of meetings through dividing the number of meetings of the same type granted to an inmate within a year by twelve months*⁴⁴.

Besides, in accordance with the legislation in force, persons sentenced to imprisonment for a certain period and persons sentenced to life imprisonment are entitled to talk on phone for fifteen minutes twice a week and once a week respectively⁴⁵. However, *the IDR stipulates that an inmate can talk only to one telephone subscriber within the specified period*⁴⁶, which deprives inmates of the opportunity to talk, within the specified period, to people residing at different addresses. *The elimination of the given restriction is deemed reasonable.*

The Commissioner has appealed to the MJ with regard to the above mentioned and currently the given proposals are being reviewed.

In 2012, along with thoroughly responding to numerous inquiries about the Commissioner's activity as the NPM as received from various sources, relevant reference on the NPM was prepared as a contribution to the second periodic report of the Republic of Azerbaijan under the UN Human Rights

⁴² Law of the Republic of Azerbaijan on Amending the Criminal Code of the Republic of Azerbaijan (29.06.2012, No. 405-IVQD)

⁴³ IDR, clause 30.2

⁴⁴ IDR, clause 35.3

⁴⁵ EPC, Article 84.1; IDR, clause 33.1

⁴⁶ IDR, clause 33.1

Council Universal Periodic Review mechanism and sent to the Ministry of Foreign Affairs of the Republic of Azerbaijan.

The output of the legal analysis work conducted by the NPM has been the analysis of the organizational status and practical results of the activities undertaken to prevent torture, summarization of the results obtained as a consequence of performed activities, relevant statistics, and the present Report including pertinent proposals and recommendations.

CHAPTER 4.

LEGAL EDUCATION

As already mentioned, arrangement of legal education work constitutes one of the main directions of the Azerbaijani NPM's activity. The organization of this activity at a higher level, in a more intensive manner, and with the involvement of other state bodies is also specified in the National Action Program for Increasing Effectiveness of Protection of Human Rights and Freedoms in the Republic of Azerbaijan, which was adopted taken into consideration the Commissioner's proposals as well. This document has established a responsibility for the relevant bodies to ensure that the personnel of law-enforcement bodies and other relevant agencies, as well as lawyers and representatives of NGOs specialized in the field of human rights learn the requirements of the Convention and OPCAT, conduct awareness raising and take other necessary measures to ensure effective implementation of the NPM functions in compliance with the OPCAT, and hold awareness raising events to improve legal thinking and legal culture of people and promote the inadmissibility of discrimination⁴⁷.

As in previous years, the legal education work conducted in 2012 may be grouped as per the target audience in the following way:

- for the staff of the Office and NPG members;
- for the personnel of the places of detention, as well as students of the relevant educational institutions and academies; and
- persons kept in places of detention.

Alongside the aforementioned, it should be noted that various booklets, leaflets, brochures, books, and posters devoted to different aspects of human rights, including prevention of torture, are regularly developed in the Office, published, and distributed, free of charge, among the personnel of relevant agencies. For the purpose of awareness raising, the text of the OPCAT is published as appendix to all the annual reports of the NPM.

During the reporting period a series of awareness raising events was arranged for each of the above mentioned audiences. The staff of the Office of the Prosecutor General of the Republic of Azerbaijan, MIA, MJ and MNS took an active part at the events. To the point, in order to ensure that the NPM operates more effectively, the Commissioner pays close attention to the constant enhancement of the measures taken by the relevant state bodies, particularly law-enforcement agencies to increase human rights awareness.

⁴⁷ National Action Program for Increasing Effectiveness of Protection of Human Rights and Freedoms in the Republic of Azerbaijan (approved by Order No. 1938 of the President of the Republic of Azerbaijan of 27 December 2011), clause 4.1, 4.2, 4.10.

In the course of legal education work, along with the state bodies, strong collaboration is ensured with international organizations, NGOs, and the mass media as well, and joint events are organized. One of such events was the methodological workshop on monitoring of places of detention by the NPM and development of reports, which was conducted by the Commissioner and OSCE Office in Baku.

Representatives of the NPM V.Maharramov and V.Verdiyeva also successfully attended the round table on the topic of “Social Adaptation of Released Prisoners” held by the Public Union “Oversight of Places of Detention”. Head of the NPG V.Maharramov stressed that along with persons deprived of liberty, the rights of the persons released from penitentiary institutions were kept in focus, persons expected to be released shortly were listened to during preventive visits, and relevant measures were taken to resolve existing problems, and suggested that the construction of the shelters under the MLSPP should be accelerated, onetime monetary allowance should be provided on time to the persons released from sentence, ill persons released from sentence should be taken under control of civic hospitals, broader measures should be taken to raise awareness on the rights of prisoners and persons released from penitentiary institutions, and so on.

The organization of legal education activities for the staff of the places of detention, as one of the main directions of the NPM’s legal education work, was continued in 2012 as well. At the Commissioner’s instruction, at different times, the NPM staff delivered lectures at the awareness raising events conducted by the relevant authorities, and courses organized for the students of the Police Academy of the MIA and Justice Academy of the MJ, as well as for new officers, and provided information on the requirements of the related international and national standards.

Moreover, Head of the NPG V.Maharramov delivered a lecture on human rights for the officers, ranks and civil personnel of the MIA Head Security Office within the Month of Peace celebrated in the country on the Commissioner’s initiative on the occasion of 21 September – International Day of Peace.

The promotion of the rights of persons receiving treatment in psychiatric institutions was particularly addressed within the conducted legal education work. In 2012 a series of regional deliberations dedicated to the problems observed in the field of psychiatrics were held in different regions of the country on the Commissioner’s initiative and with the participation of the Head Psychiatrist of the Republic, as well as training sessions on provision of medical service and treatment in compliance with international and European standards were organized for the doctors working in this sphere. At such events psychiatrists and other medical personnel were

particularly recommended to treat psycho-neurological patients compassionately, according to the established norms of ethical conduct, approach them politely, learn and apply effective standards and relevant normative legal acts regulating the provision of care for and protection of rights of patients, and strictly follow the sanitary norms. The Commissioner has stated that *it is necessary to translate the above mentioned standards into Azerbaijani, hold awareness raising seminars in the field, publish relevant convention and laws in the format of a handbook, develop, disseminate, and ensure mastering of legal publications on the rights of medical personnel and patients, and conduct training sessions to increase professional capacity of doctors.*

At the round table arranged within the framework of this work at the Mental Health Center the Commissioner's representatives Y.Jafarova and M.Mammadov took part and delivering speech, stressed that the NPM kept psychiatric hospitals and mental dispensaries in the center of attention and such events created opportunities for communicating mental health issues to the general public.

It should also be mentioned that in 2012 the Commissioner's regional centers also continuously conducted legal education work with regard to the NPM activity, held numerous seminars and meetings, provided information to the population and relevant bodies on the requirements of the OPCAT and the activity of the Azerbaijani NPM, and published related articles in different regional newspapers.

CHAPTER 5.

PUBLIC RELATIONS AND INTERNATIONAL COOPERATION

As it is known, pursuant to the Constitutional Law, the Commissioner, in line with the directions of her activity, cooperates with local, regional and international organizations⁴⁸ and the organization of public relations and international cooperation is one of the directions of the Azerbaijani NPM's activity.

In 2012 as well information exchange was continued with state and municipal bodies, local civil society organizations, mass media, regional and international organizations, and NPMs of foreign countries, mutual participation at events was ensured, as well as joint events were held.

During the past period both local and international communities were regularly informed of the Azerbaijani NPM's activity. In 2012, alongside the reports delivered at this or another event, in total 83 press releases were disseminated to the media, 54 out of them dealing with visits, 29 out of them talking about awareness raising and other events. Altogether, 421 press releases were disseminated during 2009-2012 out of which 256 was about visits and 165 about awareness raising and other events. Press releases, reports on the NPM's activities, information on the composition of the NPG, as well as relevant normative legal acts have been posted in the Azerbaijan and English languages on a special section created on the Commissioner's website. It should also be mentioned that the translation and publication, in two languages, of the NPM reports covering 2009-2010 and 2011 have been ensured by the OSCE Office in Baku. The NPM reports, along with being posted on the Commissioner's official website, were also sent to the relevant state bodies, UN Committee against Torture, Subcommittee, CPT, Association for the Prevention of Torture, international experts involved in this work and contact persons of the European NPM Network member countries.

It should be mentioned that since the designation as the NPM the Commissioner has established closer collaboration with the above indicated bodies along with other institutions, as well as has become a member of the European NPM Network organized by the Council of Europe Directorate General of Human Rights and Legal Affairs and the Association for the Prevention of Torture. The Network organizes relevant training and seminars with the involvement of well-known experts and arranges other events to

⁴⁸ Constitutional Law, Article 1.4

enhance capacity and knowledge of the member countries' NPMs and improve their work.

As in previous years, in 2012 several joint events were held in the country within the framework of international cooperation, representatives of prestigious international organizations and well-known foreign experts were received at the Office, and the members of the NPG participated at international events to exchange experience and improve theoretical knowledge.

Incidentally, at the meeting Jean-Pierre Restellini, a member of the CPT, and Trevor Stevens and Isabelle Servoz-Gallucci, staff of the Secretariat of the same Committee, visiting Azerbaijan, held with Head of the Office A.Safikhanli, Head of the NPG V.Maharramov and members of the NPG, detailed information was given on the activities of the NPM, amendments made to the legislation and the performed work, and it was stated that the conducted visits had been performed in compliance with international documents along with the national legislation, including the standards of the CPT, and perspectives of the future collaboration was discussed. The representatives of the CPT highly appreciated the Azerbaijani NPM's activity and stated that they were interested in the development of mutual relationships.

As mentioned earlier, joint events held within the framework of international cooperation are of special importance for the NPM's activity. One of such events was the methodological seminar on monitoring in detention facilities and reporting within the NPM framework held on 26-27 April 2012 together with the OSCE Office in Baku. Koray Targay, Head of OSCE Office in Baku, said at the opening of the seminar that the cooperation with the Commissioner, who has rich experience, is of particular value for the OSCE Office in Baku and such relations are of great importance for the guarantee of human rights. At the event along with local and international experts, Head of the NPG V.Maharramov, and the members of the NPG A.Aliyev and F.Hasanov delivered reports and speeches addressing the topic.

The participation at the events held outside the country in 2012 was also quite successful. Along with the NPMs of 24 European countries, representatives of relevant monitoring groups, and well-known human rights experts, the representatives of the Azerbaijani NPM attended the international workshop on "the immigration removal process and preventive monitoring" co-organized by Council of Europe and European Union in Geneva, Switzerland in March for the NPMs of the member countries. The removal process of the third country residents, conditions under which deportation is realized, and NPMs' monitoring of treatment from the viewpoint of international legal norms and migration law were discussed at the workshop

to prevent ill treatment in this sphere, which had become a pressing issue lately. The speech of the Head of the NPG on the Azerbaijani NPM's relevant activities, gained experience, and performed work was welcomed with interest.

The Azerbaijani NPM was represented by V.Maharramov, A.Hajiyev and F.Hasanov at the Forum on "Combating and Preventing Torture and Ill-treatment in the South Caucasus" held by the Penal Reform International South Caucasus Regional Office in Tbilisi, Georgia in March 2012, as well as Cross-Regional Conference on "Development of Mechanisms on Torture Prevention" held by the given organization in the same city in June, which were attended by representatives of state bodies, non-governmental organizations, civil society, various monitoring bodies, and prominent human rights experts. The participants were informed of the measures taken to prevent torture in the Republic of Azerbaijan and main activities of the Azerbaijani NPM, positive experience and gained achievements, speeches were delivered on the rules of conducting visits, development of recommendations and reports, and corresponding questions were answered.

In addition to the above mentioned regarding international cooperation, some issues have been identified which need improvement. Thus, it is desirable to expand the NPM's cooperation with relevant international bodies, particularly the Subcommittee. *As such, it is advisable that the Subcommittee organizes both theoretical and practical seminars to arrange the work of NPMs at a higher lever, methodically contribute to the legal education work carried out by the NPMs for its members, personnel of detention facilities, and persons kept in those places, and arrange exchange of experiences.* The Commissioner's relevant proposals have been sent accordingly.

CHAPTER 6.

PROPOSALS AND RECOMMENDATIONS

The general analysis of the performed activities justifies the statement that the establishment of the NPM has greatly contributed to the improvement of the capacity for torture prevention in the country.

The improvements observed in the following directions should be particularly mentioned:

- liberalization of the legislation – making it more humanized;
- improvement in treatment of detainees;
- advancement of the conditions in the places which detainees are not permitted to leave at will.

The activities performed and achievements made in 2012 are more thoroughly reflected in the relevant parts of the present report.

Along with the above mentioned, the conducted analyses have produced the below elaborated proposals and recommendations.

To improve the legislation:

- 1) Enhance the sanction provided by the Code of Administrative Offences of the Republic of Azerbaijan for the interference with the legitimate activities of the Commissioner;
- 2) Specify responsibility in the Code of Administrative Offences of the Republic of Azerbaijan for the interference with the legitimate activities of the NPG;
- 3) Stipulate in the Law of the Republic of Azerbaijan on Ensuring the Rights and Freedoms of the Individuals Held in Detention Facilities, dated 22 May 2012, that it is inadmissible to censor correspondence with the NPG;
- 4) Stipulate in the Sample Regulations of Open and Closed Special Correctional Institutions, approved by Decision No. 65 of the Cabinet of Ministers of the Republic of Azerbaijan on 13 May 2003, that it is inadmissible to censor correspondence with the NPG;
- 5) Accelerate the approval by the Cabinet of Ministers of the Internal Disciplinary Rules in Detention Facilities developed by the MJ;
- 6) Amend Clause 30.2 of the IDR to allow close relatives serving their sentences in different penitentiary institutions to meet with each other;
- 7) Repeal Clause 35.3 of the IDR that determines the time of meetings through dividing the number of meetings of the same type granted to an inmate within a year by twelve months;

- 8) Remove Clause 33.1 of the IDR that allows an inmate to talk only to one telephone subscriber within the period provided for by law.

To settle institutional issues:

- 9) Ensure that the Office of the Prosecutor General of the Republic of Azerbaijan, as well as the Office of the Military Prosecutor regularly exercise supervision over places of detention, combat torture, and continue legal education work;
- 10) Ensure that the MIA increases control over and exactingness with regard to the registration of relevant information on persons brought to police bodies, and observance of the detention threshold;
- 11) Ensure that the MIA enhances control over the replacement of expired medicine with new ones in the relevant establishments;
- 12) Ensure that the MIA continues the installation of modern surveillance devices in TDPs to prevent suicides, self-injuries and other incidents;
- 13) Ensure that the MIA continues the improvement of the financial condition of the relevant establishments, as well as the construction of new buildings where necessary;
- 14) Ensure that the MIA carries on education work conducted in the relevant fields and closely involves the NPM in such activities;
- 15) Ensure that the MJ supervises that the disciplinary conditions under which inmates are kept in the relevant establishments, types of the applied disciplinary measures, their adequacy, including the adequacy of the applied physical force and special means, are regularly analyzed, and individual correctional and preventive measures are taken;
- 16) Ensure that the MJ applies stricter measures of bringing to responsibility with regard to the revealed breaches of law in this or another establishment in order to prevent reoccurrence of such negative cases;
- 17) Ensure that the MJ enhances supervision over the organization of medical examination and treatment of inmates in the relevant establishments, and takes necessary actions to strengthen mutual cooperation with the MLSP with regard to granting disability status;
- 18) Ensure that the MJ continues improvement of the conditions under which disabled persons and persons suffering from HIV/AIDS, hepatitis, drug addiction, tuberculosis, diabetes and other serious diseases are detained, examination and treatment of such persons, and other measures taken in respect of such persons;

- 19) Ensure that the MJ strengthens control over the persons inclined to commit suicide or inflict a self-injury and enhances preventive and psychological impact measures taken in respect of such persons;
- 20) Ensure that the MJ intensifies control over the provision of inmates with the opportunity to correspond as specified by law;
- 21) Ensure that the MJ enhances supervision over the timely provision of the MSUs with quality medicine;
- 22) Ensure that the MJ recruits relevant personnel for currently vacant positions in MSUs;
- 23) Ensure that the MJ provides the MSU of PI No. 5 with a building suitable for use;
- 24) Ensure that the MJ takes necessary actions to eliminate overcrowding in the relevant establishments;
- 25) Ensure that the MJ continues to improve financial conditions in the relevant establishments, bring the number of the telephone lines and sanitary facilities used by inmates in conformity with the number of inmates, and cover floors with wood;
- 26) Ensure that the MJ keeps in the center of attention the health of the personnel and inmates of PI No. 14 located close to a stone quarry, and brings the observed ecological problems to the attention of the relevant bodies;
- 27) Ensure that the MJ speeds up the construction of new establishments;
- 28) Ensure that the MJ enhances control over the PCSs and improves the state of treatment of inmates in these establishments, as well as the practices of registration and execution of punishment;
- 29) Ensure that the MJ creates permanent work places for inmates, stimulates engagement in individual labor activity, continues work on the effective organization of their leisure time;
- 30) Ensure that the MJ carries on education work conducted in the relevant fields and closely involves the NPM in such activities;
- 31) Bring the conditions in the waiting rooms of the Baku Court on Grave Crimes, which are intended for detainees, in compliance with the requirements of the standards in force;
- 32) Ensure that the MNS carries on education work conducted in the relevant fields and closely involves the NPM in such activities;
- 33) Ensure that the MD makes efforts to establish more constructive cooperation with the NPM;
- 34) Ensure that the MD continues the improvement of the financial condition of the relevant establishments, capital renovation of the establishments which are not in compliance with the standards in force, as well as the construction of new buildings where necessary;

- 35) Ensure that the MD increases exactingness with regard to the organization of work in the relevant establishments in compliance with the requirements of law;
- 36) Ensure that the MH continues the improvement of the financial condition of the relevant establishments, and capital renovation of the establishments which are not in compliance with the standards in force;
- 37) Ensure that the MH takes actions to increase the funds allocated for daily nutrition and treatment of patients in its establishments;
- 38) Ensure that the MH takes actions to arrange leisure time in the relevant establishments more effectively;
- 39) Ensure that the MH publishes the relevant conventions and laws in the form of a booklet, develops and distributes legal publications on the rights of medical personnel and patients, organizes training sessions to improve professional qualifications of doctors, carries on other educational activities and closely involves the NPM in such endeavors;
- 40) Ensure that the ME makes efforts to establish more constructive cooperation with the NPM;
- 41) Ensure that the ME takes actions to improve the financial condition of the relevant establishments;
- 42) Ensure that the ME takes measures to recruit relevant personnel for the currently vacant positions of a psychologist in the relevant establishments;
- 43) Ensure that the ME takes actions to increase the salaries of the personnel working in the relevant establishments;
- 44) Ensure that the ME takes measures to provide persons kept in the relevant establishments with identity cards;
- 45) Ensure that the MLSPP makes efforts to establish more constructive cooperation with the NPM;
- 46) Ensure that the MLSPP continues the improvement of the financial condition of the relevant establishments;
- 47) Ensure that the MLSPP carries on education work conducted in the relevant fields, and regularly keeps the relevant staff informed of and updated on the preventive measures and relevant best practices with regard to the children that are inclined to use self-injury;
- 48) Ensure that the MLSPP improves the process of consideration of appeals for the determination of disability status for inmates;
- 49) Ensure that the MLSPP accelerates the construction of the shelters for the persons released from penitentiary institutions;

- 50) Ensure that the representatives of the institutions operating the places where the persons that are not permitted to leave at will are kept take part at various awareness raising events organized by the Commissioner and relevant cooperation is continued;
- 51) Develop awareness raising manuals about the rights and freedoms of the persons that are kept in the places which they cannot leave at will and distribute those manuals among such persons and their family members;
- 52) Ensure that the institutions, under which the places where the persons are not permitted to leave at will operate, organize exchange of practices for the personnel of the relevant establishments to learn and apply best practices;
- 53) Ensure that the Subcommittee conducts both theoretical and practical training and workshop sessions in order to enhance the quality of the NPM activities;
- 54) Ensure that the Subcommittee provides methodological support for the organization of legal education events for the NPM members, personnel of detention facilities, as well as persons kept in such places, and organizes exchange of experiences.

NPM in Figures

Diagram 1. Establishments visited by the NPM

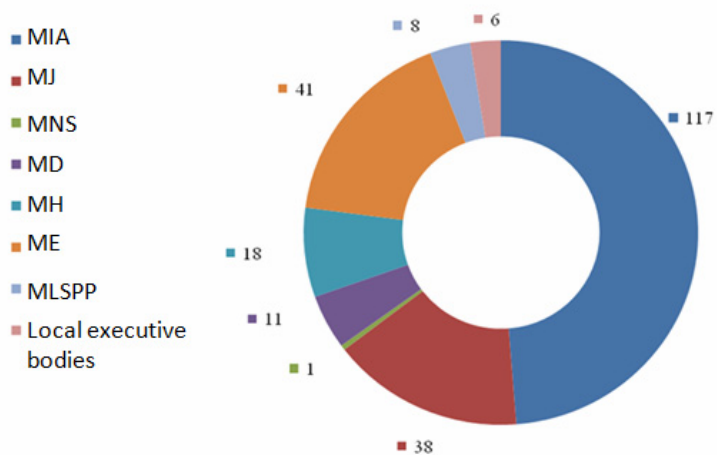


Diagram 2. Visits conducted by the NPM in 2012

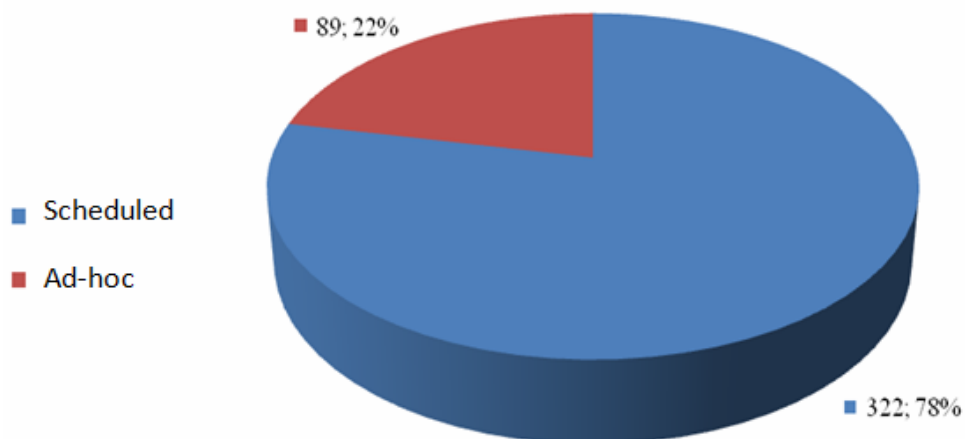


Diagram 3. Visits conducted by the NPM in 2012 (by establishments)

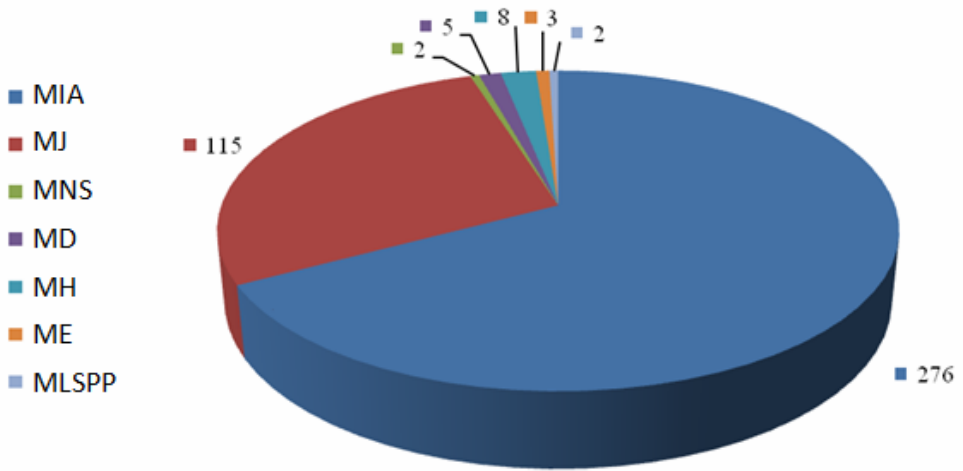


Diagram 4. Visits by the NPM (by years)

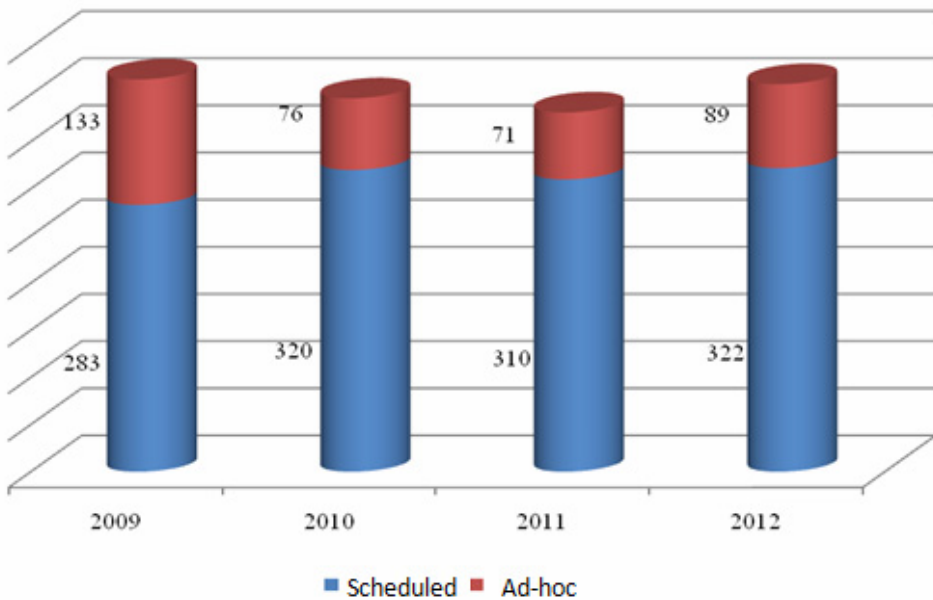
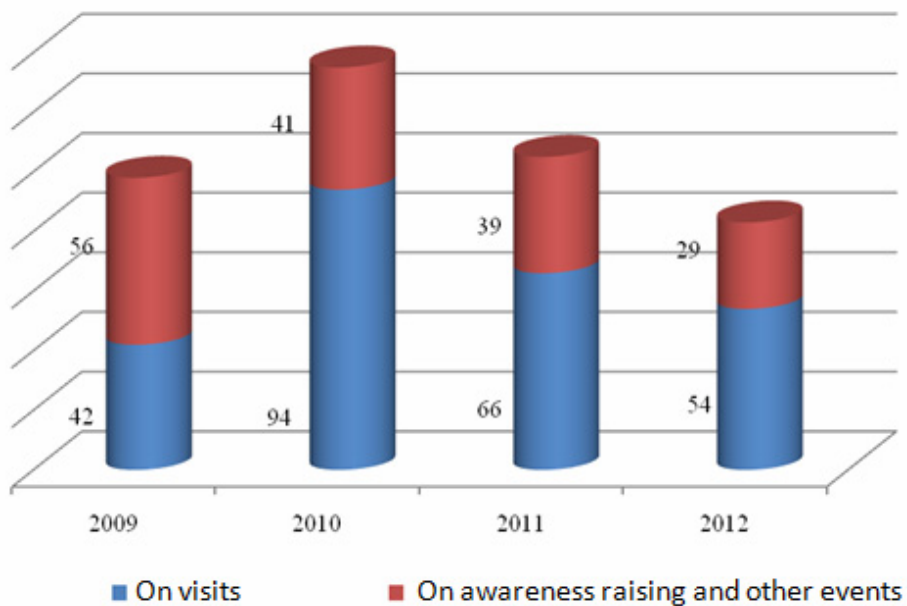


Diagram 5. Press-releases by the NPM (by years)



PHOTOS



Photo 1. Ombudsman with the NPG members



Photo 2. Ombudsman in Gusar DPD TDP



Photo 3. At an educational event in PCS No.14 of the PS



Photo 4. Ombudsman with Chief Psychiatrist in Shorsulu Inter-Regional Mental Hospital of the MH



Photo 5. Khazar DPD TDP, cell



Photo 6. Baku Investigation Isolator of the PS, MSU, ward



Photo 7. Baku Investigation Isolator of the PS, cell



Photo 8. Baku Investigation Isolator of the PS, MSU, dental office



Photo 9. In Specialized Medical Institution of the PS



Photo 10. PCS No.4 of the PS, carpet workshop



Photo 11. Ombudsman at Shagan Boarding House No.3 for Mentally Retarded Children of the MLSPP



Photo 12. Ombudsman in the Boarding House for the Elderly of the MLSPP



Photo 13. In Psychiatric Hospital No. 1 of the MH



Photo 14. In the Detention Centre for Illegal Migrants

Optional Protocol to the Convention against Torture and other Cruel,
Inhuman or Degrading Treatment or Punishment⁴⁹

PREAMBLE

The States Parties to the present Protocol,

Reaffirming that torture and other cruel, inhuman or degrading treatment or punishment are prohibited and constitute serious violations of human rights, Convinced that further measures are necessary to achieve the purposes of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention) and to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment,

Recalling that articles 2 and 16 of the Convention oblige each State Party to take effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction,

Recognizing that States have the primary responsibility for implementing those articles, that strengthening the protection of people deprived of their liberty and the full respect for their human rights is a common responsibility shared by all and that international implementing bodies complement and strengthen national measures,

Recalling that the effective prevention of torture and other cruel, inhuman or degrading treatment or punishment requires education and a combination of various legislative, administrative, judicial and other measures,

Recalling also that the World Conference on Human Rights firmly declared that efforts to eradicate torture should first and foremost be concentrated on prevention and called for the adoption of an optional

⁴⁹ Signed by the Republic of Azerbaijan on 15 September 2005, ratified in accordance with the Law 724-IIIQ dated 02 December 2008. The abovementioned Law has entered into force in respect of the Republic of Azerbaijan from the date of its publication on 15 January 2009.

protocol to the Convention, intended to establish a preventive system of regular visits to places of detention,

Convinced that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment can be strengthened by non-judicial means of a preventive nature, based on regular visits to places of detention, Have agreed as follows:

PART I

General principles

Article 1

The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

Article 2

1. A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading

Treatment or Punishment of the Committee against Torture (hereinafter referred to as The Subcommittee on Prevention) shall be established and shall carry out the functions laid down in the present Protocol.

2. The Subcommittee on Prevention shall carry out its work within the framework of The Charter of the United Nations and shall be guided by the purposes and principles thereof, as well as the norms of the United Nations concerning the treatment of people deprived of their liberty.

3. Equally, the Subcommittee on Prevention shall be guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity.

4. The Subcommittee on Prevention and the States Parties shall cooperate in the implementation of the present Protocol.

Article 3

Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other

cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).

Article 4

1. Each State Party shall allow visits, in accordance with the present Protocol, by the

mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.

2. For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

PART II

Subcommittee on Prevention

Article 5

1. The Subcommittee on Prevention shall consist of ten members. After the fiftieth ratification of or accession to the present Protocol, the number of the members of the Subcommittee on Prevention shall increase to twenty-five.

2. The members of the Subcommittee on Prevention shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty.

3. In the composition of the Subcommittee on Prevention due consideration shall be given to equitable geographic distribution and to the representation of different forms of civilization and legal systems of the States Parties.

4. In this composition consideration shall also be given to balanced gender representation on the basis of the principles of equality and non-discrimination.

5. No two members of the Subcommittee on Prevention may be nationals of the same State.

6. The members of the Subcommittee on Prevention shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Subcommittee on Prevention efficiently.

Article 6

1. Each State Party may nominate, in accordance with paragraph 2 of the present article, up to two candidates possessing the qualifications and meeting the requirements set out in article 5, and in doing so shall provide detailed information on the qualifications of the nominees.

2.

(a) The nominees shall have the nationality of a State Party to the present Protocol;

(b) At least one of the two candidates shall have the nationality of the nominating State Party;

(c) No more than two nationals of a State Party shall be nominated;

(d) Before a State Party nominates a national of another State Party, it shall seek and obtain the consent of that State Party.

3. At least five months before the date of the meeting of the States Parties during which the elections will be held, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall submit a list, in alphabetical order, of all persons thus nominated, indicating the

States Parties that have nominated them.

Article 7

1. The members of the Subcommittee on Prevention shall be elected in the following manner:

(a) Primary consideration shall be given to the fulfilment of the requirements and criteria of article 5 of the present Protocol;

(b) The initial election shall be held no later than six months after the entry into force of the present Protocol;

(c) The States Parties shall elect the members of the Subcommittee on Prevention by secret ballot;

(d) Elections of the members of the Subcommittee on Prevention shall be held at biennial meetings of the States Parties convened by the Secretary-General of the United Nations.

At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Subcommittee on Prevention shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.

2. If during the election process two nationals of a State Party have become eligible to serve as members of the Subcommittee on Prevention, the candidate receiving the higher number of votes shall serve as the member of the Subcommittee on Prevention. Where nationals have received the same number of votes, the following procedure applies:

(a) Where only one has been nominated by the State Party of which he or she is a national, that national shall serve as the member of the Subcommittee on Prevention;

(b) Where both candidates have been nominated by the State Party of which they are nationals, a separate vote by secret ballot shall be held to determine which national shall become the member;

(c) Where neither candidate has been nominated by the State Party of which he or she is a national, a separate vote by secret ballot shall be held to determine which candidate shall be the member.

Article 8

If a member of the Subcommittee on Prevention dies or resigns, or for any cause can no longer perform his or her duties, the State Party that nominated the member shall nominate another eligible person possessing the qualifications and meeting the requirements set out in article 5, taking into account the need for a proper balance among the various fields of competence, to serve until the next meeting of the States Parties, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

Article 9

The members of the Subcommittee on Prevention shall be elected for a term of four years. They shall be eligible for re-election once if renominated. The term of half the members elected at the first election shall expire at the end of two years; immediately after the first election the names of those members shall be chosen by lot by the Chairman of the meeting referred to in article 7, paragraph 1 (d).

Article 10

1. The Subcommittee on Prevention shall elect its officers for a term of two years. They may be re-elected.

2. The Subcommittee on Prevention shall establish its own rules of procedure. These rules shall provide, inter alia, that:

- (a) Half the members plus one shall constitute a quorum;
- (b) Decisions of the Subcommittee on Prevention shall be made by a majority vote of the members present;
- (c) The Subcommittee on Prevention shall meet in camera.

3. The Secretary-General of the United Nations shall convene the initial meeting of the Subcommittee on Prevention. After its initial meeting, the Subcommittee on Prevention shall meet at such times as shall be provided by its rules of procedure. The Subcommittee on Prevention and the Committee against Torture shall hold their sessions simultaneously at least once a year.

PART III

Mandate of the Subcommittee on Prevention

Article 11

1. The Subcommittee on Prevention shall:

- (a) Visit the places referred to in article 4 and make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

- (b) In regard to the national preventive mechanisms:
- (i) Advise and assist States Parties, when necessary, in their establishment;
 - (ii) Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;
 - (iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
 - (iv) Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;
- (c) Cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.

Article 12

In order to enable the Subcommittee on Prevention to comply with its mandate as laid down in article 11, the States Parties undertake:

- (a) To receive the Subcommittee on Prevention in their territory and grant it access to the places of detention as defined in article 4 of the present Protocol;
- (b) To provide all relevant information the Subcommittee on Prevention may request to evaluate the needs and measures that should be adopted to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
- (c) To encourage and facilitate contacts between the Subcommittee on Prevention and the national preventive mechanisms;
- (d) To examine the recommendations of the Subcommittee on Prevention and enter into dialogue with it on possible implementation measures.

Article 13

1. The Subcommittee on Prevention shall establish, at first by lot, a programme of regular visits to the States Parties in order to fulfil its mandate as established in article 11.

2. After consultations, the Subcommittee on Prevention shall notify the States Parties of its programme in order that they may, without delay, make the necessary practical arrangements for the visits to be conducted.

3. The visits shall be conducted by at least two members of the Subcommittee on Prevention. These members may be accompanied, if needed, by experts of demonstrated professional experience and knowledge in the fields covered by the present Protocol who shall be selected from a roster of experts prepared on the basis of proposals made by the States Parties, the Office of the United Nations High Commissioner for Human Rights and the United Nations

Centre for International Crime Prevention. In preparing the roster, the States Parties concerned shall propose no more than five national experts. The State Party concerned may oppose the inclusion of a specific expert in the visit, whereupon the Subcommittee on Prevention shall propose another expert.

4. If the Subcommittee on Prevention considers it appropriate, it may propose a short follow up visit after a regular visit.

Article 14

1. In order to enable the Subcommittee on Prevention to fulfil its mandate, the States Parties to the present Protocol undertake to grant it:

(a) Unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;

(b) Unrestricted access to all information referring to the treatment of those persons as well as their conditions of detention;

(c) Subject to paragraph 2 below, unrestricted access to all places of detention and their installations and facilities;

(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the Subcommittee on Prevention believes may supply relevant information;

(e) The liberty to choose the places it wants to visit and the persons it wants to interview.

2. Objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit. The existence of a declared state of emergency as such shall not be invoked by a State Party as a reason to object to a visit.

Article 15

No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the Subcommittee on Prevention or to its delegates any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

Article 16

1. The Subcommittee on Prevention shall communicate its recommendations and observations confidentially to the State Party and, if relevant, to the national preventive mechanism.

2. The Subcommittee on Prevention shall publish its report, together with any comments of the State Party concerned, whenever requested to do so by that State Party. If the State Party makes part of the report public, the Subcommittee on Prevention may publish the report in whole or in part. However, no personal data shall be published without the express consent of the person concerned.

3. The Subcommittee on Prevention shall present a public annual report on its activities to the Committee against Torture.

4. If the State Party refuses to cooperate with the Subcommittee on Prevention according to articles 12 and 14, or to take steps to improve the situation in the light of the recommendations of the Subcommittee on Prevention, the Committee against Torture may, at the request of the Subcommittee on Prevention, decide, by a majority of its members, after the State Party has had an opportunity to make its views known, to make a public statement on the matter or to publish the report of the Subcommittee on Prevention.

PART IV

National preventive mechanisms

Article 17

Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions.

Article 18

1. The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.

2. The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.

3. The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.

4. When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights.

Article 19

The national preventive mechanisms shall be granted at a minimum the power:

(a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;

(b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture

and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;

(c) To submit proposals and observations concerning existing or draft legislation.

Article 20

In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them:

(a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;

(b) Access to all information referring to the treatment of those persons as well as their conditions of detention;

(c) Access to all places of detention and their installations and facilities;

(d) The opportunity to have private interviews with the persons deprived of their liberty

without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;

(e) The liberty to choose the places they want to visit and the persons they want to interview;

(f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

Article 21

1. No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

2. Confidential information collected by the national preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned.

Article 22

The competent authorities of the State Party concerned shall examine the

recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.

Article 23

The States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms.

PART V

Declaration

Article 24

1. Upon ratification, States Parties may make a declaration postponing the implementation of their obligations under either part III or part IV of the present Protocol.

2. This postponement shall be valid for a maximum of three years. After due representations made by the State Party and after consultation with the Subcommittee on Prevention, the Committee against Torture may extend that period for an additional two years.

PART VI

Financial provisions

Article 25

1. The expenditure incurred by the Subcommittee on Prevention in the implementation of the present Protocol shall be borne by the United Nations.

2. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee on Prevention under the present Protocol.

Article 26

1. A Special Fund shall be set up in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations made by the

Subcommittee on Prevention after a visit to a State Party, as well as education programmes of the national preventive mechanisms.

2. The Special Fund may be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organizations and other private or public entities.

PART VII

Final provisions

Article 27

1. The present Protocol is open for signature by any State that has signed the Convention.

2. The present Protocol is subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 28

1. The present Protocol shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession, the present Protocol shall enter into force on the thirtieth day after the date of deposit of its own instrument of ratification or accession.

Article 29

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 30

No reservations shall be made to the present Protocol.

Article 31

The provisions of the present Protocol shall not affect the obligations of States Parties under any regional convention instituting a system of visits to places of detention. The

Subcommittee on Prevention and the bodies established under such regional conventions are encouraged to consult and cooperate with a view to avoiding duplication and promoting effectively the objectives of the present Protocol.

Article 32

The provisions of the present Protocol shall not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June

1977, nor the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

Article 33

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the present Protocol and the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act or situation that may occur prior to the date on which the denunciation becomes effective, or to the actions that the Subcommittee on Prevention has decided or may decide to take with respect to the State Party concerned, nor shall denunciation prejudice in any way the continued consideration of any matter already under consideration by the Subcommittee on Prevention prior to the date on which the denunciation becomes effective.

3. Following the date on which the denunciation of the State Party becomes effective, the

Subcommittee on Prevention shall not commence consideration of any new matter regarding that State.

Article 34

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the present Protocol with a request that they notify him whether

they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the

Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of the present article shall come into force when it has been accepted by a two - thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment that they have accepted.

Article 35

Members of the Subcommittee on Prevention and of the national preventive mechanisms shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions. Members of the Subcommittee on Prevention shall be accorded the privileges and immunities specified in section 22 of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, subject to the provisions of section 23 of that Convention.

Article 36

When visiting a State Party, the members of the Subcommittee on Prevention shall, without prejudice to the provisions and purposes of the present Protocol and such privileges and immunities as they may enjoy:

- (a) Respect the laws and regulations of the visited State;
- (b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

Article 37

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.

DECLARATION
of the Republic of Azerbaijan in respect of the Optional Protocol to the
Convention against Torture and other Cruel,
Inhuman or Degrading Treatment or Punishment

The Republic of Azerbaijan declares that it is unable to guarantee the application of the provisions of the Protocol in the territories occupied by the Republic of Armenia until these territories are liberated from occupation

REGULATIONS⁵⁰
of the Department for the Prevention of Torture
of the Office of the Commissioner for Human Rights (Ombudsman)
of the Republic of Azerbaijan

1. General provisions

1.1. The Department for the Prevention of Torture of the Office of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan (hereinafter “Department”) is a structural unit to organize the activity of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan (hereinafter “Commissioner”) as the national preventive mechanism provided for by the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

1.2. The Department is governed by the Constitution of the Republic of Azerbaijan and international treaties the Republic of Azerbaijan is a party to, Constitutional Law of the Republic of Azerbaijan on the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan, Labor Code of the Republic of Azerbaijan, Law of the Republic of Azerbaijan on Civil Service and other legislative acts, as well as, Regulations of the Office and regional centers of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan, Commissioners’ orders, decrees and instructions, and these Regulations.

1.3. The Department sets up its activity on the basis of the principles of respect for human rights and freedoms, publicity, transparency, legality, justice, impartiality, humanism, and confidentiality.

1.4. The Department performs assigned duties directly or through mutual collaboration with the other structural units of the Commissioner’s Office. The Department cooperates with other state bodies, municipalities, and local, regional and international organizations when performing its duties and exercising its rights.

1.5. The Department includes the Visits Unit and the Legal Analysis and Reports Unit.

1.6. The Visits Unit performs the duties specified in Clauses 3.1.1, 3.1.2, 3.1.6, 3.1.8, and 3.1.9 hereof and exercises the rights provided for by Clause 4 hereof.

⁵⁰ Approved by Decree No. 247 of 14 September 2012 of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan

1.7. The Legal Analysis and Reports Unit performs the duties specified in Clauses 3.1.3 –3.1.9 hereof and exercises the rights provided for by Clause 4 hereof.

1.8. The activity of the Department is financed and logistics are provided by the funds allocated for the operation of the Commissioner, its Office and regional centers from the state budget of the Republic of Azerbaijan and other sources as permitted by law.

1.9. The staff of the Department are members of the National Preventive Group for the Prevention of Torture under the Commissioner's Office.

2. Directions of the Department's activity

2.1. The directions of the Department's activity are the followings:

2.1.1. Organize the Commissioner's activities as the national preventive mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

2.1.2. Ensure the improvement of torture prevention activities;

2.1.3. Promote the prevention of torture.

3. Duties of the Department

3.1. The Department performs the following duties in line with the directions of its activity as defined herein:

3.1.1. Take actions to prevent torture, organize the Commissioner's regular or on-need-basis visits to the places which detainees are not permitted to leave at will and conversations with detainees;

3.1.2. Organize the work of the National Preventive Group for the Prevention of Torture under the Commissioner's Office, coordinate the work of its members, and maintain minutes of relevant meetings;

3.1.3. Prepare proposals and recommendation for sending out to relevant bodies or officials to prevent torture and other offences and eliminate reasons or conditions that have caused them;

3.1.4. Analyze the state of torture prevention – gain insight into the state of organization of undertaken activities and related experience, summarize the accomplishments made as a result of undertaken activities, analyze statistical data, and develop an annual report embracing relevant proposals;

3.1.5. Analyze, summarize and organize the application of the proposals submitted to improve the activities aimed at the prevention of torture;

3.1.6. Take actions to promote the prevention of torture;

3.1.7. Ensure that the Commissioner's relationships with other state bodies, municipalities, local, regional, and international organizations, and the general public are organized accordingly to prevent torture;

3.1.8. Ensure that the confidential information collected during the undertaken activities is not disclosed and personal information is not released without the direct consent of the relevant person;

3.1.9. Perform other duties as envisaged by law in line with the directions of its activity.

4. Rights of the Department

4.1. The Department possesses the following rights to perform its duties:

4.1.1. Freely choose establishments and persons for visits and conversations;

4.1.2. Obtain any information on the number of persons detained or otherwise deprived of their liberty, and the number and location of the places which persons are not permitted to leave at will;

4.1.3. Conduct surveys among persons detained or otherwise deprived of their liberty;

4.1.4. Submit proposals to the Commissioner for presenting recommendations to the relevant bodies or officials to immediately stop or prevent torture, and reasons and conditions that have caused such offences;

4.1.5. Prepare proposals and comments for the adoption or amendment of laws in order to more reliably ensure the prevention of torture, including draft laws submitted for the review of the Parliament (Milli Majlis) of the Republic of Azerbaijan;

4.1.6. Analyze the effective normative legal acts from the perspective of their compliance with the Constitution of the Republic of Azerbaijan and international treaties the Republic of Azerbaijan is a party to;

4.1.7. Prepare inquiries to be sent to the Constitutional Court of the Republic of Azerbaijan when necessary;

4.1.8. Learn and analyze the judicial practice on torture of the European Court of Human Rights and prepare relevant proposals;

4.1.9. Learn and analyze the judicial practice on torture of the Azerbaijani courts and prepare relevant proposals;

4.1.10. Learn and analyze the experiences of foreign countries in the field of torture prevention and prepare relevant proposals;

4.1.11. Hold conferences, seminars, round tables, public deliberations, and other events to promote the prevention of torture;

4.1.12. Publish and distribute books, brochures, booklets, leaflets and other awareness raising manuals to conduct legal education work with regard to the prevention of torture;

4.1.13. Deliver speeches on the prevention of torture in the mass media, at public deliberations or other events, the content having been approved by the Commissioner;

4.1.14. Exercise other rights as envisaged by law in line with the directions of its activity.

5. Organization of the Department's work

5.1. The units of the Department constitute a uniform system of the Department. The Department performs its activity directly and through these units.

5.2. The number of the staff of the Department is determined by the Commissioner.

5.3. The Department is managed by the Department Head who is appointed and dismissed by the Commissioner. The Department Head is personally responsible for the performance of the duties assigned to the Department and exercise of its rights.

5.4. The Department Head:

5.4.1. organizes the activity of the Department and manages it;

5.4.2. ensures division of work among the units included in the structure of the Department;

5.4.3. arranges and supervises timely and accurate implementation, by the Department, of the orders, decrees and instructions issued as provided for by law;

5.4.4. approves the drafts to be submitted to the Commissioner;

5.4.5. ensures that the activity of the Department is coordinated with the activities of the other structural units of the Commissioner's Office;

5.4.6. supervises that the staff of the Department follow the performance and labor discipline;

5.4.7. submits proposals for improving the performance of the Department, rewarding or punishing its staff;

5.4.8. implements the Commissioner's instructions;

5.4.9. performs other functions within his/her power.

5.5. The Department Head is supported by a deputy who is appointed and dismissed by the Commissioner.

5.6. The Deputy Department Head is personally responsible for the performance of the duties assigned to him/her and exercise of his/her rights.

5.7. The Deputy Department Head:

5.7.1. performs the duties assigned by the Department Head;

- 5.7.2. substitutes for the Department Head in his/her absence;
- 5.7.3. implements the instructions of the Commissioner and the Department Head;
- 5.7.4. performs other functions within his/her power.
- 5.8. A unit included in the structure of the Department is managed by the Unit Head who is appointed and dismissed by the Commissioner. The Unit Head is personally responsible for the performance of the duties assigned to the Unit and exercise of its rights.
- 5.9. The Unit Head:
 - 5.9.1. organizes the activity of the Unit and manages it;
 - 5.9.2. ensures division of work among the staff member of the Unit;
 - 5.9.3. arranges and supervises timely and accurate implementation, by the Unit, of the orders, decrees and instructions issued as provided for by law;
 - 5.9.4. approves the drafts to be submitted to the Department Head;
 - 5.9.5. ensures that the activity of the Unit is coordinated with the activities of the other units of the Department;
 - 5.9.6. supervises that the staff of the Unit follow the performance and labor discipline;
 - 5.9.7. submits proposals for improving the performance of the Unit;
 - 5.9.8. implements the Commissioner's, Department Head's and Deputy Department Head's instructions;
 - 5.9.9. performs other functions within his/her power.
- 5.10. The Department has advisers (leading adviser, senior adviser and head adviser; hereinafter "adviser") who are appointed and dismissed by the Commissioner.
- 5.11. An adviser is personally responsible for the performance of the duties assigned to him/her and exercise of his/her rights.
- 5.12. An adviser:
 - 5.12.1. takes necessary actions in line with the directions of the activity of the Unit he/she works for;
 - 5.12.2. ensures timely and accurate implementation of the orders, decrees and instructions issued as provided for by law;
 - 5.12.3 takes part at relevant visits and summarization of the results;
 - 5.12.4. develops relevant draft documents or reports or takes part at the development of such draft documents or reports;
 - 5.12.5. submits proposals for improving the performance of the Unit he/she works for;
 - 5.12.6. implements the Commissioner's, Department Head's, Deputy Department Head's, and Unit Head's instructions;
 - 5.12.7. performs other functions within his/her power.