

Compliance of the Republic of Azerbaijan with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment

**An alternative NGO report to the
UN Committee against Torture**

(30th session, 28 April – 16 May 2003)

**Prepared by the Azerbaijan Human Rights Centre
together with the International League for Human Rights
and the World Organization against Torture**

**BAKU
2003**

Table of Content

Executive Summary	2
Information on the actual implementation of the Convention, article by article	4
Article 1	4
Article 2	5
Article 3	8
Article 4	9
Article 5	12
Article 6	13
Articles 7-9	15
Article 10	15
Article 11	15
Article 12	18
Article 13	18
Article 14	19
Article 15	20
Article 16	20
Recommendations	21
A. Legislative measures	21
B. Institutional measures	21
C. Administrative measures	22

Executive Summary

Generally speaking, the recommendations of the Committee against Torture of 17 November 1999¹ and of the Special Rapporteur on Torture of 14 November 2000² have only been implemented by the Azerbaijani government in the area of legislation.

Thus, the adoption in 2000 of the Criminal Code saw the introduction of the concept of torture as a criminal offence. The Pardons Commission was instructed that torturers were not to be eligible for pardons. The procedure for the appointment of judges was changed, with a new division between powers of the courts and the procurator's offices in the authorizing of arrest, the maximum permissible period for detention without warrant has been cut, a number of investigative prisons (pre-trial detention facilities) have been transferred to the jurisdiction of the Ministry of Justice and several functional structures of the public prosecutor (prokuror) system have been abolished.

Even those largely cosmetic measures have only been implemented in a half-hearted way, however, rendering them ineffective in practice. Thus, the definition of torture in Azerbaijani

¹ Conclusions and recommendations of the Committee against Torture: Azerbaijan. 17/11/99. CAT/C/23/5.

² Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights resolution 2000/43. Visit to Azerbaijan. E/CN.4/2001/66/Add.1, 14 November 2000.

law differs to that in the Convention. The acts of torturers are categorized in such a way that they do not fall within the definition of torture and incur only light penalties. Many people who have been publicly accused by victims and by human rights defenders of practising torture continue to work in the law enforcement agencies. Officials of the public prosecutor offices, publicly accused of abuses, were laid off as a retrenchment of staff and have now taken new positions in the court system. One of the investigative prison remains under the jurisdiction of the Ministry of National Security.

In practice, even these legislative instruments have not brought about any measurable changes in the actual application of the law.

Thus, arrest as a preventive measure is practiced to an unacceptable extent in Azerbaijani criminal procedure. According to press reports and statements by the public, widespread use is made of the practice of planting narcotics, firearms and ammunition on suspects, which automatically guarantees the issuance of arrest warrants. In many cases, in order to extend period of detention without a court order, law enforcement authorities simply use administrative detention "for resisting the police".

Police holding cells (temporary detention units, IVS) continue to be used as investigative prisons and suspects held in IVSs much beyond the legally prescribed limits. There are continuing complaints by detainees of the use of torture, but these are widely ignored by the courts. Detainees are refused access to legal counsel.

Discrimination is openly practised against political detainees. While response measures might sometimes be adopted in ordinary cases where there is evidence of torture, there has never been any genuine inquiry in response to a public allegation of torture made by political detainees, nor has any culprit been punished. Worse still, complaints of torture lodged by political detainees are ignored, even when the alleged torturer is being punished for applying prohibited investigative methods in other, non-political, cases. This can be seen as a tacit policy to conceal torture in the interests of maintaining political stability.

The very fact that Azerbaijan has political prisoners, as established in October 2001 by experts delegated by the Secretary General of the Council of Europe³, casts into doubt the assurances given by the government of the impeccable standards and impartiality of its law enforcement and judicial authorities.

In the alternative report, we adduce as examples of torture only widely publicized cases which have already come to the attention of international organizations. Although, in March 2000, the Azerbaijani President ordered all allegations of torture contained in the reports of such international organizations as Amnesty International and Human Rights Watch to be investigated, this order has never been carried out.

The extradition procedure remains defective, as it still fails to accept judicial procedures and checks as legitimate reasons for fleeing a country, as well as the possible use of torture against the subject. This applies both to extradition from Azerbaijan and extradition to Azerbaijan, in cases where the other country is a member state of the Commonwealth of Independent States which has entered into mutual agreements on legal assistance. The situation has worsened considerably with the launching of the worldwide campaign against terrorism: aliens suspected of terrorism have been handed over to Arab countries which practice torture, lack due process and retain the death penalty.

³ SG/Inf(2001)34 / 24 October 2001. Cases of alleged political prisoners in Armenia and Azerbaijan. Information provided by the Secretary General.

The prison reform process is being held back by the country's social and economic problems. Notwithstanding the announcement in 2000 that Azerbaijan would strive to bring its detention practice into line with European standards, this goal is still far from being attained. Azerbaijan has been hampered in effectively pursuing the process of reforming civil society by its lack of a number of subsidiary laws. Censorship of prisoners' mail, applied without any limiting instructions, renders it virtually impossible for prisoners openly to file complaints against actions by the authorities.

The practices described above, which effectively ensure the impunity of torturers, render futile any legislative rules about paying compensation for harm caused by individual members of the investigative authorities, pre-trial inquiry authorities, procuratorial system, courts or prison administration, through the performance of unlawful acts.

Information on the actual implementation of the Convention, article by article

Article 1

The definition of torture⁴ first appeared in Azerbaijani law with the promulgation on 1 September 2000 of the new Criminal Code.

Thus, article 113, on the use of torture, mentions the "inflicting of physical pain or mental suffering on persons held in custody or subjected to other forms of deprivation of liberty." Article 133, on torture, talks of the "causing of physical or mental suffering through systematic beating or any other use of violence, unless this should have the consequences stipulated in articles 126 and 127 of the present Code", i.e., the deliberate causing of serious or moderately serious injury to health. Another form of torture, as described in article 133.3, is the performance of such acts "by, or at the bidding of, officials taking advantage of their official position with a view to extorting information from persons or forcing them to make confessions, or with the aim of punishing them for actions which they have committed or are suspected of having committed".

The notion of torture also appears in the section on military offences, in article 331.3, on the insulting, beating or torturing of military servicemen, which talks of: "The beating or torturing of subordinates by their superiors during or in connection with the performance of duties related to their military service".

Accordingly, the definition of torture in Azerbaijani law differs markedly from the definition provided in article 1 of the Convention, in the following respects:

1. In criminal law, no punishment is provided for torture committed "with the knowledge or tacit approval of an official" (officials are only punished for direct involvement in acts of torture or in their instigation);
2. If serious or moderately serious injury to health is caused as a result of the torture, it falls under other articles of the Criminal Code, which do not mention torture;
3. No penalty is provided for torture if it is a punishment for the actions of a third person or a means of intimidating a third person;

⁴ Azeri: "ishghendje" – torture.

4. Torture is not mentioned in the context of discrimination of any kind (for example, on the grounds of ethnic background, sexual orientation, etc.).

As a result, a number of situations which fall under the definition of torture in the Convention, incur no criminal liability.

While article 15 of the Code of Criminal Procedure does not define torture, it does enumerate specific situations of torture. This is the only article in Azerbaijani law which mentions the prohibition of "cruel, inhuman or degrading treatment and punishment", without any specific explanation of how such treatment and punishment differ from torture.

Article 2

In the process of revising the country's criminal law and criminal procedural law in September 2000, a number of formal preventive measures were officially established.

Thus, pursuant to articles 148.4 and 157.3 of the Code of Criminal Procedure, authorities responsible for detaining suspects may hold suspects for up to 48 hours prior to obtaining the approval of the judge for such detention and, and thereafter, if it is decided as a preventive measure to remand the suspects in custody, they are to be transferred to a remand centre within 24 hours.

In practice, however, it is common for suspects to be detained for longer than the prescribed period without being transferred to a remand centre. There are holding facilities in municipal police stations and in the anti-organized crime unit of the Ministry of Internal Affairs.

In a widely publicized case relating to mass disturbances in the village of Nardaran, on 3 June 2002, suspects incurred the following periods of detention: Seifulla Alizade spent 19 days detained in police headquarters in Baku; Mehman Hasymov, 20 days, also in Baku police headquarters; Agahusein Askerov, some 20 days; Hajibaba Ahmedov - 22 days; Hafiz Atakishev - 56 days; and Djebraïla Alizade was detained for 11 days in the holding cells of the Ministry of Internal Affairs' anti-organized crime unit. Even though these procedural violations were widely publicized, none of the persons responsible was punished.

Despite the prohibition of incommunicado detention, it is common practice for family members not to be informed of the place of custody of their relatives, which means that they have to make their own inquiries to locate such detainees.

Persons taken into custody have the right to see a lawyer, to have a lawyer present during questioning and to hold private meetings with the lawyer. In practice, however, keeping suspects in holding cells means that they can be questioned at night even without having been officially booked, since the investigators have their offices in the same buildings as these holding cells and the holding facility falls under the same authority as the investigators themselves.

In order to give the appearance of compliance with the rules, the investigating authorities often obstruct access to lawyers engaged by detainees' families, and instead assign "duty" lawyers, paid for by the State and often working hand-in-hand with the investigators. In such cases, despite the fact that no legal assistance has been provided, the investigating authorities ensure that the record of the questioning and other procedures indicates the presence of a lawyer.

In the Nardaran case mentioned above, only four of the 15 suspects had lawyers engaged by their

families.

Medical examinations of detainees may only be conducted by decision of the investigating authority and by a commission appointed by the State. Often the authorities deliberately delay the decision to conduct an examination, even where there are obvious signs of torture, or ensure that the forensic medical examination reaches a finding directly contrary to that reached by civilian doctors.

For example, Alikram Allahverdiev, one of those arrested in the Nardaran case and taken into custody in June 2002, had been diagnosed as long ago as 1984 as severely mentally handicapped. Despite demands by his lawyer and by the detainee himself that a judicial psychiatric examination should be conducted, this was only carried out some five months later. The finding of the examination was that he was only mildly mentally retarded, even though the examination report referred to the 1984 finding, which directly contradicted it. Despite this blatant discrepancy, this mentally ill person was kept in detention.

The subordinate status of prison doctors and of police officers appearing as witnesses clearly militates against the objectivity of their testimony. Failure to comply with the orders of a superior is a criminal offence under articles 328 and 329 of the Criminal Code.

Legislation enacted in Azerbaijan designed to provide legislative safeguards against abuses by the law enforcement bodies are not subject to scrutiny by local independent lawyers and non-governmental organizations. As a result, Parliament is constantly having to review them in the light of recommendations by the Council of Europe. Thus, for example, the Lawyers and Legal Profession Act and the Code of Criminal Procedure, which have been subject to scrutiny by the Council of Europe -- but not by local experts -- are currently being revised.

In August 2002, following a referendum, the Constitution was amended, to enable individual citizens to appeal to the Constitutional Court. But no corresponding amendment has been made to the Constitutional Court Act, with the result that such appeals are not considered.

Following the same referendum, amendments were made to the Constitution regarding the creation of an ombudsman's office in Azerbaijan. The ombudsman has the right to intervene in situations involving human rights violations. In particular, between December 2002 and February 2003, the ombudsman visited several prisons and held meetings with convicts.

The two-stage election of judges, based on the presidential decree of 17 January 2000 on improving the rules for the selection of candidate judges in Azerbaijan, leaves loopholes by which this selection process is open to abuses. Even though the examinations themselves were fairly transparent and objective, the oral interviews introduced a subjective element into the exam process and it was at that stage, as we have been informed, that undesirable candidates were weeded out.

The Courts and Judges Act, adopted on 10 June 1997, fails to list among the grounds for stripping judges of their powers the handing down by such judges of knowingly unjust verdicts, findings, determinations or decisions. Under article 295 of the Criminal Code, such actions are criminal offences punishable by deprivation of liberty for terms of between five and eight years. This state of affairs renders article 295 of the Code null and void and exonerates judges from any liability for unscrupulous conduct.

The much vaunted "substantial renewal" of the composition of the country's benches was achieved by appointing former members of the procuratorial system who had lost their jobs

because of the judicial and legal reforms. As a result, the judges profession has now been enriched with new members who have distinguished themselves in the past through their abuses of human rights.

There are also problems with the activities of lawyers trying to defend detainees. Thus, until the entry into force on 28 December 1999 of the Lawyers and Legal Profession Act, any qualified lawyer was able to defend the interests of citizens in both civil and criminal proceedings. As things stand today, however, only members of the bar can act for the defence in criminal cases and the numbers of such members is manifestly inadequate. Given the effective monopoly of the bar, its members have not had to take the qualifying exams stipulated under article 13 of the new act, nor are new members being admitted to the bar.

This situation has led to an increase in the fees charged by private lawyers. At the same time, those lawyers assigned by the State and providing free services, receive very low fees, approximately \$0.30 per hour, which means that this work is considered lacking in prestige and renders them vulnerable to corruption. During the first days of custody or detention, unscrupulous investigators or officials conducting the initial inquiry, taking advantage of the ignorance of the law by the general public, try to persuade detainees or persons under investigation either to decline the services of counsel (for example, by threats or by assuring them that they will be unable to afford such services) or try to foist on them their own "duty" lawyers, provided at no cost, who effectively work for the prosecution.

As part of the reform of the penitentiary system, the President adopted a decree on 9 October 1999 transferring all three remand centres of the Ministry of Internal Affairs to the jurisdiction of the Ministry of Justice. For some unknown reason, however, the remand centre of the Ministry of National Security, where citizens are held in cases under the investigation of that Ministry, was not transferred to the Ministry of Justice. This means that this custodial facility remains under the jurisdiction of the same ministry which is conducting both the pre-trial investigation and the judicial examination, and is housed in the same building as the investigators' offices. The recommendation by the Special Rapporteur on torture of the United Nations Commission on Human Rights, Sir Nigel Rodley, following his visit to Azerbaijan on 7-15 May 2000, that this prison should no longer be used, has not been followed.

The new Criminal Code, which entered into force on 1 September 2000, contains a large number of ambiguities and references to subsidiary laws and regulations which have not in fact been adopted. For example, the procedure for access to custodial facilities by non-governmental organizations, guaranteed under article 20 of the Code, has not been established, nor have the principles governing the censorship of detainees' correspondence (article 88 of the Code) been clarified. This creates difficulties for human rights defenders wishing to visit them on a regular basis and restricts the freedom of detainees to lodge complaints.

Notwithstanding the fact that, under article 66 of the Constitution and articles 95 and 96.4 of the Code of Criminal Procedure, no one may force witnesses to give testimony or to provide materials and information which may incriminate either themselves or members of their family, such pressure is still applied.

Thus, in the Nardaran case mentioned above, following the arrest on 20 September 2002 of Djebraïl Alizade, the very next day three of his relatives, including his son Nadir Alizade, were taken into administrative custody when they came to the anti-organized crime unit to bring food for Djebraïl Alizade. At a press conference held on 30 September, Nadir Alizade said that he had been beaten up, following which he had been forced to sign a statement denouncing the village elders of Nardaran and his own father. According to Nadir Alizade's statement, however,

the relevant in-house inquiry was never conducted.

Generally speaking, no single inquiry has ever been held in response to any public claims of torture inflicted on political detainees, nor has any punishment been handed down on those responsible, despite the instructions given, in March 2000, by the Azerbaijani President that all reports of torture submitted by a number of international organizations should be investigated. Furthermore, complaints of torture made by political detainees are ignored even when the supposed torturer is being punished for the use of inadmissible investigative methods in other cases, which are not of a political nature. This may be seen as a tacit policy to conceal torture in the interests of maintaining political stability.

Article 3

Extradition decisions are not taken by the judicial authorities, but by the procurator's offices and, since June 2001, the Ministry of Justice, in response to a request from the country whose citizenship the suspected person holds and, in theory, following an analysis of other information. The specific circumstances surrounding terrorism cases are such, however, that Azerbaijan is only able to receive information in any given case from one side. As for the need to take into consideration whether torture is applied in the requesting country and whether, for that reason, there can be no extradition, in practice, the Azerbaijani authorities ignore the well substantiated reports by international organizations of torture in Egypt and Turkey and the refusal by other member countries of the Council of Europe to hand over the citizens of these countries.

At the same time, pursuant to the Handing Over (Extradition) of Persons Committing Offences Act, extradition is to be refused for a number of reasons, including:

- if the offence on which the extradition request is based is categorized in Azerbaijan as a political offence;
- If there are sufficient grounds to suppose that the person being handed over will be subjected to torture or other cruel or degrading treatment or punishment in the requesting country;
- If there are sufficient grounds to believe that the person being handed over will be subjected, in the requesting country, to persecution on racial, ethnic, linguistic, and religious or sexual grounds or for reasons of citizenship or political views;
- If the offence on which the extradition request is based was committed outside the requesting country and if such offences do not incur criminal liability under Azerbaijani law.

In practice, however, the arrangements for the extradition both from and to Azerbaijan of persons suspected of committing offences do not conform to international standards, particularly where accusations of terrorism are involved. Thus, Fuad Alekserov, chief of the division in the President's executive office responsible for cooperation with the law enforcement authorities, announced on 22 October 2002 that, following the events of 11 September 2001, the Azerbaijani special services had arrested and extradited more than 30 aliens accused of links with terrorist organizations.

Eight of these persons, accused of belonging to the international terrorist organizations "Al-Qaeda", "Al-Jamaat-ul-Islam", "Al-Wa'ad" and "Jihad", were handed over to Egypt, which retains the death penalty and is routinely accused of practising torture. All the arrests and

extraditions were carried out in strict secrecy, with no judicial procedure to verify the charges and without informing the press even of the names of the persons being extradited. On 9 September 2002, one of the extradited Egyptians, who also holds Canadian citizenship – Abdel Rahman Fahri - was sentenced to three years' deprivation of liberty in a case involving 94 members of the organization "Al-Wa'ad" ("The Promise"). Under Egyptian law, there can be no appeal against the verdicts of military courts and only the President can set aside or review a decision.

In June 2002, the Azerbaijani Ministry of National Security announced that 33 members of the Kurdistan Workers Party (PKK) had been arrested in Azerbaijan over the past few years. Of these PKK members, according to information at the disposal of the Azerbaijani Human Rights Centre, only 15 -- including two Azerbaijani citizens -- are currently languishing in Azerbaijani jails, while the rest have most probably been handed over to their countries of citizenship, including Turkey, which has lost several human rights cases in the European Court involving torture and other abuses inflicted on PKK members.

The Azerbaijani press, citing United States sources, announced in June 2002 that members of international terrorist groups accused of financing terrorist organizations and holding a variety of citizenships had been detained and handed over to the United States, which, in turn, had supposedly handed them on to third countries.

The procedure applied in Azerbaijan for the extradition of persons accused of offences in politically sensitive cases more or less rules out the possibility of any effective legal assistance and defence, redress or review.

Thanks to a system of bilateral and multilateral agreements, the jurisdiction of the Azerbaijani authorities also extends to its own citizens who have committed offences in Azerbaijan and gone into hiding in other countries. In such cases, priority is given, in countries of the Commonwealth of Independent States, to bilateral treaties and a blind eye is turned to the persecution of suspects which may be politically motivated, as well as to the possible use of torture. At the same time, Azerbaijan justifies the need to hand over these persons by citing ordinary criminal offences that they have allegedly committed.

For example, following a fast-track procedure in 1996-1997, persons were handed over to Azerbaijan who were subsequently -- in 2001 -- recognized by the Council of Europe as political prisoners. They included a former minister, Rahim Hazyev, who had been sentenced to death in absentia (pilot case No 3), former Prime Minister Suret Huseinov (case No 17), and former presidential adviser Adil Dajiev (case No 8). When police colonel Natig Efendiev was being handed over from Turkey in 2000 (case No 7), the Azerbaijani government informed Interpol but omitted to include in the extradition report the political grounds on the basis of which Natig Efendiev had been sentenced in 2001 to life imprisonment. Further such cases have been attested after the period under review as well. There are grounds to believe that at least some of these people have been subjected to torture.

Article 4

Despite the existence in Azerbaijani criminal and criminal procedural law of provisions relating to the prevention and punishment of torture, the actual application of these provisions and the general approach of the authorities to the investigation of reports of torture are half-hearted, characterized by double standards and an anxiety to protect the positive image of the law enforcement authorities to the detriment of the exercise of justice. Thus, in recent years, there have been a number of cases of violent death in detention where the victims appear to have been

tortured or driven to suicide. In all these cases, however, the inquiries have been conducted in such a manner as to exonerate any possible culprits.

Thus, on 19 January 2001, in the town of Gäncä, a 30-year-old man, Aidyn Hasanov, was detained on suspicion of the illicit possession of narcotics. He was placed in the cells of the local anti-organized crime unit. Five days later, his health took a sudden turn for the worse, he was promptly discharged and he died two days later. To date there has been no indication of who was responsible for his death.

During the night of 12/13 May 2001, Ilqar Djavadov, a 28-year-old engineer in the department of foreign commercial relations of the Azerbaijani state oil company, was stopped by the police after he was heard talking in a loud voice with his wife while waiting on the street for a taxi. When he proved to have no identity papers on his person, he was escorted to police station No 9 in Sabail district in Baku. Even while placing him in their car, the police officers insulted and slapped him. His wife was advised to pay a bribe at the police station. When a friend of his went to the police station, however, he found that Djavadov was already dead, with four broken ribs, a broken neck and arm and a fractured skull. The police informed him that Djavadov had supposedly asked to go to the lavatory and had tried to escape through the lavatory window, but had misjudged the distance and fallen from the second floor.

Criminal charges were laid against the three police officers who had escorted Ilqar Djavadov to the police station for action ultra vires involving the use of force (article 309.2 of the Criminal Code). They were later freed and they continue to work in the police. Proceedings were brought against the former chief of police station No 9, Major Farhad Mamedov, who was charged under article 314.2 of the Criminal Code (dereliction of duty). Shortly thereafter, he was discharged from the police and, in 2002, several attempts were made to dismiss the case. The Djavarov family lawyer states that, in 2003, Farhad Mamedov was finally sentenced to two years' deprivation of liberty. The family has filed an appeal, challenging the sentence, but the fate of the appeal was not known at the time of preparation of the present report.

Beyliar Huliev, manager of a musical group, was invited on 18 April 2002 to appear before the detective team under the Azerbaijani procurator's office tasked with investigating the murder of the chief of the criminal offences division of the state procurator's office, Rovshan Aliev. Instead of questioning him, however, they escorted him into the police station and the Sabail court sentenced him to an administrative penalty comprising ten days' deprivation of liberty. After his return to the procurator's office, he was subjected to questioning and a short time later he fell out of a window and died. Criminal proceedings instituted on 20 April under article 125 (driving a person to suicide) were dismissed on 20 June for lack of evidence that an offence had been committed.

A 42 year-old man, Umureddin Alimov, was taken on 24 November 2002 to police station No 19 in Nasimi district in Baku, on suspicion of having committed an offence. Three hours later he was recorded as having died in his cell -- the official reason given that he had hanged himself by his own trousers. The police treated the case as suicide and, to date, there is no information that anyone has been punished.

In all known cases of torture, notwithstanding clear signs of physical or mental torture and the gravity of the consequences, no criminal proceedings have been instituted on suspicion of torture.

Under article 206 of the Code of Criminal Procedure, reports in the media of the commission of an offence may serve as grounds for the institution of criminal proceedings. After the lifting of

ensorship of the media in August 1998, such reports have become frequent, yet, as a rule, they are not taken up by the procuratorial authorities.

Thus, in August 2002, one Selif Alizade, under investigation in the Nardaran disturbances cases of three June 2002, was admitted to hospital with heart failure and nearly died. After his release on 22 August, he announced at a press conference that he had been subjected to psychological torture. When he was cut off from his family, with no defence counsel, the old man was informed that, during the riots, many of the village inhabitants, including his own family, had been killed and that he, as a village elder, bore moral responsibility for them and should therefore confess that he had been behind the disturbances. Despite the fact that his psychological torture had almost caused the prisoners death, no criminal proceedings were instituted in response to this public declaration and no culprits were brought to justice.

In November 2002, the report of the independent public commission of inquiry into the Nardaran events was published, concluding that there had been multiple abuses by police officers, including cruel treatment and torture. The need for an independent inquiry had been dictated by the obvious bias of the investigative authorities. Even before these materials were published, however, the procurator's office announced that it would not take his into consideration, as it had not been the body responsible for collecting the evidence.

In January/February 2003, when the court case started, several inhabitants of Nardaran filed reports of torture while in police custody. For instance, Mirzag Movlamov, taken into custody after being injured, stated that he had been subjected to torture while in police custody, so as to force him to incriminate himself and falsely to testify that he had been injured not by a police bullet, but by a stone thrown by other villagers.

In 2000 and 2003, there have been numerous press reports of torture and cruel treatment, exposing detainees to the risk of infection, refusing medical assistance, serving food unfit to eat and other abuses inflicted on prisoners on death row in Bail prison during the period 1994-1998. Two-person cells were used to hold as many as 5-8 people. As a result, at least 72 death-row prisoners died, and their names are known to the Azerbaijani Human Rights Centre, while, according to official records, only 20 such prisoners died. These statements too have not been investigated.

On numerous occasions, when opposition rallies and demonstrations were being broken up by the police with the excessive use of force and subsequent torture of detainees, the opposition has held press conferences, displaying clear evidence of such torture and publishing reports to this effect in the press. For example, on 16 February 2002, several hundred members of the youth wing of the Democratic Party attempted to hold an unauthorized rally in the centre of Baku. The police dispersed the participants, using truncheons. In the process, three participants received serious injuries inflicted by the police and one, Sohbat Kalbaliev, chair of the Sumgait branch organization, was admitted to hospital with head injuries.

Immediately prior to and during the opposition demonstration on 23 March 2002, the police detained a group of activists. Among them, one Zakir Beidulla was detained on 22 March by officers of the fourth division of Binagadi district police headquarters in Baku. Nine days later, on 31 March, he was admitted to hospital in a serious condition. He maintains that he was twice beaten up in the police station, causing the rupture of his stomach muscles. This beating cannot be ascribed to the police action in breaking up the demonstration, as this opposition activist was taken into custody one day before the demonstration took place. His complaints were ignored and he was refused medical assistance. Only after he declared a hunger strike did a doctor appear, who found that he urgently needed surgery. Visiting Mr. Beidulla in hospital, police

officers threatened him and warned him not to give evidence. Even after he had made public statements, naming his supposed torturer, no criminal proceedings were initiated.

Still worse, doctors often refuse to certify traces of torture and other injuries, for fear of being subjected to police pressure. The participants in the Nardaran events extensively came up against this barrier, when, after rendering first aid, medical personnel refused to issue documents certifying that they had received gunshot wounds and attesting to the severity of their injuries.

Attempts by political prisoners to lodge complaints of torture and ill-treatment are particularly doomed to failure.

There is evidence that a number of high-ranking officials in the investigative services were dismissed and taken into short-term detention, following abuses of their official position, in some cases involving the torture of former suspects under investigation. They all received short sentences, however, under relatively "light" articles of the Code and were then set free.

The statement by the President in response to calls for the resignation of the Minister of Internal Affairs, Ramil Usubov, are worth citing in this context. Noting Mr. Usubov's role in stabilizing the country's social and political situation and ensuring the extradition of criminals from Russia, the President said: "So long as I am around, Ramil Usubov will also be around. I trust him now and will always trust him"⁵

Article 5

Bilateral treaties on mutual legal aid are used to secure the extradition to Azerbaijan of suspected torturers, although such cases are few and far between.

Thus, citing the bilateral treaty with Russia, in 2000, the Azerbaijani authorities arranged for a former member of the country's procuratorial system to be arrested in St Petersburg and extradited to Azerbaijan. He had gone into hiding in St Petersburg after an incident involving torture in police station No. 17 in Nariman district, leading to the death of Djamal Aliev, suspect in an attempted murder case. It is revealing that, after the detainee's death, no criminal charges were laid against this official for eight entire months, and two official expert analyses found that the victim's death had been caused, not by torture, but by heart failure. In May 1998, four police officials received sentences in connection with this case, after being charged with causing grievous bodily harm. To date, however, no one has been punished under criminal law for falsifying the results of the expert analyses and concealing the crime.

When application was made for the arrest and extradition from Turkey of the former police chief of Găncă city, Colonel Natig Efendiev, information about his involvement in the practice of torture in the city's police service was used to substantiate the request for his search and arrest. When he was summoned on 24 December 1997 by the Minister of Internal Affairs, he had taken fright and fled to Turkey, where he became involved with the opposition. Following his arrest, however, political charges were added to the criminal charges already filed against him (complicity in plotting the overthrow of the state), and the practice of torture no longer featured among the charges considered by the court, notwithstanding the large number of depositions by political prisoners alleging the use of torture against them following the massive wave of arrests in 1994 during his tenure as chief of police in Găncă.

It should be recalled that, when acceding to various international treaties, primarily the European conventions, Azerbaijan has posted the reservation that, until such time as the territory occupied

⁵ Reported in the newspaper *Zerkalo* on 11 May 2000.

by Armenia is liberated, it cannot undertake to ensure that the relevant rights and freedoms are upheld in the territory. Some 20 per cent of Azerbaijan's territory is effectively excluded from its own jurisdiction and other legislation, based essentially on Soviet standards, applies in those areas. International human rights organizations have recorded instances of torture and cruel treatment of detainees and convicts in Karabagh. Azerbaijan has no possibility of influencing the situation, however, and local human rights defenders and journalists who remark on these practices are accused of being "unpatriotic".

Article 6

There is unjustifiably wide practice in Azerbaijan's criminal procedure of short-term detention as a preventive measure. Since, under article 155.3 of the Code of Criminal Procedure, short-term rigorous detention may be imposed on persons who, under law, may be subject to terms of imprisonment of above two years for the commission of a given offence, the practice of planting narcotics, firearms and ammunition on such suspects is widespread. This guarantees that approval will be granted for a custodial order, on the grounds that the alleged offence poses a danger to society. The reality on the ground in Azerbaijan is such, however, that any persons daring to lodge complaints against the police or refusing to pay a bribe at the police station run the risk of having drugs planted on them.

Another typical stratagem used not only to get people taken into detention, but also unlawfully to extend such detention without a court order, is the use of administrative detention for periods of up to 15 days, for "resisting the police". While the suspect is serving what in theory is an administrative penalty, procedures which are strictly part of the criminal process are conducted: the suspects is paraded before witnesses for them to identify, questioned, etc. The witnesses in such cases are, more often than not, themselves policemen.

For example, on 3 June 2002, in the so-called Nardaran case, arrest warrants were only issued for three of the eight detainees already taken into custody by the Sabunçu district procurator's office. The others were detained on administrative charges, although their advanced age and high standing in the community excluded in the possibility of them committing offences in the procuratorial premises to which they had been brought, ostensibly for interviews. Subsequently, most of the "administrative detainees" were taken into criminal detention, without first being released.

Farida Kungurova, an opposition activist with the Azerbaijani Democratic Party, was taken into custody on 24 April 2002, the day before an opposition rally. The following day, the preventive measure applied against her was changed to detention in connection with the criminal offence of disturbing the peace, with which she had been charged in 2001, and she was thenceforth held in criminal detention. Prior to her arrest, the Nasimi district chief of police announced on television that she was an ethnic Armenian and he made insulting remarks about her party. Council of Europe rapporteurs insist that her detention is politically motivated and are calling for her to be released.

If suspects are taken into custody while away from their place of residence, there is little likelihood that their relatives will be promptly informed of such action or of their whereabouts. Cases have been published in the press and investigated by human rights defenders where family members, who through their own channels have found out where such suspects are being held, have come to the detention facility to ascertain the reasons for their relatives' arrest and to bring them food, only to be themselves taken into administrative detention and even to have criminal charges laid against them.

This was what happened to three relatives and neighbours of Djibrail Alizade, one of the Nardaran detainees, when, on 21 September 2003, they went to the remand centre of the Ministry of Internal Affairs anti-organized crime unit to bring packages to the detainee and were themselves taken into detention by the police. These relatives, Nadir Djibrail-oglu Alizade, Novruzali Nurali-oglu Alizade and Farman Rahman-oglu Djibrailov, were ordered to serve ten days' administrative detention. Under public pressure, they were released early, after seven days. Two other relatives were released a few hours later and one of these was examined by an independent expert, who found evidence that he had been beaten.

In the practice of upholding human rights in Azerbaijan, the principal role is played, by and large, not by the Constitution and the law, but by instructions, statutes and other subsidiary legislation. Thus, pre-trial detention is regulated by the police holding facilities statute and the instructions on remand centres. During the period since the submission of Azerbaijan's initial report, both these instruments have recently been succeeded by new versions.⁶ Because of their bulk and the fact that they are not laws or decrees, these and other comparable instruments are only published in official gazettes and are virtually unknown to the general public, opening the door to continued and frequent violations of their rules.

Thus, paragraph 1.3 of the remand centre instructions states that suspects and accused persons may be held in temporary remand centres for up to ten days in exceptional circumstances only, as specified in the Code of Criminal Procedure. In the event that judges choose short-term detention as a preventive measure, article 157.3 of the Code of Criminal Procedure expressly requires the detainees to be transferred from the police holding facility to a temporary remand centre within 24 hours. In practice, however, and in direct breach of the law, detainees are held in police lock-ups for the entire ten-day period of their questioning (see article 214 of the Code of Criminal Procedure), as was the practice prior to the adoption of the new Code in 2000. Even this long established practice is often breached and detainees are held in police lock-ups for more than ten days (see comments under article 2 above).

In practice, when detainees are being held in the police lock-ups, the provisions of article 161 requiring family members and lawyers to be notified promptly at the request of the detainees, are also widely flouted. This leads to situations where people simply "disappear".

For example, on 8 May 2001, news came to light that three gay prostitutes had disappeared in Baku. Officers from police station No. 9 in Sabail district, posing as clients, had lured them from their homes and taken them into administrative detention. When relatives went to the police, they were given false information about their whereabouts, while in actual fact they were unlawfully detained for 15 days in the cells at Baku police headquarters, where they were subjected to insults on the grounds of their sexual orientation.

Notwithstanding the fact that article 161 requires those in charge of remand facilities to ensure "unimpeded access by defence lawyers" to detainees, in actual fact a mere identity document and letter from a lawyer's office are insufficient for this purpose: the authorities responsible for the detention or the investigation also have to give their written consent. During the initial days of detention, however, those responsible for issuing such permits go out of their way to avoid the lawyers.

We might also note that people arrested or taken into custody by the Ministry of National Security are in more or less the same boat as people held in police lock-ups. The temporary

⁶ E.g., the new "Instructions on the rules for the holding and supervision of persons detained in the temporary remand centres of the police authorities" were approved by the Ministry of Internal Affairs on 6 Nov 2001 and registered by the Ministry of Justice on 15 November 2002.

remand centre of the Ministry of National Security is situated in the same building and falls under the same jurisdiction as the investigators' offices. To illustrate the extent to which the administration of the temporary remand centre is controlled by the Ministry of National Security, in September 1994 an oral instruction by the Ministry to the remand centre's duty officer was sufficient to secure the release of four citizens accused of committing particularly serious offences from the remand centre, which happened to be in the Ministry building.

Articles 7-9

The Azerbaijan Human Rights Centre has no knowledge of cases of aliens guilty of practising torture in other countries being extradited from Azerbaijan or of Azerbaijani citizens guilty of committing such offences in other countries receiving convictions. This causes one to wonder about the effectiveness of the legal mechanisms provided for such cases under domestic law and international treaties.

Article 10

In 2002, through the agency of the Office of the United Nations High Commissioner for Human Rights, the Istanbul Protocol and the standard manual on human rights for the police were translated and published. Besides the police officers for whom these publications were intended, some copies were also distributed to non-governmental organization activists and to the training and further training centre for the staff of penitentiary facilities and remand centres.

In September 2001, the Ministry of Justice chief directorate for the enforcement of judicial decisions signed protocols on cooperation with three non-governmental organizations: the Amnesty International Azerbaijan initiative group; the Azerbaijan Human Rights Centre; and the "El" programme centre. These protocols include paragraphs on cooperation in human rights education both for detainees and for facility staff, on the development of programmes for the training centre of the Ministry of Justice chief directorate, and on the provision of additional materials for prison libraries and the library of the training centre.

Under this agreement, the Azerbaijan Human Rights Centre and the Amnesty International Azerbaijan initiative group handed over some 1,000 volumes to the libraries of various establishments under the chief directorate. In 2002, the El centre conducted a series of seminars for prison doctors.

Copies of the "Detainees' handbook", published with assistance from the Human Rights Centre, are placed in the cells of remand centres and the libraries of correctional colonies, for the information of all inmates of such facilities.

Article 11

Since the launching of the prison reform process in early 1997, there has undeniably been a substantial overall improvement in detention conditions in custodial facilities. This process has been further boosted by Azerbaijan's cooperation with the Council of Europe, in particular, since 2000.

In a country gripped by economic stagnation and host to some 800,000 refugees and internally displaced persons, however, the idea of making large investments in a prison system remains unpopular. Accordingly, improvements in the legislative framework are not always accompanied by corresponding changes in practice.

The new Penal Enforcement Code, which entered into force on 1 September 2000, doubles the minimum living space for all convicts, from 2 sq m to 4 sq m. In practice, however, this drastic increase in living space standards can only be obtained by doubling the number of prisons or by halving the number of prisoners, neither of which has happened. Accordingly, these new prison standards have not been implemented throughout the country and serve only as a guideline for the construction of new prisons (such as the new blocks in Gobustan prison and Shuvelyan remand centre No 3, the special corrective colonies for prisoners with tuberculosis and other new corrective colonies).

In some facilities, such as the Bail and Gäncä remand centers and the old blocks in Shuvelyan remand centre, where, under the new legislation, each prisoner should have 4 sq m living space, often even the old, Soviet minimum of 2.5 sq m per prisoner is not observed. Following the reforms, however, nearly all prisoners in remand centres now have their own bunks, lighting and ventilation facilities have been improved and the use of electrical appliances is permitted.

None of the country's lifers has yet benefited from the improved detention facilities for prisoners who have already served 10 or more years of their sentence (there are about 10 such prisoners in Azerbaijan). Virtually none of them have been given any work to do, although this possibility is provided for in the Penal Enforcement Code.

Under the existing daily routine, in which exercise starts at 10 am and continues until 1-3 pm, it is technically not feasible to provide exercise facilities for lifers for the full hour to which they are entitled. In a standard prison block, there are four exercise yards for every 40 cells. To cater for all 40 cells, a total of 10 hours would have to be allocated for exercise, while in reality the amount of time available is less than half this.

After the attempted breakout from Gobustan prison in 1999, which took place at night, there is a new regulation for cell doors to be locked overnight. In theory, in order to open the door of the cell, in the event, for instance, of an attempted suicide or medical emergency, senior prison authorities, who live far from the prison, have to be summoned in order to open the safe and retrieve the necessary keys. What happens in practice is that the doors are simply left locked until the morning, in consequence of which there have already been several fatal accidents during the night.

The introduction in the Criminal Code of new, alternative punishments of a non-custodial nature has not, as yet, led to any significant change in judicial practice. Short-term detention continues, without justification, to be frequently applied as a preventive measure and deprivation of liberty as a punishment.

In turn, the eagerness of the investigative authorities to take suspects into custody and to keep them in isolation leads to a variety of abuses designed to ensure that judges will grant arrest warrants. In addition to being charged for their primary offences, suspects are subject to such practices as the planting of drugs, firearms or ammunition.

As things stand, pressure on places in custodial facilities is relieved by the granting of amnesties, pardons and early releases.

The pardons procedure has undergone some major negative changes in the new statute on pardons, issued on 18 July 2001:

1. Where previously pardons could be granted on the application of relatives or voluntary associations, they now require a personal plea by the sentenced person. This

innovation has effectively ruled out the possibility of pardons for those prisoners, including political prisoners⁷, who will not file applications for such pardons;

2. Where previously a plea for pardon could be filed immediately after a sentence handed entered into force and could be resubmitted at periodic intervals, prisoners may now only apply for pardons upon completion of between one-third and one half of their sentences and those serving life sentences upon completion of 10 years of deprivation of liberty.

For example, after June 2001, prisoners formally on death row, who had previously submitted pleas for pardon every year, were no longer permitted to submit such pleas. Formerly there had even been cases when prisoners on death row had been pardoned as late as the year in which their sentence was to be carried out. There is a view among some human rights defenders that this obstacle placed before lifers has been specially designed to ensure that political prisoners, most of whom received their sentences after 1996, remain behind bars.

As a rule, political prisoners are not released on parole. Most of them received sentences ranging between seven and 12 years and, in other circumstances, they could have been paroled after serving up to two thirds of their sentences. According to the calculations by the Azerbaijan Human Rights Centre, more than 120 political prisoners, who might otherwise have been released on parole in accordance with general practice, have been subject to this form of discrimination.

Political prisoners, with a few rare exceptions, are not included in amnesties. This is because the indictment articles to which amnesties apply are carefully selected, so as to exclude any political prisoners, even though there may be only a very small number of political prisoners among those indicted under a given article.

Following Azerbaijan's ratification of the European Conventions in 2002, a mission from the European Committee for the Prevention of Torture visited the country between 24 November and 6 December 2002, with the aim of checking the conditions of police detention, remand centres, the treatment provided to tuberculosis-suffering prisoners and those with psychiatric disorders and the conditions in military prisons (guardrooms).

With effect from 2000, the International Committee of the Red Cross (ICRC) has the right of unimpeded access to the country's detention facilities. ICRC gathers information on the conditions in which persons are held in custody following remand, arrest and imprisonment and the treatment accorded to them and passes this information on to the prison administration with a view to encouraging improvements in the situation.

In 2002, the post of ombudsman (human rights commissioner) was established in Azerbaijan. The ombudsman also has the right to visit prisons. The person appointed to the post in 2002-2003, Ms Elmira Suleimanova, has already visited several prisons and held meetings with a number of prisoners, including lifers and political prisoners, and has received complaints from them.

There are four local non-governmental organizations which regularly carry out visits to penitentiary facilities. Under article 20 of the Penal Enforcement Code, voluntary associations have the right "to take part in the correction of convicted persons and to exercise public monitoring of the work of facilities and authorities responsible for enforcing penalties." Over

⁷ A number of Council of Europe documents, such as SG/Inf(2001)34 / of 24 October 2001 and PACE resolution 1305 (2002), recognize that there are political prisoners in Azerbaijan.

the more than two years that have elapsed since the entry into force of the Code, however, no departmental instruction has been adopted which, in terms of article 20.2 of the Code, is required to stipulate the arrangements for access by these organizations to penitentiary facilities.

In 2002, non-governmental organizations which had already concluded cooperation agreements with the chief directorate for the enforcement of judicial decisions prepared a draft statute on a public council for the oversight of penitentiary facilities and submitted it to the chief directorate. This draft statute was still under consideration at the time of preparation of the present report.

Article 12

As a rule, detainees avoid lodging complaints about torture until the investigative phase is over, during which access to them by lawyers and members of their family is controlled by the investigating officer. Exceptions to this occur when suspects under investigation are assigned, at an early stage, trustworthy lawyers, chosen by themselves or by members of their family. In some cases people held in detention have secretly conveyed reports of torture to the newspapers.

Usually, however, complaints of torture are made during public trials. These are usually simply ignored by judges or a perfunctory invitation is issued to the investigator to appear in court and he merely denies that any unauthorized methods of interrogation were used.

A formal inquiry is only conducted in the event of the death of a detainee or person under investigation. Even in such cases, however, the official finding is couched in such a way as to avoid imposing any penalty or to minimize such penalties on the torturers (see comments above under article 4 of the Convention).

Article 13

The main obstacle to the submission of complaints is posed by the continued practice of censoring all prisoners' correspondence. Although it might be assumed that sealed envelopes containing complaints and addressed to official bodies will not be opened, in practice, even such complaints are scrutinized.

The submission of complaints through unofficial channels sometimes results in the rejection of the complaints, since the complainant's signature has not been certified with the prison stamp. This was the response given, for instance, to several detainees in Gobustan prison, who, in November 2002, sent complaints to the court maintaining that they had been unfairly sentenced to life imprisonment, after they had been unable to submit such complaints in the usual manner, through the prison authorities.

For this reason, notwithstanding provisions in the law on the formal procedures for lodging complaints about detention conditions and treatment by facility staff, detainees prefer to use other channels:

1. Sending anonymous or signed letters to independent or opposition media;
2. Complaining to human rights bodies and international organizations;
3. Appealing to the appropriate authorities with the assistance of their lawyers (for those who have lawyers);

4. Seeking personal interviews with high-ranking officials in the central prison authorities;
5. Mounting individual or group protests (hunger strikes, suicide attempts, etc).

Although, under article 46.2 of the Code of Criminal Procedure, information provided by the media may constitute grounds for the institution of criminal proceedings, the procurator's office has never taken such a step following a report of torture. The only case where the authorities reacted to reports of torture was the presidential order, issued on 10 March 2000, on measures in response to the recommendations for Azerbaijan of the United Nations Committee against Torture and of Amnesty International. Under this order, a commission was set up with the responsibility of checking and taking appropriate measures relating to the findings of the report on Azerbaijan prepared by Amnesty International for the session of the Committee against Torture.

A number of the people cited in the Amnesty International report⁸ as victims of torture remain in prison, however, on the basis of statements which they were forced to make under physical duress. For example, police officers of the special police detachment, Mukhtarov Fazil Famil-oglu, Rahimov Tahir Shahin-oglu and Rahimov Elshan Djavanshir-oglu, are serving sentences of 12 and 13 years' deprivation of liberty. Other individuals, mentioned in the report, have been pardoned by presidential decree but, according to information received by the Azerbaijan Human Rights Centre, have not been awarded any compensation.

It is interesting that subsequent reports by Amnesty International have not elicited the same response.

One of the problems impeding the timely identification and prevention of torture is the fact that the complainants remain in the same places where they were allegedly subjected to torture and ill-treatment. This applies in particular to the prisons where convicted persons are serving sentences.

Article 14

The Compensation (Injuries to Private Individuals resulting from Unlawful Actions of Initial Inquiry Authorities, Pre-Trial Investigation Authorities, the Procurator's Office and the Courts) Act is what might be described as a "dormant" legal norm. It proclaims the victim's right to receive compensation for harm suffered but has never been applied in practice. It is indicative of the lack of faith by victims and their families in such procedures that, even when they know about the theoretical availability of compensation and notwithstanding the general poverty in the country, no one ever tries to invoke this act.

Accordingly, no material compensation has ever been paid in any one of the above-mentioned cases of torture and cruel treatment to any of the victims or members of their families. As a rule, all the associated medical costs are paid by the victims themselves and their families.

In 1998-2003, hundreds of political prisoners were freed under pardons, many of whom for years prior to their pardons had been submitting complaints, either in writing or through the courts, about the use of torture against them. Until 2002, these pardons included a formal instruction to the Ministry of Labour and Social Welfare and the Ministry of Health to ensure the social

⁸ AI-index: EUR 55/002/1999 01/10/1999. AZERBAIJAN. Torture and ill-treatment: Comments on the forthcoming review by the United Nations Committee against Torture.

protection and the provision of essential medical care for those receiving pardons and for ailing released prisoners who had no relatives that could assume responsibility for their treatment. Since 2002, however, this instruction is no longer included in pardons.

The only case known to the Azerbaijan Human Rights Centre in which the victim of cruel treatment has received partial compensation concerns one Alimamed Azimov, a villager from Nardaran. On 5 February 2003, he was seriously injured as a result of the excessive use of force by the police attacking participants in the demonstration. Following discussions between villagers and the authorities, he was hospitalized on 9 February and the government paid for his treatment, but this required a special order from the Minister of Health.

Article 15

Although article 125.2.2 of the Code of Criminal Procedure stipulates the inadmissibility of evidence obtained by unlawful means, including torture, this is never invoked in the courts. As a rule, judges are even unlikely to give cursory consideration to statements made by defendants during the trial.

This is the situation, for example, in the trial relating to the Nardaran case, in which several defendants, two of whom even had gunshot wounds, have declared that they gave evidence under torture. This case has been marked by the widespread use of false testimony given by police officers, who, despite prima facie evidence of the use of firearms by police against Nardaran villagers, insist that they came to the village without weapons and that they themselves were even fired on by the villagers. The judge simply ignores any statements about torture, however, as well as the information collected about these events by the 17-member independent public commission of inquiry.

It is also difficult to ensure that legal action is taken against judicial experts who act in an unscrupulous manner. Thus, in 1997 and 2000, in the case relating to the murder of a trade union activist in police premises, convictions were handed down on several policemen and employees of the procuratorial system. But the experts, who had twice given knowingly false findings in this case, namely, that the victim had died not from systematic beating but from a heart attack, went unpunished.

A former officer, the political prisoner Nazim Bairamov, who was taken into custody in 1994, suffers from cancer of the lymph node, as certified by two expert examinations. When his defence raised the question about him being set free on health grounds, a third expert analysis was commissioned which gave a completely different finding. In 1997, when he had already spent three years in prison, an examination conducted in the central prisons hospital confirmed that he had cancer, yet he was still not given a disability certificate which would have helped in secure an early release. In January 2001, he was transferred from a general regime corrective colony to a closed prison with much tougher conditions.

In the case of one of the Nardaran defendants, Alikram Allahverdiev, certified since 1984 with group II disability (severe mental retardation), experts gave a knowingly false finding of his mental capacity. They even based their conclusion on the report of the 1984 medical board, which had reached precisely the opposite conclusion.

Article 16

Where the prevention of other instances of cruel, inhuman or degrading treatment or punishment, which do not fall under the definition of torture, is concerned, in some cases these incur criminal

penalties. This can arise, for example, if substantial harm is caused to the health of the victim, if there is evidence of sexual assault or if they involve abuse of authority.

Some forms of cruel treatment or punishment, which do not involve harm to health but are based on discrimination, may be qualified as infringing the equality of citizens (article 154 of the Criminal Code) or inciting ethnic, racial or religious hatred (article 283). In practice, in a country waging an undeclared war against ethnic separatists, there are no prosecutions of such offences, except for the prosecution of the separatists themselves.

Although, under Azerbaijani law, reports of human rights violations may not be kept secret, the available statistics on crime do not separate out offences committed by officials. Yet, to judge from the government's report, this information is tracked for internal purposes.

If cruel treatment and torture are to be prevented, it would, on the contrary, make more sense for information about the numbers of prosecuted abuses by state officials to be widely publicized.

Recommendations

In view of the above, the authors believe that the following steps should be recommended to reduce the risk of torture in Azerbaijan:

A. Legislative measures

- The definition of torture in domestic criminal law should be brought into line with the internationally accepted definition, as in article 1 of the Convention
- Azerbaijan's inter-state treaties on extradition and mutual legal assistance should be brought into line with international and domestic law in respect of preventing the handover of de facto political emigrants and also of persons against whom torture and the death sentence might be applied. In particular, it is essential to ensure that public information is provided about such cases, even where national security is concerned; to give detainees the possibility to challenge extradition decisions; and to ensure that they receive prompt and effective legal assistance;
- Official instructions and other statutory instruments must be adopted to promote the monitoring of prisons and the participation of representatives of civil society in their reform;
- The fees paid to government-appointed lawyers must be increased and brought into line with the standard average fee, while safeguarding detainees' ability to select a lawyer from among several candidates and, if they wish, to change their lawyer;
- Instructions must be elaborated to determine levels of compensation in accordance with the type and severity of the consequences of torture and cruel treatment.

B. Institutional measures

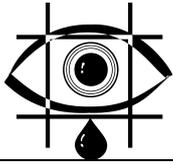
- The remand centre of the Ministry of National Security should either be closed or transferred to the jurisdiction of the Ministry of Justice;
- The unlawful use of holding cells of the Ministry of Internal Affairs for the detention of

suspects undergoing questioning and preliminary investigation should be halted and steps taken to ensure the prompt and severe punishment of those police officers sanctioning this practice;

- All such holding cells should be transferred to premises outside the buildings in which investigators have their own officers;
- The development of the legal profession should be finalized through a process of examinations for persons involved in providing legal assistance in criminal cases and by admitting new members to the bar. Lawyers must be able to form partnerships offering an alternative to the bar association.

C. Administrative measures

- The investigative and judicial authorities must ensure an appropriate response to the reports of human rights organizations, publications in the media and public statements in trials alleging torture. In particular, they must ensure the full and impartial investigation of such reports and statements and the exclusion of any evidence which has been obtained with the use of torture and cruel treatment;
- Persons involved in acts of torture prior to its criminalization (1 September 2000) must be punished under other articles of the old Criminal Code (battery, causing of bodily injury, coercion to testify, etc);
- Effective punishments must be handed down on all officials who ignore complaints of torture;
- Wide publicity must be given to cases of punishments being handed down on persons guilty of torture and to the available procedures for lodging complaints of torture;
- Persons involved in inflicting torture and cruel treatment on detainees must not be employed in any capacity in the law enforcement agencies and the judicial system;
- Measures must be taken to ensure the effective cooperation between government bodies responsible for holding citizens in custodial facilities and local and international human rights organizations in dealing with the issues of torture and ensuring that detention conditions are more decent;
- The conduct of forensic examinations must be mandatory for persons complaining of the use against them of torture and effective punishments must be handed down on government-employed doctors who refuse to certify traces of torture or who knowingly give false findings;
- Where there is convincing evidence of the use of torture, adequate compensation must be paid to its victims.



Human Rights Center of Azerbaijan

150, Bashir Safaroglu Str. (for mailing: P.O. Box 31), Baku 370000, Azerbaijan Republic
Tel./fax 994-12-977026, e-mail: eldar@azeurotel.com; http://www.aihmm.org

To the UN Committee against Torture

06 March 2002

LIST OF RECENT TORTURE-RELATED CASES IN AZERBAIJAN

Azerbaijan became party to the UN Convention against Torture in 1992, and in 2002 it ratified the European Convention against Torture. Consideration of Azerbaijan's second periodic report to CAT⁹ is scheduled for April 2003.

Human Rights Center of Azerbaijan would like to draw the Committee's attention to a list of recent cases of the alleged use of torture in police custody in Azerbaijan. These are cases which have made resonance both in Azerbaijan and abroad and have been well documented by local and international organizations.

Riot in Qobustan Prison (1999)

Background: On January 8, 1999, a group of political prisoners incarcerated in the Qobustan prison provoked a riot in an escape attempt. As a result, ten prisoners and one hostage were killed. One year later, in the period of January-March 2000, defendants in the subsequent trial testified having been subjected to torture during the investigation. Several defendants alleged having been tortured in order to implicate themselves in crimes committed during the riot. Various forms of torture allegedly included beatings, being stripped of clothes and kept naked in freezing cells, and others. Some of the defendants showed physical evidence of torture. Several other prisoners charged with the same crime had died soon after the riot, allegedly after injuries sustained during severe beatings. The defendants were charged and subsequently convicted for plotting a coup against the government.

References:

1. Deaths in custody at Gobustan prison – Amnesty International, AI Index: EUR 01/02/99 and EUR 01/01/00
2. Amnesty International. Concerns in Europe. January - June 2000 – AI Index: EUR 01/003/2000

Sheki Events (2000)

Background: Opposition sources and media have reported that a number of detainees were tortured in Sheki and Jalilabad after the popular uprising that took place on November 18, 2000. As many as 300 demonstrators were arrested, while several of them were subsequently released upon offering the requested bribes. In the end, 18 people were sentenced and 9 more received suspended sentences. One person, Tehran Latifov, is still in detention, while another

⁹ CAT/C/59/Add.1 13 December 2001

one, Djovdet Qaziyev, died in detention on February 27, 2002. During the trial in 2001, the defendants made allegations of torture while in detention.

References:

1. AI Concerns in Europe July - December 2000 - AI-index: EUR 01/001/2001
2. Anvar Gulusoy: opposition politician allegedly beaten by police at post-election demonstration. - AI Index: EUR 55/002/2001
3. Gulhar Pashayeva: 61-year-old woman allegedly beaten by police - AI Index: EUR 55/001/2001
- 4.

Death in custody of Ilqar Djavadov (2001)

Background: The case of Ilqar Djavadov, a 28-year-old engineer, received significant resonance in Azerbaijan. Djavadov was arrested on May 13, 2001 in the presence of his wife and a friend after failing to show his ID. He was taken to the 9th Sabayil district police station and allegedly beaten while in custody. According to reports, the officers in charge of his custody sought to extract a bribe from his wife in return for his release. Djavadov later died while still in custody, after suffering numerous broken bones. According to the police chief, these injuries were the result of the detainee's attempt to escape by jumping from a second floor window. The investigation against the three policemen who had arrested Djavadov was soon closed, while they were charged with abuse of power, a relatively minor administrative offense, and released. Only in February 2003, almost 2 years later, one of the police officers Farhad Mammedov was sentenced to a 2-year prison term for an abuse of power, while the rest of the group were considered witnesses in the beating incident. Djavadov's family has appealed the sentence.

References:

1. Death in custody - The case of Ilqar Javadov. AI Index: EUR 01/003/2001, EUR 55/001/2002
2. Azerbaijan: Concerns in Europe; July - December 2001 (AI Index: EUR 01/002/2002)
3. Human Rights Center of Azerbaijan. Status of Civil and Political Rights in Azerbaijan in 2001
4. International Federation for Human Rights, Annual 2001 report

Nardaran Case (2002)

Background: On May 7, 2002, a 1,000-strong demonstration took place in the village of Nardaran, calling for improvements of the social and economic conditions and for the dismissal of the head of the local government, Mr. Failet Mirzoyev, a central government appointee. On May 15, an investigation was started, with charges being brought against some of the participants, including articles 221.2.2 (hooliganism), 233 (public disorder), and 315.1 (violence against official representatives). On June 3, 2002, policemen and Ministry of Internal Affairs representatives arrested and shot several demonstrators who had participated in the May 7th demonstration, killing one and injuring several others, which, in turn, led to further unrest by the local population.

References:

1. Conclusion of the Independent Public Commission on the Nardaran Events of June 3, 2002

2. Organización Mundial Contra la Tortura (OMCT). Press releases AZE 060602, AZE 060602.2 to AZE 060602.9
3. FIDH. Azerbaijan. Civil Society and Justice locked by the Aliyev System. November 14, 2002.
4. Amnesty International Concerns in Europe (January to June 2002). AI Index: EUR 01/007/2002).

Death in Detention of Beylar Quliyev (2002)

Background: On April 18, 2002, police arrested Beylar Quliyev, manager of the “Shovket” music band. There was no warrant for the arrest, which was reportedly in connection with the investigation of the assassination of Rovshan Aliyev, chief of the Criminal Department under the auspices of the Prosecutor General. Later that night, Quliyev was charged for allegedly resisting police, and did not have an immediate access to a lawyer.

According to law, Quliyev should have been transferred to a pre-trial detention center where a suspect can be held for a maximum of ten days before charges are brought, but instead he was returned to the prosecutor’s office where he was subjected to an all-night interrogation. Later that night, Quliyev was taken to a hospital’s intensive care unit where he died in two days, on April 20. According to the official report, Quliyev jumped from a window on the 3rd Floor of the prosecutor’s office.

On June 20, 2002, the Prosecutor’s Office closed its investigation into Quliyev’s death.

References:

1. OMCT Urgent Appeal - Case AZE 240402
2. Human Rights Center of Azerbaijan. Status of Civil and Political Rights in Azerbaijan in 2002

Comments

The aforementioned cases are indicative of the failure of the state to comply with the Convention.

- a. There are no routine investigations of allegations of torture, especially with regard to politically sensitive cases;
- b. Deaths in detention are portrayed as suicide attempts;
- c. Evidence of torture or ill-treatment is ignored;

Eldar Zeynalov
Director



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

Distr.
GENERAL

CAT/C/CR/30/1
9 May 2003

Original: ENGLISH

COMMITTEE AGAINST TORTURE
Thirtieth Session
28 April-16 May 2003

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Conclusions and recommendations of the Committee against Torture

Azerbaijan

1. The Committee considered the second periodic report of Azerbaijan (CAT/C/59/Add.1) at its 550th, 553rd and ... meetings, held on 30 April, 1 May and ...2003 (CAT/C/SR.550, 553 **and ...**), and adopted the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the second periodic report of Azerbaijan, as well as the oral information provided by the high-level delegation. The Committee particularly welcomes the State party's assurances that the concerns and recommendations adopted by the Committee will be pursued seriously.
3. The report, which mainly addresses legal provisions and lacks detailed information on the practical implementation of the Convention, does not fully comply with the reporting guidelines of the Committee. The Committee emphasizes that the next periodic report should contain more specific information on implementation.

B. Positive aspects

4. The Committee notes the following positive developments:
 - (a) The efforts by the State party to address the Committee's previous concluding observations, through, in particular, the important ~~10 March 2000~~ Presidential Decree of **10 March 2000**;

- (b) The declaration under article 22 of the Convention enabling individuals to submit complaints to the Committee;
- (c) The ratification of several significant human rights treaties, in particular the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
- (d) The extensive legal and legislative reforms by the State party, including the adoption of a new Criminal Code and a new Code of Criminal Procedure;
- (e) The introduction of the offence of torture in the new Criminal Code, and the State party's report of some convictions for this crime;
- (f) The transfer of remand centres of the Ministry of Internal Affairs to the authority of the Ministry of Justice;
- (g) The creation of the post of Ombudsman ;
- (h) The assurances by the State party that it is taking action to reduce the occurrence of tuberculosis in places of detention;
- (i) The agreement concluded with the International Committee of the Red Cross, enabling ICRC representatives **to have** unrestricted access to convicted persons in places of detention, as well as the State party's assurance that access for non-governmental organizations to visit and examine conditions in penitentiary establishments is unlimited.

C. Subjects of concern

5. The Committee is concerned about:
 - (a) Numerous ongoing allegations of torture and ill-treatment in police facilities and temporary detention facilities, as well as in remand centres and in prisons;
 - (b) The fact that the definition of torture in the new Criminal Code does not fully comply with article 1 of the Convention, because, inter alia, article 133 omits references to **the** purposes of torture outlined in the Convention, restricts acts of torture to systematic blows or other violent acts, and does not provide for criminal liability of officials who have given tacit consent to torture;
 - (c) The lack of information on the implementation of article 3 of the Convention regarding **the** handover of ~~persons~~ **a person** to a country where he/she faces a real risk of torture, and on the rights and guarantees granted to ~~concerned persons~~ **the persons concerned**.

6. The Committee is also concerned ~~regarding~~ **about** the substantial gap between the legislative framework and its practical implementation, and ~~is concerned~~ about:
 - (a) The apparent lack of independence of the judiciary despite the new legislation;
 - (b) Reports that some persons have been held in police custody much beyond the time-limit of 48 hours established in the Code of Criminal Procedure, and that in exceptional

circumstances, persons can be held ~~up~~ **in temporary detention for up to 10 days of temporary detention** in local police facilities;

- (c) The lack, in many instances, of prompt and adequate access of persons in police custody or remand centres to independent counsel and a medical doctor, which ~~are~~ **is an important safeguards** against torture; many persons in police custody are reportedly forced to renounce their right to a lawyer, and medical experts are provided only on the order of an official, and not at the request of the detainee;
- (d) The fact that, despite the **recommendation of the** Special Rapporteur on torture ~~recommendation~~, the remand centre of the Ministry of National Security continues to operate, and that it remains under the jurisdiction of the same authorities that conduct the pre-trial investigation;
- (e) Reports of harassment and attacks ~~on~~ **against** human rights defenders and organizations;
- (f) The particularly strict regime applied to prisoners serving life sentences;
- (g) Reports that the ability of detained persons to lodge a complaint is unduly limited by censorship of correspondence and by the failure of the authorities to ensure the protection of the complainants from reprisals;
- (h) The reported failure of the State party to provide prompt, impartial and full investigations into the numerous allegations of torture and ill-treatment, as well as insufficient efforts to prosecute alleged offenders;
- (i) The fact that no independent body with ~~the~~ **a** mandate to visit and/or supervise places of detention has been established, and that access ~~of~~ **by** non-governmental organizations to penitentiary facilities is impeded;
- (j) The fact that very few victims have obtained compensation;
- (k) Reports that, in many instances, judges refuse to deal with visible evidence of torture and ill-treatment of detainees and do not order independent medical examinations or return cases for further investigation.

D. Recommendations

7. The Committee recommends that the State party ~~should~~:
 - (a) Ensure that the offence of torture in national legislation fully complies with the definition provided in article 1 of the Convention;
 - (b) Guarantee that, in practice, persons cannot be held in initial preventive detention (police custody) ~~beyond~~ **longer than** 48 hours, and ~~abolish~~ **eliminate** the possibility ~~to hold of~~ **holding** persons in temporary detention in local police facilities for a period of up to 10 days;
 - (c) Clearly instruct police officers, investigative authorities and remand centre personnel that they must respect the right of detained persons to obtain access to a lawyer immediately following detention and a medical doctor on the request of the detainee, and not only

after the written consent of detaining authorities **has been obtained**. The State party should ensure the full independence of medical experts;

- (d) Transfer the remand centre of the Ministry of National Security to the authority of the Ministry of Justice, or discontinue its use;
 - (e) Fully ensure the independence of the judiciary, in accordance with the Basic Principles on the Independence of the Judiciary;
 - (f) Ensure the prompt creation of the new bar association and take measures to guarantee an adequate number of qualified and independent lawyers able to act in criminal cases;
 - (g) Ensure the full independence of the Ombudsman;
 - (h) Ensure the full protection of non-governmental human rights defenders and organizations;
 - (i) Ensure that all persons have the right to review **of** any decision about his/her extradition to a country where he/she faces a real risk of torture;
 - (j) Intensify efforts to educate and train police, prison staff, law enforcement personnel, judges and doctors on their obligations to protect from torture and ill-treatment all individuals who are in State custody. It is particularly important to ~~ensure training of~~ **train** medical personnel to detect signs of torture or ill-treatment and to document such acts;
 - (k) Ensure the right of detainees to lodge a complaint by ensuring their access to an independent lawyer, by reviewing rules on censorship of correspondence and by guaranteeing in practice that complainants will be free from reprisals;
 - (l) Review the treatment of persons serving life sentences, to ensure **that it is in accordance** ~~its conformity~~ with the Convention;
 - (m) Institute a system ~~for~~ **of** regular and independent inspections of all places of detention and facilitate in practice, including by **issuing** instructions to appropriate authorities, access ~~of~~ **by** non-governmental organizations to these places of detention;
 - (n) Ensure that prompt, impartial and full investigations into all allegations of torture and ill-treatment are carried out and establish an independent body with the authority to receive and investigate all complaints of torture and other ill-treatment by officials. The State party should also ensure the ~~10 March 2000~~ Presidential Decree **of 10 March 2000** is implemented in this respect;
 - (o) Ensure that in practice, redress, compensation and rehabilitation are guaranteed to victims of torture;
 - (p) Widely disseminate in the country the reports submitted to the Committee, the conclusions and recommendations of the Committee, as well as the summary records of the review, in appropriate languages.
8. The Committee requests the State party to provide in its next periodic report:

- (a) Detailed information, including statistical data, on the practical implementation of its legislation and the recommendations of the Committee, in particular regarding the rights of persons under police custody and pre-trial detention, the implementation of the 1998 Compensation Act or other relevant legislation, the implementation of article 3 of the Convention, and the mandate and activities of the Ombudsman;
 - (b) Detailed statistical data, disaggregated by crimes, geographical location, ethnicity and gender, of complaints relating to torture and ill-treatment allegedly committed by law enforcement officials, as well as related investigations, prosecutions, and penal and disciplinary sentences.
9. The Committee welcomes the assurances given by the delegation that complementary written information will be submitted regarding the questions that remained unanswered.
10. The Committee requests that the State party provide ~~immediately~~, within one year, information on its response to the Committee's recommendations contained in paragraphs 7 (c), (f), (h), (i) and (n) **above**.
