



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

# **REPORT**

**ON THE ACTIVITY OF THE  
NATIONAL PREVENTIVE MECHANISM  
AGAINST TORTURE**

**(2009 - 2010)**

**COMMISSIONER FOR HUMAN RIGHTS  
(OMBUDSMAN) OF THE REPUBLIC OF AZERBAIJAN**

# **R E P O R T**

**ON THE ACTIVITY OF THE NATIONAL PREVENTIVE  
MECHANISM AGAINST TORTURE**

(2009-2010)

**Baku – 2011**

This report covers the establishment of the National Preventive Mechanism against Torture in the Republic of Azerbaijan, the mandate of the Commissioner for Human Rights (Ombudsman), the law in force and institutional problems, as well as the actions taken during the years 2009 and 2010, and the relevant proposals and recommendations.

The list of establishments falling under the jurisdiction of the NPM, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Constitutional Law of the Republic of Azerbaijan “On Making Additions and Amendments to the Constitutional Law of the Republic of Azerbaijan on the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan”, and photos have been added to the report as well.

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## **Foreword**

After the Republic of Azerbaijan regained its independence at the end of the XX century, through the conducted legal reforms, the establishment of democratic and legal statehood, protection of human rights as a prime value, giving higher priority to the interests of human beings and the society have been set as priorities of the state policy.

During the short period of the country's independence the national legal framework has been improved and brought in line with European standards. The majority of the adopted laws, regardless of the spheres they regulate, directly or indirectly serve to more reliable protection of human rights.

Along with constantly improving the national legislation, our Republic has ratified numerous international treaties, including the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the Law of 31 May 1996, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and Protocols No.1 and 2 thereto by the Law of 25 December 2001.

Along with the legislative reforms carried out in the country, the institutional reforms effected with regard to the conditions of detention and treatment of persons deprived of their liberty should be specifically stressed. It should be mentioned that numerous decrees have recently been signed for the implementation of legislative, institutional and other actions aiming to improve the operation of temporary detention places, investigatory isolators and penitentiary institutions, increase the quality of detention conditions and medical services, train professional personnel for such institutions, enhance their qualifications and capacities, and strengthen the material and technical basis of the above mentioned institutions. Meanwhile, it should also be stressed that yet in 1999 the investigatory isolators under the Ministry of Internal Affairs were subordinated to the Ministry of Justice in order to implement a unified rehabilitation policy and bring the operation of the investigatory isolators in line with the standards of the Council of Europe which the Republic of Azerbaijan has become a member of since 2001. That in 2004 the Health Office's subordination to the Head Office for Execution of Court Decisions (presently the Penitentiary Service) was abolished and it

became an independent medical institution under the Ministry of Justice has paved the way for more effective protection of detainees' health and prevention of torture and other ill-treatment.

The Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan, as an out-of-court legal protection mechanism, has also contributed to more reliable protection of detainees' rights. The institution, that has attached particular importance to the protection of detainees' rights and satisfaction of their legitimate interests since its establishment, has regularly monitored the establishments where detainees are held, arranged meetings with detainees, got acquainted with the conditions of detention and detainees' complaints on-site, taken necessary measures based on received appeals, put forth efforts to resolve this or other issues and eliminate existing problems, and made recommendations to various governmental bodies. The Commissioner's numerous appeals for pardoning made as per the request of convicts and their family members have been met.

Another momentum in the struggle against torture and ill-treatment in the country has been the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 02 December 2008. By the President's Order of 13 January 2009, the Commissioner has been designated as an institution to perform the national preventive mechanism (NPM) functions. Further on, the Commissioner's mandate has been expanded by amending the governing Constitutional Law.

Over the past period, notwithstanding that the legislative and institutional frameworks were not fully established, the NPM Group was created and it organized its work in conformity with the requirements of the OPCAT and international standards. Within a short time period regular visits were conducted by the Group to all the places that fall under the jurisdiction of the NPM and where persons are detained or may be detained without permission to leave at will – temporary detention places, administrative detention places, isolation centres, investigatory isolators, penitentiary institutions, prisons, guardrooms, disciplinary units, psychiatric institutions, mental dispensaries, boarding schools, etc., various proposals and recommendations were prepared and submitted to respective bodies and most of them were satisfied.

Taking into account that some part of the year 2009 was primarily devoted to the resolution of organizational issues, it was decided to prepare a unified report for the years 2009 and 2010.

The present report covers the establishment of the NPM in the Republic of Azerbaijan, the mandate of the Commissioner, the law in force and institutional problems, as well as the actions taken during the years 2009 and 2010.

The proposals and recommendations submitted to the relevant authorized bodies for the improvement and coordination of the activities aimed at revealing, investigating and preventing torture and other cruel, inhuman or degrading treatment or punishment in the country, as well as for more efficient organization of the work of the NPM have been reflected in a special section of the report. The list of establishments falling under the jurisdiction of the NPM, OPCAT, the Constitutional Law of the Republic of Azerbaijan “On Making Additions and Amendments to the Constitutional Law of the Republic of Azerbaijan on the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan”, and photos have been added to the report as well.

Any suggestions or recommendations in respect of this report will be highly appreciated.

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## **Definitions and abbreviations used in the text**

**CAO** – the Code of Administrative Offences of the Republic of Azerbaijan

**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

**CPD** – a city police department

**CPO** – a city police office

**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

**InIs** – an investigatory isolator

**MD** – the Ministry of Defence 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

**MLSPP** – the Ministry of Labour and Social Protection of Population of the Republic of Azerbaijan

**MNS** – the Ministry of National Security of the Republic of Azerbaijan

**NAP** – the National Action Plan for Protection of Human Rights

**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

**OSCE-ODIHR** – the Office for Democratic Institutions and Human Rights of the Organisation for Security and Co-operation in Europe

**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 Organisation for Security and Co-operation in Europe

**PCS** – a penal colony settlement

**Person deprived of his/her liberty** – a person in whose respect deprivation of liberty has been applied

**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

**SMI** – the Specialized Medical Institution of the Penitentiary Service of the Ministry of Justice

**TDP** – a temporary detention place

**Torture** – torture and other cruel, inhuman or degrading treatment or punishment

**UN** – the United Nations

## **Chapter 1. The essence of the national preventive mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment and its establishment in the Republic of Azerbaijan**

The Optional Protocol to the UN Convention<sup>1</sup> against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted by UN General Assembly resolution 57/199 of 18 December 2002 and after having been ratified by 20 states, entered into force on 22 June 2006.

By the adoption of the OPCAT it has been intended, as specified in its preamble, to reaffirm that torture and other cruel, inhuman or degrading treatment or punishment are prohibited and constitute serious violations of human rights, convince that further measures are necessary to protect persons deprived of their liberty against torture by non-judicial means of a preventive nature, based on regular visits to places of detention, as well as recall that states are obliged to take effective measures to prevent acts of torture and have the primary responsibility for implementing this obligation, and that the full respect for the human rights of people deprived of their liberty is a common responsibility shared by all and that international implementing bodies complement national measures serves to this process.

To the point, it should be mentioned that though the term of torture and other cruel, inhuman or degrading treatment or punishment is used in several relevant international acts, internationally the definition of torture has been specified in the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. According to Article 1 thereof, for the purposes of the Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain

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<sup>1</sup> It was adopted on 10 December 1984 and entered into force on 26 June 1987. It was ratified by the Republic of Azerbaijan on 31 May 1996 by Law No.103-IQ. It has been in force in respect of the Republic of Azerbaijan since 25 June 1996.

or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

The OPCAT, the main requirement of which is to establish a system of regular visits undertaken by independent international and national bodies to places of detention<sup>2</sup> in order to prevent torture, as an innovative treaty, embracing international and national efforts to prevent torture and emphasizing the importance of a constructive dialogue, 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. In other words, the Protocol envisages no new rights or restoration of infringed rights but the prevention of the violation of the right not to be subjected to torture. In accordance with the OPCAT, at the international level the Subcommittee on Prevention and at the national level national preventive mechanisms 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.

As already mentioned, the aforesaid document, being an effective tool for combating torture, sets out the requirement to establish or designate a national preventive mechanism for the prevention of torture. Thus, in accordance with Article 17 of the OPCAT, each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level.

The Republic of Azerbaijan signed the OPCAT on 15 September 2005 and ratified it by Law No.724-IIIQ of 02 December 2008. The OPCAT entered into force in respect of the Republic of Azerbaijan from the date the law concerned was promulgated, i.e. 15 January 2009. On the same day Order No.112 of the President of the Republic of Azerbaijan “On Ensuring the

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<sup>2</sup> According to Article 4.2 of the OPCAT, for the purposes of the OPCAT, 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.

Execution of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” was promulgated as well. In accordance with the Order the Commissioner has been designated as an institution to perform the NPM functions.

The designation of the Commissioner as an NPM was not accidental. Thus, the Commissioner, being a non-judicial legal protection mechanism, ensures the restoration of the human rights and freedoms enshrined in the Constitution of the Republic of Azerbaijan and in the international treaties to which the Republic of Azerbaijan is a party and violated by governmental and municipal bodies and officials of the Republic of Azerbaijan, and of course, the Commissioner, functioning as a national human rights institution accredited with the “A” status under the Paris Principles, in her activity has paid particular attention to the issues related to combating and preventing torture, organizing preventive measures, as well as carrying out awareness work which has laid the foundation for the establishment of the NPM and acted as a basis for its functioning. The designation of the Commissioner as an NPM, being a sign of the confidence won by her both in front of the state and the community as a result of the works done by her in this field, has served as a background for performing the mentioned activity more effectively and qualitatively and advancing it to the next stage and improving the works done in this field, expanded the scope of the Commissioner’s mandate and at the same time charged her with sufficiently responsible duties. In order to properly perform the new duties it has become necessary first of all to take immediate actions to:

- hold relevant discussions and take organizational measures;
- analyze the Commissioner’s activity in the context of the NPM;
- learn and summarize best practices;
- determine the NPM model;
- refine the list of the establishments falling under the jurisdiction of the NPM;
- start practical activity; and
- develop international collaboration.

For the abovementioned purposes the Commissioner signed a relevant order on 15 January 2009. By that order a working group comprised of the

employees of the Office was established and the group was assigned within ten days to prepare and submit to the Commissioner recommendations and an appropriate action plan for the organization of the work aimed at performing the NPM functions. The working group has undertaken necessary organizational actions pursuant to the Order and summarized the recommendations received through appeals from various governmental bodies, as well as international organizations, at the same time relevant best practices have been explored and analyzed, an action plan has been prepared, the list of the establishments, where arrested persons or persons whose liberty has been otherwise restricted are held in the country, has been drawn up, as well as practical activities have been initiated in relevant directions.

The main issue which the Commissioner is faced with and needs to be solved within a short period of time in order to more effectively organize the work of the NPM has been the duty to bring her mandate in conformity with the requirements of the OPCAT and create a new specific structural unit in the Office.

For this purpose the mandate of the Commissioner has been analyzed by the Office in the context of the OPCAT and relevant recommendations have been prepared with regard to prospective trends. Along with the above mentioned, the composition and regulations of the new structural unit to be established in the Office – Torture Prevention Affairs Department, additions to the staff lists and budgets of the Office and regional centres, as well as the relevant Order of the Commissioner have been drafted and sent to the relevant bodies for approval. As well as some additions and amendments to the Constitutional Law have been drafted and submitted to the Milli Majlis (Parliament) of the Republic of Azerbaijan.

Until the budget of the above mentioned unit is approved, 5 employees of the structural units within the current budget the Office were involved in the NPM-related activities. Later, pursuant to the Commissioner's Order of 9 January 2010 the Commissioner's NPM Group was established. The Group led by the Commissioner and comprised of the Subcommittee on Visits and the Subcommittee on Preparation of Documents and Reports included 8 employees of the Office. Afterward, in order to ensure the expansion of the activities in the given field and further improvement of the work, the

subcommittees were liquidated and the NPM Group was reorganized to include 17 persons by adding the employees of the Commissioner's regional centres pursuant to the Commissioner's Order of 28 December 2010.

After the law is accordingly amended, it will be possible to engage the representatives of civil society in the work of the NPM.

We think that the Commissioner will be able to fully, thoroughly and efficiently function as an NPM after the improvement of the law to extend her mandate, as well as the approval of an appropriate budget, structure and staff and the resolution of institutional problems.

## **Chapter 2. The Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan as a national preventive mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment: her mandate, legal and institutional problems.**

As already mentioned, the designation of the Commissioner as an NPM, along with expanding the scope of her mandate, has entrusted her with new duties. Hence, taking into account that the Commissioner is a constitutional institution, it is necessary to amend the Constitutional Law in connection with the performance of the NPM functions.

One of the main tasks to undertake in order to ensure that the Commissioner carries out the activities of an institution performing the functions of the NPM at full capacity is to set up her rights and duties – competencies in accordance with the OPCAT. Thus, according to Articles 3 and 17 of the OPCAT, the main objective of which is to establish a system of regular visits undertaken by independent international and national bodies to places of detention in order to prevent torture (Article 1), each State Party shall set up, designate or maintain at the domestic level one or several independent visiting bodies for the prevention of torture (referred to as the NPM). These bodies may be designated as an NPM if they are in conformity with the requirements of the OPCAT. In other words, the mandate of the Commissioner should embrace a range of minimum competencies provided for NPMs by the OPCAT.

The mandate of the Commissioner who has been designated as an NPM is governed by the Constitutional Law. In accordance with Article 1.1 of the Constitutional Law, the post of the Commissioner has been set up to restore the human rights and freedoms enshrined in the Constitution of the Republic of Azerbaijan and in the international treaties to which the Republic of Azerbaijan is a party and violated by governmental and municipal bodies and officials of the Republic of Azerbaijan. The activity of the Commissioner as an independent institution shall be based on the principles of publicity, transparency, legality, justice, and impartiality (the Constitutional Law, Article 1.7).



The main requirements as regards the mandate of the NPM have been specified in Articles 18-23 of the OPCAT.

Article 18 of the OPCAT says:

1. The States Parties shall guarantee the functional independence of the NPMs as well as the independence of their personnel.
2. The States Parties shall take the necessary measures to ensure that the experts of the NPM 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 NPMs.
4. When establishing NPMs, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights.

The guarantees for the independence of the Commissioner have been specified in the Constitutional Law. In accordance with Article 5.1 of the Constitutional Law, the Commissioner is independent and obeys only the Constitution and laws of the Republic of Azerbaijan. Declaration of a state of emergency or martial law does not cease or restrict the activities of the Commissioner (Article 5.3).

As per the requirement of the Constitutional Law, the following guarantees are provided for the independence of the Commissioner:

### *Irreplaceability*

The Commissioner is elected for a period of 7 years and the same person may hold the post of Commissioner not more than twice (Constitutional Law, Articles 4.1, 4.2).

### *Immunity*

The Commissioner is accorded immunity while in office (Constitutional Law, Article 6.1).

### *Inadmissibility of the interference of any governmental or municipal bodies and officials in the Commissioner's activity*

Any interference in the lawful activities of the Commissioner – limitation of his/her activity or interference in his/her activity entails the responsibility provided for by the law of the Republic of Azerbaijan (CAO, Article 310-1).

### *Material and social guarantees*

The Commissioner receives a salary as provided for by law, is exempted from military service and military gathering, is provided with a diplomatic passport during his/her term of office, uses the right to vacation as provided for by law, upon taking a leave, is given an allowance in the amount of his/her 2-month salary for the purposes of medical treatment and recreation. The term of office of the Commissioner shall be included in his/her general, special and unbroken record of service. Irrespective of its time, when a person who has held the post of the Commissioner reaches the pension age, he/she receives a pension in the amount of 80 percent of the salary currently determined for the Commissioner (Constitutional Law, Article 16).

By the way, it should be mentioned that the responsibility measures prescribed by law for the interference in the lawful activities of the Commissioner are not sufficiently satisfactory and do not conform to the Commissioner's status, his/her position in the society and among governmental bodies. We deem it reasonable to add classifying features, including an act of not responding to the Commissioner's lawful inquiries or not responding to them in time, toughen the sanction of the norm and provide differentiation for individuals and officials, as well as amend the Constitutional

Law accordingly. This is a pressing issue in the context of the Commissioner's activity as an NPM.

For providing legal, organizational, scientific-analytical, informational, logistical, financial and household support to the Commissioner, his/her office is set up. The regional centres of the Commissioner can be established on the ground (Constitutional Law, Article 17.1). The activities of the Commissioner and his/her Office and regional centres are financed from the state budget of the Republic of Azerbaijan (Constitutional Law, Article 19.1) and the amount of the operating expenses included in the annual expenditure allocated for such activities may not be lower than the amount of the financing provided for this purpose in the previous financial year (Constitutional Law, Article 19.2). The Office and regional centres operate in accordance with the regulations approved by the Commissioner (Constitutional Law, Article 17.3) and the rights, duties and responsibilities of the staff are governed by the Labour Code of the Republic of Azerbaijan, the Law of the Republic of Azerbaijan "On Civil Service" and other legislative acts of the Republic of Azerbaijan (Constitutional Law, Article 18.2).

Presently the Detainees Rights Protection Unit, the main duties of which are to investigate applications received from detainees and their relatives, organize the Commissioner's visits to places of detention, as well as conduct such visits, and carry out legal education work among detainees and persons working with them, operates under the structure of the Office. It should also be mentioned that a specialized torture counsellor, as well as a specialized detainee rights protection counsellor are assisting the Commissioner on an honorary (unpaid) basis. The specialized counsellors regularly make a scientific and analytical analysis of the national legislation and international legal acts related to the relevant fields, the current respective situation in the country, and the complaints and appeals received by the Commissioner, prepare and implement action plans in different directions, and present to the Commissioner drafts of proposals and recommendations to submit to relevant bodies. But the mentioned resources can not be deemed sufficient to ensure the effective functioning of the Commissioner as an NPM. Thus, bearing in mind that the number of the places of detention in the country exceeds 250 and the

main activity of the NPM is to carry out regular visits to such places, and as a result of the discussions held in the Office after the designation of the Commissioner as an NPM, the generalization of the proposals received from different governmental bodies, as well as international organizations, and the study and analysis of best practices in this field, it has been suggested that a special structural unit is established under the Office to organize the activity aimed at revealing, investigating and preventing torture. For this purpose, the regulations of the Torture Prevention Affairs Department of the Office, as well as its structure, the staff vacancies suggested to be added to the staff lists of the Office and regional centres, as well as the estimate of expenditures and action plan have been drafted and sent to the Cabinet of Ministers of the Republic of Azerbaijan, taking into account that the Cabinet of Ministers of the Republic of Azerbaijan has been entrusted by the country president's known order for ensuring the implementation of the OPCAT to undertake necessary actions for the implementation of the OPCAT, and the Ministry of Finance of the Republic of Azerbaijan.

It should be emphasized that in the context of the fact that the staff members of the Office do not possess relevant powers, the scope and importance of the NPM activity, and the conglomerate – number of the places of detention and their location in different parts of the country make it necessary that this activity is carried out by the National Preventive Group (NPG) that will be established by the Commissioner on the basis of transparent procedures and will include members to be selected among persons who will satisfy specific requirements. By including NGO representatives in the composition of the NPG it is possible to ensure the close participation of civil society in the work of the NPM.

Though the guarantees for the independence of the Commissioner have been specified in the legislation, no special instructions have been provided for the independence of his/her staff. To the point, it should be mentioned that the staff members have to receive special permission to conduct a visit to this or other closed establishments. The employees of the Commissioner's Office and regional centres are civil servants and their rights and duties, as well as guarantees are governed by the Law of the Republic of Azerbaijan "On Civil Service" and that law does not provide for any privileges or immunities.

When the guarantees provided for civil servants are enumerated in Article 21 of the given Law, only the protection of a civil servant and members of his/her family from violence, threats and insults against him/her and his/her family members in connection with the fulfilment of his/her official duties has been noted with regard to the issue concerned, but no instructions have been specified as regards in what and how that is expressed. In accordance with Article 35 of the OPCAT, members of the NPMs shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions. Taking into consideration this requirement of the OPCAT and Article 18.1 thereof, as well as the nature of the duties performed by the members of the NPG, the importance of guaranteeing their independence, and best practices in this field, it has been suggested that the law provides for relevant privileges and immunities for the members of the NPG.

As regards the requirements prescribed by Articles 18.2 and 18.4 of the OPCAT, it should be noted that on 27 October 2006 the Commissioner was accredited with the “A” status by the International Coordinating Committee of National Human Rights Institutions regarding that her mandate fully complies with the Paris Principles adopted on 20 December 1993.

According to the data as of the end of 2010, 70 employees work for the Commissioner’s Office and regional centres functioning in 4 regions of the republic, out of them 12 are the employees of the regional centres (3 persons for each of the 4 centres). 50 out of them are lawyers specialized in human rights. Other employees are supporting staff. 45 out of the employees working for the Office and regional centres are men. Along with Azerbaijanis, there are persons of Avar, Georgian, Lezgin, Russian, Talysh, Tat and Jewish origins among the staff members. It is planned to pay particular attention to a gender balance when establishing a new structural unit under the Office.

Article 19 of the OPCAT specifies:

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, 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, taking into consideration the relevant norms of the United Nations;
- c) To submit proposals and observations concerning existing or draft legislation.

Article 20 of the OPCAT specifies:

In order to enable the NPMs to fulfil their mandate, the States Parties of the OPCAT undertake to grant them:

- a) Access to all information concerning the number of persons deprived of their liberty in places of detention, 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 NPM 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.

The powers of the Commissioner have been specified primarily in Articles 1, 12 and 13 of the Constitutional Law. In accordance with Article 1.5 of the Constitutional Law, the Commissioner may submit proposals to the Milli Majlis (Parliament) of the Republic of Azerbaijan with regard to the adoption or review of laws with a view to securing human rights and freedoms, as well as declaration of amnesty. The Commissioner may also submit proposals to the President of the Republic of Azerbaijan with regard to granting pardon, citizenship and political asylum.

Moreover, it should be mentioned that in accordance with Article 14.3 of the Constitutional Law, the Commissioner's general views, comments and recommendations concerning the observance and protection of human rights are reflected in his/her annual reports. No later than 2 months after the end of each year the Commissioner submits to the President of the Republic of Azerbaijan an annual report on the protection of human rights in the country and speaks with that report before the Milli Mejlis (Parliament) of the Republic of Azerbaijan (Constitutional Law, Article 14.1). The report is submitted to the Cabinet of Ministers of the Republic of Azerbaijan, the Constitutional Court of the Republic of Azerbaijan, the Supreme Court of the Republic of Azerbaijan and the Prosecutor General of the Republic of Azerbaijan (Constitutional Law, Article 14.4).

As regards the submission of proposals and recommendations to relevant authorities by the Commissioner, it should be particularly stressed that she groups and analyzes received complaints and based on the information obtained as a result of the analysis, addresses her proposals for the improvement of the national legislation, as well as carrying out institutional reforms to the Milli Majlis (Parliament) of the Republic of Azerbaijan and other governmental bodies and contributes to the acceleration of the accession to and ratification of various international conventions and protocols by the Government of Azerbaijan.

However, notwithstanding the above mentioned, it should be noted that the Constitutional Law does not directly specify the Commissioner's right to make recommendations to this or another governmental body. It is therefore advisable to amend the law accordingly.

The Commissioner's rights with respect to the investigation of received complaints are specified in Article 12 of the Constitutional Law. In accordance with Article 12.2, while investigating the circumstances indicated in a complaint about human rights violation, the Commissioner has the rights to:

- access, without hindrance and prior notification, to any governmental and municipal bodies, military units, penitentiary institutions, investigatory isolators, temporary detention places; meet and interview in private the persons detained in penitentiary institutions, investigatory isolators, temporary detention places;

- get acquainted with the documents confirming the lawfulness of their detention in those places;
- receive necessary information, documents and materials, within 10 days, from any governmental and municipal bodies and officials;
  - get acquainted with court decisions in force concerning criminal, civil and administrative cases, as well as materials concerning the denials of initiation of criminal cases;
  - receive written explanations from officials during investigation of a complaint;
  - give fact-finding tasks to relevant bodies (except for a body or an official whose decision or act (omission) is being complained of);
  - charge relevant government bodies and organizations with a task of preparing an expert opinion;
  - be received without delay by heads and other officials of governmental and municipal bodies, commanders of military units, management of penitentiary institutions, investigatory isolators, and temporary detention places.

With the consent of the person whose human rights have been violated, in cases of special public importance, or in cases when the interests of the persons who are not able to independently protect their rights are affected, the Commissioner may carry out investigations on his/her own initiative (Constitutional Law, Article 12.3).

In accordance with Article 13.2 of the Constitutional Law, if during the investigation of a complaint the Commissioner reveals cases of violation of human rights, he/she may take the following measures:

- demand from governmental and municipal bodies or officials whose decision or act (omission) has violated human rights to restore those rights;
- apply to relevant bodies for the initiation of a criminal case if elements of a crime are found out;
- apply to the subjects entitled to file additional cassation complaints;



- submit proposals to relevant bodies for instituting disciplinary proceedings in respect of an official whose decision or act (omission) has violated human rights;
- inform mass media of the results of the investigation conducted in respect of human rights violations;
- apply to the President of the Republic of Azerbaijan or hold a speech before the Milli Mejlis of the Republic of Azerbaijan in case the violation of human rights assumes special public importance and the leverages available to the Commissioner are not sufficient to restore those rights.
- apply to court for the restoration of the rights violated as a result of a decision or act (omission) of a governmental or municipal body, or an official;
- apply to the Constitutional Court of the Republic of Azerbaijan in case the rights of a person are violated by the legal acts in force.

From the text of Article 12.2 of the Constitutional Law it is seen that the Commissioner's power has been significantly restricted by adding the expression of "while investigating the circumstances indicated in a complaint about human rights violation" to the norm. Thus, according to the substance of that expression, the Commissioner may use the established rights only in case of investigating this or another complaint, which is not in line with the functions of the NPM. The same presumption may be similarly applied to Article 13.2. And according to the OPCAT, the philosophy of the work of the NPM is expressed in undertaking regular visits to the institutions where persons deprived of their liberty are or may be detained, and Article 4 of the OPCAT clearly declares that each state shall allow visits by the mentioned mechanisms to any place under where persons are or may be deprived of their liberty. Bearing the above mentioned in mind, it has been suggested that Articles 12 and 13 of the Constitutional Law are amended accordingly.

Based on the requirements of the OPCAT and the experience gathered over the period of activity it should be emphasized that the NPM should also focus on other places which detainees can not leave at will (special boarding schools, psychiatric institutions, child homes, homes for the elderly which are

closed institutions). These institutions are not mentioned when enumerating the establishments which the Commissioner should be given an access to without hindrance and prior notification, etc. as specified in Article 12.2.1 of the Constitutional Law. It has therefore been suggested to amend the norm accordingly and make other necessary changes in line with the requirements of Article 20 of the OPCAT.

As regards Article 20 subparagraph “f” of the OPCAT, it should be mentioned that the Commissioner establishes relationships and collaborates with various international organizations in line with the directions of her activity. The Commissioner has become a member of the European Ombudsman Institute, the International Ombudsman Institute, and the Asian Ombudsman Association and successfully functions within those institutions. The accreditation of the Commissioner with the highest “A” status has resulted in the expansion of international relations and entitled her to independently participate in the activities of the UN Human Rights Council and make recommendations, express her opinion in respect of reports prepared by the government for submitting to the UN treaty bodies, prepare parallel reports and monitor the implementation of treaties. Taking into consideration the importance of the organization of collaboration with international organizations in the field of torture prevention, as well as experience sharing with the NPMs of foreign countries at a high level, it is planned to entrust this work to the department to be established in the Office.

Notwithstanding the above mentioned, it should be noted that the Constitutional Law does not contain any provisions requiring the Commissioner to establish international relationships, which makes it necessary to amend the law accordingly, so the relevant proposal has been submitted.

Article 21 of the OPCAT specifies:

1. No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the NPM 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 NPM shall be privileged. No personal data shall be published without the express consent of the person concerned.

As regards the compliance of the Commissioner's mandate with the requirements of the given article, it may be noted that complaints addressed by persons held in penitentiary institutions, investigatory isolators or temporary detention places shall be delivered to the Commissioner within 24 hours without being subjected to any kind of censorship (Constitutional Law, Article 8.5).

In accordance with Article 15 of the Constitutional Law, the protection of information constituting a state secret which has become known to the Commissioner while performing his/her activities shall be carried out in accordance with the Law of the Republic of Azerbaijan "On State Secrets". No data concerning personal and family life of applicants which have become known to the Commissioner while investigating the circumstances indicated in complaints are allowed to be made public without consent of those persons (Constitutional Law, Article 9.5).

From the text of the referred articles of the Constitutional Law, as well as other legal acts it is seen that no provision has been directly provided for the prohibition of prosecutions for having communicated to the Commissioner any information. Thus, it is necessary to amend the Constitutional Law accordingly and take into account the requirements of Article 21.1 of the OPCAT when toughening the responsibility provided by law for interfering with the lawful activity of the Commissioner. Relevant proposal has been submitted.

Article 22 of the OPCAT specifies:

The competent authorities of the State Party concerned shall examine the recommendations of the NPM and enter into a dialogue with it on possible implementation measures.

In accordance with Article 12.1 of the Constitutional Law, while investigating the circumstances indicated in a complaint about violations of human rights, the Commissioner shall receive the observations of the body or official concerned about that complaint. Within 10 days the observations shall be submitted to the Commissioner.

In accordance with Article 13.2.1 of the Constitutional Law, the Commissioner may demand from the governmental or municipal body whose decision or act (omission) violated the human rights to restore those rights. The appropriate bodies and officials shall, within 10 days, submit to the Commissioner written information of the taken measures. In cases when such information is not submitted or the demands of the Commissioner are not complied with, the Commissioner may apply to the superior authorities or other governmental bodies.

In order to be able to effectively resolve the problems revealed as a result of the analysis of complaints, the Commissioner has established working relationships with governmental bodies, including law-enforcement bodies, ministries and state committees, which play an important role in the organization of the Commissioner's work and restoration of violated human rights. Joint investigations, monitoring, and reception of complainants in regions are conducted together with governmental bodies, workshops and trainings are held in different regions with the involvement of governmental bodies, executive authorities, law-enforcement bodies, judges, staffs of courts, NGOs and mass media. In order to attract the attention of governmental bodies to the problems and breaches of law people encounter with, prevent the violation of human rights, effectively observe these rights, and in case they are violated, restore them within the framework of the law, a package of relevant proposals are prepared and submitted to the authorized bodies.

The Commissioner, within the framework of collaboration with governmental bodies, closely participates in the preparation of reports under the international provisions the Republic of Azerbaijan has become a party to. The Commissioner also helps governmental bodies in the implementation of the recommendations made by international organizations as a result of the monitoring conducted by them and encourages NGOs and other members of civil society to take an active part in this work.

Article 23 of the OPCAT specifies that the States Parties to the OPCAT undertake to publish and disseminate the annual reports of the NPMs.

In accordance with Article 14.5 of the Constitutional Law the annual reports of the Commissioner shall be promulgated in public publications.

Thus, as a result of the analysis of the Commissioner's mandate in the context of the requirements of the OPCAT, it has been determined that it partially complies with the OPCAT and it is necessary to amend the law accordingly to enable the Commissioner to function as a fully empowered NPM.

Meanwhile, it should be noted that the works aimed at the improvement of the legislation have already started. Thus, on 21 December 2010 the Constitutional Law of the Republic of Azerbaijan "On Making Additions and Amendments to the Constitutional Law of the Republic of Azerbaijan on the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan" passed its first reading in the Milli Majlis (Parliament) of the Republic of Azerbaijan. The law will enter into force after having passed re-voting in 6 months and being approved by the country president.

It should be emphasized that the law concerned has been adopted by the support of the Commissioner, as well as relevant international bodies, including the OSCE Office in Baku and OSCE-ODIHR, civil society, human rights advocacy organizations and human rights defenders functioning in Azerbaijan and by taking into consideration their proposals and recommendations.

The additions and amendments made to the Constitutional Law are of great importance due to their significance and scope and may be deemed successful progress and improvement. By the above mentioned law the scope of the Commissioner's mandate, as well as his/her independence indicators have been significantly extended and brought in conformity with the requirements set out for NPMs in the OPCAT, as well as certain guarantees have been provided for his/her staff.

Thus, along with the Commissioner's reactive function aimed at the restoration of violated human rights, his/her preventive function aimed at the prevention of human rights violations; his/her control over the information

owners' fulfilment of their duties arising out of the relevant legislative act; his/her collaboration with local, regional and international organizations in line with the directions of his/her activities; the right to submit relevant recommendations to authorized governmental bodies and receive responses to those recommendations within defined time periods; the right to visit, at any time, places of detention or other places which detainees are not permitted to leave at will; as well as granting powers to the National Preventive Group (NPG) to be established under the Commissioner's Office by transparent procedures; requirements to be met by the members of the NPG and guarantees to ensure their immunity; inadmissibility of pressure or prosecution against any person or organization for having communicated to the Commissioner any information; ensuring that any interference with the Commissioner's activity results in responsibility as prescribed by law and other important issues have been specified in the Law. Pursuant to the additions and amendments, the Commissioner will be able to benefit from the right to invite independent experts for conducting visits (see Appendix 3).

The above mentioned law, along with conforming to the requirements of the OPCAT and other international documents, may also be considered as one of best models in international practice.

### **Chapter 3. The main directions of the activity of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan as a national preventive mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment**

As a national human rights institution, the Commissioner has always paid particular attention to the issues related to combating and preventing torture, organizing preventive measures, as well as carrying out awareness work. This activity has been improved after her designation as an NPM and acquired new features.

The Commissioner's activity as an NPM has been organized in 4 main directions:

- Visits – carrying out regular, scheduled or ad-hoc, unannounced visits to places of detention;
- Scientific and analytical work – theoretical and practical analysis of empirical materials gathered and other information received as a result of the conducted activity, preparation of proposals for amending laws in force and their submission to relevant bodies;
- Legal education work – carrying out legal education work among people, particularly vulnerable groups, as well as employees of law-enforcement bodies;
- International collaboration – establishment of mutual collaboration with various international organizations, ombudsmen of foreign countries and embassies; ensuring the participation of the institution at regional and international events.

Of course, this division is conditional, the works done under each of these directions, in a sense, cross and complement each other.

The activities carried out in the above mentioned directions are also closely coordinated with the Commissioner's activity in the field of the investigation of appeals and communications. As such, the facts gathered and information obtained during the investigation of received applications and other information directly on-site or by assigning the governmental body concerned to examine the case, as well as substance and quantity indicators of complaints have been used as guiding and supplementary information during visits carried out within the NPM function.

The results of undertaken NPM visits, including interviews conducted with persons deprived of their liberty and staff have been documented by reports, protocols and service information and depending on their peculiarities, necessary measures have been taken for each of them. It should also be mentioned that both national and international communities have been regularly informed of the activities carried out by the Commissioner as the NPM. As such, in 2009, along with the reports given at national, regional or international events, the Information and Public Relations Department of the Office issued 98 official press-releases on the Commissioner's activity aimed at combating torture in the Azerbaijani, Russian and English languages, 42 out of them was about visits, 46 – about investigations, 10 – about awareness events. And in 2010 in total 135 press releases were issued, out of which 94 was about visits, 29 – about investigations, 12 – awareness events.

Press releases are also posted on the official web site of the Commissioner.



### **3.1. Visits**

Regular, scheduled or immediate, unannounced visits to places of detention are the main direction of the Commissioner's activity in the role of the NPM. After the designation as an NPM, both the quantity and quality indicators of the visits undertaken by the institution have gone up and the results have been documented more accurately and intensively.

The visits have been carried out by the Commissioner and the NPM Group. It should also be mentioned that the regional centres of the Commissioner have also been involved in this activity.

To allow the Commissioner and her representatives to freely conduct visits to places of detention, the relevant bodies have issued internal orders and instructions and created necessary conditions.

Before starting visits as the NPM, in accordance with Article 20 subparagraph "a" of the OPCAT, inquiries were sent to the relevant bodies about the places of detention under their authority and those inquiries were responded to. Based on the submitted information, the list of the establishments falling under the jurisdiction of the NPM has been drawn up (see Appendix 1). Along with traditional establishments, other places which detainees are not permitted to leave at will – special boarding schools, psychiatric institutions, child homes, and homes for the elderly, which are closed institutions, have been included in the list as well.

Based on the made list, the plan of visits has been prepared and visits have been carried out pursuant to and beyond this plan. Ad hoc visits have been undertaken for checking the state of implementation of the recommendations given during the previous visit, preventing prosecution against the persons who have communicated some information to the Commissioner in this or another form, satisfying the demand for increasing special attention on the basis of the information given by interviewed detainees about the establishment they were previously held and the information obtained from received applications and complaints, as well as on the Commissioner's own initiative.

Each of the scheduled visits took 1-3 working days depending on the size of the establishment and the number of persons held there. It should also be noted that before such visits special preparations are made within 1-2 working days. Thus, applications, complaints and appeals received by the Commissioner from different sources in respect of the institution to be visited, information obtained from mass media or submitted or disseminated by NGOs, as well as facts revealed during previous visits are analyzed on merits, the scope of issues to be focused on is defined and a list of questions is drawn up.

In 2009 were conducted 416 visits to the establishments falling under the jurisdiction of the NPM, out of which 283 were scheduled and 133 were ad-hoc visits. Out of the mentioned visits, 294 visits were carried out to the establishments under the MIA, 108 to the establishments under the PS, 2 to the InIs of the MNS, 2 to the establishments under the MD, 6 to the establishments under the ME and 4 to the establishments under the MH.

In 2010 were conducted 396 visits to the establishments falling under the jurisdiction of the NPM, out of which 320 were scheduled and 76 were ad-hoc visits. Out of those visits, 274 visits were carried out to the establishments under the MIA, 94 to the establishments under the PS, 2 to the InIs of the MNS, 3 to the establishments under the MD, 4 to the establishments under the ME, 11 to the establishments under the MH and 8 to the establishments under the MLSPP.

During visits carried out to any of such establishments, the issues like detention conditions, treatment of detainees by staff, state of medical services, food ration, food quality, as well as reformatory means applied to convicts, organization of their leisure time were primarily focused on. During visits carried out in the role of the NPM, as in previous years, numerous talks were conducted with detainees both in a group and in private. During talks a visiting team gets acquainted with the problem or complaint the detainee has and tries to solve them, as much as possible, on-site. With this aim in mind, the management of the establishment is given relevant recommendations for the elimination of deficiencies and shortcomings revealed during the visit and, if necessary, the corresponding ministry is appealed to and in most cases this or another shortcoming is eliminated.

During the visits undertaken in 2009 private, personal talks were conducted with up to 700 detainees in temporary detention places and up to 200 detainees in penitentiary institutions. Also 127 staff members were interviewed in private during visits. In 2010 private talks were conducted with 1241 persons in total, out of which 670 persons were interviewed in the establishments under the MIA, 430 in the establishments under the PS, 14 in the InIs of the MNS, 12 in the establishments under the MD, 40 in the establishments under the ME, 35 in the establishments under the MH, and 40 in the establishments under the MLSPP. In 2010 personal talks were conducted with 252 staff members as well.

It should be mentioned that during visits detainees mostly complained of the biasness of investigations, groundless arrests, various pressures exerted during investigations, and unjust court decisions rather than detention conditions or treatment.

Relevant proposals and recommendations have been submitted to the managements of the establishments concerned, as well as to the corresponding ministries for the elimination of the deficiencies and shortcomings revealed during visits, as well as the improvement of detention conditions, and appropriate measures have been taken by the ministries with regard to each recommendation and relevant information has been provided in this respect.

Along with the other problems revealed during the visits to places of detention, it has been determined that the daily food ration provided for detainees, which is uniform for all establishments, and the amount of the funds allocated for that purpose partially meet the real demand. This has necessitated conducting an appropriate analyses and ensuring the unification of food provisioning for all homogenous establishments. For that purpose, the Commissioner has requested the ministries, which have under their authority such places that detainees are not permitted to leave at will, to give information on the size of the daily food ration and amount of the funds allocated for that.

### *3.1.1. Establishments of the Ministry of Internal Affairs*

The MIA has 119 temporary detention places that fall under the jurisdiction of the NPM. These places include the Office for Combating Trafficking in Human Beings, Head Office for Combating Organized Crime, Head Transport Police Office, Baku City Head Police Office Detention Facility for Administrative Offenders, Baku City Head Police Office Isolation Centre for Minors, Investigation Centre of the Department for Combating Illegal Migration of the Head Office for Passport, Registration and Migration, district police offices, police stations and temporary detention isolators (see Appendix 1).

As regards the situation in the establishments concerned, it should be noted that necessary actions have been taken by the above mentioned ministry to reconstruct the temporary detention places of police bodies in line with modern standards, numerous TDPs have been rebuilt in line with modern requirements and majority of them have been entirely renovated in order to bring conditions in temporary detention places in conformity with international norms and standards and safeguard the rights of detainees. A new administrative building for the Detention Facility for Administrative Offenders and Isolation Centre for Minors of the Baku City Head Police Office, as well as new TDPs for Khazar, Gusar, Goygol and Lerik district police bodies have been built and put into use. The construction of new TDPs for Nasimi, Sabunchu, Absheron, Samux, Hajigabul, Guba and Tovuz district police bodies is being finalized.

In order to satisfy social, medical and other necessary demands of detainees, special attention has been paid to providing temporary detention places with sanitary facilities, interrogation, visit, medical, worship and other auxiliary rooms and it has been ensured that conditions meet modern standards.

Most TDPs have been provided with modern alarm and security systems, video surveillance equipment has been installed in most police bodies to increase supervision over the behaviour of detainees and this process is being continued. Beddings, beds and furniture have been renewed in all TDPs, rooms have been provided with necessary equipment, and necessary measures

have been taken to provide medical services to detainees, create appropriate conditions for them to meet their relatives, as well as worship, and to solve the issues related to providing them with an access to a lawyer. Also, in order to ensure security in detention places, prevent possible emergencies, and enhance supervision over the activities of personnel serving in such establishments, the process of the installation of video surveillance equipment in the duty sections of the city and district police bodies is being continued.

Persons brought to the police and held there are, through the boards posted in administrative buildings, provided with opportunities for familiarizing themselves with their rights and freedoms enshrined in the Constitution of the Republic of Azerbaijan, their rights and duties defined pursuant to international norms and the normative documents regulating the activities of the MIA in this field, as well as the essence of the Commissioner's institution and how to apply to it.

As already mentioned, the NPM conducted 294 visits in 2009 and 274 visits in 2010 to all places of detention of the MIA. Based on the summarization of the information collected during visits, it can be noted that overall situation, conditions of detention, as well as treatment of detainees have been satisfactorily organized in these establishments and in general, comply with standards.

Along with the above mentioned, some facts were revealed during visits and necessary measures were taken afterwards.

During the visit conducted to the Astara DPD TDP it was found out that the reports reflecting results of medical examinations in the facility had not been drawn up as required by the regulations in force. A corresponding report was prepared and recommendations for the elimination of the revealed deficiencies were submitted to the management of the establishment.

During the visit conducted to the Gobustan DPD TDP it was found out that the administrative part of the DPD and the TDP were located in a building that met modern standards as it had been built newly and necessary conditions had been created for detainees. But it was revealed that there were no painkillers and other necessary medicines in the medical box intended for providing first aid to the detainees held in the establishment concerned. During the visit several deficiencies were observed in the organization of the work in the TDP

as well. Thus, the registration of persons under administrative detention was conducted in the registration and record book of suspected and accused persons held in the TDP. During the visit it was found out that the registration of detainees was maintained in that book, but though they had met with their lawyers and families, no relevant records had been made in that regard.

Also, the fact of the involvement of persons under administrative detention in forced labour was revealed in the Gobustan DPD TDP. Thus, during the interview conducted with A.M., who had been subjected to administrative detention for 7 days in accordance with the CAO by the decision of the Gobustan District Court, he said that during the 5 days of detention everyday he, together with his brother under administrative detention, was taken out of the building of the TDP and involved in sweeping the yard of the DPD, softening soil around trees and other similar cleaning works – they did all that not voluntarily but pursuant to the Department Chief’s instructions. During the talks conducted with police officers the Chief of the TDP, as well as the Chief of the Criminal Investigation Unit of the DPD, along with confirming the above mentioned facts, stated that there was nothing abnormal or illegal in removing detainees outside the TDP and involving them in forced labour.

A similar case was observed during the visit to the Gabala DPD TDP. Thus, G.B., who was held in the TDP under administrative detention, during the interview conducted with him, stated that during his detention period he was twice involved in forced labour in the yard of the DPD for 1-2 days – he swept the yard and carried garbage out. A corresponding report was drawn up with the participation of the policeman on duty.

Another moment that attracted attention during visits was unsatisfactory conditions in the Ismayilli DPD TDP. As such, during the visit carried out to the establishment concerned it was found out that though it was cold, the cells of the facility were not heated. The only natural gas heater installed in the corridor could heat only the 2 cells located near it. During investigation it was also revealed that the cells, kitchen and investigation room of the TDP were dirty. In some cells there were no tables and chairs for receiving food and electric bulbs were not suitable for use. The sanitary facilities in the cells were in unsatisfactory condition. The state of toilets and water taps in the cells could not be deemed satisfactory either. It was almost impossible to use the

water tap that was located at a very low level. During the visit it was also found out that there was no water in the bathroom of the TDP and some other negative facts were observed.

An appeal has been addressed to the MIA regarding the above mentioned cases.

Along with the other facts observed in the establishments under the MIA, it can also be noted that though all the cells in the newly operated Khazar DPO TDP were intended for the detention of 4 persons, there were just 2 chairs in those cells; in the Nasimi DPO TDP most of the cells were weakly illuminated, water was given twice a day – in the morning and in the evening, 11 persons under administrative detention were held there for 10 months in 2010 pursuant to the letter of the Deputy Chief of the Baku City Head Police Office, because there was no woman among the staff of the TDP, 11 women accepted to the TDP in 2010 were searched by being visually examined and questioned; in the Imishli DPD TDP there were no sanitary facilities (toilet and water tap) in the cell intended for holding 5 persons under administrative detention; Gadabay, Yardimli and Ismayilli DPD TDPs needed to be fully renovated or reconstructed; insanitary conditions were observed in the Khachmaz, Gakh, Goranboy, Beylagan, Saatli, Bilasuvar and Jalilabad DPD TDPs, mattresses in the Shirvan CPD TDP and Zardab DPD were unfit for use; though the Shirvan CPD TDP was intended for 28 persons, on the day of visit 29 persons were detected under detention in that establishment; when getting acquainted with the documents confirming the lawfulness of the detention of the detainees held in the Shirvan CPD TDP and Imishli DPD TPD, it was found out that none of the protocols “on detention of a suspect” drawn up in respect of the persons detained there was officially stamped as required by the relevant order of the MIA; similar situation was observed in the Gakh and Balakan DPD TDPs; as well as in the Sumgayit CPO TDP natural illumination was weak in most cells because the windows were of a small size, the TDP did not meet modern standards and the administrative building needed capital renovation, and when documents concerning detainees were examined, it was discovered that the detention protocols of suspected and accused persons were not sealed with the required official stamp but with a round stamp marked “for references”.

During the interviews conducted with detainees in the Sumgayit CPO TDP it was also uncovered that one of them was not examined by a doctor on entering the TDP. When the NPM Group got acquainted with his documents, they determined that a reference had been drawn up alleging that he had undergone a medical examination and was found healthy. The person concerned stated that he had epilepsy and suffered from pains in his kidneys, but could not get medicine though he had requested the TDP personnel on duty to give him painkillers.

During the visits to the Jalilabad DPD TDP it was revealed that though there were free cells, 4 persons under administrative detention – 2 persons connected with the same conflict and a father and his son who had aggressive relationships were held in the same cell. After the Commissioner's intervention, the father and one of the other 2 persons under administrative detention were moved to a free cell.

Moreover, it can be noted that in the Tovuz and Imishli DPD TDPs sometimes suspects, accused persons and persons under administrative detention are not provided with medical examination, which consequently makes it difficult to investigate their justified or groundless complaints of being subjected to torture and violence in the police departments.

During NPM visits it was also found out that sometimes TDPs do not observe security procedures. As such, in the Aghsu and Ujar DPD TDPs it was observed that when persons held in cells were taken out of cells, other doors were not locked – such cases may cause unpleasant results.

As regards the overcrowding observed in some TDPs, it should be stated that as a result of the conducted analysis it has been determined that overcrowding happens because of the high number of detainees to be held in the TDPs of the police departments of the districts where new courts of appeal are functioning and within several days the defined threshold is left behind. It should be mentioned that because of such overcrowding it is sometimes impossible to separate certain groups of persons as required by law. We think it is necessary to take appropriate measures for the prevention of overcrowding which may take place in the TDPs of the police departments of the districts (cities) where courts of appeal are located and starting from the next year



courts of grave crimes and administrative and economic courts will be functioning. The Commissioner has addressed a relevant appeal to the MIA with regard to the above mentioned.

In the responses received it is stated that the chiefs of the respective police bodies have been requested to enhance the control over affixing an official stamp to the protocols of detention of persons suspected in the commission of a crime, eliminate deficiencies and shortcomings detected during visits, as well as take disciplinary measures in respect of the personnel responsible for this sphere, moreover, the management of the Khachmaz DPD has been required to take appropriate actions to improve sanitary conditions in the cells of the TDP, disciplinary actions have been taken in respect of some personnel of the Sumgayit and Nasimi city and district police bodies, as well as the investigator and chief of the TDP of the Gakh DPD and the investigator and chief of the TDP of the Balakan DPD have received reprimands, and the chiefs of Gakh and Balakan DPDs have been required to enhance the supervision over the work of their subordinates and be more demanding.

The received responses also state that necessary actions have been undertaken to improve the work of the internal affairs bodies in the field of human rights and bring it in line with the relevant international standards and recommendations of the UN Committee against Torture and additional concrete instructions have been given to local bodies to ensure that police officers strictly observe human and citizen rights.

According to the information provided by the MIA, for the prevention of acts of torture, all persons brought to temporary detention places undergo a medical examination before being placed in a cell and it is recorded in the corresponding register, afterwards that register is regularly checked by the controlling prosecutor. Besides, the personnel of the MIA sent on an official trip to regions study the state of the observance of the rights of the persons brought to regional police bodies and detained in their TDPs and take necessary actions to eliminate shortcomings. When breaches of law are revealed, it is ensured that an objective internal investigation is carried out regardless whether the victim has requested so.

During the visits undertaken by the NPM Group some detainees stated that they had been subjected to violence during detention or in connection with

investigation. As such, during the visit to the Imishli DPD TDP T.N., Kh.I. and A.Kh., who were detained there, stated that they were subjected to torture by the personnel of the Imishli DPD with the aim of making them confess another crime besides the one actually committed by them. The MIA has been informed of the case. In the received response it is stated that as a result of the investigation conducted in this regard, the allegation of the commission of illegal acts by police officers against the accused persons was not proved.

A similar complaint was made during the visit conducted to the Narimanov DPO TDP with the participation of an expert from the OSCE-ODIHR. A detainee called S.A. stated that he was beaten to obtain a confession from him. The Commissioner, who was participating in the visit, in accordance with the Constitutional Law, instructed the chief of the Narimanov DPO on the spot to investigate the case. Besides, a staff member of the Office was instructed to investigate the allegation. The mentioned allegation was not proved as a result of the conducted investigations.

During the talk with A.H., who was held in the Yasamal DPO TDP, he stated that he was detained by the officers of the Garadagh DPO and taken to the police office, there in the office of one of those officers 3 policemen stroke several blows to different parts of his body by a rubber baton to find out where he took narcotic drugs from. The case was reported to the Office of the Prosecutor General of the Republic of Azerbaijan and the MIA. In the received responses it is stated that the allegation of A.H.'s battery was not proved during the investigation into the case. Thus, according to the opinion of forensic medical experts, no injuries were detected on A.H.'s body. However, as a result of the service inquiry conducted in the MIA it was found out that the senior police investigator of the Group for Combating Drugs of the Garadagh DPO did not ensure A.H.'s lawful detention in the police office, together with 2 other police investigators held A.H. in his own office for a long time and showed rudeness to him, and only after that handed him over to the investigation together with the collected materials. Hence, though the allegations of the use of physical violence against A.H. have not been proved, by the relevant order of the MIA the senior police investigator of the Group for Combating Drugs of the Garadagh DPO and the other 2 police investigators of the same Group have been dismissed from their posts for not

ensuring his detention as required by law and treating him with rudeness, and disciplinary actions have been taken in respect of the other senior police investigator and police investigator, as well as chief of the Garadagh DPO.

In addition to the above mentioned, it can be noted that during the visit to the Khatai DPO TDP detainee M.A. stated that he had been subjected to violence at the time of his arrest by the officer of Police Station No.9 of the Sabail DPO. The MIA has been requested to investigate the case.

The NPM Group, within the framework of the visits conducted to the establishments under the MIA, has also examined the issues related to the provision of food to detainees. During the visit to the Khachmaz DPD TDP in the course of the interview conducted with the detainees, N.A., A.A, and P.S., who were under detention as accused persons, saying that they were not dissatisfied with the detention conditions, added that over the detention period they were provided with food just once a day. The chief and deputy chief of the Khachmaz DPD TDP, who were accompanying the members of the NPM Group, confirmed that fact and stated that detainees were provided with food once a day in accordance with the effective guidelines and specific order. When the members of the Group wanted to see those documents, nothing of the kind was presented. In the response to the appeal sent by the Commissioner to the MIA in connection with that issue it is stated that detainees held in the TDPs of the police bodies of the Republic are provided with food 3 times a day at the expense of the funds allocated on the basis of the MIA estimate in accordance with 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. In the response letter, along with indicating that the management of the Khachmaz DPD has been required to enhance the control over daily provision of food to detainees, it is stated that N.A., A.A, and P.S. were satisfied with their nourishment during the period of their detention in the Khachmaz DPD TDP and they were provided with food 3 times a day. When the members of the NPM Group were in InIs No.3 of the PS, they met with N.A. and P.S., who were detained there, to re-check that issue. During the talk those persons stated that, unlike previous days, they were provided with food 3 times a day after they had been interviewed by the members of the NPM Group in the Khachmaz DPD TDP

and they reported the same to the personnel of the MIA who came to the TDP a few days after the interview. Later, when the members of the NPM Group conducted interviews with the detainees held in the Sumgayit CPO TDP (28 persons) and Nasimi DPO TDP (2 persons), they informed that they were provided with food just once a day during their detention in the mentioned TDPs. The chief of the Sumgayit CPO TDP and the acting chief of the Nasimi DPO TDP confirming the fact that the detainees were provided with food once a day, stated that it was in compliance with the normative acts in force and signed the report drawn up in this regard.

The case was again raised with the MIA. In the received response it is stated that disciplinary actions have been taken in respect of some personnel of the Sumgayit and Nasimi city and district police bodies.

Along with the aforementioned, it is regretful that after the Sumgayit CPO TDP was inspected by the employees of the MIA with regard to provision of food to detainees, suspected and accused persons were prohibited, by the inspection team, to receive parcels sent or brought by their relatives or visitors, as stated by the chief of the TDP. The Commissioner has appealed to the MIA in this regard.

When speaking about the visits conducted to the establishments of the MIA, it should be particularly stressed that during the visit to the Saatli DPD TDP Aghali Khalilov, Chief of the Department, interfered with and impeded the activity of the NPM Group. Thus, after the employees of the Office entered the administrative building of the Saatli DPD and presented their badges to the officer on duty of the on-duty section located there, they declared that they had to examine the TDP and entered the establishment being accompanied by the same officer on duty. The officer on duty in the TDP reported to the officer on duty in the DPD that 5 persons were held in the facility and no breaches occurred during the period he was on duty. Then the NPM Group members started to examine the cells of the TDP, 2 cells were examined and their photos were taken. It was revealed that the examined cells did not comply with the standards in force, there were no sanitary facilities (toilet and water tap), table and chairs in both cells, the upper parts of the beds were entirely made of iron, and the walls of the cells were uneven. When the visiting team wanted to examine the next cell, Aghali Khalilov, Chief of the Saatli DPD, entered the

facility and rudely ordered the personnel of the TDP to lock the door of the cell he had opened. Aghali Khalilov said to the visiting team that they had to make a relevant record in the register on entering the Department and as they had not done it, they had to leave the TDP. The staff members of the Office stated that they were allowed in because they presented their badges when they entered the administrative building and only at the end of the visit they would make corresponding notes in the examination register of the TDP. At the same time Aghali Khalilov was informed of the requirements of the national legislation and relevant provisions of the OPCAT. Nevertheless, Chief of the Department Aghali Khalilov insistently required them to leave the TDP and did not allow them to perform their official duties. This happened in front of the TDP personnel and detainees.

We think that such an act, along with being a gross violation of the OPCAT and national legislation, casts a shadow on the mutual and close cooperation established between the Commissioner institution and the MIA for a long time. The Commissioner has requested the MIA to remedy the relevant breaches and organize the study of the requirements of the Constitutional Law and the OPCAT by police bodies. In the received response it is stated that the management of the MIA has requested the relevant police bodies to ensure that their personnel gain knowledge of the OPCAT, as well as Aghali Khalilov has received a severe warning.

As a result of the visits undertaken to the relevant establishments of the MIA it has also been revealed that though appropriate conditions have been created for the persons detained in TDPs, the working conditions of the personnel serving in those establishments can not be deemed satisfactory. As such, though the floors of cells are wooden, the floors of the rooms intended for the use of personnel and the corridors where they serve are concrete, which negatively affects their health.

### *3.1.2. Establishments of the Penitentiary Service of the Ministry of Justice*

The PS has 50 establishments that fall under the jurisdiction of the NPM. These establishments include the Prison, SMI, MI, Correctional Institution,

investigatory isolators, penitentiary institutions, penal colony settlements, and special institutions (see Appendix 1).

The PS has undertaken a number of actions to improve the conditions in the establishments concerned. This has, first and foremost, followed from the requirement of the Law of the Republic of Azerbaijan “On Making Additions and Amendments to the Punishment Execution Code of the Republic of Azerbaijan and Criminal Procedure Code of the Republic of Azerbaijan” of 24 June 2008 with regard to the humanization of the rules related to the enforcement and serving of sentences. As such, the duration of telephone conversations allowed to prisoners were increased from 10 to 15 minutes, their quantity also were increased for persons deprived of liberty for certain period of sentence from 12 times a year to once a week, and for life-sentenced persons from six times a year to twice a month. In order to settle the issues arisen in this respect, an additional land line has been allocated for the use of detainees in PIs No.1, 6, 7, 10, 11, 14, 15, and 16. Persons sentenced to life imprisonment have been granted the right to make phone calls twice a month, have 6 short visits and 2 long visits during a year, and receive 8 parcels, packages and banderols during a year.

In order to safeguard the rights of the convicts who have been allowed to watch TV programs by the new law, in the wards of the SMI intended for persons sentenced to life imprisonment 8 TV sets, in the MI 1 TV set, in the cell-type rooms of PI No.8 13 TV sets, in the cells of the Prison 148 TV sets, hence, in total 170 TV sets have been installed and given for the use of convicts. At the same time, convicts have been allowed to change TV channels themselves and the time allowed for watching TV has been increased from 2 hours up to 4 hours.

In order to guarantee the right of convicts to express their opinions with regard to decisions on application of disciplinary measures or to file a grievance against them, when the chief of a penitentiary institution or a person substituting for him/her issues such a decision, convicts, being explained their rights to voice an opinion on or file a grievance against it, are invited to sign the decision in the place specially allocated for that purpose. In case the convict refuses to sign, a corresponding report is drawn up and added to the personal file of the convict.

Though the staff lists of all PIs provide for a position of psychologist, except for PIs No.4 and 8, Prison, Correctional Institution, Baku InIs and SMI, in the other establishments these positions are vacant. In the establishments where the post of psychologist is vacant, the staff members of the Psychologists Group of the Correctional Work Organization Office of the PS provide psychological support for convicts.

The work of ensuring that convicts serve their sentences close to their places of residence and bringing the conditions of their detention in conformity with modern, international standards has been at the centre of attention. The first shift of the new InIs in Zabrat Settlement, Baku has been put into operation and the persons held under hard conditions in InIs No.1, where overcrowding was the case, have been transferred to that facility. At present the construction of facilities for that isolator under the second phase is continued.

The geological works in the areas intended for a PI for female convicts and correctional institution for minors to be built in Zabrat Settlement have been completed, the design estimates of the security fence has been prepared and constructions works have commenced.

The construction of the several facilities of the new prison in Umbaku Settlement, Baku has started and the construction of the important facilities is being continued.

Also, the second phase of the construction of the PIs of a mixed regime, started to be built in Shaki and Lankaran since 2009, is being continued.

The design estimates of the PI of a mixed regime under construction in Gandja have been prepared and evaluated by experts. Presently, the construction of the several facilities of the establishment is ongoing.

Technical specifications for the PI of a mixed regime planned to be built in Kurdamir District have been received and submitted to the respective bodies for the preparation of design estimates.

In order to improve the conditions of detention of convicts, current repair works have been carried out in the communal facilities of most PIs. In PIs No.1, 8, and 12 the canteens for convicts, in PI No.11 the dormitory for convicts, and in PIs No.12 and 13 the punishment isolators and quarantine rooms have been renovated, and in PIs No.2, 5, 7, 10, 11, 13, 15 and 17 the

roofs of the dormitories have been replaced. In the new building of the SMI internal water and sewerage lines have been installed and in PIs No.2, 9, and 17 the replacement of such lines has been finalized.

The replacement of external gas lines in PIs No.8, 12, 13, and 14 has commenced. For the replacement of the 500 meters of the gas line of the Prison, which is not fit for use, and reinstallation of the heating line of the Correctional Institution, pipes have been bought and delivered to the institutions.

Current repair works in the I regime building and capital repair works in the IV regime building of InIs No.2 have been completed. The school of the Correctional Institution has been completely repaired.

As already mentioned, in 2009 the NPM conducted 108 visits to all places of detention under the PS and in 2010 – 94 visits. Based on the summarization of the information collected during visits, it can be noted that overall situation, conditions of detention, as well as treatment of detainees have been satisfactorily organized in these establishments and in general, comply with standards.

During visits certain facts were revealed and relevant measures were taken. On the whole, the Commissioner has addressed numerous appeals to the relevant bodies of the MJ with regard to the conditions of detention of detainees in the establishments of the PS and most of those appeals have been positively resolved.

First of all, it should be mentioned that the overcrowding and placing more than allowed persons in cells as observed in InIs No.3 of the PS, which is located in Baku, raises concerns. According to the information received from the PS, this problem will be soon resolved by putting new buildings of the Baku InIs into operation. We think the construction works should be speeded up.

During visits it was also revealed that there was overcrowding in the Prison, some cells where persons sentenced to life imprisonment were held did not meet modern standards, as well as solitary cells were used without any necessity. The Commissioner has appealed to the PS in this regard and as a result, a deficiency report has been drawn up and repair works have been started to enlarge windows with the aim of bringing natural lighting and



ventilation of those cells in conformity with the approved standards. When the new prison, which is presently under construction, is put into operation, the above mentioned problems will be completely solved.

During the visit undertaken to the Prison the interviewed convicts made different appeals. Sh.R., a convict sentenced to life imprisonment, during the interview expressed his dissatisfaction about the detention conditions and stated that the bread given to convicts was of low quality. The visiting members of the NPM Group immediately investigated the mentioned allegation, examined the relevant parts of the Prison, inquired about the manner of delivery of the bread given to convicts, got acquainted with its quality on the ground, as well as talked to other convicts held in the Prison and personnel, and examined the bread found in the cells of some other convicts. During the conducted investigation, it was found out that the quality of the bread given to convicts was satisfactory and Sh.R.'s complaint was unfounded and proved wrong by the relevant facts.

During the visit R.M., another convict serving a sentence in the Prison, requested to help him to obtain an audiocassette tape recorder for learning a foreign language. The convict has been explained that the law does not allow bringing the requested appliance to the Prison.

During the visit conducted to the Prison some convicts requested to extend the daily 4-hour time within which convicts were allowed to watch TV. The convicts were informed that the Commissioner had already addressed a relevant appeal to the corresponding bodies.

As a result of the analysis of the applications, complaints and appeals received by the Commissioner from different sources and information disseminated by some NGOs, as well as with the aim of following up the state of implementation of the recommendations given during previous visits, one more visit of longer duration was undertaken to the Prison of the PS.

As compared with previous visits, during this visit, along with some positive changes observed, several breaches and shortcomings were noted. As such, during interview some convicts stated that they were subjected to torture and inhuman treatment by the chief and personnel of the institution, as well as their appeals addressed to different bodies had not been delivered. During the visit it was also revealed that the cells of the Prison did not have general

ventilation and it was very inconvenient in hot weather. Another deficiency observed in the Prison was that the place where food was kept was not suitable for that purpose. That the quality of bread is sometimes poor raises concerns as well. The proportion between the number of convicts and the number of visit rooms (which is fewer) is not observed, which may cause inconvenience for convicts and their families. It should also be mentioned that normal conditions have not been created for the people who come to visit convicts and have to wait in front of the Prison before being allowed in. Another important shortcoming observed in the Prison was the low quality of the medical services provided in the establishment. During the visit it was informed that the chief of the medical unit was in the Head Office, as well as when the NPM Group wanted to examine the pharmacy and registers, it was stated that the key to the pharmacy and registers were with the chief of the medical unit. On the next day of the 2-day visit the chief of the medical unit did not appear in the Prison either. It was therefore impossible to investigate the issues arisen by the convicts in respect of the chief of the medical unit and medical aid. The Commissioner has appealed to the PS in connection with the above mentioned cases. In the received response it is stated that every case mentioned in the appeal has previously been investigated by the PS and the allegations that the rules on treatment of convicts have been breached and applications and complaints have not been sent to the relevant bodies have proved wrong. It has also been noted that court decisions have been issued in respect of some points brought up in the appeal. The response letter further states that, within the framework of the works aimed at improving living conditions of convicts, certain repair works have been performed in the IV, V and VI regime buildings of the Prison for the enlargement of windows to ensure natural ventilation, a new heating system and new walking area have been set in the area intended for long visits. At the same time the internal gas and sewerage lines, which were unfit for use, as well as in order to deal with the emergency situation encountered with in the provision of gas to the Prison, the external gas line have been replaced.

In the IV, V and VI regime buildings plastic doors and windows have been installed in the cell-type rooms, a new power line has been fixed, the walls and ceiling have been painted, the walls have been tiled, the floor has been covered

with ceramic tiles and linoleum, as well as new water and sewerage lines, lavatories, sinks, water taps have been installed. At the same time repair works have been performed in surveillance rooms of the regime buildings. The roofs of the buildings of the Prison club, laundry, and food storehouse have been replaced. It is planned in the future to continue current repair works in the Prison depending on the availability of financial resources.

The response notes that the absence of the chief of the Medical-Sanitary Unit during the visit was connected with the fact that those days he was in the MJ Head Medical Office and took part in the event devoted to struggle against tuberculosis which was attended by representatives of several international organizations. Furthermore, it has been indicated that in order to strengthen medical services in the Prison, 3 doctors – a psychiatrist, a laboratory assistant, and a radiologist have been employed by the Medical-Sanitary Unit, thus, at present 7 doctors with different qualifications and 1 medical assistant work there, and in order to ensure the flexibility of medical services, the medical staff, being assigned to regime buildings, are visiting convicts on a daily basis. It has been stressed that when complex clinical and diagnostics-related cases are faced with while providing medical services for convicts in the Prison, the technical and human resources of the medical institutions under the Ministries of Justice and Health are used, moreover, the doctors of the facility may invite specialists from medical centres and benefit from their help in the process of examination and treatment of the special contingent.

In the response letter it is also stated that the convicts serving their sentences in the Prison are provided with food and other necessities in accordance with the relevant decision of the Cabinet of Ministers of the Republic of Azerbaijan. Along with bread and prepared meals, they are provided with vitamins, butter, sugar, cigarettes every 10 days, matches, 2 eggs once a week pursuant to the tables drawn up based on the norms. Along with prepared meals, salads made of carrot, beet, cabbage and other vegetables are distributed to them. As a result of the regularly conducted inspections it has been observed that the canteen and the kitchen, the stand located in the area are in normal sanitary conditions, meals are qualitatively prepared in accordance with the menu. It is planned to accordingly renovate the

warehouse, the rooms where food, clothes and bedding are stored and install additional racks as part of the actions to be taken in the Prison.

In the letter it is stated that it is not reasonable to perform capital construction works at present to produce a new food storehouse, additional visit rooms and waiting rooms outside the establishment as a new prison complex meeting modern standards is under construction in Umbaku settlement.

Another issue raising concerns about the establishments of the PS is that the floors of convicts' dormitories in some PIs are still made of concrete. Based on the facts observed in PIs No.1, 2, and 17, it can be noted that such a case negatively affects the heating of those rooms and convicts' health.

The conditions in PIs No.8 and 11 are not satisfactory either and we deem it necessary to conduct repair works in those establishments as well. During the visit to PI No.11 it was found out that because the roof of the second floor of the building where 2<sup>nd</sup> group was placed was unfit, when it was raining, water was leaking onto the beds where convicts were sleeping.

The Commissioner has appealed to the MJ in connection with each of the above mentioned cases.

In the received response it is stated that the MJ has reviewed submitted proposals and recommendations. It has come out that the PS and MJ Head Medical Office will address the issues of covering the floors of the dormitories of PI No.1 with wood and providing the Medical-Sanitary Unit with new dental inventory in 2011.

During the long visit carried out to PI No.2 it was determined that in winter electric heaters are used to heat dormitories and other facilities because the establishment is not provided with natural gas. It has also been determined that the relevant areal doctor expert commissions create obstacles for disabled convicts in receiving a primary grade of disability.

The Commissioner has appealed to the MJ in this regard. In the received response it is stated that the coating of the floor of dormitory No.4 of PI No.2 with a wooden cover has already been started. Depending on the availability of financial resources, this work, phase-by-phase, will be implemented in other dormitories as well. Though the establishment concerned was provided with some liquid gas by the Khazar District Gas Exploitation Station, since June

2010 the provision of gas to the most parts of Bina Settlement, where the establishment is located at, as well as for the establishment has been suspended. At present negotiations are under way with the relevant bodies to solve the problem. As regards the issuance of relevant grades of disability to some convicts serving their sentences in the establishment, it has been noted that as a result of the investigation it has been determined that 54 convicts, who need to be issued a relevant grade of disability, have submitted required documents to the MLSPP in accordance with the guidelines. 47 convicts out of them have been issued grades of disability by the decision of Areal Medical Social Expert Commission No.3. The other 7 convicts who need a primary grade of disability have been examined by the members of the Commission, but so far a reference about the results of the examination has not been provided to the PI. In order to clarify the issue, the MJ Head Medical Office has addressed a letter to Areal Medical Social Expert Commission No.3 of the MLSPP.

During the visit carried out to PI No.6 along with the observance of some positive changes as compared to previous visits, it was also noticed that the punishment isolator needed repairing, the dental chair in the medical unit was unfit, and some convicts could not receive grades of disability from the relevant body.

In the response to the letter of the Commissioner addressed to the MJ it is stated that the renovation of the punishment isolator of the establishment has been included in the PS's plan of current and capital construction and renovation works for the year 2011 and will be implemented depending on the availability of financial resources. According to the response letter, the capital repair of the dental room of the Medical-Sanitary Unit of the institution was included in the work plan of the MJ Head Medical Office for the second half of the year 2010 and it was planned to perform those works and to fully provide the unit with modern dental equipment by the end of the current year. The MJ Head Medical Office keeps the issues related to the issuance of relevant grades of disability to some convicts serving their sentences in the establishment concerned and provision of prosthesis to them under constant control. In order to clear up the difficulties that exist in this area and do not depend on the relevant bodies of the MJ, again some discussions have been

held with the relevant bodies and the problem will soon be resolved. The Commissioner also urges the MLSPP to take necessary actions to solve the given problem as soon as possible.

Problems of the same nature have been observed in PI No.7. As such, the floors of the 8 dormitories intended for convicts of the institution concerned are concrete. Besides, the medical services provided to convicts in the PI have not been organized at a satisfactory level. During interviews conducted with a number of convicts they said that when they applied to the medical unit in connection with their illnesses, they were subjected to bureaucracy, and encountered obstacles in receiving necessary medicines from the Head Doctor. During the conducted investigation it was also revealed that in many cases the doctor's signature was not affixed in the register of the examination of the meals prepared for convicts. That 2 medical assistant positions were vacant and the dentist, who was sent from PI No.17 to PI No.7 on Tuesdays and Thursdays, was not in the institution on the day of the visit (Thursday) points to the existence of shortcomings in the provision of medical services to convicts. It should be mentioned that though the International Committee of the Red Cross and other organizations that perform monitoring in such establishments have provided recommendations with regard to the poor quality of the medical services provided in the institution, such deficiencies have not been eliminated.

The Commissioner has appealed to the MJ in this respect. In the received response it is stated that because a large amount of money is required to cover the floors of the dormitories in PI No.7, these works have been included in the list of current repairs of the PS for the years 2011-2012 and will be implemented subject to the availability of financial resources. The response letter also notes that it has been determined that the Medical-Sanitary Unit of the institution is provided with sufficient quantity of medicines and bandaging materials and only psychotropic medicines are scarce. When checking how convicts are received by the Medical-Sanitary Unit, it has been determined that sometimes the results of the provided medical aid have not been recorded in the outpatient reception register and other medical registers. Because the Medical-Sanitary Unit has not drawn up and agreed with the management of the establishment the schedule of outpatient reception of convicts, the appeals

of the convicts have become massive. At the same time, during the investigation it was determined that in many cases the doctor's signature was not affixed in the register of the examination of the quality of the meals prepared for convicts. In the response it is also stated that necessary actions have been taken to fill the vacancy of 1 medical assistant for the Medical-Sanitary Unit.

For the clarification of the absence of the doctor-dentist of the Medical-Sanitary Unit on the visit day it has been informed that the dentist received convicts in the first half of that day and having notified the chief of the Medical-Sanitary Unit, left the institution for the official meeting with a dental mechanic at another PI in the second half of the day.

The response also states that the Chief of the Medical-Sanitary Unit has been severely criticized with regard to the detected deficiencies and shortcomings, and relevant tasks have been assigned to him and the fulfilment of those tasks has been taken under control.

According to the response, the shortcomings noticed by the International Committee of the Red Cross and other organizations that have performed monitoring in the establishment have been investigated by the MJ Head Medical Office and the results have been reported to the management.

During the examination of the Medical-Sanitary Unit of PI No.10 it was noticed that sanitary and hygiene rules were not observed in the rooms, kitchen and sanitary facilities and the situation was unsatisfactory, as well as there was no boiled water for sick convicts. The Commissioner has submitted relevant recommendations to the MJ and in the received response letter it is stated that because the building of the Medical-Sanitary Unit is old, it needs general renovation and at present repair works are performed in the wards. According to the letter, the kitchen and sanitary facilities were planned to be repaired in the second half of 2010. The response also stresses that it has been ensured that in the Medical-Sanitary Unit boiled water is available within the reach of every convict's hand, and the relevant personnel have been strictly instructed to keep the hygiene and sanitary conditions in the institution, including the Medical-Sanitary Unit, under constant control.

During the visits carried out to PI No.14 along with the observance of some positive changes, the facts that the floors of the dormitories, Medical-

Sanitary Unit, as well as punishment isolator were concrete, one of the dormitories was not illuminated with normal natural light due to the small size of its window, there were no permanent dentist and a separate lawyer room, and the administrative building of the institution was located in the middle of the residential area of convicts were evaluated as negative cases.

In the response to the appeal addressed by the Commissioner to the MJ it is stated that with respect to the mentioned deficiencies and shortcomings, a candidate with relevant specialization has been approved by the Recruitment Commission established in the MJ Head Medical Office to staff the vacancy of doctor-dentist in the Medical-Sanitary Unit and a motion has been made to the MJ to appoint him accordingly.

The wooden flooring of the convicts' dormitories and punishment isolator, and expansion of the window in a dormitory room will be realized in the near future subject to the availability of financial resources. At the same time covering the floor of the Medical-Sanitary Unit of the establishment with wood has been included in the budget of the MJ Head Medical Office. As well as a deficiency report has been drawn up to repair the roofs of the punishment isolator and one of the regime buildings and the volume of the works to be performed has been determined. The current repair of the roofs will start in the near future.

In the response it is also stated that as the relevant normative-legal acts regulating the structure of PIs do not provide for the organization of separate rooms for meetings between convicts and their lawyers or other persons eligible to provide legal assistance, short visit rooms and personnel's rooms are used for this purpose. At the same time it has been planned to arrange special rooms in the new penitentiary institutions, which are presently under construction in different regions of the republic, for ensuring that convicts have access to legal assistance. The Commissioner believes that the above mentioned issue needs to be regulated by law.

In addition to the aforementioned, it has also been informed that taking into account that the administrative building of the institution is located in the residential area of convicts, the building concerned has been separated from the other area with iron railings.



During the visit conducted to PI No.15 it was revealed that some problems still remained unsolved. As such, though the threshold determined for the institution in respect of the number of convicts is observed, the area available for every convict does not meet the approved standards.

The appeal made by the Commissioner to the MJ in this respect has been reviewed and it has been informed that the problems mentioned in the letter have been at the centre of attention of the MJ and PS and relevant actions have been taken to solve them. As such, an analysis has been conducted in respect of the recent increase in the number of convicts held in PIs of a strict regime and overcrowding in such establishments. Taking into account that the number of convicts held in the general regime PIs of the PS, that are intended for convicts who have committed crimes that do not constitute a great public threat or are less serious, has decreased, it has been deemed reasonable to transfer one of those establishments to a PI of a general regime and the relevant proposals have been prepared.

During the visit undertaken to PI No.16 it was revealed that the gas was weak in that institution, there were problems with the heating of the dormitories, as well as one of the dormitories was not illuminated with natural light, one of the cells of the punishment isolator did not meet standards, and some convicts could not get necessary medical aid. After the visit to the establishment ended, a discussion was held with the management of the institution who was informed of the results of the visit and given relevant recommendations. Next day the management of the institution, getting in touch with the NPM Group, informed that two of the sick persons had been transferred to the MI and it had been decided to repair the cell of the punishment isolator that did not meet standards.

During the visit undertaken to PI No.17 a group of convicts, who were interviewed in private, stated that they could not get necessary and quality treatment. The relevant appeal has been addressed to the MJ.

It should be particularly stressed that the current situation in PI No.12 raises serious concerns. Thus, during the next long visit carried out to the institution concerned, along with revealing that no positive changes had happened, the following negative cases and breaches of law were noticed:

1. The PI concerned is located in Puta Settlement of Garadagh District and the 3 kilometres of the road leading to the establishment has been in bad condition for many years. Given that 3 institutions of the PS (PIs No.8, 12, and 12) are located in that area and every day the personnel of those establishments and visitors of convicts have to use this road, it is necessary to take relevant measures.
2. During the visit when the long visit room of the establishment was examined, it was found out that convict A.M. had a visit with his spouse and 2 children for 3 days and they were placed in visit room No.3 that had just a double bed and needed repair. During the investigation it was determined that those children had to sleep on mattresses laid directly on the stone floor. Taking into account that all other visit rooms were free, as well as visit room No.1 had recently been repaired and had all necessary conditions, the placement of the family under such conditions may be deemed as a degrading treatment based on discrimination against the convict and persons visiting him.
3. During the examination of the kitchen of the institution it was determined that there was no chlorine in the place where dishes were washed up, the nails of the cook and the convict who was cutting bread in the kitchen were long and dirty, and the doctor of the establishment had just put his signature in the register of the examination of the quality of meals and did not note down any opinion.
4. During the investigation conducted in the Medical-Sanitary Unit of the establishment it was found out that the head doctor was not sincere when he was giving information to the members of the NPM Group. As such, though he informed that the medical unit had 20 beds, it was uncovered that in fact there were only 7 beds in the unit, as well as only one of the 4 wards had wooden floor (that wooden floor was in unsatisfactory condition), and used disposable syringes had not been destroyed (that afforded ground for assuming that those syringes would be re-used).

5. During the examination of the stand located in the general area of the establishment and intended for convicts, it was noticed that the civilian working in the stand was selling things by cash, production or expiry dates were not shown on the sold cakes, and there were dead cockroaches on the shelves and scales.
6. During the interview with the convicts they stated that they could not get envelopes from the stand to send their appeals to the bodies prescribed by law (including the Commissioner) without being subject to censorship.
7. During the examination of the dormitories it was revealed that about half of the convicts were not provided with chairs, some of the mattresses were unfit for use, floors were made of stone, and natural lighting was weak in some dormitories.
8. During the examination of the punishment isolator it was determined that most of the convicts placed in punishment rooms or cells were not provided with pillows and sheets. The convicts held there could exercise their right to daily walking not for 1 hour as provided for by the Punishment Execution Code of the Republic of Azerbaijan but just for 20-30 minutes.
9. Through the random selection conducted by the members of the NPM Group, as well as at the request of the convicts themselves, 30 convicts were received and without any witnesses private interviews were held with them. During the interview the convicts complained of the breaches of law that occurred in the institution and stated that meals were of poor quality, foods intended for them were sold in the stand, the common bathroom was inconvenient because of poor conditions and private shower cubicles were sold for money (every convict had to pay 1 manat for taking a shower for half an hour), appeals addressed to the relevant bodies, including the Commissioner, were not sent to the intended addresses by the personnel of the special unit of the establishment contrary to law, 10 manats was charged for delivering the money sent to foreign convicts by their relatives, and the convicts who did not want to shave their heads had to pay

5 manats monthly. The most important point is that the above mentioned issues have been voiced by not just one convict, but by majority of them, which lets us believe in the truthfulness of the provided information.

10. Based on the complaints received by the Commissioner from convicts or their relatives during 2008-2010, as well as the information collected about PI No.12 during the visits conducted by the NPM Group, it should be noted that the convicts are subjected to violence by the management and personnel of the establishment raises serious concerns. As well as at the interview held with the convicts during the last visit two convicts, who requested not to disclose their names as they were afraid that the chief of the institution would pose a threat to their lives, informed that they had been subjected to inhuman treatment by the management of the establishment. During the examination of the bodies of both convicts the traces of a rubber baton were observed and the members of the NPM Group drew up a corresponding report. Then the register of the application of special means to convicts was examined and it was found out that the name of none of those persons was among the names of the 7 convicts recorded in the register as the convicts in whose respect a special mean was applied during the year. Another convict during the interview stated that because he had appealed to a local office of an international organization in connection with a personal issue, he was beaten and his tooth was broken by Aftandil Aghayev, chief of the institution. It should be mentioned that in all cases the convicts alleged that they were beaten and subjected to torture by Aftandil Aghayev, chief of the institution, and the person called Karim, an employee of the operation unit, in this or another form.

The Commissioner has requested the MJ to thoroughly investigate the cases mentioned in respect of PI No.12 and take necessary measures in respect of the guilty.

Though during visits to PCSs it was observed that capital repair works had been performed in some of them, in most establishments conditions were evaluated as unsatisfactory and it is necessary to perform capital renovation and reconstruction work in the establishments concerned. By the way, it should be mentioned that the fact that some of these establishments are not on the balance sheet of the PS causes certain objective problems. We therefore find it more expedient to transfer the buildings where the PCSs are located to the balance sheet of the PS.

It should be mentioned that the situation observed in most special institutions of the PS also gives a reason for concern. During the visit to Special Institution No.1 it was revealed that the general condition of the building where the institution was located was unsatisfactory, there were no bathroom, kitchen, and library in the establishment, sanitary facilities were located outside the building, as well as there was no fence to isolate the institution from other facilities. During investigation it was not possible to get acquainted with necessary documents as the chief of the institution and inspector of the special unit were not in the establishment.

Similar problems were noticed in Special Institution No.5. Thus, it was revealed that the sanitary facilities in the establishment concerned were broken, and only in 2 of the 3 rooms where general residential areas were located had normal conditions.

As well as the conditions in Special Institution No.8 can not be deemed satisfactory. As such, there is no fence to isolate the institution from other civil facilities and the general condition of the buildings is very bad. Only 2 of the 4 dormitories where convicts are held are fit for use. In one of the usable dormitories there are beds for detaining 20 persons and in the other one for 40 persons. Though a gas heater was installed in one of the dormitories and the weather was cold, the personnel of the establishment stated that there was no need to use that heater. It was noticed that in both of the used dormitories the bedding, as well as towels intended for convicts were old and dirty. During the visit it was also found out that there were no library, medical room, bathroom and other service rooms in the establishment. The toilet of the institution was in unsanitary condition. It was impossible to enter that facility because of strong smell. It was revealed that the punishment isolator of the establishment

was also in unsatisfactory condition. During the visit the state of the administrative rooms intended for the personnel was evaluated as satisfactory.

During the visit to Special Institution No.13 the conditions in that establishment were also evaluated as unsatisfactory. It should also be mentioned that on the visit day only the leading specialist of the institution was at work. Nobody from the management and officers was in the establishment.

An appeal has been addressed to the MJ with regard to the above mentioned. In the received response it is stated that the relevant bodies of the PS have been instructed to take necessary actions to eliminate the deficiencies and shortcomings indicated in the appeal. From the response it becomes clear that disciplinary actions have been taken in respect of the management of Special Institution No.1. Along with the aforementioned, in the response it is also informed that though about ten years has passed since the execution of the punishment of restraint of liberty started, no appeals or complaints have been submitted to the MJ, PS, and other governmental or non-governmental organizations to allege that persons serving their sentences in special institutions are subjected to torture and other inhuman or degrading treatment.

During the visits undertaken to the establishments of the PS some other complaints of different nature have also been addressed to the Commissioner. Those complaints have primarily concerned provision of medical services, placement in the MI, allowance of short or long visits, as well as reception of parcels.

It should be noted that, pursuant to the information received from various sources, in some cases convicts' insistent requests for their transfer to the MI are connected not with their health but with other issues (establish outside-the-law relationships with other convicts, avoid regime rules, etc.). It is therefore critical to enhance the control over the observance of regime rules in the MI. Notwithstanding the aforementioned, the Commissioner has investigated each of the appeals concerned and necessary measures have been taken to ensure the re-examination of those persons and their replacement in the MI if needed.

During the visit to PI No.11 convict V.H. stated that though he did not have any complaints about the detention conditions, he was unhappy with the institution chief's bias against him and alleged that notwithstanding his

sickness, he was not sent to the MI. The management of the PI has been recommended to take measures, as required by law, with regard to the issue concerned. The appeal of A.S., another convict serving his sentence in that PI, with respect to his transfer to the MI has also been considered, the relevant recommendation has been submitted to the management of the establishment and the convict's transfer to the MI has been ensured.

The elimination of the problem connected with the delivery of the food brought for convict M.M. in InIs No.3, restoration of the right to receive information by providing the convicts serving their sentences in PIs No.12, 14 and 17 with requested newspapers, creation of necessary conditions for the citizen of Saudi Arabia serving his sentence in PI No.11 to meet with his family members, renovation of the cell where convict E.A. serving his sentence in the Prison was placed, and other similar cases may be shown as an example to other measures taken to solve the facts revealed in respect of the conditions of detention and application of the punishment-execution legislation in the visited establishments, as well as received appeals.

During the visits conducted by the NPM Group to the institutions subordinate to the PS some convicts appealed to the Commissioner in connection with the violence they were subjected during investigation. Accused B.A., who was held in Baku InIs, in his appeal stated that when returning from the Islamic Republic of Iran to the Republic of Azerbaijan, at the Astara Customs Office he swallowed down 1.5 grams heroin previously hidden by him seeing that he would be detained by customs officers, for that he was beaten by 5-6 persons in civilian clothes in the service room of a customs officer which was located on the 3<sup>rd</sup> floor of the customs office, narcotic substances in large quantities were shown to him and he was unfoundedly accused in possessing them, then he was brought to the Investigation Office of the State Customs Committee located in Baku and left lying on the cold concrete floor with his hands handcuffed, after remaining in such a position for several hours, he opened his handcuffs, entered the toilet, broke the glass hung there and inflicted injury to himself, at the same time he informed that he had hidden some more 1.5 grams narcotic substance and would say its place only to the personnel of the prosecuting bodies. When the NPM Group examined B.A.'s body, they found several signs of injury. The

Commissioner has addressed an appeal in this regard to the Office of the Prosecutor General of the Republic of Azerbaijan. In the received response it is stated that the allegations, indicated in the appeal, that the narcotic substance did not belong to B.A. have proved wrong and it is also noted that the fact that he has inflicted self-injury is investigated by the Yasamal District Prosecutor's Office. The investigation has assigned forensic medical examination to determine the degree of seriousness of the injuries present on the body of B.A., but the expert opinion has not been received yet. The investigation of the appeal is continued and depending on its result, the adoption of a lawful decision will be ensured. The progress of the investigation is also kept in the focus of the Commissioner's attention.

Speaking about the relevant bodies of the PS it should be particularly stressed that during the interviews conducted with convicts in these institutions the main issue brought up by them was about the obstacles created by the prosecuting bodies for convicts in applying to the court for being prematurely released on parole from the unserved part of the sentence imposed by court. This issue, along with being a really pressing issue, has been repeatedly broached in complaints and other information received by the Commissioner. The MJ has been appealed to in connection with the aforementioned.

In the received response it is stated that the practice of the application of the institute of releasing convicts on parole has been analyzed by the Supreme Court of the Republic of Azerbaijan, serious deficiencies have been identified, and the issue was thoroughly discussed at the Plenum of the Republic of Azerbaijan. What necessary actions should be undertaken to eliminate deficiencies in the given field was discussed at the meeting held in the Ministry with the participation of the Minister of Justice. The event was attended by the senior staff of the Ministry and the PS, judges, members of the Judicial-Legal Council and senior staff of the Office of the Prosecutor General. Serious shortcomings related to the application of release on parole which plays an important role in the effective implementation of reformation process, including deficiencies in documentation, bureaucracy, breaches such as the adoption of unreasoned decisions, and the reasons causing them were discussed at the meeting in detail and in essence. At the event it was stressed



that it was important to take critical steps aimed at improving the situation in this sphere, concrete tasks were set, and a decision was adopted for the establishment of a working group comprised of the representatives of the relevant bodies to coordinate the work aimed at simplifying the corresponding procedure on the basis of best practices and strengthening transparency and objectivity.

### *3.1.3. Investigatory Isolator of the Ministry of National Security*

The Investigatory Isolator of the MNS intended for the detention of suspected and accused persons is one of the establishments falling under the jurisdiction of the NPM.

In 2009-2010 practical actions aimed at the improvement of the detention regime, material and social welfare of detainees, and medical services provided to them and protection of their rights in the InIs of the MNS were continued.

All detained or arrested persons are immediately examined on entering the InIs of the MNS by the members of the medical-sanitary assistance service of the isolator. The work of the medical assistance service of the isolator is not limited to just medical treatment of the sick, they also undertake social and preventive measures. All the specialists of the polyclinic of the MNS are involved in, as well as the inpatient medical institutions of the MJ are used for the examination and treatment of detainees when needed and necessary actions are regularly undertaken to enhance the work done in this field and provision of free-of-charge medicines to the sick.

As already mentioned, the Commissioner carried out in total 4 visits to the InIs of the MNS in 2009 and 2010.

The Commissioner when conducting a visit to this establishment, inquired about the current situation, as well as met with and talked to accused persons detained there. During the interview those persons noted that they did not have any complaints about the conditions of detention in the investigatory isolator and they had not been subjected to any illegal treatment in the isolator and stated that they were satisfied with nutrition and medical services. Some of the detainees complained of the biasness of the proceedings conducted pursuant to

the criminal cases initiated in their respect and pressures they were subjected to during investigation – each of those complaints was accordingly investigated.

In 2009 and 2010 the situation, detention conditions, as well as treatment of detainees in the InIs of the MNS were at a satisfactory level and met modern standards.

#### *3.1.4. Establishments of the Ministry of Defence*

The Disciplinary Military Unit (Military Unit No.N) and guardrooms of the MD are the establishments that fall under the jurisdiction of the NPM (see Appendix 1). 2 visits were conducted to the above mentioned establishments of the MD in 2009 and 3 visits in 2010.

During the visit carried out to the guardroom of the Lankaran Military Police each of the persons detained in the establishment was interviewed in private and they noted that they did not have any complaints about the detention conditions and treatment. During the visit it was also noticed that the Lankaran Military Police was located in an old building that did not meet the requirements of the day. The visiting team was informed that a new building was under construction and would be soon put into operation.

During the visit undertaken to the Disciplinary Military Unit the current situation, conditions of detention of military men serving their sentences, treatment of them, level of the performance of preventive measures and other issues were examined. During the visit the living and service conditions of the personnel of the military unit, works done for the organization of leisure time, medical services provided to servicemen, their nourishment, as well as the state of relationships between officers and soldiers as required by the regulations were kept at the centre of attention. The NPM Group examined the area of the military unit, residential buildings of the personnel, club, places allocated for the effective organization of leisure time, canteen and kitchen and got acquainted with the treatment conditions in the hospital. Along with the above mentioned, the personnel and commander of the military unit were interviewed in private and given relevant recommendations. During the

interviews the military men serving their sentences in the Disciplinary Military Unit stated that they were satisfied with the detention conditions and they were not subjected to any illegal treatment.

During the visits it was determined that the treatment of convicts was in compliance with the detention regime, natural lighting and cleanness in the dormitories of convicts were normal, beds and bedding, bathroom and toilet used by convicts were clean and tidy and corresponded to the number of convicts, as well as appropriate conditions had been created for convicts to spend their leisure time, including football and volleyball fields, a horizontal bar, and appropriate conditions for reading. The provision of packages, parcels, banderols, short and long visits and telephone contacts to convicts was organized as required by the relevant law.

The medical unit of the military unit was ready to provide first aid to soldiers with available medicines and other medical equipment though certain construction works were performed there.

In one of the visits undertaken to the Disciplinary Military Unit one of the convicted soldiers freely addressed the visiting team, stated that the investigation carried out pursuant to the criminal case initiated in his respect was bias and he was therefore dissatisfied with the judgment issued by the court. When a copy of the judgment was presented, it was found out that the period provided by the criminal procedure law for him to appeal against the judgment had not expired. Based on the recommendation of the NPM Group, the commander of the military unit gave instruction to immediately send the soldier's appeal to the corresponding court. The Commissioner has also instructed the Jalilabad Regional Centre to keep the issue in the focus of attention, as well as get acquainted with the family status of that soldier on the ground.

During the visits conducted to the Disciplinary Military Unit along with the positive points described above, some shortcomings were revealed as well.

As such, when the living conditions of convicts were examined, it was found out that in winter months the dormitories intended for convicts and other buildings, as well as the entire military unit were heated by the heaters operating with diesel fuel in a manner that could pose a threat to detention conditions and health.

It was also determined that the roofs of the kitchen and food storehouse of the soldier canteen of the military unit were unfit and leaky, on the whole, those buildings needed capital repair, as well as provision of new equipment and natural gas.

During the visits the general condition of the long visit room allocated for convicts and the level of its provision with necessary equipment were assessed as unsatisfactory.

During examination it became clear that because there was no servicewoman among the permanent composition of the military unit concerned, women who came to visit convicts were searched only by being visually examined and questioned.

It should be particularly stressed that during the visits when relevant documents were consulted with, it was determined that in 5 cases the persons convicted in the same criminal case (by being 2 persons under each case, in total 10 persons) were held together. We believe that it does not conform to the duty to safeguard convicts' right to personal security, as well as the requirements of reformation objectives.

During the visits it was also determined that the military unit also held trainings for newly recruited soldiers in swearing a military oath. We think that assigning the disciplinary camp to take actions for the training of young soldiers recruited for military units under the Military Police Office of the MD for swearing a military oath may impede the intended purposeful activity of the commanding personnel of the disciplinary camp, as well as the implementation of educational work and actions aimed at reformation of convicts, and maintenance of security and regime. In our opinion, it would be more reasonable to assign the training of young soldiers for swearing a military oath to another military unit.

During the visits it was also determined that it was necessary to provide the "Ideology Room", which was operating in the military unit to perform educational and reformation work with convicts and raise their awareness, with relevant legal and educational literature.

In respect of the above mentioned cases, the NPM Group submitted relevant recommendations to the commander of the military unit on the spot, as well as the Commissioner has addressed an appeal to the MD.

In the response received from the MD it is stated that the shortcomings revealed during the visits and indicated in the Commissioner's appeal have been eliminated. The response notes that the leaking parts of the roofs of the kitchen and storehouse of the military unit have been repaired and the long visit room allocated for convicts has been accordingly equipped. On the whole, it has been planned to perform capital repairs in the mentioned areas.

Moreover, the search of women who come to visit convicts has been entrusted to a serviceman of the military unit who has served in the army for a longer term.

It is also noted that the dormitories and other buildings where convicts live are heated with diesel fuel in a prescribed manner in winter season. Given that the military unit will be heated with natural gas in 2011, the current heating manner is deemed temporary.

Along with the above mentioned, as a result of the investigation conducted in this respect, it has been found out that the village where the Disciplinary Military Unit is located is not provided with natural gas at all. The Commissioner has therefore requested the Executive Power of the district to which that village belongs to accelerate the actions aimed at the provision of natural gas to the village concerned and the military unit located there.

In the letter received from the Executive Power of the district where the Disciplinary Military Unit is located it is stressed that since 2005 certain measures have been taken to solve the mentioned issue. It is stated that the village was not supplied with gas even before the independence. In this respect, relevant appeals have been addressed to the Cabinet of Ministers of the Republic of Azerbaijan and assistance has been requested for the provision of gas to the village. Based on the instruction given to the Azerigas CJSC after the appeals, the Azerbaijan Scientific Research Project Gas Institute has performed necessary research works and prepared design estimates. In respect of the appeal, the Azerigas CJSC has informed that because the amount of the funds obtained from the payments made for the natural gas provided to the district does not allow for the implementation of the mentioned work, the work will be performed within the Action Plan for 2009-2013 drawn up on the basis of the State Program for Social and Economic Development of Regions.

### *3.1.5. Establishments of the Ministry of Education*

41 establishments of the ME fall under the jurisdiction of the NPM. These establishments include the Open Special Correctional Institution for Boys, Guba Special Trade School, other boarding schools and child homes (see Appendix 1).

As already mentioned, the NPM carried out 6 visits in 2009 and 4 visits in 2010 to the relevant establishments of the ME. Along with the Open Special Correctional Institution for Boys and Guba Special Trade School which require special attention, visits have been conducted to other boarding schools and child homes as well, and conditions provided in those establishments, children's education and nutrition, medical services provided to them and the state of organization of their leisure activities have been the focus of attention.

Based on the summarization of the information collected during visits, it can be noted that overall situation, living conditions, as well as treatment of children have been satisfactorily organized in the visited establishments and in general, comply with standards.

During the visit to the Open Special Correctional Institution for Boys some deficiencies have also been detected.

During the visit it was noticed that the classrooms of the school had water tanks to provide children with water and there was just one glass intended for the use of the entire class and all students of the class drank water from that glass (see Appendix 4, photo 32). The visiting team informed the management of the establishment that the observed was unacceptable (it was recommended to use disposable glasses) and that deficiency was remedied.

Another case revealed in the establishment concerned was that though the new bathroom was ready and fit for use, children were still taking a bath in the old and unsatisfactory bathroom (see Appendix 4, photo 35-36). The management of the institution explained it with the fact that the new bathroom was very slippery, but after the visiting team's condemnation, they stated that the mentioned case would be eliminated and the old bathroom would be liquidated.

### *3.1.6. Establishments of the Ministry of Health*

The MH has 22 establishments that fall under the jurisdiction of the NPM. These establishments include psychiatric hospitals, mental dispensaries, Psychoneurological Child Home and other child and baby homes (see Appendix 1).

As already mentioned, the NPM conducted 4 visits to the relevant establishments of the MH in 2009 and 11 visits in 2010.

As a result of the visit conducted to the Psychoneurological Child Home it has been discovered that a new building meeting modern standards has been built for the establishment by Heydar Aliyev Foundation and the medical, psychological, physiological and massage rooms have been provided with the equipment, modern furniture and accessories that correspond to children's needs. The kitchen has been furnished at a high level, the neighbouring areas and the yard of the establishment have been surfaced with green grass cover, a fountain has been installed, and tidiness and cleanness have been ensured. The visit has also revealed that necessary conditions have been created for the rehabilitation of children, qualified specialists provide necessary medical and psychiatric aid to ill children, and they are cured by special training equipment and vocational training therapy. The Commissioner, who led the visiting team, has emphasized that it is important to take good care of mentally ill children and that they need communication and recommended the medical staff to be kind to their patients and treat them very politely. By the way, it should be mentioned that though the European standards specify that every 6-7 mentally handicapped children held in child homes should be provided with 1 nurse and in case of children with more serious illnesses every 3 children should be serviced by 1 nurse, in the establishment concerned 1 nurse takes care of 18-20 children. The Commissioner has therefore submitted relevant recommendations to the Cabinet of Ministers of the Republic of Azerbaijan for initially providing every 7-10 such children with 1 nurse and increasing salaries of the persons working in child homes and boarding schools taking into consideration their working conditions. The given issue has been brought up by the Commissioner during the discussion of the state budget as well.

During the visits conducted to the relevant establishments of the MH, along with some positive changes and innovations observed, several serious deficiencies, shortcomings, and breaches of law were noted as well.

During the visit carried out to the Forensic-Psychiatric Examination Centre it was discovered that the building of the centre had newly been put into operation and the conditions complied with modern standards. During the interview conducted with 17 persons held in the Centre they stated that they were satisfied with the detention conditions and treatment by the personnel of the Centre and they were not subjected to any torture and ill-treatment.

During the visit carried out to Republic Psychiatric Hospital No.1 it was discovered that there were 1400 patients, out of them 187 were persons in whose respect compulsory medical treatment had been ordered by the decision of the court. It is estimable that a new canteen, boiling-house, laundry and bathroom have been built, put into operation and provided with necessary equipment.

During the examination of various units intended for patients held in general practice it was observed that there was overcrowding, unsatisfactory conditions for living and treatment, insanitation, weak illumination, and unsatisfactory ventilation in the buildings of the hospital. In Units No.5 and 6 and in the Unit intended for the elderly, patients were lying on the beds put in the corridors of the hospital. The sanitary facilities were completely unfit. It was noticed that the number of the dining tables intended for patients' nutrition was few and no conditions had been provided for leisure activities of persons receiving treatment in the establishment. More miserable conditions were observed in the isolating rooms of those units. Those rooms had just entrance doors and no windows for lighting and ventilation and were highly humid.

During the examination of the isolating room of Unit No.5 patients A.I. and S.K were found lying on the beds that had no legs and were placed directly on the floor. The walls of the room were dirty and the floor was rotten or broken. Those patients had been kept there for a long time without being taken out to get fresh air. It should also be mentioned that because there were no sanitary facilities in the room, the patients were providing their physical needs using the bucket placed in one corner of the room.



During the examination of the special unit, where persons in whose respect compulsory medical treatment was ordered by the court were held, it was found out that the second floor of the building was not used as it was not suitable for use. It was revealed that the detention conditions were not satisfactory in the strict regime section of the unit, there was shortage of air, humidity, and strong unpleasant smell in some rooms because the windows were not opened, and the isolating rooms were unfit. The general section of the special unit was found to have relatively normal conditions after renovation.

Thus, as a result of the visits, it has been determined that the detention of patients under the above mentioned conditions does not correspond to the requirements set forth by the national and international legal norms. Such conditions imply that they are subjected to inhuman treatment. As a result of the visit it has also become clear that there is not any special normative act to regulate the detention of persons subjected to compulsory medical treatment in hospital and the duration of placing and detaining those persons in isolating rooms, as well as their access to walking, taking bath, and other rights are therefore determined on the basis of the subjective decisions of doctors. For instance, persons held in the special unit are taken to walking only on the 1<sup>st</sup>, 3<sup>rd</sup>, and 5<sup>th</sup> days of the week.

With regard to the revealed facts, the Commissioner has requested the Ministry of Health to take necessary actions to improve conditions in the hospitals that have violated laws, ensure that persons held in those establishments are not degraded, and eliminate the detected violations in order to guarantee the rights of persons with mental illness to receive psychiatric assistance under such conditions that satisfy sanitary and hygiene requirements and ensure their detention under conditions meeting minimum standards.

According to the information received from the ministry in response to the appeal, reconstruction and renovation works of large volume have been performed in Republic Psychiatric Hospital No.1, some units, as well as the other parts of the hospital have been completely renovated to meet modern standards. The nutrition unit of the hospital has been completely renovated, furnished with new modern equipment and put into operation. The common bathroom of the hospital which had been in bad and unfit condition for many

years has been fully reconstructed and put into operation and it now has capacity to serve 200 patients a day. The laundry of the hospital has been reconstructed and started to function at full capacity.

The hospital has been included in the 5-year capital renovation program of the MH and according to that program several buildings, as well as the unit where persons in whose respect compulsory medical treatment has been ordered are held are planned to be completely renovated in the near future.

The territory of the hospital has been cleaned from the waste piled up for years, needless trees and bushes that grew wild in that area, and stones. Within a short period of time 4160 pieces of different fruit and decorative trees were planted in the area. Numerous flower bushes have been planted along both sides of the road leading from entrance of the hospital to its administrative building.

Projectors have been installed in the entire territory of the hospital, which has significantly eased the problems related to the security of the hospital. The damaged parts of the stone wall surrounding the area have been reconstructed, and the parts of the asphalt coat that were in poor condition have been covered with new asphalt. A waste collector has been installed in the territory of the hospital which allows cleaning and carrying away piled up waste and debris. The process of land improvement in the area belonging to the hospital is being continued and the foundation of a new park has been laid to allow patients to have a good rest.

For many years both the units of the hospital and its administrative section had suffered serious problems because of poor water supply. Water was brought to the hospital from outside which could not fully meet the demand for water. At present several water tanks are operated in the territory of the hospital, which provide the units with water and allow watering planted trees and flowers. For many years the units had been provided with water just for 2 hours, but now the units are permanently supplied with water. Several old wells left without attention and filled with debris have recently been found in the territory of the hospital, cleaned, brought to fit-for-use condition by their sides being built, their mouths have been covered with iron doors, and their surroundings have been illuminated with electric lamps. It is planned to use the water of those wells in the near future as well.

In order to restore the sewerage system of the hospital, several sewerage holes of sambo type have been dug in the territory and built from the inside with pipes.

The units of the hospital and its administrative part had been heated with electric heaters for many years, which sometimes resulted in undesirable situations and caused power consumption in large quantities. Two boiling houses were built in the hospital within last two years and presently all buildings are heated by them.

A lot of work has been done to improve the practice of providing patients with medicines and food, positive changes have been observed both in the provision of medicines and increase of their variety and presently there is no problem in this sphere.

The problems that existed for many years in the sphere of provision of food to patients have been eliminated and patients are provided with quality food. Patients are also provided with hospital clothes and personal hygiene items. That certain boxes have been hung in each unit of the hospital for proposals and complaints and radio and TV sets have been installed in most units may be appreciated as a positive step toward the solution of living problems of patients.

A consent form with treatment information for patients entering the hospital, a form reflecting information on the receipt of full treatment for patients leaving the hospital and a form about voluntary suspension of treatment have been prepared by specialists in compliance with international standards and at present are successfully applied in the hospital.

It should also be mentioned that the overcrowding observed in several units during the visit was a result of the suspension of the operation of four units (No.9, 10, 11 and 12) with 80 beds each in connection with capital repairs to be performed there. At present the renovation works have been completed and the units have been put into operation.

A follow-up visit has been conducted with the participation of the Commissioner to Republic Psychiatric Hospital No.1 of the MH to check the status of the implementation of the submitted proposals and recommendations and the performed work on the ground. During the visit the buildings of the hospital, including newly constructed and renovated buildings were examined,

the conditions of detention of patients and process of their treatment were scrutinized, interviews were conducted with patients and their relatives who came to visit them, and other issues related to treatment, nutrition, provision of food and medicines were investigated. As a result of the examination it has been determined that a noticeable turnabout has taken place, a number of positive changes have happened as compared to the previous situation.

In order to improve the performed work even further, the Commissioner has addressed relevant proposals and recommendations to the MH for taking them into consideration in the course of conducted reforms.

It should be noted that during the visit carried out to the Shaki Mental Dispensary the condition of the establishment was assessed as unsatisfactory.

According to the response given from the MH, several works have been performed in the Shaki Mental Dispensary as well. Water is supplied to the establishment by an artesian well, though it fully satisfies the demand, in addition, a water tank with a capacity of 12 tons has been installed in the yard of the hospital. The lighting of the wards has been amplified with additional sources of illumination, appropriate conditions have been created for patients to take a bath, and those places have been repaired to ensure that patients fully observe personal hygiene rules. Items of personal hygiene have been renewed and the establishment has been provided by the District Central Hospital with appropriate furniture for placement of such items and the works in this direction are being continued. The issue of renewing beddings and hospital clothes for patients has been solved. Certain works have been done to widen the variety of meals provided to patients and to increase their quality.

As well as, taking into consideration the recommendations of the European Committee for the Prevention of Torture, a dentist has been employed for the hospital, a psychotherapy room has been established, and short-term training courses on the topic of the Characteristics of Mental Patients and Rules on Their Treatment have been started. The registration of the complaints and proposals of patients and their parents and relatives has been put in order.

In the response it is also noted that the building where the Shaki Mental Dispensary is located in is a construction built at the end of the XIX century – at the beginning of the XX century. It has been planned to build a new building for the central hospital in Shaki District within the Reforms Project

carried out with a World Bank Loan. After the construction works are completed, the issue of the transfer of the Shaki Mental Dispensary to one of the buildings of the central hospital will be addressed.

Several proposals and recommendations were made in respect of the cases revealed during the visit conducted to the Gandja City Mental Dispensary by the Commissioner. And later a follow-up visit was conducted to the establishment concerned to check the status of the implementation of the submitted recommendations and the situation was investigated.

It has been discovered that the sanitary facilities in the women's unit of the hospital have been renovated at a high level with the joint support of an international humanitarian organization and the MH, and the hospital has been provided with 18 new beds, 40 mattresses, 40 sets of sheet, 20 hand towels, 60 warm blankets by the MH. It has been determined that the heating system of the second unit is under reconstruction and repair works are being continued.

Visits and follow-up visits have been undertaken to the Gazakh Inter-District Mental Hospital as well. The status of the implementation of the Commissioner's instructions and recommendations in the establishment concerned has been examined and it has been determined that at the expense of the internal resources of the hospital certain works have been performed to improve the general conditions in the hospital, namely, some laying work has been performed in the lobby of the kitchen, the illumination system has been changed, corridors and wards, as well as ceilings have been painted, 6 doors and 7 windows have been replaced with new ones, the stairs connecting the first and second floors have been provided with a handrail, floors have been covered with ceramic tiles, the cover of ceilings has been renewed and illuminators have been installed. The most part of the roof of the hospital has been repaired and covered with new slates. It has been informed that it is planned to start the renovations of the second unit after the repair works of the first unit end.

As a result of the visit conducted to Clinic Psychiatric Hospital No.2 several deficiencies and shortcomings have been detected. As such, though the norms in force provide for patients to be taken out for walking once a day, patients are held indoors as the hospital does not have a yard. In some wards not every patient is provided with a cupboard to keep his/her personal

belongings, there is no labour shop for psychosocial rehabilitation, and no gynaecologist and dentist to provide operative treatment. Along with the above mentioned, we think that the hospital should have a gerontology unit. At the same time it should be mentioned that patients had better to be placed by being differentiated according to the clinical degrees and degrees of seriousness of their illnesses.

During the visit the members of the NPM Group witnessed how an orderly of the hospital holding the arm of a patient praying in a narrow place between beds in the ward, insistently required him to stop his praying.

The NPM Group, getting acquainted with the medical reports of patients, found out that 2 patients had been hospitalized without their consents having been obtained. According to the management of the hospital it is difficult to obtain a court decision within 48 hours to ensure involuntary placement.

The Commissioner has addressed an appeal about the above mentioned to the MH.

Along with the above mentioned, we believe that several deficiencies that have been revealed in the above mentioned establishments of the MH and are not related to renovation should be immediately eliminated, a normative framework to regulate the operation of these institutions should be established or improved, as well as the Ministry's supervision over such activity should be enhanced.

### *3.1.7. Establishments of the Ministry of Labour and Social Protection of Population*

The MLSPP has 10 establishments that fall under the jurisdiction of the NPM. These establishments include homes and boarding houses for the elderly and disabled (see Appendix 1).

As already mentioned, the NPM carried out 8 visits to the relevant establishments of the MLSPP in 2010.

During the visit conducted to Home No.3 the conditions of detention of children held there, their nutrition, sleeping accommodations, classrooms, and other facilities were examined and information was collected. During the

interview conducted with children able to speak they did not complain of their detention conditions.

During the visit a serious breach was observed in the establishment concerned. Thus, it was determined that twice as many children as the allowed limit were held in the establishment and those children, that is 24 children were sleeping on 12 beds. The Director of the institution explained it by the repair work carried out in the establishment and temporary placement of the children of Home No.7 in the establishment concerned.

The Commissioner has requested the MLSPP to immediately eliminate the revealed violation.

In the received response it is stated that because Homes No.3 and 7 are being renovated by the support of Heydar Aliyev Foundation, a group of children has been transferred from Home No.7 to Home No.3, hence within the first two weeks some difficulties arose with the organization of appropriate conditions for children in Home No.3. The managements of Homes No.3 and 7 are taking necessary actions to eliminate those difficulties.

Such an inadequate approach by the MLSPP to the issue is disappointing. We think that no repair or transfer may excuse making two children sleep on one bed. Such issues should have been addressed before the transfer or temporary placement and necessary conditions should have been created by bringing beds as well. The persons responsible for the issues concerned should be brought to relevant responsibility in order to prevent such cases in the future.

The NPM Group has also visited the Boarding House for Disabled War Veterans and Workers of the MLSPP. During the visit the conditions of detention of persons held in the establishment were examined and private interviews were conducted with the elderly and disabled residents of the boarding house.

It should be mentioned that during the visit the management of the establishment concerned did not create necessary conditions for the NPM Group, some rooms were not opened on the pretext that they would not open or keys to them were not found, the NPM Group was forced to waste time by being kept waiting without any need for that, as well as the leadership of the establishment entering the room many times, with their comments interfered in

private interviews conducted with the residents of the establishment in the Senior Nurse's room.

The above mentioned cases are unacceptable; hence it is necessary to take relevant responsibility measures in order to prevent such cases to be repeated in the future.

During the visit, resident of the boarding house E.A. addressing the NPM Group stated that he had been residing in the boarding house for 6 months, was subjected to ill-treatment by Senior Nurse Z.Zeynalova and was not allowed to enter the medical unit. At that time the members of the NPM Group witnessed how rudely and impolitely E.A. was treated by the nurse concerned. Thus, Z.Zeynalova ignoring the NPM Group, tried to shut up E.A. with expressions that did not fit with professional ethics and stated that she was not afraid of anyone as she had long employment history. The members of the NPM Group talked in private to both E.A. and Senior Nurse in the latter's room and gave them relevant recommendations. It should be noted that Senior Nurse Z.Zeynalova's room was in insanitary condition, the bed intended for received persons to lie on was dusty and there were many dead flies on it.

As a result of the visit it has also been discovered that often conflicts happen among residents in the establishment. It indicates that psychological work has not been properly organized in the establishment.

During the investigation it was revealed that the residents of the boarding house had to get permission for leaving the territory of the establishment during the day.

After the examination of the living conditions of the residents, it has been determined that the buildings, where the establishment is located in, need capital repair.

During the visit it was also found out that the boarding house did not have toilets and bathrooms intended for the use of the disabled and there were no pay phones within hand reach. Disabled persons who need help are placed in the same room with healthy persons to benefit from the latter's voluntary help. This is explained with the shortage of medical personnel and orderlies.

The examination of the rooms revealed that hygiene norms were not observed in some rooms. Because the salaries of cleaners and orderlies are low, there is a limited opportunity for making a choice during the recruitment



of employees who are eager to take care of patients. During the visit it was determined that the number of the personnel in the boarding house was not adequate at all.

During the conducted interviews the residents stated that they did not have any problems with nutrition. According to them, everyday they are given meat courses. But because there is no dietician in the establishment, patients, including persons suffering from diabetes can not receive dietary meals.

Along with the aforementioned, it should be noted that it is necessary to undertake appropriate systematic actions to improve the communication of residents of the establishment concerned with the society, enhance psychological support, as well as restore their contacts with their relatives and return them to their families when possible.

At the end of the visit comments and recommendations regarding the revealed deficiencies and shortcomings were made to the director of the establishment, and he was recommended to familiarize himself with the requirements of the relevant national and international documents and perform legal education work among his subordinates.

The situation in the Boarding House for Disabled War Veterans and Workers of the MLSPP which mainly functions as a home for the elderly will be kept in the focus of attention by the Commissioner in the upcoming period.

### ***3.2. Examination of appeals and information***

The examination of received appeals and other information directly on the ground or by instructing this or another governmental body to investigate has been one of the main directions of the Commissioner's activity in the field of combating torture. As such, various applications and complaints sent to the post and email addresses of the Commissioner, received via the hotline, and submitted during receptions and visits, as well as relevant information received by the Office and regional centres of the Commissioner and corresponding materials published in media have been investigated.

The analysis of the investigation of the applications and complaints, as well as other information regarding torture that were received by the Commissioner in 2009-2010 gives grounds for saying that irrespective of the form of investigation, in some cases even when signs of violence are discovered, it is still impossible to prove the case beyond reasonable doubt because of the shortage or absence of evidence. Let's look at a practical example.

The information received from a public organization stated that R.P. was detained by the officers of the Sumgayit CPO on 5 March 2010 and that was documented only after 2 days, i.e. on 7 March 2010, during the mentioned period he and the other 2 persons arrested together with him were detained in the CPO illegally and subjected to torture with the aim of making them confess to a crime that they had not committed, and as a result confessions were obtained, as well as though when the Sumgayit City Court was ordering detention on remand in respect of those persons, signs of injury were found on R.P.'s body and Deputy Prosecutor of Sumgayit City who was participating in the process stated that the fact of torture would be investigated, no investigation was carried out, and the motion submitted for the examination of the accused persons was unsuccessful.

R.P. and the other accused persons charged together with him were received in private by the members of the NPM Group visiting InIs No.3 of the PS where those persons were detained. During the interview R.P. and I.F. stated that they were beaten in a service room of the CPO by policemen,

electric current was applied to their bodies and as a result of the acts of torture they had been subjected to, they had to give accusatory testimonies against themselves and each other.

During the examination of R.P.'s body surface it was found out that there was a round wound in the region of his right hand's wrist and 2 burn traces in the region of his left hand's wrist. He informed that the injury on his right hand was caused by handcuffs, the other injuries were traces of electric current and both injuries were sustained when he was subjected to torture while being under detention in the police office.

When R.P.'s documents were consulted, it was found out that in the report drawn up on 07 March 2010 by the personnel of the TDP on his entry to the Sumgayit CPO TDP it was recorded that during the examination of R.P.'s body many wounds, as well as in his right and left abdominal regions red spots were found and according to him, he had received those wounds before being brought to the police. And in the Convict's Medical Record drawn up by the personnel of the MJ Head Medical Office on his entry to InIs No. 3 of the PS it was indicated that "a skin spot has been found on his left arm. According to him, his arm was burnt by a cigarette in the police department".

The Commissioner has requested the Office of the Prosecutor General of the Republic of Azerbaijan to ensure that the mentioned cases are completely and thoroughly investigated, necessary measures are taken in respect of the fact, forensic medical examination is conducted, and the guilty are brought to relevant responsibility.

In the response given to the appeal it is stated that the allegations that R.P. has been subjected to torture and other violations have taken place have been investigated in a separate proceeding by the Sumgayit City Prosecutor's Office and as a result, the made allegations have proved wrong. It has been decided to reject instituting a criminal case based on the gathered material as no criminal elements have been found in the actions of the police officers. The response also states that the Sumgayit City Prosecutor has made a submission for bringing the respective personnel of the Sumgayit CPO to responsibility for the deficiencies revealed in their activities.

The Commissioner has kept the further development of the issue at the centre of attention. After some days when examining the complaint lodged by

R.P.'s lawyer with regard to the procedural actions of the criminal prosecution authority (the lawyer in his complaint also indicated that he had appealed to the Commissioner with respect to the issue, the person whose rights he was defending had been accepted by the members of the NPM Group, as well as the Commissioner had appealed to the Office of the Prosecutor General of the Republic of Azerbaijan requesting to investigate the case, and referred to the press-release circulated by the Office in this regard), the Sumgayit City Court, taking into consideration expert opinions as well, in its decision concluded that the fact that R.P. had been subjected to torture and cruel treatment during investigation was present and commissioned the Sumgayit City Prosecutor's Office to investigate the fact. The appeal lodged by the Sumgayit City Prosecutor's Office by being displeased with the decision has been examined pursuant to its jurisdiction by the Sumgayit Court of Appeal and the first-instance court's decision on the presence of the fact that R.P. was subjected to torture and cruel treatment during investigation has been upheld without variation (it should also be noted that the Sumgayit City Court's other decision on the rejection of the submission of Sumgayit City Prosecutor's Office for the extension of the detention on remand ordered in respect of R.P. has been upheld without variation by the Sumgayit Court of Appeal and he has been released from detention).

Taking into consideration that the decision of the Sumgayit Court of Appeal is a final decision on the issue, the Commissioner, in order to receive information on the results of the investigation entrusted to the Sumgayit City Prosecutor's Office, has sent an inquiry to that Prosecutor's Office. In the received response it is stated that service inquiry has been conducted in the MIA into the complaint that R.P. was subjected to torture and violence by police officers in the Sumgayit CPO and the indicated cases have proved wrong. The response also notes that during the investigation into the mentioned allegation that was conducted in the Sumgayit City Prosecutor's Office the allegation that the scratches and injuries found on R.P.'s body on entering the Sumgayit CPO TDP were inflicted by police officers was not substantiated and initiation of a criminal case based on the collected materials was rejected as it was found out that R.P. sustained those injuries before being brought to the TDP.

The point brought up as a problem by both international organizations and local human rights defenders for a long time that no-one is brought to responsibility for having inflicted torture is truly a matter of concern. In this respect, the Commissioner has held consultations and discussions with the relevant bodies and brought to the fore the importance of taking necessary measures for improving the situation in this field. The Commissioner has appealed to the Office of the Prosecutor General of the Republic of Azerbaijan regarding the above mentioned, as well as requested to thoroughly, completely and objectively re-investigate cases the objectivity of the investigation of which is doubtful.

The Office of the Prosecutor General of the Republic of Azerbaijan has informed that during the discussion of the 3<sup>rd</sup> periodic report of the Republic of Azerbaijan under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment at the 43<sup>rd</sup> session of the UN Committee against Torture the Committee members called our delegation's attention to the fact that the notion of the infliction of torture as defined in Article 133 of the Criminal Code of the Republic of Azerbaijan did not fully comply with Article 1 of the Convention concerned. As such, that in contrast to Article 1 of the Convention, the words "for any reason based on discrimination of any kind" that characterize one of the existing motives of torture are not reflected in the disposition of Article 133.3 of the Criminal Code of the Republic of Azerbaijan has been viewed by the Committee members as a factor obstructing the application of the requirements of the Convention and our delegation has been recommended to bring the disposition of Article 133.3 in line with those requirements. Taking into consideration the importance of bringing Article 133.3 of the Criminal Code of the Republic of Azerbaijan, that specifies as an offender an official or a person acting at his/her instigation, in full conformity with the provisions of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Office of the Prosecutor General of the Republic of Azerbaijan has prepared relevant proposals for differentiating that article from Articles 133.1 and 133.2 that mostly deal with domestic violence, i.e. specifying it as a separate norm and sent them to the relevant bodies.

It has also been informed that in order to assess the offences specified in Article 133.3 of the Criminal Code in force as a crime of torture, such acts must have been committed regularly, that is why a concrete person has not been brought to criminal responsibility under that article. But that does not mean that the personnel of the law-enforcement bodies who rudely violate human rights and freedoms and apply battery, insult and other inhuman treatment remain unpunished. At present such offences being classified as excess of official powers or abuse of official powers, it is ensured that those persons are brought to responsibility.

After the Criminal Code of the Republic of Azerbaijan is amended as suggested above, it will be ensured that the above mentioned persons are brought to responsibility under the article concerned.

The Office of the Prosecutor General of the Republic of Azerbaijan has also provided detailed information on the re-investigations conducted as required and their results. It has become apparent that in some cases decisions on rejection of a criminal case as previously adopted on the ground have been cancelled and re-investigation has been started and in other cases decisions have been issued on initiating a criminal case and conducting investigation.

The results of the investigations have been thoroughly discussed with the participation of the relevant bodies of the Office of the Prosecutor General of the Republic of Azerbaijan, MIA and MNS, and emphasizing that it is important to persistently observe the requirements of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, it has been decided to promptly investigate every appeal related to the application of pressures accompanied with torture and inhuman treatment, if the fact is confirmed, to initiate a criminal case and carry out investigation accordingly, and to take the most serious actions as provided by law in respect of the officials who have committed such actions.

The demonstration of such a caring approach to the issue by the Office of the Prosecutor General of the Republic of Azerbaijan should be particularly appreciated as an estimable case.

The MIA should also be acclaimed as a body that has strongly supported the Commissioner's NPM activities and closely and constructively collaborated with her, and ensured that necessary conditions are provided in

compliance with law, as well as relevant investigations and re-investigations are conducted. As such, the MIA intently approached every appeal addressed to this body and ensured that necessary actions were taken over the past period. In 2010 this collaboration was improved.

According to the information provided by the MIA, 151 facts of the violation of human rights and freedoms by the personnel of the internal affairs bodies were revealed in 2009, out of which 55 facts related to rude treatment of citizens, 38 related to groundless detention, 29 related to unfoundedly bringing to the police, 1 related to bringing to criminal responsibility without any due reasons for that, 1 related to battery, and 27 related to other facts. Disciplinary actions were taken in respect of 247 officers who committed such negative acts, out of them 13 persons were discharged from service in internal affairs bodies, 26 officers were dismissed from their posts, and 208 were subjected to other disciplinary measures.

174 facts of the violation of human rights and freedoms by the personnel of the internal affairs bodies were recorded in 2010, out of which 51 facts related to rude treatment of citizens, 38 related to groundless detention, 46 related to unfoundedly bringing to the police, 5 related to bringing to criminal responsibility without any due reasons for that, 3 related to violation of the rights of foreigners and stateless persons, and 31 related to other facts. Disciplinary actions were taken in respect of 276 officers who committed such negative acts, out of them 18 persons were discharged from service in internal affairs bodies, 20 officers were dismissed from their posts, and 238 were subjected to other disciplinary measures.

As a result of the investigations conducted in 2010 on the basis of the Commissioner's appeals addressed to the MIA, 14 facts of violation of the requirements of the legislation and the relevant normative-legal acts of the MIA were revealed and disciplinary actions were taken in respect of 41 officers by the relevant decisions of the ministry. Out of them 2 persons were discharged from service in internal affairs bodies, 6 persons were dismissed from their posts, and 33 persons were imposed other types of disciplinary punishments.

Out of the officers in whose respect disciplinary actions were taken, 12 worked in criminal investigation, 13 in public security, 4 in investigation and inquiry, 3 in traffic patrol and 9 in other service fields.

Though, as a result of the service inquiries conducted into 34 appeals received from the Commissioner with regard to the cases of torture and inhuman treatment, the mentioned facts have proved wrong, on the basis of 10 service inquiries disciplinary actions have been ordered in respect of 30 officers as they have brought citizens to the police without any due reasons for that and demonstrated rudeness and other faults against them. Out of them 2 persons have been discharged from service in internal affairs bodies, 4 persons have been dismissed from their posts, 2 persons have received “a warning of not fully corresponding to official post”, 10 persons have received “a severe reprimand”, and 12 persons have received “a reprimand”.

Serious disciplinary actions have been taken in respect of 7 senior officers as breaches of law accompanied with violation of human rights and freedoms have occurred because of their weakening supervision over and demand to the activities of their subordinates.

### ***3.3. Scientific and analytical work***

Theoretical and practical analysis of empirical materials gathered and other information received as a result of the conducted activity, preparation of proposals for amending laws in force and their submission to relevant bodies is one of the main elements of the Commissioner’s work of combating torture.

In order to attract the attention of governmental bodies to the problems and breaches of law people encounter with, prevent the violation of human rights, effectively guarantee these rights, and in case they are violated, restore them within the framework of the law, a package of relevant proposals are prepared and submitted to the authorized bodies. It should also be mentioned that a specialized torture counsellor, as well as a specialized detainee rights protection counsellor work for the Commissioner. The specialized counsellors regularly conduct a scientific and analytical analysis of the national legislation and international legal acts related to the relevant fields, the current respective situation in the country, and the complaints and appeals received by the



Commissioner, prepare and implement action plans in different directions, and present to the Commissioner drafts of proposals and recommendations to submit to relevant bodies.

The Commissioner strives to constantly improve her activities in this or another direction. In order to ensure more reliable protection of the rights of detainees, the Office studies best practices, punishment execution laws of various countries (Russia, Poland, Romania, Ukraine, Georgia, etc.), as well as the methodology of undertaking visits, and new proposals are prepared for the improvement of the national punishment execution law and sent to the relevant bodies.

So far a number of progressive proposals and recommendations reflected in the annual reports and other speeches of the Commissioner have found their positive resolutions in both legislative and institutional contexts. The approval of the NAP specifying more reliable protection of the rights of all population groups falling under the jurisdiction of the country, establishment of the Public Committee that ensures the involvement of the community in the rehabilitation of convicts and exercises public control over the operation of penitentiary institutions, amendment of the Punishment Execution Code of the Republic of Azerbaijan from the humanist viewpoint by the Law of the Republic of Azerbaijan of 24 June 2008, etc. can be cited as an example to such facts.

As an institution with the “A” status, the Commissioner has also contributed to the acceleration of the accession to and ratification of various international conventions and protocols by the Republic of Azerbaijan. In this context, the Commissioner’s proposal submitted to the relevant bodies for the acceleration of the ratification of the OPCAT, as well as the preparation of additional reports besides the country reports and their submission to treaty bodies can be mentioned.

After the Commissioner was designated as an NPM, as in case of the other directions of the activities aimed at combating torture, it has become necessary to improve the scientific and analytical work as well and appropriate measures have been taken in this respect. First of all, the institution had to undertake the following tasks in this regard:

- Analyze the Commissioner’s mandate in the context of the OPCAT requirements;

- Prepare proposals for conducting legislative and institutional reforms to ensure that the NPM functions at full capacity;
- Prepare relevant proposals to submit to the Milli Majlis (Parliament) of the Republic of Azerbaijan for amending the Constitutional Law, as well as the CAO;
- Analyze the normative-legal acts in force in the context of the Constitution of the Republic of Azerbaijan and international treaties which the Republic of Azerbaijan is a party to with the aim of ensuring the prevention of torture more reliably;
- Prepare proposals and recommendations to submit to the relevant bodies or officials with regard to the prevention of acts of torture, as well as other violations;
- Prepare proposals and recommendations for the improvement and coordination of the activities aimed at revealing, investigating and preventing torture in the country;
- Explore the practices of the bodies functioning in foreign countries in the field of torture prevention and prepare and implement proposals for the application of best practices;
- Participate in the preparation of the report to be submitted by the Republic of Azerbaijan to the UN Committee against Torture;
- Analyze and summarize the proposals received in respect of the improvement of the activities aimed at the prevention of torture;
- Conduct various surveys and analyze their findings;
- Study the state of organization of the activities carried out by the Commissioner in the field of torture prevention and the relevant experience, summarize the outcomes of the undertaken activities, analyze statistical indicators, and prepare a report that would reflect relevant proposals.

In order to achieve the realization of the above mentioned tasks, the Office has performed significant work within a short time period. As such, firstly, as a result of the numerous discussions held and the generalization of the proposals and recommendations received from different sources, as well as the study of best practices, it has been proposed to establish a new structural unit

in the Office to ensure that the NPM functions at full capacity and relevant documents have been drafted. Simultaneously, the Commissioner's mandate has been analyzed in the light of the OPCAT and in order to eliminate the revealed shortcomings, proposed additions and amendments to the Constitutional Law, as well as proposals for amending the CAO have been drafted based on the relevant best practices, including the information obtained through the analysis of the relevant experiences of the Republics of Poland, Moldova and Georgia and sent to the respective bodies.

Moreover, the international and national aspects of how the issues related to the prevention of torture should be specified in the legislation, the notion of torture pursuant to the provisions of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and its indicators have been analyzed, as well as consultations have been held with the Office of the Prosecutor General of the Republic of Azerbaijan, MIA and other relevant bodies and targeted proposals have been made. As mentioned in previous sections, the relevant draft has already been submitted to the respective bodies by the Office of the Prosecutor General of the Republic of Azerbaijan.

Along with the above mentioned, it should also be mentioned that the Law of the Republic of Azerbaijan "On Psychiatric Care" of 19 April 2002 has been initially analyzed referring to the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care adopted by UN General Assembly resolution 46/119 of 17 December 1991 and proposals have been prepared for making additions and amendments in 23 directions. It is planned to send the proposals to the respective bodies after relevant consultations.

When speaking about the proposals and recommendations made by the Commissioner for the improvement of the legislation, her appeal to the Milli Majlis of the Republic of Azerbaijan for the acceleration of the adoption of the law, that will provide for the legal regulation of detention of suspected and accused persons at the legislative level, should also be mentioned. The Commissioner has noted in her appeal that though a long period of time has passed, still there are some important issues that have not been specified at the legislative level. Thus, the functioning of the institutions where suspected and

accused persons are detained, rules of detention of persons held in those establishments, their rights and duties, and their legitimate interests are still regulated by the regulations (as well as temporary regulations) approved by the relevant ministries. And that, in its turn, along with causing some problems in practice, impedes the improvement of the conditions of guaranteeing the human rights of detainees, as well as those of their relatives. The above mentioned cases have been recorded both during the activities carried out by the Commissioner as the NPM and during the analysis and generalization of the outcomes of various events organized by the Commissioner's institution.

When speaking about the scientific and analytical work conducted by the NPM, it should also be mentioned that in order to prevent the violations revealed during visits or during the investigation of applications and complaints in the Office and eliminate the reasons and conditions that cause them, proposals and recommendations have been regularly prepared and have been submitted to the superior body of the relevant institutions with the requirement to provide information on the results of their implementation.

Along with thoroughly responding to numerous inquiries received from various sources with regard to the Commissioner's NPM activities, the preparation of a relevant reference pursuant to the questions that would be examined during the presentation of the third periodic report of Azerbaijan at the 43<sup>rd</sup> session of the UN Committee against Torture and its submission to the Ministry of Foreign Affairs of the Republic of Azerbaijan have been organized.

The finalization of the scientific and analytical work performed in the role of the NPM has been the preparation of the present report which includes the analysis of the state of organization of the activities and experience in the field of torture prevention, summarization of the outcomes of the undertaken activities, relevant statistics, and proposals and recommendations. During the preparation of the report it caused difficulties to conduct the analysis of the complaints and other information received by the NPM in 2009-2010 because no special structural unit was functioning in the Office.

### ***3.4. Legal education work***

The Commissioner taking into consideration that in the provision of human rights the primary emphasis is on learning and assimilating these rights and establishing legal culture and legal sense, has always paid particular attention to the organization of broad legal education work in her activity. In order to guarantee the right not to be subjected to torture, of course, it has been necessary to conduct this work among population, in particular, vulnerable groups of population, as well as the employees of law-enforcement bodies.

For the above mentioned purpose, on the instruction and under the supervision of the Commissioner the Office has prepared numerous booklets, leaflets, brochures, and books for both detainees and the employees of law-enforcement bodies, including penitentiary institutions, as well as posters, printed them in a large number of copies, and distributed them free of charge. As an example to such publications, “What One should Know when Detained”, “What One should not Forget when Arresting”, “Legal Status of a Suspect”, “Legal Status of an Accused”, “Legal Status of Convicts”, “No Torture”, “Are you Ready for Cooperation with the Rapid Investigation Group?”, “The Police and Human Rights” and other numerous print products can be cited.

By the way, it should be mentioned that based on the agreement reached between the Commissioner and the OSCE Office in Baku in October 2009, the translation into Azerbaijani and publication of the practical guide “Monitoring Places of Detention” of the Association for the Prevention of Torture, which will be a useful aid both for the members of the NPM Group and the employees of the Office and the regional centres, as well as law-enforcement bodies, have been organized by the support of the OSCE Office in Baku. On 25 May 2010 with the participation of the members of the NPM Group, employees of the Office and the regional centres, as well as law-enforcement bodies, members of the Public Committee that ensures the involvement of the community in the rehabilitation of convicts and exercises public control over the operation of penitentiary institutions and representatives of other local NGOs, as well as the OSCE Office in Baku, OSCE-ODIHR, and

representatives of the Association for the Prevention of Torture, the presentation of the above mentioned book was held.

A range of meeting-seminars in PIs and in the Correctional Institution for Minor Convicts has been organized by the Commissioner, with the participation of the PS. In order to ensure the organization of more reliable protection of the rights of convicts and foster respect for laws, during meeting-seminars the Commissioner and the employees of the Office delivered speeches on the interpretation of national, regional and international documents related to the prevention of human rights, and general human rights standards, including minimum European standards for the treatment of detainees for convicts and the personnel of institutions and answered various questions of convicts. During those events interactive discussions were held in groups with convicts, also private interviews were conducted with them. Such events are constantly continued, at the end of events questionnaires drawn up with the aim of preparing relevant proposals for the improvement of the punishment execution work and detention conditions are distributed among the convicts participating at the meeting-seminar, anonymous surveys are conducted on a voluntary basis. The findings of the surveys, being summarized and systemized in the Office, are submitted to the relevant bodies in the form of concrete and useful proposals.

2 employees of the Office are members of the Guardianship Council that functions under the Correctional Institution for Minor Convicts and assists in the provision of human rights and freedoms of convicted children and their rehabilitation. Various education events are held through the Council. By the way, it should be mentioned that on the Commissioner's initiative certain work is performed to improve the functioning of the Guardianship Council further.

In general, the Commissioner approaches minor convicts with special attention taking into account that they are at the vulnerable stage of their development, and events of specific nature are organized for them. Cultural mass events carried out every year in the institution under the title of "Open Door Day" can be cited as an example to such events. During the events dedicated to the above mentioned momentous days and holidays, along with speeches aimed at legal education, the concert-performances of various theatre

and children groups are organized for convicts. At such events necessary conditions are provided for parents and close relatives of convicted children to enter the institution without any restriction and be in contact with convicts during the whole day. It is ensured that prominent public figures, representatives of international organizations, as well as media representatives also participate in such events which play an important role in the rehabilitation of convicted children.

Along with the above mentioned traditional events, a meeting-seminar devoted to child rights was conducted on the eve of 20 November - Universal Children's Day in the Correctional Institution of the PS by the Commissioner together with the UN Department of Public Information Office in Baku. Presentations related to international documents were made and interactive discussions on the topic were conducted at the event. Such events are held annually.

The Commissioner has also strived to ensure that relevant legal education works are conducted in the institutions where children who have lost their parents or have been deprived of parental care are held. As an example to such events, the event held on the topic of "Human Rights" in the SOS Children's Village together with the UN Department of Public Information Office in Baku can be cited. During the event the employees of the Office explained relevant national, regional and international documents and made recommendations on combating and preventing violence.

The Commissioner, together with the UNICEF Azerbaijan Office, also organized seminars on "Promotion and Protection of Child Rights" in different cities and regions of the country. The main aim of the seminars was to increase awareness of the promotion of child rights, protection of children from violence, child rights protection mechanisms, etc. and discuss the situation in the field of child rights in those regions.

As already mentioned, the Commissioner holds broad legal education events for the employees of law-enforcement bodies in order to prevent torture. When conducting a visit to this or another establishment the Commissioner also meets with the personnel of that establishment and delivering a speech to them, informs them about the requirements of new

legislative acts and international documents the country has acceded to, as well as the rights and duties of the NPM.

Taking into consideration that persons who are in trouble with the law, suspected or accused in the commission of a crime, and persons who are victims of a crime get primarily in contact with the police, a number of seminars have been held both in the capital and regions with the aim of increasing the police's knowledge of human rights, treatment of detainees, as well as child rights and juvenile justice.

In November-December 2009, on the eve of municipal elections, together with the MIA and Central Election Commission of the Republic of Azerbaijan, the Commissioner also took part in a series of regional seminar-meetings on "The Rights and Duties of the Police in the Election Process" organized for the senior staff of the district police office and departments of various cities and districts of the republic. At the events, that covered 58 districts and cities of the country in whole, discussions were held by detailed information on the requirements of the OPCAT being provided, and national and international norms that the police must strictly and irreversibly adhere to in their activities in order to avoid acts of torture and prevent such cases were once more brought to the participants' attention. During the above mentioned events it became clear that police officers had little and scanty information about the OPCAT. It is therefore necessary to give broad information to the employees of law-enforcement bodies on the OPCAT, its ratification, the establishment of the NPM in Azerbaijan and its powers.

Legal education events were also held in military unit No.N of the MD where persons sentenced to detention in a disciplinary military unit are held. At such events the members of the NPM Group delivered speeches to military men, gave information on the requirements of the relevant national and international norms, as well as the essence of the OPCAT and the set objectives, and answered the questions put to them.

The Commissioner, within the legal education events carried out by her, has attached particular importance to increasing theoretical and practical knowledge of the employees of the Office, especially the members of the NPM Group in this field. The two-day seminar on the application of the OPCAT in the Republic of Azerbaijan and establishment of the NPM held



together with the OSCE Office in Baku and OSCE-ODIHR for the employees of the Commissioner's Office and regional centres on 25-26 November 2009 served this aim. The seminar was attended by governmental bodies, representatives of NGOs and international organizations, well-known international experts and mass media representatives as well. During the exchange of views held on the issues presented for discussion at the event several productive proposals were made and valuable recommendations were provided based on best practices.

Another event of this type was the methodical training on monitoring places of detention held for the members of the NPM Group on 25-26 May 2010 by the support of the above mentioned international organizations. The employees of the Commissioner's regional centres and law-enforcement bodies, members of the Public Committee that ensures the involvement of the community in the rehabilitation of convicts and exercises public control over the operation of penitentiary institutions under the Ministry of Justice of the Republic of Azerbaijan and representatives of other NGOs were also involved in the event.

At the training E.Svanidze, former member of the European Committee for the Prevention of Torture, international expert on monitoring, made speeches on "Concept of Monitoring Places of Detention" and "Monitoring Visit in Practice", L.Huseynov, member of the same Committee, Department Head in the Office of the Milli Majlis of the Republic of Azerbaijan delivered a speech on "International and National Standards on Detention", E.Steinerte, Professor of the University of Bristol, gave a speech on "Preventive Nature of NPMs", and V.Maharramov and R.T.Samadov, members of the NPM Group, delivered speeches on "Azerbaijan Ombudsman's Experience in Monitoring Places of Detention" and "Detained Minors: Detention Conditions and Key Rights" respectively and exchanged views with the participants.

Among the conducted events the conference on "Strengthening the Commissioner's Role as the National Preventive Mechanism in Azerbaijan" held in the building of the Parliament of the country on 24 May 2010 with the joint organization of the Commissioner's institution, Milli Majlis of the Republic of Azerbaijan, OSCE Office in Baku and OSCE-ODIHR should be particularly stressed. The conference was attended by the deputies of the Milli

Majlis of the Republic of Azerbaijan, representatives of governmental bodies, NGOs, and international organizations, prominent international experts, including representatives of the UN Subcommittee on Prevention of Torture and the Association for the Prevention of Torture, and media representatives.

Commissioner E.Suleymanova delivering a report on “The First Year of the NPM’s Functioning in Azerbaijan: Achievements, Problems, Perspectives”, gave brief information to the conference participants on the works implemented within a short period of time since the designation of the institution as an NPM, gained achievements, as well as existing difficulties.

At the event A.Huseynov, Chair of the Legal Policy and State Building Committee of the Milli Majlis of the Republic of Azerbaijan, and Ambassador B.Cankorel, Head of the OSCE Office in Baku, delivering speeches, noted that the protection of human rights and freedoms was one of the key responsibilities of every state, Azerbaijan had done crucial work in this field and the process was in progress, as well as the Commissioner had organized her activities at a high level and effectively, and they found it important to cooperate with her.

At the first session on “International and National Mechanisms on Prevention of Torture” of the Conference that continued its work in sessions Commissioner E.Suleymanova, L.Huseynov, member of the European Committee for the Prevention of Torture, Department Head in the Office of the Milli Majlis of the Republic of Azerbaijan, Z.Lasosik, member of the UN Subcommittee on Prevention of Torture, M.Pringl, representative of the Association for the Prevention of Torture reported on the functioning of the NPM in Azerbaijan, role of the relevant international bodies in the prevention of torture, brief summary of the NPM principles, collaboration among relevant bodies at international, regional and local levels, and joint visits. At the second session on “Strengthening the Potential of the NPM in Azerbaijan – Legal Framework, Involvement of Civil Society, Preparation of Reports and Recommendations and Constant Control” E.Steinerte, Professor of the University of Bristol, M.Pringl, representative of the Association for the Prevention of Torture, R.T.Samadov, member of the NPM Group, delivered reports on the summary of obligations under the OPCAT, positive practices of other countries, and improvement of the national legislation on the NPM.

At the conference the NPM model to be applied in the Republic of Azerbaijan was discussed and assumptions and recommendations were voiced as well. During the exchanges of views held at the conference Commissioner E.Suleymanova, as well as the members of the NPM Group and international and national experts answered numerous questions of the participants.

At the end of the conference A.Huseynov, Chair of the Legal Policy and State Building Committee of the Milli Majlis of the Republic of Azerbaijan, underlined that, taking into consideration the Commissioner's proposals, certain actions would be taken to improve the laws relating to the NPM functioning.

Another contribution of the collaboration among the Commissioner's institution, OSCE Office in Baku and OSCE-ODIHR was the organization of a four-day training-seminar aimed at increasing theoretical and practical knowledge of the members of the Commissioner's institution, particularly the NPM Group established under her, with the participation of L.Adler, experienced expert of OSCE-ODIHR in October 2010. At the training-seminar the Commissioner's NPM activities were discussed, views were mutually exchanged by the current situation being analyzed, and proposals and recommendations were provided.

Within the event, necessary conditions were created for the above mentioned expert to scrutinize the documentation, database and other materials maintained by the NPM Group in order to allow him to get acquainted with the NPM's work more closely. L.Adler also took part in visits conducted by the members of the NPM Group to PI No.6 of the PS and Narimanov DPO TDP.

At the end of the event L.Adler highly appreciating Azerbaijani Ombudsman's work as the NPM, noted that the operation of the NPM Group had been organized in a comprehensive manner and in line with international norms and assessed it as an example of high professionalism.

The analysis and summarization of the outcomes of the legal education work on combating torture allows to say that the participation of parliamentarians and the employees of law-enforcement bodies in various legal education events of the Commissioner, and particularly the organization of such events together with the relevant governmental bodies at a high level

result in more effective and useful impact and yield desirable outcomes. It is therefore necessary to continue and enhance the Commissioner's joint collaboration with governmental bodies, security, defence and law enforcement agencies, as well as NGOs.

### ***3.5. International cooperation***

The Commissioner, in line with the directions of her activity, independently establishes relationships and maintains close cooperation with various international organizations, including the UN, its treaty bodies, country representations, Council of Europe, OSCE, International Committee of the Red Cross, and other prestigious organizations, embassies, as well as her foreign colleagues. It should be mentioned that so far 10 bilateral agreements on mutual cooperation have been signed with ombudsmen of various countries. The main goal of these agreements is that institutions timely inform each other about the violations of the rights and freedoms of the citizens of the other country, which is a party to the agreement, in the territory falling under its jurisdiction and organize assistance with prompt restoration of such rights within their powers.

The Commissioner has become a member of the European Ombudsman Institute, the International Ombudsman Institute, and the Asian Ombudsman Association and successfully functions within those institutions. The representatives of the Commissioner and her Office also take part in relevant international events.

The Commissioner's international relations and cooperation have contributed greatly to the organization of her activity as an NPM. As such, the exchanges of views and experiences conducted on the international platform well before the designations of the Commissioner as an NPM contributed to the determination of the future perspectives.

After the designation as an NPM, the Commissioner has paid particular attention to improving the establishment of international cooperation. For the mentioned purpose, right after the designation as an NPM, the Commissioner has accordingly informed the relevant international bodies, including the UN

Committee against Torture, Subcommittee on Prevention, European Committee for the Prevention of Torture, as well as Association for the Prevention of Torture and requested them to provide recommendations. The received recommendations have been duly summarized and adequately used in the Commissioner's activity as the NPM and in the preparation of this or another project. Along with the above mentioned, it should also be noted that numerous inquiries received from various international organizations and prominent experts in the field of combating torture with regard to the Commissioner's NPM activities have been thoroughly responded to.

When speaking about the international cooperation of the Commissioner as the NPM, it should be emphasized that the Commissioner has already become a member of the Council of Europe Directorate General of Human Rights and Legal Affairs and the Network of European NPMs organized by the Association for the Prevention of Torture. The network has been established within the project of the Council of Europe aimed at setting up an active network of the European NPMs and improving combating torture in the countries that are members of the Council of Europe, as well as promoting active cooperation between the NPMs and relevant international bodies. It is planned to organize a series of events that will ensure the organization of the functioning of the NPMs at a higher level through the network.

At the "First Meeting of the European NPM Network", which was organized in Strasbourg, France on 05 November 2009 by the Council of Europe Directorate General of Human Rights and Legal Affairs and the Association for the Prevention of Torture and attended by V.Maharramov and R.T.Samadov from the NPM Group as well, the establishment and development of NPMs, problems and perspectives, preparation of annual reports and information to be necessarily included in reports, aims of the establishment of the network, and steps to be taken to establish mutual cooperation were discussed.

Later, R.T.Samadov, member of the NPM Group, was appointed a contact person for that network by the decision of the Commissioner and he took part at the first meeting of the contact persons of the network concerned, which was held in Padua, Italy on 27-28 January 2010.

At the meeting, which was attended by the respective contact persons of the NPMs of other European countries, as well as the representatives of the Council of Europe, European Commission, European Committee for the Prevention of Torture, UN Subcommittee on Prevention, Association for the Prevention of Torture, and Inter-department Centre on Human Rights and People's Rights of the Padua University, presentations were made on the preventive monitoring concept, its difference from visits conducted based on complaints, measures to be taken with regard to the complaints made during preventive visits, principles of visits, UN Subcommittee on Prevention, European Committee for the Prevention of Torture and the role of NPMs, as well as experiences of the Georgian and Estonian NPMs, exchange of views was conducted, and discussions were held and agreements were reached on the organization of the future functioning of the Network, topics, schedules and venues of the workshops to be arranged, share of practices to be carried out, as well as annual meetings of the NPM heads and scheduled meetings of contact persons, and periodic reporting letters to ensure exchange of information through the Network.

R.T.Samadov, delivering a speech at the meeting, gave information on the Commissioner's activity as the NPM, voiced proposals made by Azerbaijani NPM with regard to the topics of the workshops to be held in the upcoming years, and expressed his opinion on the proposals submitted by his colleagues from other countries. R.T.Samadov also informed the participants and the project management of the Commissioner's intention to hold one of the planned seminars in Baku. After relevant discussions it was decided to conduct one of such international workshops in Baku in October 2011.

The first workshop from the series of events to be organized by the Network was held on the topic of "The role of NPMs in the Prevention of Ill-Treatment in Psychiatric Institutions" in Padua, Italy on 24-25 March 2010. At the workshop attended by members of the NPM Group Y.Jafarova and R.T.Samadov presentations were delivered and discussion were held on the protection of the right to mental health in psychiatric institutions; special rights and provisions relating to the placement pursuant to mental health and social care; material conditions and personnel of mental health institutions;

protection of the rights of vulnerable groups; elements of visits to psychiatric institutions: medical approach and monitoring methodology; etc.

Another workshop of this type on “The role of National Preventive Mechanisms against torture (NPMs) in protecting individuals’ key rights upon deprivation of liberty by the police” was held in Tirana, Albania, on 09-10 June 2010. Together with R.T.Samadov, member of the NPM Group, S.Abbasov, staff member of the Gandja Regional Centre of the Commissioner attended the event. At the workshop presentations were delivered and discussion were held on the key rights of individuals in cases of detention by the police, relevant international standards, including perspectives of applying those standards in practice at the national level, key medical issues relating to the protection of the right to health, as well as methodology of monitoring relevant institutions, visit preparations, preparation of the list of questions and issues relating to the implementation of the visit, special rights of vulnerable groups – women and children, their detention, requirements as to the detention conditions, etc.

The next event of the Network was a scheduled meeting of the NPM heads and contact persons at the end of 2010. The meetings held in Strasbourg, France on 01-02 December 2010 were attended by members of the NPM Group V.Maharramov and R.T.Samadov. At the meetings the first year achievements of the Network established within the Network of European NPMs Project, the work done, events organized, as well as difficulties and problems encountered were discussed and the action plan for 2011-2012 was worked on by priorities being set. At the event the application by NPMs of their mandates: management and other strategic issues, the outcomes and positive and negative features of the visits conducted within the Project by the NPMs of Estonia, Poland, Georgia and Spain together with the experts of the European Committee for the Prevention of Torture, UN Subcommittee on Prevention of Torture and Association for the Prevention of Torture, as well as the contributions the European Committee for the Prevention of Torture and the UN Subcommittee on Prevention of Torture had already made and could make to the Project concerned, and the steps to be taken to develop the information bulletin of the Network were also discussed and proposals and recommendations were uttered.

Within the framework of the events the results of the conducted discussions have been analyzed and summarized, the details of the action plan for the next year has been worked out, the topics and plan of workshops to be held in various European countries and perspectives of organization of new events of another format within the Project have been discussed as well, an open vote has been taken on different issues and various decisions have been made by majority voting.

The active work of Azerbaijan's NPM in the above mentioned Network is being successfully continued.

The Commissioner and staff members of the Office have attended several other international events dedicated to the issues relating to combating torture or held by discussing problems of this type.

As an example to such events, the international conference on "Prevention of Torture in the South Caucasus" organized by the Penal Reform International in Tbilisi, Georgia on 1-2 October 2009 can be cited. The Commissioner and member of the NPM Group R.T.Samadov participated in the conference. At the event the notion of torture, mandate of national preventive mechanisms pursuant to the OPCAT, practices of the world countries relating to positive results achieved in the prevention of torture and other acts of ill-treatment, various concepts in that regard, and other similar issues were discussed, the current situation in the field of combating torture in the South Caucasian countries was analyzed, and relevant recommendations were provided by international experts. At the conference reports and expert opinions were delivered on the activities of the Public Defender of Georgia (Ombudsman) aimed at preventing torture against persons deprived of their liberty and held in police departments, investigatory isolators, penitentiary institutions, military units, psychiatric hospitals, homes for the elderly and child homes and other establishments, current situation, and problem solution practice as well. E.Suleymanova delivered a report on "The Activities of the Commissioner for Human Rights of the Republic of Azerbaijan as the NPM for the Prevention of Torture" at the conference. In her speech she stated that the issue of combating torture was an essential part of the Commissioner's activity and gave information on the preventive measures taken by that time,



the works done after the designation as an NPM, as well as the future duties and planned actions.

Another member of the NPM Group A.Hajiyev, when attending the international conference on “The Role of State Bodies and Civil Society in the Development of an Ombudsman Institute” held in Lipetsk, Russia on 27-31 January 2009, joined the group meeting dedicated to the topic of “Prevention of Torture”, provided proposals and recommendations, and get closely acquainted with the relevant experience of other countries through the exchange of views.

Head of the Office A.Safikhanly’s participation in the III Issyk-Kul International Human Rights Forum organized in Bishkek, Kirgizstan on 14-21 July 2009 and joining the session on “International Practice of the Use of NPMs in Combating Torture” have also been sufficiently useful.

The workshop on “The Protection and Promotion by National Human Rights Structures of the Rights of the Elderly” attended by Y.Jafarova, member of the NPM Group, psychologist, and Sh.Gambarova in Budapest, Hungary on 15-16 September 2009, where pressing issues such as the prevention of torture in the establishments where the elderly live and conducting systemized monitoring for that purpose were discussed and practical recommendations were made, can be attributed to such events.

Head of the Office A.Safikhanly’s participation in the fourth working meeting on combating torture of the OSCE Human Dimension Implementation Meeting held in Warsaw, Poland on 28 September – 04 October 2009, as well as A.Eyvazov’s, Z.Valimammadli’s and A.Novruzova’s participation in the workshop which was jointly organized by the Polish and French Ombudsman Institutes within the framework of the Eastern European Partnership in the same city on 21-26 October 2009 and where issues relating to combating torture were discussed have been beneficial.

The participation of V.Maharramov and R.T.Samadov, who are the Office’s staff members directly responsible for the NPM-related issues, in the “Conference on New Partnerships for Torture Prevention in Europe” held in Strasbourg, France on 06 November 2009 and devoted to the 20<sup>th</sup> anniversary of the European Committee for the Prevention of Torture has also been successful. At the event NPMs shared information, heard reports on the

implementation of international standards and application of the recommendations of preventive mechanisms, and held broad and productive discussions.

When member of the NPM Group A.Hajiyev was in Yekaterinburg, Sverdlovsk, Russia on 17-20 December 2009 for an exchange of experiences, he gave information about the Commissioner's NPM activities and productively exchanged views in the Office of the Ombudsman of the Oblast and at the meetings held with the teaching staff and students of the Law Faculty of the Yekaterinburg Humanitarian University.

When member of the NPM Group R.T.Samadov was in the cities of Tashkent, Bukhara, and Samarkand of the Republic of Uzbekistan on 17-21 December 2009 for an exchange of experiences, he discussed issues relating to combating torture and gave information about the Commissioner's NPM activities at the meetings held with the participation of the employees of the Office of the Commissioner for Human Rights (Ombudsman) of the Oliy Majlis of the Republic of Uzbekistan and regional centres, as well as the teaching staff and students of the Tashkent State Law Institute.

Member of the NPM Group V.Maharramov's participation in the meeting of the Committee held in Kiev, Ukraine on 06 October 2010 in connection with the realization of the Council of Europe and EU joint program on the "Combating Ill-Treatment and Impunity in South Caucasus, Moldova and Ukraine", as well as in the 3<sup>rd</sup> conference of the Eastern European countries on "NPMs, Investigating Ill-Treatment and Similar Cases" held in Odessa, Ukraine on 02-03 November 2010 within the same program has also been useful for the institution.

The participation of member of the NPM Group A.Aliyev in the workshop on "The Role of National Human Rights Structures in Protecting and Promoting the Rights of Persons with Mental Health Problems" held in Bilbao, Spain on 17-18 November 2010 by the Council of Europe Directorate General of Human Rights and Legal Affairs has also had a significant impact. At the event reports were delivered and discussions were held on the protection of the rights of persons with mental health problems in Europe: norms and facts; main difficulties in relation to the protection of the rights of persons with mental health problems, ways to protect the rights of persons

with mental health problems in practice, best practices; as well as the activities carried out by national human rights structures, assisting with the rights of persons with mental health problems; means of assistance of national human rights structures in relation to the rights of persons with mental health problems, and promoting the rights of persons with mental health problems.

The activities carried out by the Commissioner as the NPM in 2009-2010 and gained achievements were also discussed and highly appreciated at the workshop on “Service User and Prisoner Participation in Monitoring Places of Detention” co-organized by the Mental Disability Advocacy Centre and the Justice Chancellor of Estonia by the support of the Penal Reform International and Zennström Philanthropies in Tallinn on 20-21 January 2011, which was attended by member of the NPM Group R.T.Samadov. Thus, the participants highly appreciated the Commissioner’ activity in the given field, her work style and methodology, as well as that she along with conducting visits, had also analyzed the laws and provided proposals and recommendations and welcomed the fact that the additions and amendments to the Constitutional Law intended for expanding the scope of her powers, as suggested by the proposals and recommendations of the Commissioner and the relevant international bodies, was adopted at the first voting last year.

The information given at the above mentioned and other events about the work done by the Commissioner within a short period of time with respect to organizing the NPM’s work and ensuring its functioning has been welcomed and highly appreciated by the representatives of international organizations, prominent experts, and the Commissioner’s peers in foreign countries.

The international relations established and successfully maintained by the Commissioner, her mutual and close collaboration with her peers in foreign countries allows her to take care of the conditions of detention of Azerbaijan citizens deprived of their liberty outside the country, treatment of them, observance of their rights and freedoms as well. It is no coincidence that when Commissioner E.Suleymanov was in Moscow, Russia on an official trip from 25 June to 1 July 2009, she requested her Russian colleague to pay attention to the conditions of Azerbaijan citizens residing in the territory of the Russian Federation, as well as detained for having violated the rules of registration in that territory for certain reasons and assist Azerbaijani immigrants within his

competencies in case of their detention. Within the visit E. Suleymanova also was in the Detention Centre for Foreign Citizens of the Moscow Head Office of the Ministry of Internal Affairs of the Russian Federation with the help of the Russian Federal Ombudsman, inquired about the legal bases for the detention of Azerbaijani citizens held there, consulted necessary documents, met with and talked to each of those persons, and gave them relevant legal advice. The Commissioner got closely acquainted with the treatment of detainees, detention conditions, medical and other services, and nutrition conditions as well. The detainees during the interview told the Commissioner that they did not have any complaints about the acts of the personnel of the establishment.

On the Commissioner's instruction, the employees of the Office also inquire about the conditions of the citizens deprived of their liberty outside the country and take relevant measures. When employees of the Office A.Hajiyev and O.Karimov were in Lipetsk, Russia in February 2009, they visited the Lipetsk City Investigatory Isolator of the Lipetsk Oblast Office of the Russian Federation Punishment Execution Federal Service and the Lipetsk City Colony of General Regime and met with Azerbaijani citizens held there. As well as when member of the NPM Group R.T.Samadov was in Alma-Ata, Kazakhstan on 01-03 April 2009, he inquired about the condition of an Azerbaijani citizen detained in that city and held in the Alma-Ata Investigatory Isolator and delivered the Commissioner's appeal for his immediate extradition to the Republic of Azerbaijan to the authorities of Kazakhstan.

The Commissioner using her efficiently established and developed international relationships, on 13 May 2009 appealed to the Baku Office of the International Committee of the Red Cross with regard to a sergeant of the Azerbaijan Armed Forces captured by the military forces of the Republic of Armenia on the line of contact and requested to assist with ensuring that he was not subjected to torture or any other violence, controlling the situation and repatriating him to Azerbaijan as soon as possible.

When the Commissioner was on an official visit in Geneva in March 2010, she met with an authorized representative of the International Committee of the Red Cross and made her appeals in relation to some more cases.

To the point, it should be mentioned that the Commissioner's international cooperation has also significantly contributed to the organization of a series of events of various nature in the country.

When speaking about the international relationships the Commissioner has improved after her designation as an NPM, her numerous statements addressed to the international community should be stressed as well. It should be noted that on 25 June 2009 on the eve of the International Day in Support of Victims of Torture the Commissioner issued a statement calling upon the international community to combat torture and jointly cooperate for the sake of just peace and sent it to the UN Secretary General, UN Assistant Secretary General, UN Special Envoy for Children and Armed Conflict, UN Commissioner for Human Rights, OSCE, Council of Europe, International and European Ombudsman Institutions, Asian Ombudsman Association, International Peace Bureau, Universal Peace Federation, ombudsmen of various countries, embassies of the Republic of Azerbaijan to foreign countries, embassies of foreign countries to the Republic of Azerbaijan and Azerbaijan Diaspora organizations.

The Commissioner's activities in the field of combating torture, as well as her NPM activities and the work aimed at their improvement are being continued.

## **Proposals and recommendations**

Based on the analysis of the activities of the newly established Azerbaijani NPM, it can be noted that within a short time period dynamic work has been performed, positive experience have been gained, as well as a serious turnabout has been observed in the approach to the investigation of any allegations of torture in the country. As such, the following accomplishments have been recorded as a result of the mentioned activities:

- positive changes in the attitudes, as well as in the behaviour of police officers and the employees of the penitentiary service;
- improvement of the conditions, treatment and services in the establishments falling under the jurisdiction of the NPM;
- raising awareness of civil society, NGOs, as well as persons deprived of their liberty through regularly disseminated press releases and other information;
- increasing transparency in relevant bodies, as well as punishment of the employees who have resorted to violence by bringing them to criminal or administrative responsibility.

As a result of the activities, visits carried out after the Commissioner was designated as an NPM, consideration of the applications and complaints received by her, numerous discussions and consultations held, summarization of the proposals received from various governmental bodies and international organizations, as well as the comprehensive scientific and analytical analysis conducted through learning best practices in this field, the following proposals and recommendations are made in order to improve and coordinate the activities aimed at revealing, investigating and preventing torture and other cruel, inhuman or degrading treatment or punishment in the country, as well as to more effectively organize the work of the NPM:

### **A) For improving legislation**

- 1) Enhance the sanction provided by the CAO for the interference with the legitimate activities of the Commissioner, as well as specify

responsibility for the interference with the legitimate activities of the national preventive group of the Commissioner;

- 2) Improve the definition of the offence of torture specified in the Criminal Code of the Republic of Azerbaijan in compliance with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- 3) Accelerate the adoption of the Law On Places of Detention;
- 4) Improve the Law of the Republic of Azerbaijan On Psychiatric Care of 19 April 2002 in compliance with the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care adopted by UN General Assembly resolution 46/119 of 17 December 1991.

## **B) For solving institutional issues**

- 1) Allocate appropriate funds and take other organizational measures for the establishment of a special structural unit which would organise and implement the activities of the Commissioner as an NPM;
- 2) Allocate appropriate funds for the publication of the annual reports of the Commissioner, as well as reports reflecting the results of her activities as the NPM;
- 3) Improve the work of registering and maintaining records of persons held under administrative detention in temporary detention places of the MIA, as well as suspected or accused persons and strengthen the control over this work;
- 4) Eliminate the cases of involving persons under administrative detention in forced labour in the TDPs of the Gabala and Gobustan DPDs of the MIA;
- 5) Accelerate repair and reconstruction work in the establishments of the MIA where detention conditions do not comply with modern standards;
- 6) Enhance supervision to ensure that employees of places of detention apply laws correctly;
- 7) Improve relevant prosecutors' control over temporary detention places;

- 8) Take necessary measures to immediately eliminate negative cases such as overcrowding and placing more than allowed persons in cells of InIs No.3 of the PS and speed up the construction of new premises for the Baku InIs;
- 9) Renovate, as required, the cells of the PS Prison where the detention conditions do not comply with modern standards;
- 10) Soften the management's treatment of convicts at the Prison of the PS;
- 11) Improve the work of Medical-Sanitary Units at the Prison and PIs of the PS;
- 12) Perform necessary renovation work in the establishments of the PS where the floors of dormitories are made of concrete (e.g., PI No.17), as well as in the penal isolator and in the establishments where the detention conditions at dormitories do not meet the requirements of modern standards (e.g., PIs No.8 and 11);
- 13) Provide for specific rooms in PIs under construction to ensure that convicts exercise their rights to have access to legal assistance; provide for the normative-legal regulation of the issue;
- 14) Perform capital and current renovation works in the PCS and special institution of the PS where the detention conditions do not meet the requirements of modern standards;
- 15) Transfer the buildings where the PCSs of the PS are located to the balance sheet of the PS;
- 16) Take necessary measures to enhance the control over the observance of regime rules and improve the quality of medical care provided in the MI;
- 17) Holding of regular wide enlightenment for prisoners suffering from tuberculosis, as well as for staff of the facilities where they are detained; conduction of measures in the direction of explaining to such prisoners the prejudice of cigarette and drugs use, as well as of elimination of stigma hampering to relations among prisoners and among them and persons who are in contact with them;
- 18) Improve the work of the Guardianship Council operating under the Correctional Institution of the PS;



- 19) Accelerate renovation and reconstruction works in some departments of Republic Psychiatric Hospital No.1 and Shaki and Gazakh Mental Dispensaries of the MH, eliminate the deficiencies that are not related to renovation, establish or improve a normative framework to regulate the operation of those institutions;
- 20) Arrange worship rooms in the mental hospitals of the MH with a view to both protecting the rights of patients and acknowledging the positive impact of praying on patients, as well as provision of psychological assistance service along with drug treatment;
- 21) Improve social services provided for patients in the mental hospitals of the MH, ensure their efficient involvement in activities corresponding to their mental and physical capacities, provide employment opportunities for them pursuant to their health conditions and capabilities;
- 22) Provide necessary conditions for patients to efficiently spend their leisure-time in the mental hospitals of the MH;
- 23) Thoroughly audit placement in the mental hospitals of the MH and ensure conformity with law;
- 24) Ensure that the medical personnel of the mental hospitals of the MH treat psychoneurological patients kindly and demonstrate politeness to them, and increase their wages taking into consideration the hardship and tension of their work;
- 25) Carefully select supporting staff for the mental hospitals of the MH, arrange training and qualification courses for them;
- 26) Develop patients' skills in different areas in the mental hospitals of the MH, involve them in education, organize their preparation for integration into society;
- 27) Work with family members of patients in the mental hospitals of the MH and encourage some of patients to return to their families taking into consideration their conditions;
- 28) Enhance patients' contact with society in the mental hospitals of the MH;
- 29) Improve the work performed by the experts of the Forensic Medical Examination and Pathologic Anatomy Union of the MH;

- 30) Put forth an effort to eliminate artificial problems encountered when convicts are issued grades of disability by the MLSPP;
- 31) Improve the organization of psychological work in the relevant institutions of the MLSPP, add a position of psychologist to the corresponding staff list;
- 32) Irrespective of the form of subordination, eliminate deficiencies and shortcomings revealed in all establishments containing places of detention within the shortest possible period of time, bring the persons who have violated law to responsibility, and take immediate actions to improve the conditions of detention of persons deprived of their liberty;
- 33) Intensify investigations carried out by law-enforcement bodies to reveal, investigate and prevent cases of torture, bring the persons who have infringed rights to responsibility as provided for by law, and enhance the control of the Office of the Prosecutor General of the Republic of Azerbaijan over that activity.

### **C) For solving other issues**

- 1) Hold broad discussions with the participation of the law-enforcement bodies and the NPM in order to define the notion of torture and other cruel, inhuman or degrading treatment or punishment in the Azerbaijani legislation and revise the sanction provided for that purpose;
- 2) Ensure that the MLSPP constructively approaches the recommendations made to improve collaboration in connection with the designation of the Commissioner as the NPM and takes necessary measures;
- 3) Ensure that the Office of the Prosecutor General of the Republic of Azerbaijan, MIA, MJ, MNS, MD, ME, MH and MLSPP acquaint their subordinate bodies and employees with the requirements of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, OPCAT, Law No.724-IIIQ of the Republic of Azerbaijan On Approval of the Optional Protocol to the Convention

against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 02 December 2008, as well as Order No.112 of the President of the Republic of Azerbaijan On Ensuring the Execution of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 13 January 2009;

- 4) Ensure that the Office of the Prosecutor General of the Republic of Azerbaijan, the Office of the Military Prosecutor of the Republic of Azerbaijan, MIA, MJ, MNS, MD, ME, MH and MLSPP together with the Commissioner initiate or support the organization of various legal awareness events – a series of meeting-seminars, lectures, as well as regional meetings, round tables, and conferences for employees, as well as for detainees, that would be devoted to human rights, including the right not to be subjected to torture;
- 5) Improve collaboration with the UN Committee against Torture, Subcommittee on Prevention, European Committee for the Prevention of Torture, as well as Association for the Prevention of Torture;
- 6) Arrange trainings, seminars and other awareness raising events for the members of the NPM group;
- 7) Organize study tours, as well as invite experts specialized in this field to share experiences.

**List of Establishments falling under the jurisdiction of the  
NPM**

<b>Establishment</b>	<b>Number</b>
<b>Establishments of the Ministry of Internal Affairs of the Republic of Azerbaijan</b>	<b>119</b>
<i>including,</i>	
Office for Combating Trafficking in Human Beings	1
Head Office for Combating Organized Crime	1
Head Transport Police Office	1
Baku City Head Police Office Detention Facility for Administrative Offenders	1
Baku City Head Police Office Isolation Centre for Minors	1
Investigation Centre of the Department for Combating Illegal Migration of the Head Office for Passport, Registration and Migration	1
District police offices	6
Police stations	43
Temporary detention places	64
<b>Establishments of the Penitentiary Service of the Ministry of Justice of the Republic of Azerbaijan</b>	<b>50</b>
<i>including,</i>	
Prison	1
Specialized Medical Institution	1
Medical Institution	1
Correctional Institution	1
Investigatory isolators	3
Penitentiary institutions	16
Penal colony settlements	14
Special institutions	13

<b>Investigatory Isolator of the Ministry of National Security of the Republic of Azerbaijan</b>	1
<b>Establishments of the Ministry of Defence of the Republic of Azerbaijan</b>	11
<i>including,</i>	
Disciplinary Military Unit (Military Unit No.N)	1
Guardrooms	10
<b>Establishments of the Ministry of Education of the Republic of Azerbaijan</b>	41
<i>including,</i>	
Open Special Correctional Institution for Boys	1
Guba Special Trade School	1
Other boarding schools and child homes	39
<b>Establishments of the Ministry of Health of the Republic of Azerbaijan</b>	22
<i>including,</i>	
Psychiatric hospitals	8
Mental dispensaries	11
Psychoneurological Child Home and other child and baby homes	3
<b>Homes and boarding houses for the elderly and disabled under the Ministry of Labour and Social Protection of Population of the Republic of Azerbaijan</b>	10
<b>Total: 254 establishments</b>	

**Optional Protocol to the Convention against Torture and other Cruel,  
Inhuman or Degrading Treatment or Punishment<sup>4</sup>**

**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 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,

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<sup>4</sup> 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.

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 secretballot;

(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 followup 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.

**Constitutional Law of the Republic of Azerbaijan<sup>5</sup>**

**On Making Additions and Amendments to the Constitutional Law of the Republic of Azerbaijan “On the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan”**

The Milli Majlis of the Republic of Azerbaijan hereby resolves:

The Constitutional Law of the Republic of Azerbaijan “On the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan” (Collection of Legislative Acts of the Republic of Azerbaijan, 2002, No. 3, Article 115; 2004, No. 9, Article 665; 2006, No. 3, Article 207, No. 11, Article 909; 2007, No. 10, Article 928; 2009, No. 12, Article 944) shall be amended as follows:

1. In Article 1.1 the words “and to prevent human rights violations in cases as specified in this Constitutional Law” shall be added to the end of the paragraph.

2. Articles 1.2-1.7 shall be deemed as Articles 1.5-1.10 respectively and Articles 1.2, 1.3 and 1.4 shall be added in the following wording:

“1.2. The Commissioner shall perform the functions of a national preventive mechanism as specified in the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. With the aim of preventing torture and other cruel, inhuman and degrading treatment or punishment, he/she shall, on a regular basis or as deemed necessary, visit the places which detained persons can not leave at will.

1.3. The Commissioner shall oversee the fulfillment of the duties arising out of the requirements of the Law of the Republic of Azerbaijan "On Access to

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<sup>5</sup> The Law has passed its first reading only and will enter into force after having passed re-voting to be held in 6 months after the first voting and being approved by the country president.

Information" by governmental bodies, municipalities or officials that are owners of information.

1.4. The Commissioner shall cooperate with local, regional and international organizations in accordance with the directions of his/her activities.”

3. The name of Chapter II shall read as follows:

“Investigation of complaints of human rights violations and performance of the functions of the national preventive mechanism”.

4. In Article 12:

4.1. The name of the Article shall read as follows:

“Procedure of investigation of a complaint of violation of human rights and performance of the functions of the national preventive mechanism”;

4.2. In Article 12.2 after the word “violation” the words “and while performing the functions of the national preventive mechanism” shall be added;

4.3. Article 12.2.1 shall read as follows:

“12.2.1. have access, without hindrance and prior notification, to any governmental and municipal bodies, military units, as well as police stations, temporary detention places, investigatory isolators, penitentiary institutions, military guardhouses, psychiatric institutions and other places, which detained persons can not leave at will; meet with and talk to detained persons, as well as any other persons who may provide relevant information in private or when deemed necessary with the participation of an expert or interpreter; get acquainted with and obtain copies of the documents confirming the lawfulness of detention of detained persons and providing information on treatment and the conditions of detention of those persons; draw up a report, document the progress and the results of the actions undertaken; provide relevant

recommendations to the competent authorities and receive responses to these recommendations within the defined period.”;

4.4. Article 12.2.7 shall read as follows:

“12.2.7. be received without delay by heads and other officials of governmental and municipal bodies, commanders of military units, and management of police stations, temporary detention places, investigatory isolators, penitentiary institutions, military guardhouses, psychiatric institutions, and other places which detained persons can not leave at will.”;

4.5. Articles 12.3-12.5 shall be deemed as Articles 12.4-12.6 respectively and Article 12.3 shall be added in the following wording:

“12.3. Pressure or prosecution against any person or organization for having communicated to the Commissioner any information is inadmissible.”.

5. Article 13-1 shall be added in the following wording:

“Article 13-1. Peculiarities of consideration of a complaint related to the violation of the right to obtain information

13-1.1. The Commissioner shall within 10 working days investigate the circumstances indicated in a complaint related to the violation of the right to obtain information. If the complaint requires specification or additional explanation and documents are needed for the investigation of the complaint, having notified the complainant accordingly, the Commissioner can extend the period of consideration of the complaint for another 10 working days.

13-1.2. The Commissioner shall not consider a complaint if:

13-1.2.1. the complaint is anonymous;

13-1.2.2. the complaint is not related to the activities of the concrete information owning governmental body, municipality or official;

13-1.2.3. the complaint is repetitive, unjustified or biased;

13-1.2.4. there is a final court decision in relation to the case;



13-1.2.5. the applicant has not used, effectively enough, the opportunities provided by the information owning governmental body, municipality or official for obtaining information.

13-1.3. While investigating the circumstances indicated in the complaint of the violation of the right to obtain information, the Commissioner shall clarify whether the information owning governmental body, municipality or official has observed the following provisions of the Law of the Republic of Azerbaijan "On Access to Information":

13-1.3.1. registration of the request for obtaining information (hereafter - information request);

13-1.3.2. satisfaction of the information request pursuant to the procedure, within the period and by the method as specified in the law;

13-1.3.3. conformity of the rejection to satisfy the information request with the requirements of the law;

13-1.3.4. accurate and full compliance with the obligation to disclose public information;

13-1.3.5. compliance with the obligation to create an Internet-based information resource.

13-1.4. With regard to a complaint of the violation of the right to obtain information, the Commissioner can require the information owning governmental body, municipality or official to remedy the violation.

13-1.5. The information owning governmental body, municipality or official shall report the undertaken measures to the Commissioner in writing within 10 days. In case of failure to provide information or fulfil the Commissioner's requirements, the Commissioner can address the relevant superior authority.”

6. Article 18-1 shall be added in the following wording:

“Article 18-1. National Preventive Group

18-1.1. The National Preventive Group shall be established within the Commissioner's Office for the purposes of performing the functions of the national preventive mechanism referred to in Article 1.2 of the present Law. A

person who is at the age of above 25, is a university graduate, has experience in human rights protection and possesses high moral values can be appointed as a member of the National Preventive Group. The members of the National Preventive Group are appointed by the Commissioner based on transparent procedures for the period of 3 years.

18-1.2. The National Preventive Group has the rights to:

18-1.2.1. have access, at any time, without hindrance or prior notification, to police stations, temporary detention places, investigatory isolators, penitentiary institutions, military guardhouses, psychiatric institutions and other places which detained persons can not leave at will; meet with and talk to detained persons, as well as any other persons who may provide relevant information in private or when deemed necessary with the participation of an expert or interpreter; get acquainted with and obtain copies of the documents confirming the lawfulness of detention of detained persons and providing information on treatment and the conditions of detention of those persons; draw up a report, document the progress and the results of the actions undertaken;

18-1.2.2. be received without delay by the management of police stations, temporary detention places, investigatory isolators, penitentiary institutions, psychiatric institutions and other places which detained persons can not leave at will.

18-1.3. A member of the National Preventive Group can not be forced to testify about the facts that became known to him/her while performing his/her duties or to disclose these facts by any other methods. This guarantee shall remain in force in respect of a member of the National Preventive Group even after he/she leaves the Group.

18-1.4. A member of the National Preventive Group can not be arrested or detained, subjected to search or personal examination while performing his/her duties in places which detained persons can not leave at will. No arrest, check or seizure can be undertaken in respect of the mails, telegraphic messages or other correspondence of a member of the National Preventive Group.”.

7. Article 20 shall be added in the following wording:

“Article 20. Responsibility for interfering with the Commissioner’s activity

Persons guilty of interference with the Commissioner’s activity shall bear responsibility in accordance with the legislation of the Republic of Azerbaijan.”

**Ilham ALIYEV**  
**President of the Republic of Azerbaijan**

# PHOTOGRAPHS

Annex 2



*Photo 1. Commissioner E. Seleymanova at a legal awareness raising event in Penitentiary Service's Penitentiary Institution No. 4 (for women) (17.11.2009).*



*Photo 2. A discussion seminar organised by the Commissioner's Office in collaboration with the MIA within the framework of a series of regional seminars for the senior managing officials of police departments and offices. Narimanov DPD (05.12.2009).*



**Photo 3.** Commissioner E.Suleymanova examines legal bases for the detention of Azerbaijani citizens and the conditions of detention at the Detention Centre for Foreign Citizens of Moscow city General Department of the Ministry of Internal Affairs of the Russian Federation (30.06.2009).



**Photo 4.** Seminar on “The implementation of OPCAT and the establishment of the NPM in Azerbaijan” organised by the Commissioner's Office in co-operation with the OSCE Office in Baku and OSCE ODIHR (25-26.11.2009).





**Photo 5.** Seminar on “The implementation of OPCAT and the establishment of the NPM in Azerbaijan” organised by the Commissioner's Office in co-operation with the OSCE Office in Baku and OSCE ODIHR (25-26.11.2009).



**Photo 6.** Conference on “Strengthening the role of the Commissioner as the National Preventive Mechanism in Azerbaijan” organised by the Commissioner's Office in co-operation with the Milli Majlis (Parliament) of the Republic of Azerbaijan, OSCE Office in Baku and OSCE ODIHR (24.05.2010).



**Photo 7, 8.** Conference on “Strengthening the role of the Commissioner as the National Preventive Mechanism in Azerbaijan” organised by the Commissioner’s Office in co-operation with the Milli Majlis (Parliament) of the Republic of Azerbaijan, OSCE Office in Baku and OSCE ODIHR (24.05.2010).





**Photo 9, 10.** Presentation of the Azerbaijani version of the guidebook on “Monitoring places of detention” of the Association for the Prevention of Torture published based on the agreement between the Commissioner and the OSCE Office in Baku (25.05.2010).





*Photo 11, 12. Methodology training on monitoring places of deprivation of liberty organised by the Commissioner's Office in co-operation with the OSCE Office in Baku (25-26.05.2010).*



*Photo 13, 14. Methodology training on monitoring places of deprivation of liberty organised by the Commissioner's Office in co-operation with the OSCE Office in Baku (25-26.05.2010).*





**Photo 15, 16.** *Training-seminar involving participation of the OSCE ODIHR expert L.Adler organised by the Commissioner's Office in co-operation with the OSCE Office in Baku and OSCE ODIHR and aiming at increasing the theoretical and practical knowledge of members of the Commissioner's NPM Group (26-29.10.2010).*



*Photo 17. Investigation Centre of the MLA Department for Combating Illegal Migration of the Head Office for Passport, Registration and Migration. Dormitories for the detainees.*



**Photo 18.**  
*Baku cityu, Khazar DPD TDP,  
Walking yard..*



*Photo 19.*  
*Gabala DPO TDP. Kitchen.*



*Photo 20.*  
*Gobustan DPO TDP Information board.*





*Photo 21.*  
*Gobustan DPO TDP. Detention cell.*



*Photo 22.*  
*Shamakhi DPO TDP. Prayer room.*



**Photo 23.**  
*Shamakhi DPO TDP. Medical room.*



**Photo 24.** *PS PCS No. 8. Dormitory*



**Photo 25.**  
*PCS No. 13. Sanitary facility.*



**Photo 26.** *MD Disciplinary military unit. Soldiers' dormitory.*





*Photo 27. MD Disciplinary military unit. Kitchen.*



*Photo 28. MD Disciplinary military unit. Soldiers' canteen.*



*Photo 29. MD Disciplinary military unit. Member of the NPM Group F.Hasanov at an awareness raising event with the military personeel*



*Photo 30. ME Open Special Correctional Institution for Boys. Living room.*





*Photo 31. ME Open Special Correctional Institution for Boys. Classroom.*



**Photo 32.**  
*ME Open Special Correctional Institution for Boys.  
Water tank with drinking water  
for the children in the  
classroom.*



*Photo 33. ME Open Special Correctional Institution for Boys. Old boiler room.*



*Photo 34. ME Open Special Correctional Institution for Boys. New boiler room.*





*Photo 35. ME Open Special Correctional Institution for Boys. Old bathroom.*



*Photo 36. ME Open Special Correctional Institution for Boys. New bathroom.*