



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

REPORT

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

(2019)

Baku – 2020

This Report provides the information on activity of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan as a body designated to function as a National Preventive Mechanism (NPM) under the Optional Protocol to the Convention on Prevention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), as well as recommendations and suggestions made in 2019.

In the process of preparing this report and functioning of the Commissioner as an NPM, the recommendations and suggestions made by the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) and European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the Committee on the Elimination of Discrimination against Women (CEDAW), Committee on the Rights of the Child (CRC), the Committee on the Rights of Persons with Disabilities (CRPD), also made by the UN Human Rights Council Universal Periodic Review Working Group to the Republic of Azerbaijan were taken into account.

The information, statistical data collected as a result of analyses of the findings as well as the OPCAT have been enclosed to this Report.

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FOREWORD

As well it known, the Republic of Azerbaijan ratified the UN OPCAT on 2 December 2008 and under the Presidential Order of 13 January 2009, the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan was designated to function as an NPM under the OPCAT.

In the frame of the legal reforms carried out in the country, the execution of those responsibilities, arising from the functions became one of the main directions of the activities of the HRCA.

Mutual relations of the Ombudsman with the relevant state bodies, civil society institutions, human rights defenders, lawyers, mass media outlets, international organizations, foreign NHRIs and national and international experts led to the development of its activity as the NPM, building successful and constructive cooperation and organization of useful discussions, trainings and exchange of experiences.

Initiatives are being made amid the NPM activity against torture in the interest of either taking a practicable approach or producing recommendations and suggestions to the legislation, and to improve the current work from the institutional perspective.

The presented Report describes the works, preventive visits and their outcomes, recommendations and suggestions and follow-up visits, legal educational and other measures taken by the NPM of Azerbaijan in 2019.

I express my hope that the issues, recommendations and suggestions presented in this Report will further contribute to the improvement of the country's experience and our activity in this area, in particular, in line with national legislation and international standards.

We appreciate any comments to be made to this Report in advance.

Sabina Aliyeva

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

LIST OF DEFINITIONS AND ABBREVIATIONS

- AIDS** – Acquired Immunodeficiency Syndrome
- CAT** – UN Committee against Torture
- CEDAW**- the Committee on the Elimination of all Forms of Discrimination Against Women
- CEP** – The Code of the Republic of Azerbaijan On Execution of Punishments
- Constitutional Law** – the Constitutional Law on the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan
- HRCOA**- Office of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan
- Ombudsman** – the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan
- Convention** – the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- CSO** – Civil Society Organization
- CDPO** – City District Police Office
- CPD** – City Police Department
- CPO** – City Police Office
- CPT** – European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- CRC**-the Committee on the Rights of the Child
- CRPD**-the Committee on the Rights of Persons with Disabilities
- Department** – Department for the Prevention of Torture of the Office of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan
- DPD** – District Police Department
- DPO** – District 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 on his/her will by order of any judicial, administrative or other authority
- Detainee** –person deprived of his/her liberty
- HIV** – Human Immunodeficiency Virus
- ICRC** – International Committee of the Red Cross
- MLSPP** –Ministry of Labor and Social Protection of Population of the Republic of Azerbaijan
- NGO** – Non-governmental organization
- NPM** –National Preventive Mechanism against Torture
- NPG** – National Preventive Group of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan
- OPCAT** –Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- OSCE** –Organization for Security and Co-operation in Europe
- PU** – Police Unit
- SPT** –Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture
- TDP** – Temporary Detention Place
- Torture** – torture and other cruel, inhuman or degrading treatment or punishment
- UN** – United Nations

CHAPTER 1

National Preventive Mechanism under the OPCAT

1.1. The OPCAT Requirements

OPCAT¹-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.² OPCAT underlines the importance of constructive dialogue and taking preventive measures from the perspective of reacting to the regulated relations. The Protocol's innovative approach does not rely on new rights or standards or restoration of the violated rights, rather on an existing standard to ensure the right not to be tortured.

The objective of the Protocol is to establish a system of independent and regular visits to all places of detention to monitor general treatment and custody conditions as the most effective method to prevent torture.

According to the OPCAT, preventive mandate holder national and international institutions are established (they include the Subcommittee on Prevention of Torture (hereafter SPT) and national preventive mechanisms, as well). SPT-is a new kind of UN treaty body established at the universal level.

According to Article 17 of the [Optional] Protocol, "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...". The NPM mandate covers at a minimum the followings:

- to regularly examine the issues related to the detainees;
- to make recommendations to the relevant authorities in a view to improving the treatment and detention condition of detainees and prevention of torture, taking into account the relevant UN norms;
- to make recommendations and observations concerning existing or draft legislation;³

The guarantee of the functional independence of the NPMs as well as the independence of their personnel is the main precondition to successfully fulfill the mandate.⁴

OPCAT grants the NPMs the following main powers:

- to access to all information concerning the number, treatment and condition of persons deprived of their liberty in places of detention as well as the number of places and their location;

¹The OPCAT was adopted by the UNGA Resolution No. 57/199 dated December 18, 2002, and entered into force on June 22, 2006; was ratified by 20 States;

²According to paragraph 2 of Article 4 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.

³ OPCAT, Article 19;

⁴ OPCAT, Article 18(1);

- to access to all places of detention;
- to have private interviews with the persons deprived of their liberty without witnesses, as well as with any other person who may supply relevant information;
- to choose the places they want to visit and the persons they want to interview without any hindrance;
- to have contacts with the SPT, to send it information and to meet with it.⁵

1.2. National Legislative Framework

Azerbaijan has ratified the OPCAT by the Law dated 2 December of 2008⁶ and the Ombudsman has been designated as an institution functioning as the NPM with the Presidential Order of 13 January 2009.⁷

With granting new and quite responsible powers to the NPM, in order to make its work more effectively and qualitatively, expansion of its mandate and a scope of competencies of the personnel became a prerequisite.

By making additions and amendments to the Constitutional Law,⁸ the scope of the power of the Ombudsman, as well as its independence were brought into conformity with NPM standards as stated in the OPCAT, also there were identified the transparent procedures for the establishment of the NPG, the requirements for its candidates, along with the matters on guarantees for their rights and impunity.

According to the Constitutional Law, the Ombudsman and NPM team have the right to access to any state and municipal body, military units, police stations, temporary detention places, investigation isolators, penitentiary institutions, military guardhouses, psychiatric institutions and other places, which detained persons cannot leave on their own will; to meet privately or when deemed necessary with participation of an expert or interpreter and interview in private detained persons, and any other persons who may provide relevant information; to get acquainted with and obtain copies of the documents confirming the lawfulness of detention and providing information on treatment and conditions of detention of persons mentioned above; to prepare acts and document the process and the results of the actions undertaken without hindrance and prior notification.⁹ The power of the Commissioner to provide relevant recommendations to the competent authorities and to receive responses to these recommendations within the identified time limits are also proclaimed by the above noted Law.¹⁰

In the last period, the legislative acts were advanced and the powers mentioned above, which granted to the Commissioner and the NPG were also

⁵OPCAT, Article 20;

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

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

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

⁹The Constitutional Law, Article 12.2.1; 18-1.2.1;

¹⁰The Constitutional Law, Article 12.2.1;

identified in the legal and normative acts in a duly manner in a view to effectively organize their work.¹¹

The NPG is established in every 3 years based on the transparent procedures under Article 18-1.1 of the Constitutional Law.

Under the OPCAT, the Commissioner considered the recommendations made by the UN Human Rights Council UPR Working Group to Azerbaijan, as well as recommendations and suggestions of the CAT, SPT, CPT, CEDAW, CRC and CRPD to organize the NPM work effectively.¹²

1.3. NPM Activity Directions

The activity of the Azerbaijani NPM encapsulates the following main four directions:

•**Preventive visits** – refer to visits carried out in a regular, scheduled and unscheduled manner and without prior notice to places, where persons cannot leave on their own will;

•**Legal analysis** – refers to theoretical and practical analyses of the relevant work, information, recommendations and suggestions, the existing and draft legislative acts; summing up the results and producing the relevant recommendations;

•**Legal education** – is a process of organization of legal education operations for the HRCA staff, NPG members, employees of the places, where persons cannot leave on their own will, persons held in those places and student-attendants of the relevant education institutions and academies as well as preparing and dispensing visual materials to promote activities for prevention of torture;

•**Public affairs and international cooperation** – refer to the exchange of information with national, regional and international organizations, also with NPMs of other countries, mutual participation at the events, organization of joint events as well as promotion of NPM activities in the media.

With regard to the abovementioned, this should be noted that the NPM activity is linked with the Commissioner's mandate to investigate complaints. Thus, the information collected during the investigation of appeals received by the HRCA,

¹¹Law of the Republic of Azerbaijan on Making Amendments to the Execution Punishment Code (20.04.2012, № 324-IVQD); the Law of the Republic of Azerbaijan on Making Amendments to the Law on Psychiatric Care (20.04.2012, № 325-IVQD); The Law on Making Amendments to Annex 4 of the Regulations of the Garrisons and Guard Services of the Armed Forces of the Republic of Azerbaijan which was confirmed by Law #886 of September 23, 1994. (20.04. 2012, № 326-IVQD); The Decision of the Cabinet of Ministers of the Republic of Azerbaijan on Making Amendments to “The Sample Regulations of Open and Closed Special Correctional Institutions approved by Decision #65 of the Cabinet of Ministers dated May 13, 2003” (04.07.2012, № 148); The Decision of the Plenary Board of the Ministry of Justice of the Republic of Azerbaijan on “Making Amendments to the Internal Disciplinary Rules of Penitentiary Institutions approved by Decision #7-N of 29 December 2011 of the Plenary Board of the Ministry of Justice” (13.07.2012, № 3-N); The Law of the Republic of Azerbaijan on Ensuring the rights and freedoms of persons kept in places of detention (22.05.2012, № 352-IVQ); The Decision of the Ministry of Internal Affairs on “The Rules for Safeguarding and Escorting Persons Detained in Temporary Detention Places of Police Bodies” (14.01.2013, № Q1-001-13);

¹²The UN Human Rights Council, Report of the Working Group on the Universal Periodic Review, July 5, 2013, A/HRC/24/13 (para.103.31).

as well as the specific weight of complaints on institutions and facilities were used as a guiding tool in the planning and implementation of preventive visits.

The results of the Commissioner's activity on the abovementioned activity directions, initiatives, recommendations and suggestions are included into the NPM annual reports. The annual reports of the past years were available in Azerbaijani and English languages and placed on the official website of the Commissioner as well as were disseminated. More than 200 recommendations and suggestions for advancing the legislation and solution of organizational problems shown in the reports prepared so far have been practically solved or directed to the execution.

The Commissioner's NPM activity is not limited with only condemning torture and ill-treatment, but also making recommendations to the relevant agencies for further strengthening the preventive measures and the noted issues and preventive approaches are kept in the focus in the cooperation with the state agencies, civil society organizations, the Public Committee uniting them and other stakeholders.

CHAPTER 2

NPM Activity and Preventive Visits

2.1. Organization of Preventive Visits

As it well known, conducting regular visits to the places, which persons cannot leave on their own will is the vital part of activity of the NPMs. Whilst defining the priorities for the preventive mechanism functions, the NPM of Azerbaijan is also mainly based on the objectives of the OPCAT¹³.

Thus, in accordance with Article 20 paragraph (a) of the OPCAT, in order to enable the national preventive mechanisms to fulfill their mandate, the States Parties to the present Protocol undertake to grant them to 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;

That information is requested by the Commissioner from the relevant state agencies and visits are carried out according to the annual plan drafted based on the received information. If deemed necessary, the information for the next year is updated by making clarifications with the relevant authorities.

As a part of the NPM activity, all preventive visits are carried out as scheduled and unscheduled without a prior notification.

2.1.1. Scheduled visits

The scheduled visits are conducted in line with the annual plan approved by the Commissioner. The draft of the annual work plan for the upcoming year is discussed by the NPM members at the end of each year, the outcomes are recorded

¹³ OPCAT, Article 1;

and the approved plan is presented to the Commissioner for approval. From the perspective of effectiveness of the visits, the confidentiality of the annual work plan is vital. The confidentiality is ensured by the NPM members.

The sequence of inclusion of this or other facility into the work plan and the repeated visits to it are carried out on the basis of the specificity of type of that particular facility, records of its general condition and treatment in previous years, its territorial compatibility as well as the information taken from analyses of the complaints received by the Commissioner.

The length of visits largely depends on the size of the institution, the number of persons deprived of their liberty, type of the facility visited and other specificities as well as the number of NPG members.

2.1.2. Unscheduled Visits

NPM carries out unscheduled visits to get familiar with the implementation status of previously given recommendations; to prevent persecution of persons reporting any information to NPG members in one form or another, as well as analysis of the information given by the persons about the place of detention, where s/he was previously held; to verify the information provided in complaints incoming to the HRCA and hotline incoming calls and investigation of the information reported to the NPG members; to check on site the information spread through media and other issues interesting to the preventive group members ; as well as such visits are conducted on the initiative of the Commissioner.

2.2. Conducting Visits

The effectiveness of the visits mainly requires three phases, so, taking account of that, the NPM of Azerbaijan conducts its visits at the three-stage approach as in below:

- **First phase**-preparation;
- **Second phase**-conducting a visit;
- **Third phase** - post visit (**follow-up**) phase

The first preparation phase usually takes two working days, including collecting necessary information; identifying the objectives of the visit and the personnel of monitoring delegation members.

During this phase, in the process of collecting necessary data, the information received during previous visits or taken from other sources, applications received by the Ombudsman, media sources, national legal and normative acts, regulating the activity of the institution to be visited, and international standards are analyzed.

The objectives of a visit are determined on the basis of the general assessment of detention conditions and treatment standards, studying *ad-hoc* cases of detention condition and treatment (e.g. institution of disciplinary measures, quality of health service etc.), follow-up activities, such as checking the status of removal or failure to remove issues identified as findings of previous visits and the

implementation status of the recommendations previously made; to define the scope of the questions of special importance and other issues.

While preparing for the preventive visit, the composition of the monitoring delegation is formed based on factors such as the number of members, their specialization, sex etc. and depending on the objective of the preventive visit, the list of facilities to be visited and interview questions, act templates for the interview records with prisoners, future plan of actions and protocol templates, questionnaires and others for drawing up the outcomes are prepared.

Second phase is conducting visit that includes in itself several phases as well: first, an initial talk with the administration of the facility, self-introduction of monitoring delegation members, and explaining the purpose of the visit and having some general information about the facility.

After the initial talk with the administration of the facility, group members conduct a monitoring in the facility. In its course, conditions of detention in the facility, such as the condition, size, capacity (occupancy), lightening, ventilation and equipment of its building, individual cells or rooms, personal hygienic and sanitary conditions, nutrition issues are evaluated; the access to medical care, the documentation and others are examined.

Later, the NPM members review the documentation and interview the persons, deprived of their liberty, in a collective, private or confidential manner. Such interviews mainly depend on the objective of the visit. Taking account of the situation, the NPM team members can determine the technique of questioning or can make corrections to the preliminary agreement on the spot.

A talk with the facility staff is also an essential part of the preventive visit. The NPM members organize interviews with the staff members in charge in order to evaluate their approach about treatment of persons, deprived of their liberty. In some cases, the NPG also uses special questionnaires prepared for the facility personnel along with the abovementioned interviews.

At the final stage, NPM team held final talk with the administration to alert him on the results of the general observation of the facility. The administration is also informed about the issues that can be fixed locally and is given relevant recommendations. At the same time, the administration is informed about that the NPG members will report the findings to the higher instance authority.

The third is a post-visit phase. The objective of the NPM is not only to conduct a visit to the places of deprivation of liberty, but also to take measures for improving treatment and conditions of detention of persons held there.

Therefore, after completion of the visit, the relevant final report is prepared, the outcomes are analyzed, and the relevant bodies are given the recommendations about improving treatment standards and detention conditions.

Usually, when deemed necessary, the NPM members again conduct a visit to the facility, where the last visit was implemented to follow-up on site the implementation status of recommendations previously given.

In general, throughout 2019, the NPM delegation conducted 268 visits, to the places of deprivation of liberty, out of which 170 were scheduled and 98

unscheduled. Preventive visits were carried out to the institutions of the Ministry of Internal Affairs (139 visits), Ministry of Justice (44 visits), State Security Service (4 visits), State Migration Service (3 visits), Ministry of Health (20 visits), Ministry of Defense (one visit), Ministry of Labor and Social Protection of Population (11), Ministry of Education (34 visits) and of local executive authorities (12 visits).

NPM monitors has conducted legal awareness talks with 1445 persons during private interviews in places of deprivation of liberty and with about 400 staff members of those facilities.

In all cases, regular, scheduled and unscheduled preventive visits were conducted unannounced.

Similarly, as in past years, during this reporting year, the administrations of facilities as well as the relevant ministries were given recommendations and suggestions to eliminate the shortcomings and to improve the detention conditions. Subsequently, those bodies informed the Ombudsman, as one who was designated to function as the NPM, about the follow-up measures taken by them in response to each recommendation.

At the time of the scheduled and unscheduled visits carried out annually, the NPM delegation held private and confidential talks with the persons, held in places of deprivation of liberty and received their appeals and investigated on the spot. Along with this, the Preventive group members took also relevant measures in relation to the appeals received and took up them for the investigation accordingly. The NPM also provided legal advice to the applicants. Furthermore, the appeals, addressed to the HRCA by detainees during the visits, also by their family members, lawyers and human rights defenders, CSOs, NGOs and ICRC and those received via HRCA hotlines were taken into consideration and many detainees were received.

The relevant appeals were examined accordingly and if deemed necessary they have been submitted to the Prosecutor-General Office, Ministry of Internal Affairs, Ministry of Justice and other related state bodies for further investigation. Subsequently, the appeals have been solved and each applicant was responded in written and in a timely manner.

2.2.1. Institutions of the Ministry of Internal Affairs

As part of the Ombudsman's national preventive mechanism activity, 139 scheduled and unscheduled visits have been conducted to temporary detention places and police stations.

570 detainees, held in these facilities, were spoken in private and their detention conditions were evaluated. Also, their detention conditions were monitored; it was investigated whether they were subjected to ill-treatment, while being brought under custody or throughout their detention period.

The Ombudsman and NPM members held talks with the administration and personnel of the district (city) police offices; and carried out legal awareness work for them, where the NPM members specifically emphasized the importance of

ensuring human rights and freedoms and discussed about cooperation issues in this area. During those talks, legal publications and education material were presented for studying and using in training, seminars and applying in practice.

The NPM members examined whether posters with hotline numbers of the Ombudsman was demonstrated and in case of need, the facilities have been provided with such posters making them available (visible).

During the visits conducted to temporary detention places, NPM members investigated whether the persons, while taken into police custody, in or other form subjected to ill-treatment. The confidentiality of the information given by those arrested persons was maintained.

Throughout the inspections, it was found that the measures have been taken to further ensure human rights and to improve existing custodial conditions in compliance with modern standards and to advance the material-technical base.

In that vein, it was also revealed some appropriate actions have addressed to improve the treatment standards of the persons under arrest and to eliminate the existed shortcomings and also underlying causes. The oversight of the temporary detention facilities was also reinforced.

With regard to the investigation of the shortcomings revealed, the Ombudsman's requests, as the NPM, were taken into consideration by the Ministry of Internal Affairs and deficiencies were eliminated. The facility staff members, neglected their duties, were penalized as provided by the laws, and the other police bodies were informed about that which is a significant input to the restoration of violated human rights.

Within the preventive mechanism mandate of the Ombudsman, the NPM has implemented unannounced visits to the ***Detention Station for Administratively Arrested Persons of the Ministry of Internal Affairs***.

The preventive visit, which was carried out under the OPCAT and the Constitutional Law, aimed to inspect custody conditions, treatment standards and ensuring human rights in the detention facility as well as to investigate the appeals addressed to the Ombudsman.

In the course of their visits, the NPM team has monitored the detention conditions in cells, walking area and meeting rooms and other objects as well as evaluated ensuring the rights to access to a qualified medical care, food, drinking, hot and cold water, parceling, visitation and phone calls and the documentation.

During the next preventive visit, ensuring the rights of the arrested persons, areas of concern and documentation processing were inspected. Some of the appeals, including one written by T.Yagublu to meet with a family member were granted.

At the end of the visit, the NPG members had awareness talks with the administration and staff of the detention facility and gave relevant recommendations to further improve the detention conditions in accordance with national and international standards¹⁴.

¹⁴<https://apa.az/en/accidents-incident-news/national-preventive-group-of-ombudsman-met-with-tofig-yagublu-295607>

The outcomes of the preventive visit have been submitted to the Ministry of Internal Affairs for taking appropriate measures that has been taken.

The NPG made a visit to the TDP and Police Station No. 16 of the Narimanov DPD. The objective of the visit was to monitor the custody conditions and treatment of detainees, to analyze the conformity of human rights situation of persons under detention, with the legislation and to check how the documentation has been processed.

At the time of the visit to the TDP, the NPM members examined the documents, confirming the lawfulness of detention of persons under custody and other documents on treatment, custody conditions, nutrition, healthcare service, walking, visitations, phone calls, and the information on release from cells. The facility cells have been monitored and the existed needs have been documented.

Furthermore, in the course of the visit, the NPM members held interviews with the detainees in private for the purpose of assessing their custody conditions and treatment in the facility. While having talks with them, they could raise their requests, at the same time; each detainee was consulted about the Ombudsman's competences and their rights. Numerous appeals have been investigated and satisfied immediately.

At the end of this visit, the NPG members held a legal awareness talk with the staff of the TDP and Narimanov DPD and gave relevant recommendations to eliminate deficiencies in delivering appeals, the documentation and registration.¹⁵

NPG members conducted an unannounced visit to the Juvenile Temporary Isolator Place of Baku City Chief Police Department of the Ministry of Internal Affairs.

During the visit, despite the fact that this was in contradiction with the duty to be provided by the facility, it was found that there were held a large group of people of different age, who were reported to be engaged in begging and vagrancy.

In the course of the talks with those persons, some of them said that they had been detained in the facility more than 3 days and expressed their concerns about the detention condition and nutrition. At the time of monitoring of the cells, other areas of concern disclosed by the NPM members included inadequate number of beds and bedding sets.

The NPM members had a legal awareness talk with the persons in charge and gave them recommendations on how to get rid of deficiencies, found in the documentation and to further improve the situation in this regard.

The Ombudsman appealed to the Ministry of Internal Affairs on the NPM findings and the problem has been fixed.

NPM members carried out a visit to the ***TDP of Guba DPD*** without prior notice. During this unannounced visit, the NPM members held private interviews with persons under custody to discuss with them the issues of condition and treatment. The requests of those detainees have been heard and each of them was

¹⁵<https://www.mia.az/w782004/ombudsman-qrupu-nerimanov-polisinde-neler-ashkarladidin-e-muraciet-edilecek>

consulted about the Ombudsman's competences and own rights. Some of their appeals have been investigated and satisfied on the spot.

At the end of the visit, group members held awareness raising talks with the administration and staff of the TDP and gave relevant recommendations to remove deficiencies revealed about documentation and registration.

Gusar District Police Department TDP was inspected by the NPM members, as well. During this visit, the detainees have been privately interviewed and consulted about the powers of the Ombudsman, along with their rights. A few requests of the detainees have been satisfied on the spot.

At the time of the visit, the NPM members checked the records about the lawfulness of detention of persons in **TDP of Siyazan DPD**. During the visit, documents confirming the legality of the detainees' custody, as well as their treatment and conditions of detention, were examined, cameras were inspected, documentation related to nutrition, medical care, walks, meetings, telephone conversations, releases from the cell and parcels were examined, and existing needs were studied.

It was revealed out that A.I., who had no previous convictions, and B.I., who had been convicted, were placed in the same cell. And this problem was immediately settled.

So, at the end of the visit, along with the legal consultation, the NPM members gave their recommendations to the administration and staff of the facility.

The NPM members held private talks with the detainees in TDP of **Khachmaz DPD** to assess the custodial conditions and treatment standards in the facility.

The NPM found that the decision on notification and submission of arrest warrant on the suspect A.R did not specify the date. The food delivery schedules were signed in prior, before the lunch and dinner time. The case was immediately investigated and settled by the preventive delegation members.

At the end of the visit, the chief of the facility and the staff were legally consulted and instructed how to further improve the documentation and registry works.

The NPG members had a visit to **TDP of Shabran DPD**. During the visit the issues of conditions and treatment as well as the documentation were monitored; the detainees have been privately interviewed and explained the Ombudsman's powers and consulted on legal issues.

TDP of Khizi DPD was monitored by the NPM members as well. The visit's main objective was to make thorough examination of the evidences of lawfulness of detention of persons in the facility, including the custody records on conditions and treatment standards, ensuring the rights of detainees to food, healthcare service, walking, visitations, phone calls, parcel service and records about releases. The monitoring team also inspected the TDP cells and learned the basic needs.

Furthermore, the NPM members interviewed the detainees in private to gather information about the custody conditions and treatment. During those

interviews the detainees have been legally consulted, along with the explanation of the Ombudsman's competences.

At the end of this visit, the NPM members had an awareness discussion with the facility administration and staff, which followed with the monitors' recommendations on how to eliminate deficiencies in the documentation, registration and application procedures.

*The NPM members conducted a visit to **Sheki City-District Police Department**.* The purpose of the visit was to examine the condition and treatment of detainees and to observe to what extent the rights of persons under custody were ensured and how the custody records were processed in line with the legislation.

During the visit, the monitors found that there were only persons who were serving an administrative penalty. So, the NPM members privately interviewed those persons in order to examine their conditions and treatment as well as requests. The monitoring team listened to their requests; afterwards, they explained the Ombudsman's competences and gave legal advice to the detained persons.

TDP of the Lankaran City-District Police Department was inspected by the NPM team.

During the visit, the monitors checked the documents, confirming the lawfulness of detention and providing information on treatment and conditions of detainees. Each of the detainees has been privately interviewed and their requests have been heard. They, also, have been explained the Ombudsman's powers and consulted on legal issues. At the end of this visit, the NPM held the awareness raising talk with the facility administration and its staff and gave them relevant recommendations.

The NPM members conducted a visit *to **TDP of Salyan DPD*** to assess to what extent the custody conditions and treatment standards were respected and therefore, the monitors interviewed the detainees in private. During these interviews, the NPM listened to the concerns of the detainees and immediately satisfied some of them. The NPM team gave legal advice and information on the Ombudsman's competences.

At the time of the visit, the detainees S.A and G.V. serving the administrative penalty according to the District Court decision claimed that they were subjected to pressure while being arrested. Subsequently, those persons were subjected to body search by the monitoring team, but no sign of injuries was observed. The appeals addressed to the Ombudsman have been received by the Preventive Team.

At the end of the visit, legal awareness talks were held with the head and staff of the TDP, and relevant recommendations were given on the conditions of detention and treatment.

TDP of Masally DPD was monitored by the NPM members. This visit aimed at examination of documents confirming the lawfulness of detention, the information on treatment and custody conditions, medical service, nutrition, walking, visitations, phone calls, parcel service and releases. The TDP cells have been also inspected and the basic needs were learned.

During the visit, the detainees were received individually, their appeals were heard, the Ombudsman's powers were explained and legal advice was provided.

The NPM members inspected the **TDP of Jalilabad DPD**. They examined the documents confirming the lawfulness of detention, the information on treatment and custody conditions, medical care, nutrition, walking, visitations, phone calls, parcel service and releases from cells, as well as inspected the TDP cells. *As a part of the follow-up process, the visiting delegation also found that the facility took into account of their previous recommendations and that the deficiencies have been eradicated.*

At the time of the visit, the NPM privately interviewed to assess the detention conditions and treatment standards and heard the requests of the detainees, which were investigated on the spot and satisfied. The NPM had also an awareness talk with facility administration and its staff and recommended to improve the processing records and application delivery system.

The NPM members conducted a scheduled visit to the **TDP of Naftalan City Police Department**. This visit was aimed at monitoring the custody conditions and treatment standards and ensuring the rights of the detained persons and processing of appropriate custody records.

During the visit, NPG members inspected TDP cells, identification, investigation, medicine, two-room glass partition meeting, worship and television rooms, disinfection room, kitchen, TDP's chief's room and personal belongings storage room, and walking area. In the course of its work, the NPM found that the size and hygiene of cells were in line with modern standards, the rights of detainees were ensured, there was a centralized heating system for the winter time, cells were supplied with cold and hot water and appropriate bedding and the they were equipped with all necessary supplements according to the purpose of them. Furthermore, the organization of medical service, supplement with food, drinking, hot and cold water, and parcel delivery, access to walking, visitation and phone calls were examined and recorded.

During the visit, it was found that due to the overhaul in TDP of Goranboy DPD, the accused and persons under administrative detention in that facility have been temporarily transferred to the TDP of Naftalan City Police Department.

At the end of the visit, the NPM members raised the awareness of the facility staff about the Constitutional Law provisions, internal disciplinary rules on the arrested and detained persons, as well as recommended improving the documentation, registration and custody standards.

During the visit to **TDP of Astara DPD**, the NPM members monitored cameras, identification and investigation room, medical room, kitchen, meeting, walking and personal belongings. The detainees have been received in private and their access to medical service, treatment by the facility staff and relevant appeals were examined on site.

At the end of the visit, the awareness of the facility staff was increased about the relevant regulations and they were given recommendations on how to improve the custody conditions.

Scheduled and unscheduled visits have been conducted to TDP of **Dashkesen DPD**. In the course of these visits, the detention facility was subjected to general inspection. It was found that the conditions in cells, bathroom, kitchen, interrogation room, walking yard, as well as general condition in TDP were satisfactory.

In the course of the visit, the custody registries were checked, and it was found that the majority of registries for 2019 (excluding registries for monitors and releases from cells) did not exist. Furthermore, the NPM members observed that in spite of the fact that the injury on the face of A.R, who was under administrative custody, has been documented by the medical officer in medical records, the facility staff did not draw the relevant act in relation to this fact. The NPM members have discussed the shortages noted above with the administration of the district police department and subsequently, the TDP was provided with new registry books. As for the fact that the detainee's injury on this face was not documented, the visiting monitors were reported by the fact that the detainee fell down and injured before being brought to the custody, which was also documented by the doctor. Nevertheless, the NPM members recommended to the facility in the future to draw act about any injuries of the detained persons regardless of their causes.

At the end of the visit, the NPG members raised the awareness of the Dashkesen DPD TDP staff about the Constitutional Law, NPM functions, rights and responsibilities of the detained persons, internal disciplinary rules, and also gave relevant recommendations for the improvement of registration and custody standards.

Mingachevir City Police Department TDP was monitored by the NPM. During the visit, group members monitored cameras, identification and investigation room, medical room, kitchen, meeting, walking and personal belongings. The detainees have been received in private and their access to medical service, treatment by the facility staff and relevant appeals were examined on site.

At the end of the visit, the NPM members raised the awareness of the facility staff about the Constitutional Law and internal disciplinary rules on the arrested and detained persons and gave relevant recommendations on how to further improve the custody standards.

NPG members conducted an unannounced visit to **TDP of Ganja City Chief Police Department**. The aim of the visit, carried out in line with the provisions of the OPCAT and the Constitutional Law on the Ombudsman, was to assess to what extent the custody and treatment standards, ensuring the rights of detainee, and custody records were meeting the international standards.

In the course of the visit, the NPM monitored the conditions in the medical-sanitary unit of the facility, TDP cells, walking yard, kitchen, white grey studio room with police lineup, interrogation room, visitation room, medical room, room for praying and the storage of facility inventory. It was found that the general

condition was in line with sanitary norms and the ensuring the rights and freedoms of the detainees were respected.

Furthermore, the current situation with medical care, food delivery, access to hot and cold water, parcel, walking, visitation, and phone calls and the documentation were examined.

For assessing the treatment issues, the NPG members also had confidential talks with the persons detained, including those, who were under administrative penalty and those, accused of criminal offences as well as had observed the ensuring the rights of detainees and concerns as well as the documentation.

While examining the registry books, it was observed that necessary custody records were adequately indicated in there.

The facility staff was informed about the relevant legislation, the provisions of the Constitutional Law on the Ombudsman and NPM functions and was recommended to bring the documentation into compliance with internal disciplinary rules and on how to further improve the detention conditions.

The TDP of Yevlakh District Police Department was also inspected by the NPG members. Throughout the visits to this facility, the NPM delegation checked the documents, confirming the lawfulness of the detention of persons in the facility and the records on treatment and detention conditions, food, medical service, walking, visitation, phone calls, releases from cells and parcel service. The monitors also observed all detention cells and studied the existed gaps.

In the course of the visit, all cell rooms were inspected and the detainees were received in private. The NPM delegation members heard the requests of those detainees. While being legally consulted, the detainees were also explained the Ombudsman's competences and a number of the appeals were satisfied on site. *At the time of the visit to that TDP, the visiting NPM monitoring group observed that the injury of K.O., who was accused of a criminal offence under Article 234 (1) of the Criminal Code was not documented. This case shall be immediately documented and forwarded to the prosecutor leading the preliminary investigation by the administration of the custody facility. While examining the personal file of the applicant, it was found that there was not any notice about the injury, including the medical records on the relevant fact. It was drawn the relevant act with presence of the detainee and this matter has been raised before the competent body.*

According to paragraph 2.6 of the Internal Disciplinary Rules on TDPs, approved by the Decision No. 63 of 26 February 2014 by the Cabinet of Ministers of the Republic of Azerbaijan, immediately after bringing the arrested or detained persons to the temporary detention places, any complaints of them about any observable bodily injuries and any torture or other cruel, inhuman or degrading treatment they suffered before entering the TDP should be recorded; and they must be medically examined by medical officer within 24 hours. The results of the medical check-up shall be registered accordingly. Furthermore, under the paragraph 2.7., complaints about torture or other cruel, inhuman or degrading treatment as well as the written information on the suspected bodily injuries, emerging as a result of torture or other cruel, inhuman or degrading treatment

identified during medical examination shall be immediately transferred to the prosecutor, leading the preliminary procedural actions for the investigation of the case.

At the end of the visit, the administration of the facility and staff were legally consulted on the related issues and given recommendations on documentation, registration and eliminating the existed shortcomings.

During the next visit, *it was observed the arrest warrant put out for arrest of A.R. was not sealed with the coat of arms and was not signed by the defense counsel. All these facts were documented by the NPM members. Since, Article 92.3 of the Criminal-Procedural Code of the Republic of Azerbaijan listed the imperative circumstances provided in Article 92.3.9. of the abovementioned Code for the participation of the defense counsel. One of such circumstances is that the defense counsel shall participate upon detention of the suspect or accused or when the accused is held on remand as a restrictive measure. So, in this context, the issuance of the arrest warrant for the suspect A.R. that has not contained the signature of the defense counsel evidenced that the document was issued without his/her participation, which is consequently considered a procedural violation.*

The NPG members carried out a scheduled visit to **TDP of Gazakh DPD**. During the visit, 7 persons, detained in the facility did not complain about the treatment of them by the facility staff and detention conditions. *In response to the questions, detainees Z.V and G.D., the nationals of Georgia, also added that the Georgian Embassy had been notified about their detention and the representatives of the Embassy visited them accordingly. They both expressed their thankfulness both to the Government of the Republic of Azerbaijan and to the Ombudsman for the specific attention paid to their conditions in custody.*

The staff of the detention facility was given recommendations for the improvement of the custody standards and effectively ensuring the rights of detainees.

NPM members conducted a scheduled visit to **TDP of Agstafa DPD** without prior notice.

While generally observing the detention facility, it was found satisfactory the condition of custody cells, bathroom, kitchen, medical room, worship room, interrogation room, the room of the facility administration, also walking yard; and that for improving the condition in the facility, the cells and corridors have been repaired and there was installed the under floor heating system.

For theoretical preparedness of the detention facility staff about legal framework, they were given relevant recommendations by the NPM to further ameliorate the conditions.

The purpose of unannounced visits carried out to **TDP of Tovuz DPD** was to assess to what extent the condition and treatment issues, ensuring the rights and freedoms of detainees were respected, according to “the Law of the Republic of Azerbaijan on the Protection of the Rights and Freedoms of Persons held in Places of Deprivation Liberty” and the related interdisciplinary regulations, as well as to check the documentation.

During the visit, NPM members spoke with the detained persons in private and responded to their requests, along with explaining them the Ombudsman's competences and the rights of detainees and gave advice on legal issues. Furthermore, the documentation related to the treatment, custody condition, nutrition, visitation, phone calls, medical service, releases from cells, parcel service was checked and the basic needs were studied.

As well as, at the time of the visit, while observing the conditions of cell rooms and custody, the NPM members found that the convicted-G.V., who was also awaiting trial and first-time offender V.V. have been placed together in the same custody cell No. 5. The monitors have drawn up an act with the related fact with the participation of a facility officer on duty and this issue was settled on site.

During the talks, the detainees did not complain about their detention condition and treatment by the facility staff. The facility administration was given appropriate recommendations on treatment and custody conditions.

An unscheduled visit to ***Govlar Police Division of Tovuz DPD*** was conducted by the NPM.

The preventive visit carried out based on the requirements of the OPCAT and Constitutional Law, aimed to inspect custody condition and treatment and the ensuring of the human rights in the detention facility as well as to review the documentation.

At the time of the visit, it was found that in the Govlar Police Division, there was no person under custody. While checking the registry books of the district police division, the NPM members found that all relevant data was documented. At the end of the visit, the NPM increased the awareness of the Police Division staff about the Constitutional Law, the rights and duties of arrested and detained persons and the related interdisciplinary regulations. Furthermore, they were given recommendations to improve the detention conditions, accordingly.

During the visit conducted to ***TDP of Oguz DPD***, cells, suspect identification room, medical room, kitchen, visitation rooms, walking area and the storage of detainees' personal belongings were observed.

The NPM delegation members received the detainees in private, and the issues related to nutrition, healthcare service, treatment of detainees by the staff and appeals have been inspected on site.

At the end of the visit, the NPM informed the staff of detention facility in detail about the Constitutional Law and increased their awareness on the rights and duties of arrested and detained persons and the related interdisciplinary regulations. Furthermore, they were given recommendations, accordingly.

The main objective of the visit to ***TDP of Shemkir DPD*** was to monitor the situation of ensuring human rights of detainees and custody standards and processing the documentation.

At the time of the visit, cells, interrogation rooms, medical rooms, visitation room, walking yard, kitchen, and the inventory storage were inspected. Furthermore, the organization of medical service, food supply, and access to drinking, hot and cold water, parceling service, walking, visitation and phone calls

were observed on site. Throughout the visit, it was found that the custody condition was in adequate sanitary norms and ensuring the rights and freedoms were respected.

The NPM members had confidential talks with the detainees, and with those, accused of administrative and criminal offences, as well as the status of ensuring the rights, concerns and the documentation were examined on the spot.

At the time of the visit, it was found that A.A., A.R and A.I. despite the fact that all of them were accused of the same criminal offence in accordance with Article 150.2.1 of the Criminal Code of the Republic of Azerbaijan, all were placed in the same cell. Furthermore, the NPG members also unveiled that neither personal file, nor registry book and nor the medical records contained the information about a bruise on the forehead of the detainee A.R. (as he reported it was happened to him when he has fallen down in the investigation isolator No. 2) and the facility staff has not documented this fact as well.

The European Committee (CPT) remain of the view that if a comprehensive single registration of each detainee, covering all aspects of detention and all measures taken for the detainees (including any sign of bodily harm) were recorded by the police, then the basic safeguards for detainees would be strengthened (CPT, GR 2, 40).

During the next follow-up visit, it was observed that “The Registry Book for TDP inspection- notes and proposals of appellants”, and “the Registry Book on Notes and Proposals on the Security of the Administratively Detained Persons” contained the signatures of the Chief and officers in charge of the Criminal Investigation Unit of the DPD. The NPM members have documented the deficiency in the work of the facility.

According to the paragraph 4.11 of the temporary “Regulation Places for Administratively Detained Persons” approved by the Decision Q14-001-14 dated 11 June, 2014 of the Ministry of Internal Affairs, the entrance of persons to the facility, not indicated in the present Regulation shall be strictly forbidden. Despite the fact that Criminal Investigation Unit Director and officers in charge, not listed in the abovementioned Regulation, entered the facility and conducted an investigation which inevitably heightens the risk of torture of detainee, which also lead to the breach of human rights, guaranteed by the national Constitution, and international legal and normative acts.

The main objective of the unannounced visits to **TDP of Goygol DPD** was to examine the treatment and detention condition of persons held in the facility, to assess to what extent the Law on the Protection of the Rights and Freedoms of Persons held in Places of Deprivation Liberty and the related interdisciplinary regulations were respected and to check the documentation.

At the time of the visits, the persons held in the facility were privately interviewed; their appeals were received, and legally consulted on related issues and competences of the Ombudsman. Furthermore, the documents were reviewed in detail, in the light of the principle of lawfulness and the records on treatment and detention, nutrition, medical service, walking area, visitation, phone calls, releases

from cells and parcel service. Then, the NPM team inspected cells and studied the basic needs.

During the visit, the NPM had a talk with J.A., serving administrative penalty in the facility based on the Decision of the District Court and being accused of Article 528.1 of the Code of Administrative Offences and his detention and treatment were monitored. The detainee did not complain about his detention condition and treatment by the custodial police officers. However, he expressed his dissatisfaction with the court decision claiming that the decision was unfair and therefore, asked the monitors to explain him how to appeal to the Judicial-Legal Council against that judge. *The NPM members gave him a legal advice for the related issue.*

In the course of the visit, Ombudsman's Ganja Regional Center staff reviewed the Goygol DPD pre-trial detention facility registry books and observed that it contained the relevant data.

During the next follow-up visit, the staff members of the Ganja Regional Center once again checked the registry books, which were in a satisfactory state. However, while reviewing the personal file of a person held in the facility, it was found that clause 2.1.2 of the previously mentioned temporary regulation, which was approved by the Decision of the Ministry of Internal Affairs of the Republic of Azerbaijan on 11.06.2014 was violated because there was not a research protocol related to the detainee in the file. Furthermore, during the talk with the administration of the facility, it was observed that the preliminary medical examination of a person, when brought in police custody, by a doctor took place in hearing of the custodial police officers. According to clause 2.8 of the Rules for the provision of medical and psychological assistance to detained or arrested persons, and their detention in medical institutions, approved by the Decision of the Cabinet of Ministers of the Republic Azerbaijan dated April 18, 2013, medical officer shall conduct his/her examinations in police custody out of sight of other persons (excluding for security reasons).

At the end of the visit, recommendations have also been made to TDP administration by the NPM regarding the improving custody and treatment standards.

NPM members conducted an announced visit to ***TDP of Gadabay DPD.***

At the time of the visit, cells, medical rooms, visitation room, walking yard, kitchen, interrogation rooms, worship room, inventory storage and other objects were inspected. While observing the situation in the facility, it was found the condition was in line with sanitary norms and ensuring the detainees rights and freedoms were respected.

Furthermore, the organization of medical service, supplement with food, and access to drinking, hot and cold water, parceling service, walking, visitation and phone calls were monitored on site. Throughout the visit, it was found the custody condition was in line with sanitary norms and ensuring the rights and freedoms were respected. As a part of our follow-up visits, following the recommendations

previously made by the NPM for the improvement of the custodial conditions have been taken into account and the facility was being repaired.

In the course of the visit, based on the principles of the CAT and the OPCAT, thereto, the NPG members held awareness discussions among the custodial police officers. At the end, the appropriate recommendations were made to the administration of facility regarding the improvement of detention conditions and treatment standards and the issues related to their solution have been discussed.

The objective of an announced visit carried out to **TDP of Samukh DPD** was to assess the custody condition and treatment of persons held in the facility.

While generally observing the cells, medical room, visitation room, walking area, kitchen and other objects, the NPM members found that in general, the detention and human rights situation in the facility were in a satisfactory state. Also, the situation with the access to healthcare service, food, drinking, hot and cold water, parcel service, walking, visitation and phone calls was inspected.

At the time of the visit, while evaluating the professional capacity and awareness of the custodial police officers on the relevant legislation, it was found that they have been engaged in the training group run by the administration of the DPD. While reviewing the training course outline, it was seen that the course did not cover the topics particularly needed by the police officers of the District TDP. The NPM members called on the facility administration to fix this problem.

The CPT continued to pay a particular attention to the training of the staff. It is not that difficult to proof that a well-trained police officer or a prison officer are the best safeguard for the persons, deprived of their liberty against cruel treatment. To the opinion of the CPT, officers with extensive experience will fulfill their duties without using cruel treatment as a resort and will guarantee the security of those under the temporary custody.

At the end, the appropriate recommendations were made to the facility administration regarding the improving detention conditions and treatment standards and the related issues have been discussed.

The main objective of announced visits to **TDP of Gakh DPD** was to inspect detention condition and treatment, ensuring the rights of the persons held in the facility as well as the documentation.

During the visits, the NPM interviewed in private the persons apprehended and have heard their requests. Those persons have been legally advised on the related issues and the Ombudsman's powers. Furthermore, the documents on legality of their apprehension, treatment and detention conditions have been checked. The facility cells were monitored and the documents, providing information on food, treatment, medical service, walking, inmate visits, phone calls, releases and parcel service have been checked as well. The basic needs were learned.

The persons interviewed by the NPM delegation stated that they had been treated correctly by police officers and did not complain about treatment of them by TDP staff and their detention condition. The facility administration was

recommended relatively on how to ameliorate the detention condition and treatment standards.

During the visit conducted to **TDP of Zagatala DPD**, the members of the NPM delegation have monitored all cells in the facility. The documents were reviewed in detail, in the light of the principle of lawfulness and the records on treatment and detention, nutrition, medical service, walking, visitation, phone calls, releases from cells and parcel service were examined as well. Furthermore, the monitoring delegation studied the basic needs.

At the time of the visit, though it was a winter time, the NPM found that the heating system was not functioning in the facility. Therefore, the Ministry of Internal Affairs was requested to eliminate this question and the problem was settled.

At the end, the NPM made recommendation to the administration of the TDP on how to improve the detention condition and treatment.

NPM delegation of the HRCA carried out a scheduled visit to TDP of **Balaken DPD** without prior notice.

The purpose of the visit was to investigate the conditions and treatment of detainees, to ensure their rights, as well as to study the state of documentation. The NPM delegation received privately the persons apprehended and increased their awareness on their own rights and Ombudsman's competencies.

At the end, the NPM delegation has discussed national and international detention and treatment standards, CAT (Committee) recommendations, the provisions of the Law on the Protection of the Rights and Freedoms of Persons held in Places of Deprivation of Liberty and internal disciplinary rules with the administrative staff of the facility and gave the relevant recommendations.

The objective of an unannounced visits to **TDP of Gabala DPD** was to assess the custody condition and treatment standards, and to what extent the human rights of the detainees were respected in compliance with the Law of the Republic of Azerbaijan on the Protection of the Rights and Freedoms of Persons held in Places of Deprivation of Liberty and internal disciplinary rules as well as to check the relevant documentation.

During the visit, NPM delegation has had private talks with the detainees, have heard their requests and provided them with the relevant responses, accordingly. Furthermore, the persons under custody in this facility have been legally aware of their rights and competences of the Ombudsman. In addition to this, the legality of the apprehension of those persons, and the records about particularly reviewed the legality of detention of persons under custody on treatment and detention, nutrition, medical service, walking, visitation, phone calls, releases from cells and parcel service were examined as well. The NPM delegation also inspected the cells and learned the basic needs.

The facility administration was given recommendations by the NPM members on improvement of the situation and treatment standards.

This should be noted that the results of all visits, measures taken and discovered shortcomings have been analyzed by the NPM delegation and based on the final analysis, the Ombudsman has appealed to the MIA.

The NPM observes that the measures, taken to improve detention conditions in temporary detention places of district and city police divisions and departments under the MIA were being continued. Taking into account the proposals of the Ombudsman, the majority of TDPs were brought into compliance with international standards and the conditions of detention have been improved.

Persons held in custody were provided with information on their rights and duties as stated in the relevant legislation, and about two 24/7 hotlines of the HRCA.

One of the existed shortcomings was placement of convicted ones together with those with clean record. Similar cases are observed during monitoring in district police departments.

The CPT continues particularly to promote training for the police officers, taking a view that a well-trained police officer is the best safeguard against ill-treatment of detained persons. From this point of view, the Ombudsman recommends extending the legal awareness operations in the work of the internal affairs authorities.

Throughout the visits conducted to TDPs, the lack of comprehensive data about detainees in the registries still remain as a problem, which necessitates advancing and strengthening control over the single and comprehensive registration system.

2.2.2. Institutions of the Ministry of Justice Penitentiary Service

Under the NPM jurisdiction there are 38 related settings of the Ministry of Justice Penitentiary Service. These include one Prison, a Specialized Medical Institution, Medical Facility, Correctional Institution, Investigation Isolators, Penitentiary Institutions and precinct penitentiary institutions.

Throughout the year, 44 preventive visits carried out to 15 facilities of the Penitentiary Service. The vast majority of preventive visits were made to the investigation isolators.

The Azerbaijani NPM takes the view that visits to investigation authorities and places of deprivation of liberty should be conducted more frequently. The organization of constant preventive visits to such facilities would be effective in terms of prevention of ill-treatment and amelioration of the situation.

During its preventive measures, the NPM focused on, respectively, the situation of inmates regarding treatment, detention condition, visits, phone calls, medical service, food, clothing, ventilation, heating system, ensuring the right to appeal, the right to legal counsel and other rights.

At the time of the visits to penitentiary institutions, 308 persons, deprived of liberty were confidentially interviewed by the NPM and the issues of treatment, detention condition and situation of ensuring human rights of inmates have been

investigated. The appeals of inmates addressed to the Ombudsman, were, respectively, sent to the competent bodies for further investigation.

As a result of the visits carried out during the reporting period the Ombudsman has appealed to the Ministry of Justice and made the relevant proposals and suggestions and the process has been followed up.

The findings were publicly available via news releases that have been also placed on the official webpage of the HRCA. The relevant information bulletins have been sent to international organizations as well.

As regards the follow-up measures, taken for the proposals that have been raised in the 2018 NPM Annual Report, it should be noted that the necessity for re-establishment of material and technical framework of adequate living standards in some penitentiary institutions remained as a challenge.

Despite previously given recommendations in the past years on speeding up the construction of penitentiary settings, including Penitentiary Facility for Female Convicts in Zabrat (Baku), juvenile correctional facility, Umbaki Prison (Baku), penitentiary complexes in Ganja and Lankaran cities, their construction process has not yet been completed.

The reforms with regard to the work of the precinct penitentiary institutions remained weak.

Taking into account the recommendations regarding the payment of specific attention to the work programs in penitentiary facilities and creating new workplaces, the need of new production areas still remain as a problem. Increasing the number of inmates employed in newly opened manufacturing areas would be later very important in terms of further social integration of such category of persons.

Treatment issues: The treatment of the convicted by the staff of penitentiary institutions still continues to be problematic. During the visits the detainees interviewed raised their concerns about the treatment by staff of penitentiary institutions, use of means of restrain (rubber truncheon and handcuffs) mainly applying to new admitted inmates and about how they were treated during search operations. In the past years, although the use of such special restrain tools has decreased, there have been cases of changes in the records and dates of use of such tools.

Last year, a staff member of the penitentiary institution No. 7 was brought to disciplinary liability as he did not on time provide the information on the use of special tools.

In general, it is very essential to ensure that any allegations of torture are investigated effectively, independently and impartially.¹⁶ Such investigations are carried out by the NPM of Azerbaijan on the basis of the Istanbul Protocol.

In the period of the last years, the number of practices of placement in penalty isolation either for guaranteeing security or because of the violation of internal disciplinary rules has decreased. The number of regime violations has also

¹⁶A/HRC/39/14, recommendation 140.85 (Switzerland)

decreased accordingly. However, among the disciplinary sanctions imposed for regime violations, transfer to solitary confinement remains as the preferred one.

Detention conditions: In general, the overcrowding in investigation isolators (Investigation Isolators No. 2 and 3) and in solitary confinements of penitentiary institutions remains challenging. *The CPT states that the overcrowding in places of detention negatively affects the services and general work of such facilities. Furthermore, it may often generate inhuman and ill-treatment conditions of detention.*

Overall, with exception of Baku Investigation Isolator and Sheki Penitentiary Institution, detention condition of majority of penal institutions, particularly, Investigation Isolators No. 2 and 3, Prison, Penitentiary Medical Institution and Penitentiary Institution No.4 was not in a satisfactory state.

Throughout the preventive visits, the NPM delegation expressed particular concern about the inadequate state of food supply in penitentiary institutions, non-compliance of the approved food menu with the served ones, the daily preference of the food made of barley or wheat, which are mostly refused by inmates and the need for white bread.

It was observed that the prices of daily necessities in most commissaries were higher than in the current market prices.

Health service. A number of challenges concerning the medical service in penitentiary institutions are still being unsettled.

During the preventive visits it was observed that medical service and approaches to the accused and convicts with disabilities and psychological problems were inadequate.

The NPM delegation also observed that, in general, daily screening of prisoners, including those in pre-trial detention facilities by the health providers in cells, penalty isolator and on an outpatient basis, as well as the control over the sanitary and epidemiological situation had a formal character.

The prisoners, their family members or legal defense raised concerns in the appeals to the Ombudsman over the impediments to thorough medical examination and treatment, including transfer to medical penitentiary institution. The concerns raised in the appeals have been discussed with the Head Medical Institution of the Penitentiary Service and most of them have been settled.

The CPT in its recommendations states that prisoners (especially those in solitary confinement) regardless of type of detention applied to them (apprehension, arrest, etc.) have the right at any time to request a medical examination by a doctor upon his own choice. The medical service should be provided in such a way that discussions with the doctor and requests for confidential reception are exercised without delay.¹⁷

According to information provided by the Penitentiary Service in the last years the number of persons with mental retardation, lining up for the enrollment to inpatient treatment has increased, whereas the number of such category of patients being treated inpatient has decreased year after the year. It was reported that as

¹⁷CPT/Inf (92) 3, Second General Report on the CPT's activities, Para. 36

regards the latter case such a positive development was achieved as a result of effective organization of psychiatric treatment at places and allocation of medicaments for the relevant institutions to be used in supportive medical treatment.

Throughout the reporting year, the members of the NPG of the Ombudsman have conducted preventive visits to ***Baku Investigation Isolator***.

At the time of the visits, the NPM delegation mainly focused on the issues concerning monitoring of detention condition and treatment, on-site investigation of the incoming appeals, ensuring the rights of persons accused of crimes and checking the information about the refusal of prison food by the inmates spread out via internet, and those received by the hotline.

During the confidential interviews, the detainees did not complain about the detention condition and treatment by the facility staff. The majority of persons expressed their discontent of the investigation process and court proceedings. Those persons have been given legal advice and appeals have been received for discussions with the competent authorities.

The occupancy of the Baku Investigation Isolator is considered for 2500 persons. At the time of the visits, it was observed that the density situation in the facility was generally satisfactory.

Despite the fact that material and technical base of Baku Investigation Isolator and detention condition was generally in a satisfactory condition, the persons detained in the facility, during the interviews, complained about the low quality of the food.

The UN Standard Minimum Rules for the Treatment of Prisoners advises that the administration of the facility shall be informed upon the medical officer's regular inspection of the quantity, quality, preparation and service of food in a view to protecting each prisoner and maintaining his/her health and strength (SMR, Rule 26(1)(a)).

In the course of a confidential meeting with an inmate Z.T. to verify the allegations in the appeal received by the Ombudsman on his starvation, he said that he went on a hunger strike only for one day demanding the unbiased investigation of his case, but after the preventive discussions of the facility administration with him, he stopped starving.

During the visits there, the NPG members had a talk with the detained person Ikram Rahimov to check the allegations spread on websites about his refusal of the food. He said that he went on a hunger strike for the objective investigation of his criminal case pending before the court and appealed to the Ombudsman for appropriate assistance. He was placed in medical unit of the facility and was kept under close medical supervision. Considering that the criminal case of I. Rahimov was pending before the Baku Court of Appeal, his appeal was sent to that Court accordingly.

In the light of the visits, the NPM had confidentially met with a detainee Elvin Isayev (paternal name Iltikham), who was deported from the Ukraine. He did not complain about his detention condition, medical service and treatment throughout

his detention period. Furthermore, on the day of his reception, his rights to have a parcel and phone call were ensured.

At the end of the visits, the NPM had a discussion with the facility administration about how the rights of detainees to be effectively ensured.

The NPG members have conducted visits to ***Investigation Isolator No. 2***. The objective of the visits was to assess the detention condition, treatment and ensuring the rights of detainees.

At the time of the visits, all objects of the prison and their walking yards, phone booths, parcel reception desk, quarantine and meeting rooms, interrogation room, lawyer and prisoner meeting room, a room for online trials (equipped with special devices), canteen, commissary desk, bathroom, medical-sanitary unit, penalty isolator were monitored.

The detention condition in the facility is in poor condition. It was observed that as the prison building was old and therefore, the repairing was not effective. During the talks with the facility administration it was reported that the new building of mixed-regime penitentiary institution was being constructed but the completion date was unknown.

At the time of the visit it was found that the living space in either some of cells or penalty isolators is less than the norm. According to paragraph 4.1 of internal disciplinary rules on investigation isolators, a living area per inmate in penalty isolators should not be less than 4m².

It was also noted that though some penalty isolators had bunk beds, the general living area of those cells was lower than 8m². Furthermore, the NPM delegation had encountered that two persons were kept in a cell considered for a single person and one of detainees was relocated only after the criticism from the NPM members.

During its monitoring activities, the NPM has encountered situation in another cell, when, in a cell with 8 beds, there were 9 detainees, two of whom were minors. Furthermore, in the same cell, there was no heating system, and the juveniles were not provided with thick blankets. With the intervention by the NPM, those two juveniles were relocated to another cell with more favorable condition and electric heater.

According to 5.11.3 Internal Disciplinary Rules on Investigation Isolators, the first-time offenders should be placed in separate rooms from those, previously convicted, but it was observed that most cells did not follow this rule.

It was found that the decision and acts related to the use of special means in the Investigation Isolator No. 2 did not comply with the Internal Disciplinary Rules. During the study of the personal files of the persons transferred to the penalty isolator and applied special means, it was observed that the correctional measures addressed these persons were low.

During the questioning of the persons in penalty isolator it was made clear that they have been imposed severe punishment on in cases when they did not commit serious violations of the regime. Those persons said that they were simply

punished because of speaking aloud, for carrying a phone on or speaking through the window.

Whilst observing the medical and sanitary unit, it was observed that the unit was equipped with a new stomatological and artificial respiration device, lab and special seats for persons with disabilities.

It was also found that there was no room for psychological assistance as it was required by the paragraph 2.3 of the Internal Disciplinary Rules of Investigation Isolators. This, in itself, impedes effective organization of psychological assistance work.

It was found that the meeting rooms were not equipped with the necessary equipment (water carafe, glass, wall clock, clothes hanger) in accordance with the Internal Disciplinary Rules of Investigation Isolators (paragraph 19.13).

While monitoring the room equipped especially for online trials, as a positive example of national judicial and legal reforms, it was observed that the persons held in isolator can observe the court trials online through special means of live communication, without being appear before those courts if located at far distance.

During the visits, every person was received confidentially. Majority of those interviewed did not complain about the treatment by staff or the food provided. Most of these individuals expressed dissatisfaction with the investigation and asked for help in the effective investigation of their cases. These people were explained their rights, powers of the Ombudsman, the issues raised by them were investigated and the necessary measures were taken.

S.T., detained in the facility claimed that he and his brother K.T. were ill-treated in the office of the deputy chief of operations, Ismayil Aliyev. While examining the detainee's personal medical file, it was found that no injuries on body have been documented. The concerns indicated in the detainee's appeal to the Ombudsman have been discussed with the Ministry of Justice.

The NPM delegation visited *Sheki Penitentiary Institution* three times a year. The objective of these preventive visits was to obtain detailed information about detention condition, treatment standards, and ensuring the rights of prisoners and accused persons in compliance with internal disciplinary rules and international norms.

During its monitoring activities while visiting the facility, the NPM inspected dorms, penalty isolator, and other units of the facility and investigated the documentation on healthcare service, food service, walking yard and the relevant prison records.

The NPM delegation spoke in private with the convicted and accused to seek the information about the appeals received, detention condition and treatment, ensuring their rights and to investigate their appeals and concerns on-site.

Some of the questioned persons complained about their detention condition and expressed their dissatisfaction with the investigation. They have been legally consulted about the issues raised.

At the time of the visit, it was found that there is a shortage of a seasonal clothing and bedding in the facility, and the existing ones were unusable.

It was determined that there were no decisions or acts related to the application of special means of restraint in the facility in line with the “Internal Disciplinary Rules of Penitentiary Institutions”.

In addition to the above, it was found that there is a need to strengthen the educational work with prisoners in the institution, to increase the professional skills of service personnel in the field of treatment and communication.

It was determined that the decisions on transferring the prisoner for security reasons were applied in violation of the legislation on the execution of sentences. Furthermore, in the facility there was a convict who had been waiting his transferring for security reasons for 10 months according to the related decision.

The objective of the visit of the members of the NPG to the *Prison of the Penitentiary Service* (hereafter “Prison”) was to seek the information about detention conditions, treatment standards, and ensuring the rights of prisoners, to investigate the appeals received and the relevant Prison records.

At the time of the visit, the NPG members also inspected the corps, separation units, medical and sanitary unit and other units and investigated the documents on detention condition, health care service, nutrition, drinking, cold and hot water, parcel service, walking yard and phone calls and other records. Furthermore, it was found that some of the Prison regime corps needed to be improved, and there were a few stocks of medications, and that the USM machine was not working.

At the time of the visit, NPG members interviewed the randomly selected prisoners independently of each-other, investigated the conditions of detention, meetings, phone conversations, medical care, as well as the number of appeals were examined and the problems were solved on the spot. The detainees were explained the powers of the Ombudsman and provided with legal advice. Certain issues raised by prisoners in the regime’s corps were mainly about the lack of neuropathologist, medicines and that they were medically treated at their own expense.

Among the concerns raised by the NPM, the delegation generally recommended to improve the inmate behavior management work, in particular the work with the prisoners with maladaptive behaviors, and to strengthen the correctional work, the psychological support and to increase professional capacity of service personnel.

At the end of the visit, the NPM delegation had increased the awareness of the Prison administration and responsible personnel, and recommended the detention condition, medical service and documentation be harmonized with the internal disciplinary rules of the penitentiary institutions, national and international legal documents.

In the course of the NPM visit to *Penitentiary Institution No. 2*, the preventive delegation focused on inspection of the situation of inmates in penalty isolator, medical and sanitary unit, dorms and other units of the penitentiary facility.

The situation with the organization of medical care, nutrition, parcel reception, meetings and phone conversations at the penitentiary institution was investigated, and some shortcomings related to the conditions of detention were

identified. Thus, there was a shortage of seasonal clothing and bedding, and those held in segregation complained that their outerwear was unusable and not washed.

The NPM monitors called on to expand and promote the organization of psychological services in the penitentiary institution, the rehabilitation of prisoners by involving them in community service.

As a part of its NPM activities, the Ombudsman and her NPM delegation conducted preventive visits to *Penitentiary Institution No. 4 for Female Convicts*.

Throughout the visits, the Ombudsman had broad awareness discussions with participation of vast majority of managerial staff and prisoners about the legal reforms carried out at the national level and legally consulted the prisoners about the issues raised.

The Ombudsman questioned in private the female prisoners held in the facility and investigated the appeals and requests and the requests for medical referrals, visitation and other issues have been satisfied on the spot.

Furthermore, the issues raised in appeals of female prisoners concerning investigation, decriminalization of criminal offences, other criminal and civil cases have been clarified as provided by the laws. The prisoners have been explained their rights, eligibility criteria for pardoning and the Ombudsman's competences.

The appeals and the issues, raised during the visit, have been raised before the competent bodies, and they have been provided.

During the visits, the Ombudsman inspected a number of units of the facility, including manufacturing areas, walking yards, library, club and other places, listened to the appeals of some women prisoners and recommended the detention conditions be further improved. At the same time, the building for prisoners with minor dependants was also inspected, and she gave special attention to their condition.

The scheduled visit has been conducted to *Penitentiary Institution No. 5*. The objective of the visit, where a doctor member of the NPM delegation also participated, was to investigate detention condition and treatment, and the incoming appeals and situation with ensuring the rights of detainees.

During the visit, the NPM monitors inspected the situation of prisoners related to detention, nutrition, and access to water, parcel service, walking, visitation, phone calls, medical service and the relevant records.

During the follow-up visit, it was observed that the medical and sanitary unit has been already constructed and gone into operation, whereas, the construction works were still being continued in the canteen.

Nevertheless, the NPM also criticized the fact that, the facility cells were unrepaired, that the detainees were not provided with personal hygienic kit, that the seats were inadequate for the number of detainees, and that the walking was not organized properly. It was found that decisions on incarceration were not announced to persons, and in general, the rate of such decisions was high, but the duration was long.

At the time of the preventive visits, the NPG members interviewed the randomly selected prisoners independently of each-other, investigated the

conditions of detention, meetings, phone conversations, medical care and the requests for appeal to court and medical examination and others were satisfied on the spot.

Scheduled and unscheduled visits were conducted to ***Penitentiary Institution No.6***. During the visits, the NPG members focused on the issues of detention condition, nutrition, water supply, parcel service, walking, visitation, phone calls, healthcare service organization and the documentation.

The NPM also stressed some shortcomings in the implementation of the right of prisoners to request for medical examination and health protection. Thus, it was found by the NPM that the health of prisoners in cell, solitary confinement and in outpatient facilities was not daily monitored; the sanitary and epidemiological situation carried a formal character and the relevant journals were not made appropriate corrections, and the facts of injuries were not documented or the notes made were inconsistent with the records of the facility. Another concern raised by the NPM during its visit was a practice of the use of special means of restraint on prisoners and that not any relevant notes throughout the year were documented.

In the Penitentiary Institution No. 6, the overcrowding remained an issue.

During the visits, the randomly selected prisoners were questioned. Each convict was provided with legal advice on their rights, the Ombudsman's powers, and the issues raised in their appeals. The interviewed persons complained about the quality of the food given and the lack of hygiene kit. Some of those prisoners said that they had difficulties in being sent to a Medical Facility, while others treated in that facility reported difficulty in receiving treatment.

In the course of the visit, a prisoner Babek Hasanov was also confidentially received. During the talk with him, he said that he had no complain regarding his treatment by the facility staff and that he had an opportunity to call his family members and visitation from the very outset of his detention.

At the end of the visits, legal awareness talks were held with the administration of the facility and responsible staff members, relevant recommendations were given to improve the detention conditions, medical care and documentation in accordance with national and international legislation.

Members of the NPM visited ***Penitentiary Institution No. 7***.

During the visit, which was also attended by a doctor member of the NPM, a visit was made to the penitentiary institution, where, medical and sanitary unit, dormitory buildings and other units, as well as the organization of medical care, nutrition, water supply, parceling, walks, meetings and phone conversations, the current situation and documentation were investigated, and some shortcomings in the conditions of detention were unveiled. Thus, it is essential to highlight the concerns regarding seasonal clothing, lack of bedding, and inadequate detention conditions in the penitentiary institution.

The randomly selected prisoners were heard in a confidential manner and the NPM members focused on the issues of treatment and ensuring the rights of detainees; furthermore, the issues raised by the interviewees, including the requestor medical examination were satisfied on the spot.

The NPM delegation conducted an unscheduled visit to *Penitentiary Institution No.9*.

In the course of the visit, the NPG members inspected incarceration and other units of the facility, the detention condition, nutrition, water supply, parcel service, walking, visitation, phone calls, organization of healthcare service and the documentation.

This should be highlighted that the facility generally was in need of improving its work with the prisoners with maladaptive behaviors, and to strengthen the correctional work and psychological support.

At the time of the visit, 4 convicts were questioned in private and the NPG held talks with them to seek the information about their detention condition and treatment and the situation of their human rights.

At the time of the visit to *Penitentiary Institution No. 13* all units of the facility, including incarceration, medical and sanitary unit, quarantine room, visitation rooms, canteen, worship rooms, relevant records and registries have been inspected.

While examining the registry book on the application of special means of restraint, it was found that the records have not contained acts and decisions in compliance with the internal disciplinary rule of the penitentiary institutions. There was a overcrowding in the incarceration; furthermore, there was a shortage of seasonal clothing and bedding in the facility.

The Facility was in need of strengthening the correctional work and increasing the professional communication skills of service personnel.

The objective of the visit carried out to *Penitentiary Institution No. 17* was to assess the detention condition and treatment standards and human rights situation in the facility and to check the documentation.

During the visit, the dorms, incarceration, medical and sanitary unit, canteen, visitation rooms and other units, detention condition and situation with the healthcare service were monitored.

The NPM delegation particularly monitored the treatment of 13 convicts held in the facility and had a confidential talk with them and heard their requests. The requests of some of the questioned prisoners were satisfied on site. The inmates complained about the investigation of allegations against them and trial proceedings as well as with regard to the issues raised, they have been legally consulted.

In the course of the unscheduled monitoring by the NPM of *Medical Institution of the Penitentiary Service*, the healthcare corps and units, inpatient and visitation rooms, detention condition, organization of healthcare service and nutrition and the documentation were inspected.

It was found that the living corps of the facility was in old condition and there were challenges in detention condition.

At the time of the visit, the NPM delegation monitored the situation of 3 convicts treated in this medical facility, including Abulfaz Bunyatov treated here and about whom the information was spread in the media,¹⁸ were confidentially

¹⁸<https://www.turan.az/ext/news/2019/6/free/Social/en/81523.htm>

received and their requests related to detention condition, healthcare service, visitation, phone calls and to other issues were satisfied on the spot. Each of them has been given legal advice related to the issues raised and explained the Ombudsman's competences and their rights. Some persons interviewed were concerned about the difficulties in treatment.

An unscheduled visit to *Precinct Penitentiary Institution No.10* revealed the facts that the occupancy of this penitentiary institution, located in Goranboy district and considered for those charged with criminal negligence was for 150 persons. At the time of the visit, it was found that there were 354 persons held in this facility, 2 of whom were females and 26 persons were those with disabilities. The NPM were reported that the persons imprisoned in the facility were currently engaged in agricultural works and cattle-breeding in the land, leased by the Penitentiary Service in Gadabay district.

During inspection of the registries it was found that throughout the year the number of persons incarcerated was 5 (five). At the time of the monitoring activities, it was found that although there was a heating system in the facility, due to the absence of natural gas, the building was heated by electric heaters, but the dorm with diesel heaters.

Another shortage included absence of commissary desk, phone booth as well as a medical and sanitary unit inside the facility.

At the end of the preventive visit the NPM monitors gave appropriate recommendations to the facility administration for improving the detention conditions and registration and increased the legal awareness of the facility staff.

2.2.3. Institutions of the State Security Service

The NPM delegation conducted visits to *Temporary Detention Place and Investigation Isolator of the State Security Service*.

Throughout the visits conducted, the NPM members investigated the appeals received by the Ombudsman and whether the treatment, food standards, the process of documentation and the access to healthcare service were respected in compliance with the Law on the Rights and Freedoms of Persons kept in the Places of Deprivation of Liberty.

As a part of monitoring activities, the NPM delegation have inspected the detention condition in the facility, quality of nutrition services, for this reason, the cell rooms, kitchen and food storage as well as the situation of healthcare service, walking, phone call, legal assistance and ensuring the other rights.

Polad Aslanov, whose food refusal information was circulated on the Internet, was also, in private, interviewed.¹⁹ During the meeting, he said that he received food.²⁰

At the cells inspected the NPM delegation had tête-à-tête talks with the persons held in the facility and heard their appeals. Each of them, was given legal

¹⁹<https://www.amerikaninsesi.org/a/v%C9%99kil-polad-aslanov-acl%C4%B1q-edir-/5118202.html>

²⁰<https://www.amerikaninsesi.org/a/v%C9%99kil-polad-aslanov-acl%C4%B1q-edir-/5118202.html>

advice regarding the issues raised, the powers of the Ombudsman and the requirements of the legislation were explained. The detainees did not complain about the treatment of the staff of the temporary and pre-trial detention facility and the detention conditions and expressed their satisfaction with the quality of food, walking and medical care.

At the end of the preventive visit, the issues of improvement of the detention condition, healthcare service and the documentation as a process inside the facility in line with national and international laws, itself, were discussed with the facility administration that was also provided with appropriate recommendations.²¹

2.2.4. Institutions of the State Migration Service

The NPM members conducted preventive visits to the institutions of the State Migration Service.

The NPM delegation members carried out a visit to *Baku Detention Center for Irregular Migrants* without prior notification.

The objective of the visit, conducted under the requirements of the UN OPCAT and the Constitutional Law, was to monitor the situation of the incoming appeals, human rights situation in the facility, particularly detention condition and treatment of involuntary and voluntary migrants to comply with the internal disciplinary rules and international human rights standards.

The NPM delegation particularly focused on the admission and handover of the returnees, the medical examination, and treatment of the involuntary and voluntary migrants by the migration facility. Consequently, the persons, held voluntarily in the facility, were met in private and their appeals were received.

As well as by virtue of calls received by the Ombudsman's hotline, the grounds for placement of the nationals of Islamic Republic of Iran M.A. and his son M.R. were investigated. Those persons were interviewed, independently from each other, their requests were heard and given legal advice.

At the end, the NPM delegation had legal awareness discussion with the administration of the facility and responsible staff members and the monitors gave their appropriate recommendations to them regarding how to eliminate deficiencies in detention conditions, medical service, the process of documentation and phone calls and to comply with national and international legislative framework and the SPT and CPT standards.

The State Migration Service was requested regarding the findings.

The NPM members had visited *Yevlakh Detention Center for Irregular Migrants* several times.

During these monitoring activities, the NPM monitors inspected the building of the detention center, two-floored building of temporary detention place for voluntary migrants, building for involuntarily held migrants, laundry, bathroom,

²¹<https://ona.az/az/sosial/dtx-nin-muveqqeti-saxlama-yeri-ve-istintaq-tecridxanasina-bascekme-heyata-kecirilib-5417>

kitchen, food storage, visitation room and other office rooms and the sport court of the facility.

The administrative building of the facility consists of checkpoint, service, meeting and leisure rooms, canteen for staff and WC room. While observing the room for personal search and a medical room for the forced and voluntary migrants, it was found that the general condition there was in a satisfactory state.

During the inspection of the visitation room in the facility, it was found that in conflict with the paragraph 14.28 of the Internal Disciplinary Rules on the Detention Centers for Irregular Migrants, the room was not provided with necessary equipment, box for applications and complaints. Furthermore, the delegation observed that the information about the parcel reception desks and the related rules, such as procedures of submission, reception or transfer of parcels to non-nationals, held in the facility, the list of items prohibited to be brought in packages, parcels and banderols as well as the text of normative legal acts establishing liability for concealment or other submission (sending or transfer) of the items specified in this list without inspection, and the work schedule and reception days of those rooms have not been displayed.

Then the NPM delegation visited the building for the voluntary migrants. This should be noted that this 2-storey building, in general, consisted of 15 rooms at the ground floor (which included 8 rooms for 6 people, 1 room for 2 people and 6 rooms for a single person), classroom and recreation room for small children, worship room, WC and bathroom, whereas, the second floor consisted of 17 rooms (including 9 rooms for 6 people and 8 rooms for a single person), duty officer's office and leisure rooms, a classroom and WC. While observing the building, it was observed that rooms, located in both floors were provided with all necessary inventories – child beds, tables and chairs, boards and wardrobe.

The NPM delegation also visited the building of the detention facility for the forced migrants. The delegation found that the facility has single cells and that the area of one cell was 4m² and each cell was provided with one bed, the WCs in cells were clean and tidy, the lightening, ventilation and heating systems were of high quality and there was a padded room for the psychologically distressed persons. *Furthermore, it was observed that the windows of cells for forced migrants or stateless persons were without bars that, in future, from security reasons can create problems.*

In the course of the visit, registry journals were checked and it was observed that the appropriate records have been made.

Furthermore, it was observed that in contradiction to Article 87.1.20 of the Migration Code of Azerbaijan, there was not a phone booth in the Yevlakh district Detention Center for Irregular Migrants and hence, foreigners and stateless persons, held in the facility could not exercise their right to a phone call. The NPM delegation was reported that in case of necessity for phone calls, foreigners and stateless persons use their personal mobile phones under the sight of facility personnel, but in other case, if they have not their own mobile phone, they use personal mobile phones of the staff. It was also observed that there were no any

records on phone calls in the registry for 2019 due to the fact that no migrant has been held in the facility for that period of time.

Furthermore, it was also found that the immigration detention facility has no library and barbershop as it was required by paragraph 2.1 of the Internal Disciplinary Rules on Detention Centers for Irregular Migrants. As well as, in contradiction to the requirement under paragraph 19 (30) of the Rules, for the position of psychologist to conduct the work with foreigners in the relevant field inside the facility, it was found that this occupation was filled with one, who studied international law. It was also observed that there was not any registry on psychological work, which includes the information on the relevant aid to persons, applied psychological methods, the effects and the personal traits and in contrary to paragraph 19.2 of the Rules, there was a specialized doctor in the facility. Furthermore, it was observed that there was only one woman paramedic in the facility, who was also engaged not only in medical examinations, but also in personal body search of female migrants, held in the facility, which cause to impediments in the work of the facility with female migrants.

2.2.5. Institutions of the Ministry of Defense

The NPM delegation conducted a visit to ***Guardroom of the Military Police of Baku Garrison***. The objective of the visit was to monitor the detention condition, treatment and ensuring the rights A. Kazarian,²² military servicemen of Armenian origin, deserted in the direction of Fuzuli district at the frontline. During the talk with A. Kazarian in presence of an interpreter, he said that he had undergone medical examination and that his health was in normal state; he expressed his satisfaction with his condition, treatment and food supply. He also stated that his rights were not infringed, and he had no complaint²³.

2.2.6. Institutions of the Ministry of Health

The NPM delegation of the Ombudsman carried out unannounced visits to the subordinate institutions of the Ministry of Health as a part of the NPM monitoring activities.

The objective of the visits, conducted on the basis of the relevant national legislation, the Law of Azerbaijan on Psychiatric Care, UN and COE international standards as well as recommendations indicated in the CPT General Reports, was to monitor the living conditions, treatment standards of patients, to evaluate the quality of medical assistance and to review the documents confirming the lawfulness of holding and to follow-up the previously given recommendations.

²²<https://az.sputniknews.ru/incidents/20190812/421450640/Armyanskiy-voennosluzhaschiy-sdalsya-azerbaydzhanskoy-armii.html>

²³<https://www.amerikaninsesi.org/a/ombudsman%C4%B1n-n%C3%BCmay%C9%99nd%C9%99ri-erm%C9%99ni-h%C9%99rb%C3%A7isin%C9%99-ba%C5%9F-%C3%A7%C9%99kib-/5044642.html>

A planned visit was conducted to ***Ganja City Orphanage Health Department***. At the time of the visit, it was observed that there were 21 children (10 males and 11 females) in two groups (groups of breastfed babies and children up to 3 years old), it was observed that the children were placed in the institution on the basis of the relevant order of the local executive authorities. This should be noted that in the facility, in general, there were 37 personnel, including 2 doctors (pediatrics and therapist), 6 nurses, 9 junior nurses, 13 tutors, 2 cooks, one gardener and other technical staff. The NPM concluded that children in such facilities mainly were those, whose parents were ill, dead, in penitentiary institutions, and who, was born out of wedlock. It was appeared that in the facility, the children above the age of 3(three) were transferred to Ganja Children's Home, whereas children suffering from brain diseases were located in Baku Children's Psycho-neurological Center. It was also known that representatives of Ganja Executive Power Office, city Health Department and charitable people regularly visited the facility.

During the monitoring, the area of the children's home, the administrative building, consisted of 3 corps, and dorms, medical room, laundry (by the way currently the laundry does not operate as the facility was provided with washing machines), old building used as a storage for old stuff, kitchen and the canteen have been inspected.

It was observed that the first floor of the two-stored dormitory was unusable, and the second-floor housed infants and children less than 3 years of age.

The Unit, where infants under 3 and suckling infants are kept, consisted of a playroom (common room), a bedroom, a dining room, a bathroom, a meeting room, a storage room; the building was provided with heating system and air conditioning, the bedroom was provided with cradles and cribs. During the inspection, it was observed that the bedding sets were clean.

While getting acquainted with the diet norms for infants, it was determined that the infants were given the infant milk "Humana", and the other group was given various meals (milk porridge, sweet tea, beef rice soup, and thin porridge) 3 times a day.

The facility is in need of capital repairs.

Guba Inter-district Psycho-neurological Center was monitored by the NPM.

The objective of the visit, conducted on the basis of the OPCAT and the Constitutional Law, was to monitor the living conditions, treatment standards of patients, the quality of medical assistance and to review to what extent the documentation was processed in an appropriate manner.

During the visit, the NPM monitored dorms, kitchen and office rooms to review the living conditions, as well as investigated the organization of recreation activities, nutrition, the access to drinking, hot and cold water and the documentation. The NPM delegation had questioned in confidential the persons treated there to evaluate their treatment standards and human rights situation and to check the documentation on site.

At the end, awareness talks, including the explanation of the requirements of national and international legislation were held with the administration of the

facility and persons in charge, and also, they had been given relevant recommendations.

The NPM made a scheduled visit to *Gazakh Inter-district Psychiatric Hospital*. During the visit, the NPG members had a talk first with the Chief Physician.

In the course of this talk, the chief physician informed the NPM members that the occupancy of the Hospital was considered for 100 patients, which covered branches in Gazakh, Agstafa, Tovuz, Shemkir, Samukh, Goygol, Dashkesen, Ganja, Goranboy, Yevlakh and other districts. It was also reported that the women patients were held on the ground floor, but the male patients were treated in the wards located on the second floor of the facility and that currently, the overall number of patients, treated in the hospital were 96 (47 men and 49 women) and this year there was no case of death or contagious disease documented.

While monitoring the Hospital, including its administrative building, the wards for female and male patients, located in two floors, office rooms of the medical staff, the yard of the medical facility, canteen, kitchen, food storage, it was documented that, currently, general corridors and the wards, on the ground and second floors for female and male patients, canteen, kitchen, food storage of the hospital have been repaired and gone into operation; Furthermore, the landscaping work was carried out in the yard as well as office rooms for doctors and accountants were repaired and the roof of the facility was completely replaced. It was found that the situation with medicine supplement was not fully satisfactory, whereas the situation with the food supply was good. The water supply in the facility was constant and for collecting the water the facility used also its tank. The facility was also provided with a natural gas and the heating system there was centralized. The hospital was heated by a central boiler.

The hospital has round-the-clock duty schedule, and if deemed necessary, in case of emergency, the hospital provides in and out-of-hospital care. However, dental, surgical and other services are provided outside the institution. First-time patients are screened for tuberculosis and other infectious diseases and, if in doubt, those persons are provided with referrals to appropriate hospitals.

The patient having his/her health status improved can be discharged from the facility and go home. The NPG members were reported that at this period, there was no patient suffering from tuberculosis or HIV/AIDS at the hospital. The patients are sent to Gazakh Central Hospital and Polyclinic for infectious diseases, including HIV/AIDS, fluorography due to the lack of laboratory and instrumental examination. When a person is detected infectious diseases (especially tuberculosis), these people are sent to the Infection Department of Psychiatric Hospital No. 1 located in Mashtaga settlement, Baku.

The patients are provided with personal hygiene kit, including toothbrush, toothpaste, soap, feminine hygiene packages, men's single blade razors etc. The patients' clothing were clean and suitable for the climate.

The NPM team recommended that the hospital management hang out the pictures positively affecting the treatment and rehabilitation of patients and the information boards on their rights and duties after the capital repair.

Salyan Inter-district Psychiatric Hospital was monitored.

The objective of the visit was to focus on the living conditions and treatment, nutrition and medicine supply, medical service, heating system and to define the issues to be addressed.

At the time of the visit, there were 105 people in the facility. 57 out of who were men, 48 were women. During the monitoring, female and male persons held in the facility were questioned. The NPM team also inspected the wards, office rooms, storage of personal belongings, a reception room, a visitation room, a room for medical servant, a bath, a disinfection room, an isolation room, a kitchen and a food storage.

When it was cold, in the facility, the problem with the heating system still remained as a challenge, but the facility administration has attributed this problem to the lack of allocated funds.

The NPM team recommended the facility administration to eliminate deficiencies in living conditions and treatment standards and the documentation in compliance with national and international norms.

A scheduled visit was carried out to ***Ganja City Psychiatric Hospital***.

The objective of the visits, conducted on the basis of the OPCAT and the Constitutional Law, was to monitor the living conditions, treatment standards of patients, the situation with human rights and the documentation.

The NPM was informed that the capacity of the hospital is for 200 people (200 beds) and is consisted of 2 corps, and there are three departments, the first department and rehabilitation department that operate together, the second and the third departments are for treatment. It was found that all patients are voluntarily placed in the facility. There is a 4-bed ward for women patients and in a short amount of period, the patients are sent either to psychiatric clinic in Gazakh or Baku cities or home if they were already rehabilitated.

The hospital has only one general lab tests (blood, urine and cal) and instrumental examination screening. In 2019, there were no cases of suicide or self-harming among the patients. The hospital has special mailboxes for requests or complaints. The water supply is constant and for collecting water, the hospital has either a tank or underground water tank.

After the general monitoring of the hospital, the NPM team had a conversation with the facility administration.

During the observance of all three departments, the wards, isolation room, kitchen, canteen, storages for food and personal belongings, laundry, the sanitary units and a ward for women, it was found that they are in need of capital repairing. The Chief of the Department informed the monitoring team that the new building for the hospital has been already constructed in Ganja city and the inventory from this old building was being gradually relocated there and that would be operated in late 2019.

While monitoring the condition of wards, it was seen that majority of them are in need of urgent repair and the walls of the wards absorb moisture. Nevertheless, the unsanitary condition of sanitary units that were unrepaired during the previous visit was slightly improved by repairing. The NPM team had questioned the patients in the wards about their living conditions, treatment and the quality of food. Although, the patients did not complain about anything that was asked, but some of them asked for assistance in release for home.

The hospital administration reported that they practice the use of force and other restrictive means such as using sedative injection and talking to the patient, whereas, the anxious patients are temporarily placed in the care-room that replaced by an isolation room if the sedative means are not effective for agitated patients who are at risk of injuring themselves or others.

At the end of the visit, the NPM members recommended to the administration of the facility to accelerate the movement process to a new building and to fulfill the duties indicated in the Law on Psychiatric Care of Azerbaijan for full realization of the rights of patients.

It should be noted that at present, taking into account the recommendations of the Ombudsman, Ganja Psychiatric Hospital has already moved to a new building.

Sheki Inter-district Psychiatric Hospital encapsulates the districts of Sheki, Oguz, Gabala, Gakh, Zagatala and Balaken.

The objective of the visits was to monitor the living conditions, treatment standards of patients, the situation with ensuring the rights and the documentation.

At the time of the visit, it was found that the wards, kitchen, canteens, food storage, drugstore, bath and sanitary units were adequate, whereas, the overall condition (buildings and equipment) were in poor condition. There is no heating system in the wards of the hospital and heat radiators were only in corridors. It was also observed other issues such as overcrowding in the wards, tying up and sealing the registration books.

The chief physician of the hospital said that the construction of a new 200-bed building has already started in 2018 and works are expected to be completed in early 2020.

At the end of the visit, the NPM team had awareness talks with the management and medical staff of the facility and recommended to eliminate deficiencies in living conditions and treatment standards and the documentation in comply with national and international norms.

The visits conducted on the basis of the national legislation, including the Law of Azerbaijan on Psychiatric Care and recommendations set out in international standards, the Declaration on the Rights of Disabled Persons, the UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care,²⁴ and CAT (SPT) regulations, and in the 3rd General Report on CPT activities (CPT/ Inf (93) 12, paragraphs 30-77).

Currently, the facility took the Ombudsman's recommendation into account and is already operating in a new building, meeting the international standards.

²⁴A/RES/46/119, the UN GA Resolution adopted on 17 December 1991

The NPM team conducted a visit to *Lankaran Inter-district Narcological Dispensary of the Ministry of Health*.

The objective of the visit was to inspect the treatment condition, quality and supply of food, and to review to what extent the medical care is exercised.

At the time of the visit to the medical facility, there was one patient held in the facility. In the course of questioning of that patient, he had not any complaint and dissatisfaction. The NPM also monitored the conditions, lightening, ventilation and sanitary state of the wards, storage for personal belongings, rooms for reception and visitation, bath, disinfection room, and a kitchen.

The objective of the scheduled visit conducted to *Ganja Inter-district Narcological Dispensary*, was to assess the living and treatment conditions, ensuring the rights of patients in the facility and to review the documentation.

During the visit, the NPM had a talk with the physician in chief of the facility and he was informed about the competences of the Ombudsman, mandate of the NPM, and the issues related to the condition and the works done have been discussed.

During the talk, the physician in chief informed the monitoring team that the facility has been operating since 1985 and the building is old, and in need of overhaul repair. The dispensary is regional and covers Gazakh, Agstafa, Tovuz, Shemkir, Samukh and Goranboy districts. He also said that mainly in the facility, the drug-addicted persons and chronic alcoholics are treated in and out hospital care. The admission of patients to the facility is based on referrals of other hospitals and on voluntary applications of patients. The documentation, including also the patient's voluntary application and treatment records, is carried out by opening personal medical card for inpatient and outpatients. Throughout the 2019 year, in the facility, 10 people were registered for outpatient treatment for alcoholism and 59 people for drug-addiction. The medical supplements and medicines have been allocated at the state expense. The patients are given meals three times a day. Approximately 1 (one) AZN per day is provided for the provision of meals per capita, the food supply of the facility is provided by Agro Procurement and Supply OJSC.

During a conversation with the chief physician of the dispensary, he stated that although he had worked as a chief physician for 30 years, he was not familiar with any instructions or charter governing the activities of the medical institution.

The hospital consists of 2 Departments - outpatient and inpatient departments, office rooms - 6 doctor's rooms; the staff consists of 24 people, including 3 narcology doctors, 11 nurses, and 10 junior nurses and technical staff (chief, kitchen worker, storekeeper, etc.). The hospital has 5 wards with 20 beds for inpatient treatment.

During the visit, a meeting was held with 7 patients at the hospital, who stated that they had no complaints about living conditions or treatment.

During the inspection, it was determined that the administrative building of the facility, ancillary buildings, kitchen, laundry, wards are in completely unsanitary and unusable condition.

During the inspections of general building of the facility, including the doctors' room, the medical registrar's room, the head nurse's room, the wards, the surgery (injection) room, the pharmacy, the food warehouse, the sanitary unit, the soft inventory storage room and the general area of the institution, , it was found that the hospital building was generally old and dirty. The inpatient wards as well as beddings and other items in the wards were old, untidy, in poor condition. It was observed that patients were kept in wards where no minimum standards of living conditions were respected. The wards badly smelled and were on humidity. There was a lack of heating system and that the wards were heated with electric heaters. There was no any condition for recreation activities (TV, sports equipment, etc.).

It was also found that the sanitary unit of the inpatient department was completely unusable, in an emergency condition, the boiler room did not work (the boiler room of the bathroom) and the bath was generally unusable.

Since the facility did not have a laundry unit, it was reported that the laundry was made in a washing machine that one of the staff members brought from home.

At the end of the visit, the NPM monitors gave their recommendations to familiarize the staff of the medical institution with the necessary normative-legal acts, to improve the registration process, to regulate the behaviors of doctors in comply with the relevant instructions and to provide patients with diverse diet norms.

As the findings of the visits to the facilities of the Ministry of Health throughout the year, it was documented that most of the facilities were old and unusable, and the registration process was incomplete. The Ombudsman subsequently recommends such facilities be repaired and brought up to modern standards, and that construction works be accelerated and completed to transfer some of them to new buildings.

2.2.7. The Institutions of the Ministry of Education

The NPM team of the Ombudsman made visits to the subordinate facilities of the Ministry of Education.

NPM members conducted 34 unannounced visits to the subordinate facilities of the Ministry of Education on the basis of the Constitutional Law, the Law on the Rights of the Child of Azerbaijan, including the UN CRC, CRPD, OPCAT, CAT (SPT) Recommendations, CPT standards and CRC Recommendations. During these visits, taking into account international standards, the living conditions and treatment standards in educational institutions, as well as the application of the relevant national and international standards were examined. The status of previously given recommendations was also checked during follow-up visits.

The NPM team of the Ombudsman conducted unannounced visits to *Sheki city Integrated Training Gymnasium of Boarding Type*.

The objective of the visits was to monitor the living conditions and treatment of the children being educated and residing in the facility by the staff members and the ensuring of the rights of children.

During the monitoring activities of the NPM team and an expert in social work, in general, all units of the facility, including dorms, classrooms, rehabilitation rooms, canteen, kitchen, recreation rooms and common area have been inspected.

In order to investigate the issues of treatment and to assess the current situation, the NPM, in private, had questioned the randomly selected children, studying in this institution, the facility administration, teaching and medical staff.

It was determined that the common area and the sanitary unit of the facility were in need of repair and the living conditions should be improved and the awareness of employees should be increased.

During the visit, the NPG members observed overcrowding in the facility corps and in rooms as well as deficiencies in living conditions. It was found that in the medical-sanitary department, a doctor was not there at work time; there was a lack of medicines in general and absence of those necessary for certain diseases.

It was also observed that the registration books were not properly processed, not filled in, and in general, there was a deficiency in the registration process.

During the visit, NPG members held legal awareness-raising talks with the administration and staff of the institution on the basis of national legislation and international standards on conditions of living and treatment, as well as the UN Convention on the Rights of the Child.

In the course of the visit, the NPM team had awareness talks with the administration of the facility and staff about the living conditions and treatment standards based on national and international legislation, including CRC requirements.²⁵

At the time of its visit to ***Guba city Secondary Boarding School for Children Deprived of Parental Care***, the NPM team focused on the issues of treatment and conditions of the dorms, classes and training rooms, kitchen, bath, office rooms, sport hall and the general area of the facility and the situation with the education and recreation activities in the facility.

The NPM had interviewed in private the randomly selected children out of 114 children, residing in the boarding institution, about their treatment, guarantees and living conditions. The children were explained their rights. The children did not complain about their conditions in the facility and the treatment of them by the staff.

Furthermore, while observing the kitchen and canteen of the facility, it was found that the catering company had violated the sanitary and hygiene rules, the meal schedules were old and dated back to November of 2018, that the meals did not match the menu; the canteen was dirty and that the stuff there belonged to the employees' personal property.

²⁵<http://www.ombudsman.gov.az/en/view/news/1529/national-preventive-group-continues-visits-to-state-child-care-facilities>

At the end of the visit, NPG members recommended the boarding school management to conduct trainings on child rights in accordance with national legislation and the CRC and to exercise the control over the treatment of children by staff.

Guba Special Vocational School was also monitored by the NPM team.

The objective of the visit, conducted to the facility on the basis of the OPCAT and the Constitutional Law, was to assess the living conditions and treatment standards, ensuring the rights of residents of the facility and to review the documentation.

The NPM monitors had, in confidential, talks with the residents of the school, to monitor the treatment issues and inspected the general human rights situation in the facility, raised issues and the documentation on site. At the end, the NPM had a legal awareness talk with the administration and responsible staff and gave recommendations for ensuring child rights in compliance with national and international legislation.

The NPM team made a planned visit ***to Ganja city Sport Lyceum of the Ministry of Education of Azerbaijan.***

At the time of the visit, conducted in the frame of the Child Rights Month-Long campaign, announced by the Commissioner, it was found out that the Lyceum building was overhauled. During the conversation with the Director of the lyceum, he said that the repair work will be completed by the beginning of the next academic year and the children studying at the institution were temporarily continuing their education at the Ganja city Vocational Lyceum No. 3.

Members of the Ombudsman's NPG recommended the Director of the education facility to ensure the rights of children in the facility effectively and to bring living conditions into line with international standards.

The NPM team visited ***Ganja City Integrated Training Gymnasium of Boarding Type.***

The objective of the visit, conducted to the facility on the basis of the OPCAT and the Constitutional Law, was to assess the living conditions and treatment standards, ensuring the rights of children educating and residing in the facility.

During the visit, the director of the school said that the educational institution was put into operation in 1961, and although they are currently operating on the basis of the Charter adopted by the Pedagogical Council No. 4 of the Boarding School-Gymnasium, held on 21 February, 2016, and on the "Model Charter of Boarding Schools", approved by the Cabinet of Ministers of Azerbaijan on January 13, 2011, the new Charter was not yet approved. He also added that the students were provided with school uniforms, bags and school supplies.

It was also indicated that the education in the gymnasium is for 9 years and the facility is considered mainly for children from low-income families, and that, currently, there are 240 students studying at the school. 25 of the students are children with limited health capacities and 3 special classrooms are allocated for them. The classes last until 16:30 p.m. The admission to school is carried out by a

Special Commission. The staff of the facility includes 21 teachers, 9 educators, 1 doctor, 1 psychologist, 1 nurse, 1 warehouseman, 1 janitor, 1 librarian, technical staff and security guards.

During the visit, the NPM members inspected all units of the educational facility, including the school yard and a 35-room dormitory, a dining room and kitchen equipped with all necessary equipment, a building for office rooms and classrooms, a medical room, a psychologist's room, a technology room, a computer room and a library. The NPM team has observed that the rooms have been provided with new furniture and necessary accessories. NPM team had focused on the issues related to the progress of lessons and held a meeting with some of students.

During the observance of the canteen and kitchen as well as the food storage of the gymnasium to which food supply was provided by "Ren Servis" LLC on the basis of the tender, it was found that the sanitary and hygiene rules have been seriously followed, the conditions of the place where meals were prepared, and the storage conditions were clean and tidy and that all kitchen staff wore white coats.

During the visit to the medical room of the gymnasium, a conversation was held with the medical officer of the school. During the talk, it was determined that upper grade students are involved in compulsory dispensarisation, whereas, the students of the primary school will be examined in the near future. It was also found that the medical room was provided with the necessary drugs for first aid, and the students had personal medical records.

The NPM team was informed by the administration of the gymnasium that in the facility, there was not a student, staying the night.

During the observance of the classes for students with special needs, it was observed that students with various diagnoses and mental disabilities were involved in the education process.

In order to investigate the issues of treatment and to assess the current situation, the NPM team had private talks with the randomly selected children, studying in this institution, the facility administration, teaching and medical staff. The administration of the facility, as well as children have said that there were no incidents related to the treatment in the gymnasium, and that the school was always sensitive to the educational work.

In the course of the visit, the NPM team had awareness talks with the administration and responsible staff and gave recommendations for ensuring child rights in compliance with national and international legislation, including the CRC.

The NPM made an unscheduled visit to ***Govlar city Integrated Training Gymnasium of Boarding Type in Tovuz district.***

The objective of the visit, conducted to the facility on the basis of the OPCAT and the Constitutional Law, was to monitor the living conditions and treatment standards, ensuring the rights of children residing in the boarding facility.

The NPM team has documented that the gymnasium, which was built and put into operation on October 1, 2018, consists of a main administrative building, a 3-storey dorm for 102 rooms, a primary building for 360 rooms, a building for general education and a dining room (kitchen, bathroom and warehouse). All buildings of

the gymnasium were provided with all relevant equipment. There was a medical center, a lab, a tailor, shoemaker and a hairdresser's booth.

The preventive team members also were informed that a Charter of the gymnasium, regulating its activities has been prepared and submitted to the Ministry of Education for approval. Children with disabilities, at the institution, are educated separately. At present, the students, studying at the institution, are those coming from Gazakh, Agstafa, Tovuz and Shamkir districts. 43 of these students are children with disabilities (mainly suffering from various diseases –such hypertension-hydrocephalic syndrome, mental retardation, oligophrenia, etc.). 102 students spend the night in the dormitory of the gymnasium. Since the beginning of the school year, all students have been provided with school uniforms. According to the Chief of the school, there were no incidents of misconduct at the school, only absenteeism, and misunderstandings between students and teachers were resolved by convening a parent-teacher meeting and awareness and preventive talk with the juveniles by the police officer in charge of juvenile affairs from the District Police Office.

The gymnasium employs 147 teachers and 50 technical staff (educators, chief accountant, treasurer, accountant, librarian, laboratory assistant, computer operator, night shift nurse, cook, kitchen worker, hairdresser, dresser, storekeeper, tailor, driver, etc.). The medical department of the facility has one physician, one psychologist and 2 nurses.

During the visit, all newly built and operated buildings of the school – administrative building for office rooms, classrooms, teachers' room, a dorm, a medical room, a bathroom, a kitchen, a dining room, a food warehouse, a library equipped with modern furnish, technology room, equipped with new computers, as well as the cabinets of math, physics, chemistry, biology, an event hall, and yard of the gymnasium were inspected, and it was found that all buildings of the gymnasium were complying with modern standards.

The objective of the visit to *Mingachevir city Integrated Training Gymnasium of boarding type*, conducted by NPM team on the basis of the OPCAT was to assess the living conditions and treatment standards, nutrition of children and medicine supplement, medical service, heating supply and to determine the scope of issues to be addressed.

During the visit, the NPM team had identified that the facility in general, is in need of overhaul repairs. The gymnasium had no centralized heating system. Although it was said that the classrooms and dorms were heated with electric heaters, at the time of the monitoring, the electric heaters were not connected to the mains. It was observed that the registration books were in a mixed state, not concluded, not bound and not sealed.

It was also observed that there was no refrigerator for storing medicines in the medical room, no bathroom in the gymnasium; the dining room was not heated, and the floor surface was covered with concrete.

At the end of the visit, NPM team members recommended the school administration to conduct trainings on child rights in compliance with national legislation and the CRC, and to monitor the treatment of children by staff.

At present, taking into account the NPM recommendations, overhaul was started in the facility and the children have been relocated.

In the course of the monitoring of **Balaken City Integrated Training Gymnasium of Boarding Type**, dorms and classrooms, kitchen, also the general areas of the facility were inspected; the living conditions and treatment standards in the facility and the relevant documentation were reviewed.

It was observed that children staying overnight were not provided with warm blankets.

At the end of the visits, the NPM team held legal awareness talks with the management and staff of institution on the basis of national legislation and international standards, including the CRC, and made recommendations to increase attention to the implementation and promotion of children's rights.

Lankaran city Integrated Training Gymnasium of Boarding Type was visited by the Ombudsman's NPM team.

The objective of the visit conducted on the basis of the OPCAT and the Constitutional Law, was to inspect the living conditions and treatment standards, and ensuring the rights of children residing in the facility.

During the visit the NPM team recommended the principal of the facility to conduct trainings on child rights and to exercise the control over the treatment of children by the staff of institution on the basis of national legislation and the CRC.

During the visit to the **Neftchala district Integrated Training Gymnasium of Boarding Type named after M.Safarov**, in order to investigate the issues related to the treatment in the facility, the NPM members had relevant talks with the children living there and explained them the rights they are entitled to.

At the time, the preventive team monitored the canteen, dormitory and educational building of the boarding facility. During the conversation with the students, they expressed their satisfaction with the treatment and did not complain about the food supply.

During the visits to **Salyan city Integrated Training Gymnasium of Boarding type named after A.Safarov**, the NPM team inspected dorms and classrooms, a kitchen, as well as the common area, and studied the living conditions and treatment of children in the institution and checked the relevant documentation.

In the process of monitoring, the preventive team members held face-to-face talks with some of the children, residing in the institution, and questioned them about treatment, security and conditions.

NPM members have also inspected a kitchen, a warehouse, bedrooms, classrooms, and held educational talks with students on their rights and freedoms, and their responsibilities.

At the end of the visits, they held legal awareness talks with the management of the facility on the basis of national legislation and international standards,

including the CRC and recommended them to increase attention to the implementation and promotion of children's rights.

Goranboy city Integrated Training Gymnasium of Boarding Type named after R. Agakishiyev was made a scheduled visit by the NPM.

The objective of the visit conducted on the basis of the OPCAT and the Constitutional Law, was to assess the living conditions and treatment standards in the gymnasium, ensuring the rights of children residing in the facility and the documentation.

In the process of the monitoring activities, the director of the gymnasium said that the school has been operating since 1960 and consists of 3 buildings. The capacity of the facility is for 260 students, whereas, the current number of students studying is 120, but the number of those staying in the dormitory is 30. Admission to the school is based on the applications filed by the parents or other legal representatives and by low-income families. The staff of the school consists of 33 teachers and 28 technical staff. The school was last renovated in 2004. Students who are in need of school clothing, they are provided as such once a year. The school is heated by a boiler house and electric heating radiators.

The NPM team was also informed that the facility had rented a shop near the gymnasium and in the frame of the recently running social Project they provide clothes for children from low-income families under the motto “Bring if you don't need, take if you need.”

Members of the Ombudsman's NPM team also checked the classrooms of the Gymnasium and had talks with students.

During that meeting with the students, they did not express their dissatisfaction in response to questions about the living conditions and treatment in the dormitory of the Gymnasium.

During the inspection of a canteen, a kitchen and a food warehouse located in the 2nd building of the school, the condition was found satisfactory, clean and the dishes were cleaned and washed with detergent, and for storing perishable food there was a refrigerator.

During the visit, NPM members recommended to the head of the school to improve the living conditions in the gymnasium, to hold classes on children's rights, and the NPG members presented the facility posters on traditional children's drawing competition “Me and my rights” organized by the Ombudsman, held on December 10 - International Human Rights Day and manuals on children's rights.

At the time of the general monitoring of classrooms, administrative building, a boiler room, a kitchen, although the school administration had repaired the building, the building, itself, was old; there was a need of a stationery for pedagogical staff; the medical room needed medicines, (medicines were purchased by a doctor working at the gymnasium at his own expense), so, in general, it was observed that the gymnasium was in need of an overhaul.

The NPM made a visit to ***Siyazan Integrated Training Boarding Gymnasium***. During the visit, dorms, classrooms and training rooms, kitchen, bathroom, office rooms, gym and common area were inspected; the living

conditions and treatment of children in the institution, their education process and organization of recreation activities were monitored.

Furthermore, when inspecting a canteen, kitchen, bathrooms and sanitary units of the facility, it was found that the LLC providing catering services to the gymnasium had violated the sanitary and hygiene rules, the food did not match the menu, the canteen was dirty and there were personal belongings of the staff; and that the condition of bathrooms and the sanitary unit was in poor state.

The NPG members had talks in a confidential manner with many of 73 children, staying in the institution on a random basis and asked them questions about their treatment, guarantees and living conditions and also explained their rights.

The objective of the visit to **Zagatala city Integrated Training Gymnasium of Boarding Type** was to investigate the living conditions and the issues of treatment.

It was found that a part of the facility has been repaired, the heating system was renewed. However, in the process of the monitoring, it was observed that the facility was in need of overhaul. It was also found that a part of the facility has been repaired; the heating system has been renewed. However, during the visit, it was observed that the facility was in need of overhaul.

While reviewing the registration books of the facility, it was found that the books were not sealed and bound, and the documentation was being processed confusingly. The registration books did not contain the names of children.

It was also observed that the children's bedrooms were crowded and the heating system in the girls' dormitory was out of order.

At the end of the visits, NPM team members held legal awareness talks with the management and the staff of the facility on the basis of national legislation and international standards, including the CRC and recommended them to increase attention to the implementation and promotion of children's rights and to take measures for elimination of deficiencies existed.

Throughout the visits conducted in 2019, the NPM team observed that some shortcomings still exist in the institutions, subordinated to the Ministry of Education, and its recommendations and suggestions given in previous years have not been fully implemented. Thus, most facilities need to improve the living conditions, to build new buildings and overhaul to eliminate overcrowding.

Furthermore, it was documented that, in a number of institutions, heating problems remained as challenge during the winter time (lack of central heating systems, lack of warm blankets for children, etc.), which also affected living conditions. It is also essential to address the shortcomings in the field of registration and medicines supply.

2.2.8. Institutions of the Ministry of Labor and Social Protection of Population

During the reporting year, the NPM had 11 unannounced visits to the facilities of the Ministry of Labor and Social Protection of Population as part of the activities of the NPM.

The visits were implemented on the basis of the national legislation, including the Law on Psychiatric Care, as well as international standards such as the UN CRPD, the Declaration on the Rights of Disabled Persons, the UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, the UN Principles for Older Persons, and the UN GA recommendations concerning the Madrid International Plan of Action on Ageing, CPT and SPT rules.

The NPM team conducted a visit to Social Shelter (Zabrat settlement) for persons over 18 years of age under the State Social Protection Fund of the Ministry (hereinafter MLSPP).

The objective of the visit was to investigate the living conditions of and the treatment of persons, held in this social institution, as well as ensuring their rights. During the visit, the units of the facility were inspected.²⁶ The living conditions and treatment standards at the facility were found to be satisfactory.

A visit was paid to *Social Shelter and Rehabilitation Center for Minors*.

The NPM had talks with the residents of the facility, including children, the management of the shelter, doctors, teachers and medical staff in order to monitor the issues related to the treatment. The NPM team found the living conditions and treatment standards at the facility to be satisfactory.

At the end of the visit, the members of the NPM have discussed national legislation and international standards, including the CRC and CRPD and made its recommendations, respectively.

The NPM visited the *Rehabilitation Center for Visually Impaired Minors*. The objective of the visit was to assess the living conditions and treatment issues and ensuring the rights of persons held in the facility. At the time of the visit all objects of the Center were inspected and the conditions and treatment standards were also reviewed.

At the end of the visit, NPM monitors recommended the Center administration to conduct trainings on child rights in compliance with national legislation and the CRC, and to exercise the control over the treatment of children by staff.

The NPM made a visit to *Social Service Institution for Persons of Retirement Age*.

During the monitoring activities, the dorms, living and medical rooms, camera observation rooms, a canteen, a food warehouse and other objects were inspected, as well as the organization of medical care, food supply, phone calls, the

²⁶<http://www.ombudsman.gov.az/en/view/news/1533/representatives-of-ombudsman-office-conducted-visits-to-social-establishments/>

current situation and the documentation, ensuring the rights of residents were the issues addressed by the monitoring team.

At the same time, the NPM team had talks in a confidential manner with a number of residents of the institution, the applications of the latter addressed to the Ombudsman were received, and the requests respectively were raised before the relevant authorities.

The confidentiality of the application or complaint is ensured if so requested by the complainant.²⁷ According to the Standard Minimum Rules for the Treatment of Prisoners, it shall be possible to make requests or complaints to the inspector of prisons during his inspection.²⁸

A scheduled visit was made to **Ganja City Areal Social Service Center for the Retired Persons** by the NPM team. The objective of the visit conducted on the basis of the OPCAT and the Constitutional Law, was to inspect the living conditions and treatment issues and ensuring the rights of persons held in the facility and to review the documentation.

In the frame of the visit, administrative and dormitory corps, yard, walking area, a canteen and other objects of the Center were monitored to see to what extent the treatment standards were respected as well as the administration and the staff of the Center were also interviewed.

It was found that the MLSPP carried out overhaul repair at the Center, and the living conditions in the 3-storey dormitory, administrative building, a dining room and a boiler room was improved.

In the process of the visit, NPM team members inspected the institution's administrative building, dorms and wards, which were intended for the care of critically ill patients, as well as an additional 50-bed dorm, a dining room, a kitchen, a bath and sanitary units, and it was observed that the new wards for 1, 2 and 3 people were equipped with all the necessary for living furnish, and that a separate bath and sanitary unit was built for each room.

The director of the Center said that the service center is expected to start operating in the first quarter of 2020. At the end of the visit, the NPM recommended the Center to bring the living conditions in line with the standards.

The NPG members had a visit to **Goygol district Psycho-Neurological Social Care Center No. 3**.

The objective of the visit conducted on the basis of the OPCAT and the Constitutional Law, was to inspect the living conditions and treatment issues and ensuring the rights of persons held in the facility and to review to what extent the documentation is properly processed. The director of the Social Service Institution informed the NPM that the total area of the institution is 4.5 hectares and the total number of employees is 55 people. He also stated that although the limit is 135 people, currently, in the facility, the number of residents was 147, as 25 residents of the Ganja city Areal Social Service Center for the Retired Persons as well as 9

²⁷ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 33, UNGA/Res/43/173, of 9 December 1988

²⁸The Standard Minimum Rules for the Treatment of Prisoners (SMR), Rule 36

residents of the Shamakhy city Psycho-Neurological Social Service facility No.2 were relocated here due to the repair works in both facilities noted earlier. All additional resident patients were provided with beds and the office rooms of the Center were temporarily used as wards.

There was no juvenile among the residents of the Center.

The Center is mainly considered for those, suffering from schizophrenia, oligophrenia, Down syndrome, cerebral palsy, mild intellectual disability, Huntington's disease, mental retardation, etc. The institution consists of one building, ancillary farm building, laundry, and the office rooms for the staff are on the 2nd floor of the Center.

The Center operates on the basis of the Charter of Psycho-neurological Social Service Institutions of the State Social Protection Fund under the MLSPP of Azerbaijan, approved by the Decision No. 2-3 dated 25.02.2015 of the Board of the MLSPP.

In the process of the visit, it was reported that no self-harming cases by patients were documented in 2019; that meetings and phone conversations of the patients with their relatives were provided by intra-hospital phone. The NPM also observed that no special means of restraint were used against patients and the isolation room was only temporarily used. It was also found that the institution exercises the control over hygiene rules in the facility, and that the ventilation system in wards was adequate, the shower room was usable. The medical examinations were found to be undertaken regularly and to be monitored, and normal conditions were created for visitors to see patients.

During the talks with the residents in the social care center, there were no complaints about living conditions or treatment standards.

In the process of observing the registration books and personal files of patients, it was observed that they contained the relevant notes.

During the course of the visit, it was found that drainage pipes were being installed along the fence and a boiler house was being built in a separate area in the yard. The administration of the social institution said that in the near future the institution will be suspended for overhaul with support of the MLSPP; therefore, patients treated at the institution will be temporarily transferred to other hospitals.

At the end of the visit, the NPM respectively recommended the administration of the institution to further improve the conditions at the facility and to improve the registration. Consequently, the administration of the facility was given recommendations based on international standards, including the CRPD and the International Action Plan on Aging (Madrid).

At the same time, the NPM made a visit to the *Children Shelter-Reintegration Center under the Azerbaijan Children's Public Union*, which is not regulated by the MLSPP. The objective of the visit was to investigate media reports that a teenager had been placed in the facility due to violence by a relative. During the investigation, it was unveiled that a 17-year old V.S. of Roma origin, about whom the media reported, was abused by his relative and forced to live on the

streets for a long time as he has been evicted from his house, which was currently placed in the shelter and the documentation was preparing.

In the course of the visit, the NPM team had, in private, talk with 17-year-old V.S. to investigate his living condition, nutrition, and health condition. V.S was explained his rights and his case was taken under control.

At the end of the visits, the NPM team held legal awareness talks with the management and staff of the institution on the basis of national legislation and international standards, including CRC, and made recommendations to increase attention to the implementation and promotion of child rights.

2.2.9. Institutions of the Local Executive Authorities

The NPM made scheduled and unscheduled visits to facilities subordinated to local executive authorities and those under its jurisdiction in accordance with the OPCAT.

As a part of the preventive monitoring activities, the NPM team conducted a visit to Sheki *Mixed Type Children's Home* on the basis of the OPCAT and the Constitutional Law.

A UNICEF representative and child rights expert from South Korea were also invited in order to organize the visit based on international experience.²⁹

The objective of the visit was to evaluate the living conditions and treatment of children, residing in the institutions, and the situation with the protection of children's rights. At the time of the confidential conversation with the children, the NPM team was told that they were pleased by their conditions, treatment and nutrition.

During observing the registration books, it was determined that the relevant books were in a mixed state and they had not concluded, was not bound and sealed. At the same time, shortcomings were found in the personal files of children living in the institution. Thus, it was found that the facility had violated paragraph 9 of the Model Charter of social services of orphanages, providing the rules for processing and maintaining the child personal files.

The documents for placement of children were also incomplete. There was overcrowding in bedrooms of preschool children.

The NPM found that the amount of food did not correspond to the number of children, a newly appointed nurse in the medical unit had not extensive experience, there was a lack of medicines in the social-care institution, and the ventilation system was not used. The NPG members found that the institution was in need of a doctor, social worker or psychologist, pedagogical staff, and that the recreation activities of children should be organized effectively.

²⁹ The participation of civil society and NGO experts in visits is ensured for the effectiveness of the Ombudsman's NPM activities. The UNICEF Country Representative also contributes to the improvement of the relevant national experience through participating representatives of this international institution in visits to state child social-care facilities as agreed plan concluded between the HRCA and the UNICEF country team.

At the end of the visit, the NPM team had a legal awareness talk with the children and the management of the facility on the basis of national legislative acts and international standards, including CRC recommendations and recommended the facility to increase the attention to the implementation and ensuring the rights of child, to increase the professional capacity in the concerned field and to improve the documentation.

The findings and implementation of recommendations have been discussed with Sheki City Executive Power Office. Consequently, the facility has improved the registration books and eliminated the existed deficiencies in personal child files. Furthermore, the city executive power office has requested the Ministry of Finance to address the issues that require funding.

*The NPM team conducted a visit to **Lankaran city Boarding House of Mixed Type named O. Mirzayev.***

During the visit conducted on the basis of the OPCAT and the Constitutional Law, the NPM focused on the living conditions and treatment issues, nutrition, medicament provision, medical service, heat supply and ensuring the other issues to be addressed.

At the time of the visit, a canteen, a warehouse and other rooms have been inspected. The preventive group members had, in private and in group, talks with the children, held in the facility and their awareness about their rights and duties have been increased. The children questioned had not complained about the treatment, provision of clothing and food.

The NPM conducted a scheduled visit to **Ganja city Boarding House under the City Executive Power Office.**

In the process of the visit, the Director of the boarding facility said that the facility has been operating since 1997 and was considered for the children deprived of parental care and that the residents of the facility were those between 3-18 years of age. The facility has 50 staff members, engaging in the training of children, held in the facility. The facility, which has been repaired in 2012 with modern standards by the Heydar Aliyev Foundation, has been furnished with all necessary equipment.

The orphanage runs English and computer courses, and art clubs, a dance ensemble (“Lalegyzlar”) and a children’s club. The orphanage facility functioned on the basis of the Charter, approved by the relevant Ganja executive power authority. The facility had services of psychologists, social workers and those in charge of social services.

The NPM was informed that the boarding institution consisted of one building and that the facility has 4 dormitories for children aged 3-6, 6-8, 9-11, 12-14, in 4 groups, which was fully equipped and renovated, with a separate bathroom and furnished with the necessary equipment (e.g. air conditioning and TV). Furthermore, the facility had a kitchen, a dining room, an assembly hall, a recreation and reading room, a psychologist's office room, an art club room, kids indoor entertaining room, a computer room, a craft room and a library hall, a laundry, a tailor's shop, a bath and a sanitary unit. There were separate dorms for

girls and boys in different age groups. At present, 69 children, including 28 girls and 41 boys, are residing in Ganja boarding house.

During the time of inspection, the NPM monitors held a meeting with the residents of the boarding school and it was observed that their conditions (clothing, room temperature, clean bedding, visual aids, etc.), in general were normal, the children in the group were engaged in preschool education.

The NPM team has reviewed the bedrooms of all age groups, baths, computer rooms, recreation rooms, a psychologist's room, an art room, a kitchen, a food warehouse, a medical room, the general area of the boarding facility. When checking it was found that, in general, the conditions of the psychologist's room, the art club and the computer room, the kitchen, the dining room, the warehouse were in good condition, clean and tidy. Another improvement in the facility included providing each room and service rooms (warehouses, kitchen) with the necessary equipment.

According to the information provided, the child's nutritional needs are assessed by a health worker, taking into account his health, and only then, s/he is provided with appropriate food. Also, children in the institution are provided with clothes, shoes and soft inventory, on the basis of the "Guidelines for the provision of all type of boarding facilities (boarding schools, rehab centers for children with mental and physical disabilities, children's house, orphanages) with the clothing, shoes and soft inventory, approved by the Decision No. 15 of the Cabinet of Ministers on January 17, 1994.

During the inspection of the boarding facility, the NPM team was informed that the construction of a new building for children began in December 2018, which is intended to include also two bedrooms, a winter gym, workshop and recreation rooms, a canteen and a laundry. The new building will be commissioned soon.

The NPG members has documented that the residents of the facility were registered at the local medical institution, and each child had a personal medical card.

The NPM team identified a number of concerns relating to the registration books, deficiencies in children's personal files, in some cases, overcrowding in the facility, deficiencies in nutrition and supply of medicines. The facility can face with challenges of living conditions and treatment standards, nutrition, medical care, in cases where the number of children exceeds the norm, as the food norms, medical equipment and supplies, as well as medicines have been allocated for the facility based on its occupancy.

CHAPTER 3

Legal analysis

Legal analyses of the findings and legal education works are one of the key directions of the NPM activities of the Ombudsman.

In this process, the information collected as a result of monitoring activities, recommendations as well as legislative acts are theoretically and practically analyzed and summed up.

This chapter describes the information collected on the basis of the relevant recommendations, suggestions, applications, complaints and written proposals to the competent bodies, findings in penitentiary institutions, investigation isolators, temporary detention places, detention centers for irregular migrants, military units, social care institutions for children, for persons of retirement age and for persons with disabilities, boarding schools, health and educational institutions, as well as the specific cases, challenges and problems found out during the receptions and investigations conducted at the relevant bodies.

In the middle of legal analyzing process, official correspondences of state bodies and officials, proposals and suggestions submitted to the state bodies, national and international human rights conference and seminar materials, works done in the frame of the cooperation with NGOs and media resources were used.

Under Article 19 of the Optional Protocol, the national preventive mechanisms are granted the power to submit proposals and observations concerning existing or draft legislation.

The analyses of the incoming round-clock hotline calls to the Ombudsman also became one of the key sources for this activity to rely on.

The improvement of the legislation: The Presidential Decree on deepening of the reforms in the judicial-legal system, of 3 April, 2019, became effective in terms of further increasing the right to appeal, transparency of courts and efficiency of trial proceedings, ensuring full and timely execution of court decisions, measures for the elimination of procrastination and other similar negative cases.

In order to fulfill recommendations driven from that Decree, intensive work was carried out at the national level, statistical data were analyzed and summarized, as well as international good practices were studied.

In this regard, the laws envisaging amendments to the Law of Azerbaijan “On Courts and Judges”, Civil Procedure, Administrative Procedure and Criminal Procedure Codes, as well as relevant orders and decrees, ensuring the application of these laws were adopted.

This set of normative and legal acts includes the drafts on humanization of criminal policy and decriminalization of crimes, comprehensive analysis and improvement of civil procedure legislation, establishment of new mechanisms by the Supreme Court for developing a unified judicial practice, advancing the process of appointment and application of forensic expertise, as well as the enforcement mechanisms of judicial decisions.

The judiciary, criminal prosecution and enforcement agencies are taking legislative and practical measures for expanding the use of ICTs, including e-Court and online execution systems in their activities.

The Presidential Decree “On deepening reforms in the judicial and legal system” set out the clauses to undertake the Supreme Court a duty to develop a unified judicial practice and its enforcement mechanism (3.2); to take serious measures to ensure the stability of the legal approach to settlement of disputes during trial proceedings (6.1); and to extend the activities for studying and generalization of precedent law to increase the effectiveness of administration of justice (6.2);

The Ombudsman takes the view that the development of a unified judicial practice is vital in terms of similar and proper application of the law to disputes before the courts.

Another important issue specified in the Decree is about increasing the total number of judges in the national judicial system by 200 to improve the functioning of courts, improve the quality of justice and shorten the timelines of cases in courts. The Ombudsman indicates the importance of increasing the number of judges and continuation of this process.

The analysis of the ECtHR judgments concerning Azerbaijan, incorporating its decisions into practice at national level, and subsequently, the developed unified judicial practice and the relevant plenum decision, adopted will further accelerate the implementation of preventive and effective human rights activities.

Taking into account the abovementioned, the Ombudsman recommends development of the unified judicial practice concerning the cases of torture and ill-treatment.

Article 15 (1) (3) of the Law of the Republic of Azerbaijan on Ensuring the Rights and Freedoms of Persons kept in Places of Detention establishes the right of the detainees or arrested persons to get acquainted with their rights and duties, the internal disciplinary rules etc. in writing in a language, which they understand. The Ombudsman finds it necessary to amend the legislation concerning the granting persons without reading and writing skills the right to oral communication.

Taking account of the international law-making tendencies and ethical issues related to the vulnerable groups of population and reminding that the practice of using the words and expressions, degrading human dignity in the national laws still remain as a challenge, the Ombudsman recommends, in general, removing such degrading language such as dumb, blind, deaf, disabled, etc. in relation to the persons with disabilities and the use of proper terminology, instead.

Generalized analysis of information provided in the media: Throughout the year, including in the last periods of time, numerous reports on the rights of detainees were published by media outlets, including on social networks, which have recently become widespread and require an operative response. The NPM team examined and analyzed all information on a regular basis.

It was reported on social media that A.H., who was serving his sentence in the Penitentiary Service Prison, was subjected to physical pressure and forcibly

removed from his cell and taken in an unknown direction. This information was given by T.B., who was also serving a sentence in that facility. The NPM team members immediately contacted the Penitentiary Service and the prison management to investigate the case. It was found out that A.H. was transferred to the Baku Pre-Trial Detention Center regarding his appeal against the decision of the Garadagh District Court. Lawyer Fariz Namazli's appeal with the same content was answered and the lawyer was given detailed information.³⁰

The internet sources made public the complaints lodged by family members of M.T., I, N., Q.A., held at the Administrative Detention Center. The complaints contained allegations about custody conditions of the arrested persons, including concerns related to walking, nutrition and bedding.³¹

The appeals were immediately investigated by the Ombudsman's NPM team. Consequently, the appeals were granted, the bedding was changed, the problem with walking and phone calls was solved, and it was noted that any appeal would be resolved in accordance with the law.

The Ombudsman appealed to the Supreme Court of Azerbaijan concerning the information about the deteriorating health of A.B, one of the convicts, charged of the crime committed in Nardaran settlement, and detained in the Medical Institution of Penitentiary Service and asked for alternatives to imprisonment, while trying his case in court. Subsequently, that person was released from the unserved part of his term by the court due to his serious illness.³²

The Ombudsman sent an appeal to the Minister of Internal Affairs and the Prosecutor General of Azerbaijan to check the information released on websites and social networks whether a blogger Mehman Huseynov was detained by the police at night, taken away in a service car and subjected to ill-treatment.³³

The Ombudsman immediately reacted to the issues released in media related to violence, suicides, etc., and raised concerns in the public. In this regard, she sent appeals to the relevant bodies for an objective investigation of similar issues and stayed focused on them.

The activities of the Penitentiary Service:

At the time of the conversations with the persons interviewed and in the process of the analysis of the incoming applications, there were made also allegations about the treatment of detainees by the staff of the Penitentiary Service. Among the main concerns raised by the detainees were the application of special means of restraint to new admitted inmates and degrading treatment during the search operations.

³⁰<http://0s.o53xo.mf5gczdmmfys433sm4.cmlle.ru/a/abbas-h%C3%BCseynov-haqq%C4%B1nda-yeni-cinay%C9%99ti%C5%9Fi-ba%C5%9Flan%C4%B1b-/29710610.html>

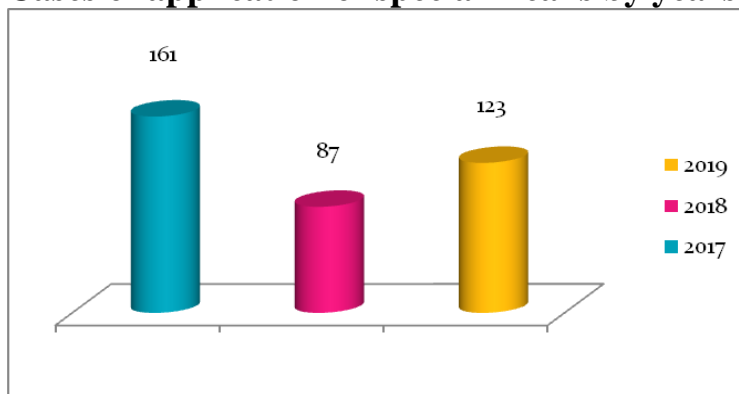
³¹<http://aws-www.meydan.tv/az/article/seherler-bir-dilim-corek-ve-10-qram-yag-verirler/?ref=search>

³²<http://www.contact.az/ext/news/2016/12/free/Social/en/58992.htm>

³³<https://www.bbc.com/azeri/azerbaijan-50805315>

According to the information provided by the Penitentiary Service of the Ministry of Justice,³⁴ the statistical data on the use of special means of restraint by years are as follows.

Cases of application of special means by years:



The statistics of the applied special means of restraint are as follows:

- rubber truncheon 2017 – 106 cases, 2018 – 38 cases, 2019 – 48 cases
- handcuffs 2019 – 64 cases
- tear gas 2019 – 11 cases

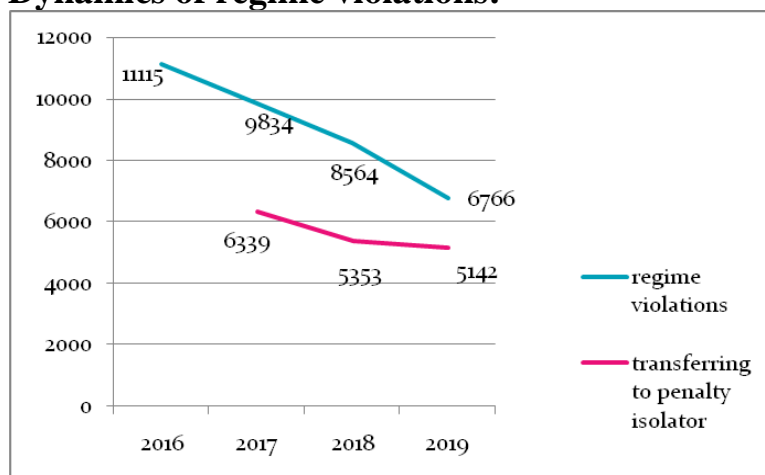
During the examination of the relevant registration books by us regarding the application of special means of restraint, it was found that the type and date of records on restraint had been changed, and that there were shortcomings in substantiating these measures with decisions and acts.

One of the concerns indicated in the applications was the use of a rubber truncheon to a person protesting against any action during the strip-search and subsequent placement in a penal isolator. It should be noted that the UN Standard Minimum Rules for the Treatment of Prisoners prohibit the use of special instruments of restraint as a punishment for disciplinary offenses. Under the Guidelines on security measures in the penitentiary system of Azerbaijan and Rules of their application, the special means shall only be used also as a measure of last resort or necessity defense. Given the above, the personnel shall be given ongoing training on how to apply special means of restraint.

According to the data provided by the Penitentiary Service, the number of regime violations committed by detainees and prisoners has decreased in recent years.

³⁴ The information contained in the letter No. 17 / 2-17546 dated December 4, 2019, addressed to the Ombudsman by the Penitentiary Service of the Ministry of Justice, covers the first 11 months of 2019.

Dynamics of regime violations:



In recent years, the decrease in number of prison regime violations has been accompanied also by the decrease of disciplinary measures in the form of transferring to a penal isolator. However, the analyses show that the placement in a penal isolator remains the most common form of disciplinary action against those who violate internal disciplinary rules.

According to international experience and using the opportunities provided by law, it is recommended to use more verbal warnings or reprimands as disciplinary sanctions instead of incarceration for the regime violations.

There is also a need for comprehensive measures to rehabilitate criminal offenders and reintegrate them into society. Consequently, this goal can be achieved through intensifying the correctional work by early parole or transfer to a lighter regime inside the penitentiary institutions.

The awareness-raising activities with prisoners should be aimed at their rehabilitation and that the convicts, who do not violate the law and behave in a proper manner must be established a confidence in that they will be released early. Furthermore, along with consistent works to extend these measures to all prisoners, the number of correction employees to be proportionately increased to the number of prisoners. Should it be necessary to increase the attention on the correctional process and the effectiveness of educational work with the prisoners, the number of employees must be increased proportionately to the number of offenders.

We consider it necessary to establish areas of manufacturing in penitentiaries and to involve prisoners in there. Employment of prisoners is also required by the Executive Order of the President of the Republic of Azerbaijan On improving work in the penitentiary system, humanization of the punishment policy and expansion of alternative punishments and procedural enforcement measures not associated with isolation from society.

The observations show that although some work has been done in this area, there is still a need for creating new production areas in penitentiary institutions and expanding the prison paid labor participation. With some exceptions, the *major concern about the detention condition* in penitentiary institutions was

overcrowding. The similar concern remains in cells of pre-trial detention facilities as well.

The CPT also highlights in its Recommendations that overcrowding in places of detention has a negative impact on all services and activities within the facility. Excessive physical presence can also lead to inhuman or degrading treatment.

One of the reasons for the overcrowding in pre-trial detention facilities is the long timeline of pending criminal investigations on the accused. The Ombudsman strongly believes there is a need for completion of the investigation in a timely manner in order to reduce the overcrowding in such institutions.

During the preventive visits to pre-trial detention facilities, it was found a large number of detainees restrained, which led to overcrowding. Subsequently, the Ombudsman recommends applying alternatives to imprisonment as a precautionary measure in terms of reducing congestion.

Inadequate detention conditions in some penitentiary institutions remain as challenge.

The State Program for the Development of Justice in Azerbaijan for 2019-2023 provides the strengthening material and technical base of penitentiary institutions and bringing the detention conditions of the imprisoned and arrested persons into compliance with international standards. The Ombudsman considers important to accelerate the construction of new penitentiary institutions with modern standards in a view to improving detention condition in those facilities and full and consistent execution of the abovementioned State Program.

The concerns observed by the NPM in penitentiary institutions were related to the inadequate food supply, inconsistency of the quantity of meals with the approved menu, preferring a food made from barley or wheat, refusal of those meals by most inmates and the need for white bread. The Ombudsman deems necessary to bring the food norms into conformity with the norms approved by the Cabinet of Ministers, as well as to improve the quality of the food and catering service.

Some concerns did exist in the protection of health of prisoners in places of deprivation of liberty and in general, in the ***organization of medical care***.

One of the significant concerns highlighted by the NPM is about the persons suffering from mental problems or those, whose mental health conditions have significantly changed during their imprisonment. Segregation of those persons on a voluntary basis or by the facility itself deteriorates their mental health condition.

Based on the information provided by the penitentiary service, in the last years, the number of persons with mental disorders, registered for inpatient treatment, has increased, whereas, the number of inpatients of similar category, has decreased over the years. Such improvement has been primarily achieved through the increased effectiveness of psychiatric care in the places and allocation of the medication for those treatment facilities for carrying out the supportive care. The Ombudsman considers it crucial to further increase the effectiveness of psychiatric care in the penitentiary institutions.

According to the Decision No. 4, dated November 29, 2011 by the Board of the Ministry of Justice on the “Rules on Medical Examination of the Prisoners with

Serious Diseases Preventing the Imposition of Imprisonment”, the prisoners are medically examined and provided with relevant certifications on the basis of a referral of the administration of the detention facility, issued on the medical examination record given by the medical officer or as per the relevant court decision.

Furthermore, as reported by the Penitentiary Service, in compare to the previous year, the Special Medical Expert Commission (SCEC) intensified its activities in 2019, and the Commission has dealt with the issues of more prisoners. During 11 months of 2019, the cases of 19 prisoners were reviewed by the SCEC and 2 times more prisoners (12 people in total) were released in comparison with 2018. *The observations show that, in general, the experience in this area is not carried out effectively, and there is a need for more effective measures in this area for the placement of these people in specialized psychiatric hospitals, instead of penitentiaries.*

Prisoners, their family members or lawyers requested the Ombudsman to assist in arranging for a thorough medical examination and treatment, to be provided with referrals to a Medical Institution, and sometimes in determining the degree of disability. The issues reflected in the appeals were raised before the General Medical Department of the Ministry of Justice, and the vast majority of these appeals were resolved positively. The issues indicated in the appeals have been raised before the Main Medical Department of the Ministry of Justice and vast majority of the requests have been satisfied.

In its Recommendations the CPT highlights that *prisoners shall, any time, have the right to request a medical examination [...]. The medical service should be provided in such a way that discussions with the doctor and requests for confidential reception are exercised without delay.*³⁵

The Ombudsman considers it would be appropriate the requests of the prisoners for a medical care to be immediately and sensitively approached.

Institutions of the Ministry of Internal Affairs

Some deficiencies regarding the ***detention condition*** remain as challenge, e.g. it can be underlined the difficulty with heating systems in Zagatala DPD TPD.

The Ombudsman believes that comprehensive measures taken in this field must be continued and the detention condition standards must be brought into conformity with national and international legal acts.

One of the specific shortcomings found throughout the monitoring was the placement of first-time offenders together with recidivists in the same cell. The NPM team members have observed similar situations in Siyazan and Tovuz Districts Police Departments. It was also found that in Shemkir temporary detention place of the District Police Department, 3 (three) persons held under custody for the same criminal allegations, have been placed in one suite.

In view of the above, the Ombudsman considers it important to further strengthen the legal awareness activities of the Ministry of Internal Affairs.

³⁵CPT/Inf (92) 3, Second General Report on the CPT's activities, paras. 36

During a visit to Juvenile Temporary Detention Isolator of Baku City Chief Police Department of the Ministry of Internal Affairs, the NPM members found that in contradiction with the purpose of the detention facility, there were held a large group of people of different age, who were reported that to be engaged in begging. Furthermore, 3 of the interviewed said that they had been detained in the facility already more than 72 hours and expressed concerns about the custody condition and nutrition. Also, it was revealed during the monitoring of confinement place that the number of beds and the detainees were inconsistent, and appropriate bedding was not available. Hence, the Ombudsman requested the MIA regarding the findings and the issues raised were solved.

The right to have a legal aid and access to a lawyer are one of three fundamental safeguards of a detainee against ill-treatment which should apply as from the very outset of deprivation of liberty, regardless of how it may be described under the legal system concerned (apprehension, arrest, etc.).³⁶

The right of access to a lawyer shall not be only guaranteed for the suspects, but also e.g. to any person who is obliged by law to go to a police station and spend a specified period of time in custody.³⁷

The Ombudsman supports the activities of lawyers within the scope of her jurisdiction. *She also holds up the improvement of advocacy institution at the national level and welcomes the actions taken in the concerned area during the reporting period.* Lawyers play important role in protecting the rights of citizens. In this regard, the steps taken to increase the number of lawyers, the institution of bar exams can be considered a positive development. The Ombudsman considers it crucial to increase the number of lawyers at the national level.

As in previous years, in 2019 as well, the Ombudsman's hotline for torture allegations became an effective mechanism for prevention of impediments to exercise the right of lawyers to meet with their clients.

For example, Elchin Sadigov, a practicing lawyer, calling the hotline had claimed that his clients T.M and A.S. were detained in police custody in Salyan district Police Department and that although he presented the order to the police department 4 (four) hours before, he was not permitted to enter the police facility and to meet with his client and asked for an assistance, accordingly. The NPM team immediately contacted to Salyan district Police Department in this regard and investigated the grounds for detention. Consequently, the lawyer was permitted to meet with his client.³⁸

Khaver Ismayilova, a practicing lawyer, also contacted to Ombudsman Office via hotline stating that her client, G. Kh. was detained in the temporary detention place of Yasamal district Police Office and despite the fact that she has presented her lawyer practicing certificate to the facility, she had faced with barriers to meet with the client and requested for help.

³⁶CPT, GR 2, para. 36

³⁷CPT, GR 12, para. 41

³⁸<https://d9mc3ts4czbpr.cloudfront.006Eet/az/site/news/32365/>

*The similar problem has emerged with the detainee B.M. while being under the custody in the Detention Center for Administratively Detained Persons, which was settled with the NPM intervention and he met with his lawyer.*³⁹

The recommendations to Azerbaijan, indicated in the Report of the UPR, also include the recommendation about refraining from any undue interference in the work of lawyers and ensure the effective independence of the Bar Association of Azerbaijan.⁴⁰

From the perspective of preventing possible torture and ill-treatment, it is important to provide unimpeded access of lawyers with their clients and to stop undue interference.

A member of the Azerbaijan Bar Association, a lawyer Orkhan Kangarli was arbitrarily taken into custody, where his client was also held, despite the fact that he was a lawyer, and was subjected to ill-treatment in the confinement facility of the Station No.4 of Binagadi DPD.⁴¹ The Ombudsman investigated this issue and requested the Minister of Internal Affairs in this regard. Subsequently, the deputy-head of the police department was dismissed from the law-enforcement authorities; the investigator was also fired from his job due to shortcomings in their activities, as well as the head of the police department was severely reprimanded and various other disciplinary actions were taken against three other police officers.

The Ombudsman considers it necessary to immediately prevent barriers to the activities of lawyers and to take appropriate steps as provided by the law as regards to those who have committed similar violations.

The right of detainees to provide information: The CPT attaches special importance to the right of persons under the police custody to notify to a third party of his choice about their detention as one of the main guarantees. To the opinion of the CPT, this fundamental safeguard should apply as from the very outset of deprivation of liberty, regardless of, how it may be described under the legal system concerned (apprehension, arrest, etc.).

Persons deprived of their liberty by the police shall have the right to have the deprivation of their liberty notified to a third party (family members or relatives) of their choice,⁴² shall be applied from the very outset of detention. *However, the CPT acknowledges that in certain exceptional cases, this right may be restricted in the legitimate interest of police servicing.* However, such exceptions must be clearly defined and strictly limited in time; their use must be based on the relevant rough guideline.⁴³

For example, delays in notifying about the detention in any case must be recorded and reasonably justified, and the relevant decision must be approved by irrelevant senior police officer or prosecutor.

³⁹<https://www.bbc.com/azeri/azerbaijan-47793346>

⁴⁰Report of the Working Group on the Universal Periodic Review, Rec. no 141.76 http://unazerbaijan.org/wp-content/uploads/2018/12/Universal-Periodic-Review_-Azerbaijan-2018.pdf

⁴¹<https://report.az/hadise/vekil-orxan-kengerlinin-sikayeti-esasinda-arasdirma-aporilir/>

⁴²The European Code of Police Ethics/ Art. 57

⁴³CPT GR 12, para.43

However, in practice, there are still some challenges in the implementation of this provision.

A woman, whose son Jabbarov Anar was detained in Istanbul, Turkey and brought to Baku, asked to help to identify the location of her son. So, as per this incoming call to the hotline of the Ombudsman, the NPM delegation had immediately contacted to the Main Organized Crime Department of the Ministry of Internal Affairs to investigate the case. Consequently, it was found that the person was detained in Baku Pre-Trial Detention Center. The requester was informed accordingly.⁴⁴

Medical examination of detainees in the TDPs is one of the main safeguards against ill-treatment. The national legislation provides for medical examinations of detainees by medical personnel of the facility within 24 hours of upon the admission. A medical examination may also be performed by another medical officer upon the detainee's choice.

The Ombudsman pays specific attention to the issues related to the access to medical care by detainees. Thus, one of the issues to be addressed during the visits to places, which individuals cannot leave voluntarily, is the medical care of the persons held in those facilities. It should be noted that a doctor member of the Ombudsman's NPG is also present during the preventive visits.

At the time of the visit to the Goygol DPD, it was established that the medical examination of the persons brought to the TDP was conducted in the presence of the police. Nevertheless, under the clause 2.8 of the "Rules for the Provision of Medical and Psychological Aid to Detained or Arrested Persons, and Their Detention in Medical Institutions", approved by the Decision by the Cabinet of Ministers of Azerbaijan dated April 18, 2013, a medical officer conducts his/her examinations in police custody out of sight and hearing of other persons (with exception of security reasons).

Preventing arbitrary detention: In Azerbaijan, the issues related to detention of persons by the law-enforcement authorities are regulated by the criminal and procedural legislation. The grounds for, lawfulness, duration and conditions of detention, safeguards for a detained person and duties of the law-enforcement authorities have been specified in both, national and international legal acts as well as in the relevant standards as well.

In practice, in some cases, the requirements of the law are still violated. The hotline of the Ombudsman received a call by a resident of Goychay district, B.L., who was previously wanted. The requester informed that he had been detained by the Balaken District Police Department, despite the fact that he had voluntarily came to the Goychay District Enforcement and Probation Department and had a relevant document suspending the search, accordingly and asked for the appropriate assistance. The NPM team had immediately contacted to the administration of the Balaken District Police Department regarding the case to investigate the well foundness of detention. During the talk, the NPG members have highlighted the significance of consideration of the document on suspension of

⁴⁴<http://www.turan.az/ext/news/2019/4/free/Social/az/79992.htm>

search for that person as a legal basis for his release. As a consequence, a citizen, B.L. has been released from the relevant police department.

Taking into account the necessity of the elimination of shortcomings in this area, the Ombudsman calls on the MIA and its staff, as well as prosecutorial authorities to pay specific attention to this issue.

Documentation and unified registration system: The appropriate registration about the detainees is an important and justified guarantee of their rights. The process of comprehensive registration, providing the information on time of initial detention and the reasons for, hour for notification of rights, injury, mental disability and other symptoms, hours of contact or visit of a close relative, consular representative or lawyer, time of food delivery, time of interrogation, and the time of transfer or release should be strengthened. *The detainee's lawyer should also have access to such custody records.*⁴⁵

Different types of necessary information are recorded in different registries. The shortcomings found in registration books during the visits conducted, in 2019, to district police departments in Khachmaz, Dashkasan, Yevlakh, Shamkir, Goranboy and Goygol, once more, has evidenced that the work in this area was not effective.

The Ombudsman deems necessary to properly register the name of the detainee, the reason for and time of detention, interrogation time, transfer, procedures and other issues and that, the information must be described in detail.

Detention conditions and treatment of migrants: A number of difficulties found in previous years in the concerned area are still remaining.

The NPM members who visited Yevlakh Detention Center the State Migration Service for Irregular Migrants, while observing the visitation room found the lack of necessary equipment in the room, the lack of box for applications and complaints, the information about the parcel reception desks and the related rules, such as procedures of submission, reception or transfer of parcels to non-nationals, held in the facility, the list of items prohibited to be brought in packages, parcels and banderols as well as the text of normative legal acts establishing liability for concealment or other submission (sending or transfer) of the items specified in this list without inspection, and the work schedule and reception days of those rooms.

Furthermore, regarding this immigration facility, the NPM highlighted the shortcomings such as the absence of a phone booth to exercise the right to phone call by foreigners and stateless persons, placed in the facility in violation of Article 87.1.20 of the Migration Code of Azerbaijan; the lack of library and barbershop in the facility in contradiction with internal rules related to the organizational structure of the facility; hiring to the position of psychologist of a person, who is specialized in international law, to conduct the relevant work with foreigners in the facility; the lack of a book for psychological aid records, which describe the information on psychological work, applied methods and their effects, personality traits; and an absenteeism of a medical officer.

⁴⁵CPT, GR2, para.40

It should be emphasized that the NPM also found that the female paramedic, working in the facility, participated not only in medical examinations, but also in personal body search of female migrants that impede the relevant work of the facility.

During its monitoring activities in Baku Detention Center for Irregular Migrants of the State Migration Service, non-nationals M.A. and M.R. claimed that although they have been held under custody over 7 days, there was not yet issued any decision on placement, which violated the provisions of the Migration Code, Article 82, in particular.

Underlining the fact that immigration facility in Yevlakh city, is quite modern and in compliance with standards in relation to detention conditions, the Ombudsman stresses the significance of getting rid of shortcomings.

The Ombudsman considers it important to further strengthen the legal awareness activities of the State Migration Service and offers the cooperation in this area.

Given that the decisions on placement are made by the State Migration Service, this often resulted in the lack of documents on detainees or delays in such decisions. The Ombudsman convinced that building flexibility with decision-making process on the relevant cases, could remove delays in sending decisions to detention centers that will eradicate the problems in this area.

The institutions of the Ministry of Health: During the visits to the institutions of the Ministry of Health throughout the year, the NPM found that the building of Ganja Inter-district Narcological Dispensary is generally old and dirty, the inventory is old, the wards were unsuitable, the facility had not heating system and no conditions were provided for the recreation activities. The Ombudsman thinks it necessary to build a new building for the dispensary, familiarize employees with the internal regulations of the facility, improve the registration of the dispensary and ensure the diversity of the diet of detainees.

The main concern raised by the NPM regarding Ganja city Boarding House is that the building of the facility is old and unusable; therefore, we recommend to overhaul the facility building, to provide new essentials for infants, to improve the placement process of infants with limited physical capacities over the age of three that have to leave the facility, to increase the awareness of the facility staff on relevant internal legal framework and professional capacities.

The conditions and treatment standards in places, where persons cannot leave on their own will: Regarding some concerns raised by the residents of the social service institution for the persons of retirement age, located in Bilgah settlement, the NPM officially requested the Ministry of Health, Ministry of Labor and Social Protection and Baku Transport Agency to address those issues. The NPM members requested the Ministry of Health to provide the persons with diabetes with necessary medicaments. Consequently, the concerns about the access to medical care, provision of the residents with clothing and personal hygiene kits have been eliminated and infrastructural changes have been made to improve the living conditions.

During visits to boarding institutions of the Ministry of Education (eg, boarding schools with integrated training in Balaken, Mingachevir and Goranboy districts), it was found that some institutions did not have adequate material and technical conditions, others did not have adequate living standards, central heating systems and had difficulties in provision of first aid kits and medicines and the documentation. Hence, considering the relevance of the NPM mandate to monitor those institutions, it deems necessary to improve the living standards consistent with international norms and to provide with the necessary inventory of the institution in urgent need of overhaul.

The NPM delegation requested the Sheki Executive Office to eradicate shortcomings found during its monitoring activities in Sheki Mixed Type Children's Home, which included the inaccurate state of registration books, deficiencies in personal files of the children, incompleteness of documents related to placement in the facility, inconsistency of the amount of food with the number of children, overcrowding in dorms, bad organization of the medical care service. Subsequently, the indicated challenges have been eliminated. Furthermore, considering that the food norms, medical supplies and medicines for boarding schools are allocated in accordance with the occupancy of those institutions, and that, in case of overcrowding, all these create impediments to the treatment and care, as well as to proper organization of catering service and medical care. Therefore, the NPM highlights the importance of the allocation of additional funds by the Ministry of Finance.

The abovementioned show that the existing problems in some cases are not systemic and complex, but local and individual, which can be eliminated in a short amount of time. In this regard, the Ombudsman believes that in many cases, facilities and their subordinate central and local executive authorities are able to eliminate shortcomings at their own expense without making a mistake in their work and without additional financial and administrative resources from the state.

The Ombudsman calls on all government agencies to take approach to innovations and reforms taken at the domestic level, and to be responsible and proactive.

CHAPTER 4

LEGAL EDUCATION

One of the Azerbaijani NPM activity directions is to organize legal awareness measures to address the persons in places of deprivation of liberty and their staff.

The preamble of the OPCAT recalls for a combination of various legislative, administrative, judicial and other measures in the field of educational activities. In this regard, within the bounds of the Ombudsman's activities and effective bilateral cooperation with educational institutions responsible for the training of the staff of various state bodies, legal awareness measures have been continued.

As part of the cooperation with the Academy of Justice, topics on human rights, including the NPM activity of the Ombudsman have been included in the academic curricula.

So, the candidates for the middle management of the Penitentiary Service, were delivered lectures on “The NPM visits of the Ombudsman of Azerbaijan to penitentiaries in the context of national and international practice”; whereas, those who successfully passed the interviews to work in the Center for Forensic Examination, have been informed about “The activity directions and the NPM mandate of the Ombudsman of Azerbaijan”. But, the medical officers newly admitted to the Medical Service of the Ministry of Justice were taught lectures on “The monitoring of medical and sanitary units of the penitentiaries in the NPM capacity of the Ombudsman of Azerbaijan in the light of national and international experience”.

The participants of those courses became aware of the NPM functions of the Ombudsman as provided by the OPCAT, regular monitoring of places, where the persons cannot leave on their own will, recommendations and follow up visits, and relevant national and international good practices.

Effective cooperation was continued with educational institutions trained the personnel of law enforcement authorities, including the Police Academy of the Ministry of Internal Affairs. Within the framework of mutual cooperation, at the Academy, the senior level officials of internal affairs bodies were delivered a lecture on “Human Rights Protection Mechanisms”. The lecture was delivered by Rashid Rumzada, Head of the Department against Torture at the Ombudsman Office. He had informed the course listeners on the national and international human rights protection mechanisms, and the existed barriers and global challenges, as well as how the relevant international legal framework is applied at the domestic level.

This is noteworthy that at the initiative of the Azerbaijani NPM, the Academy of Justice and Police Academy of the Ministry of Internal Affairs have advanced their academic curricula and included topics on prevention of torture and other cruel, inhuman and degrading treatment or punishment into their curricula.

Throughout the visits, the NPM continued increasing legal awareness of the staff and detainees, held in the institutions of deprivation of liberty, including penitentiaries, temporary detention facilities, education, health and social-care institutions as well as provided them with legal advice.

As part of NPM activities, at the female Prison #4, the Ombudsman once again organized an “Open Door” reception for the prisoners.⁴⁶ Prior to the reception, the Ombudsman had an initial legal awareness talk with the administration of the institution and a large number of convicts. During those talks, the participants have been informed about the importance of the regular pardoning and amnesty acts issued at the national level, the essence and significance of the Presidential Order dated February 10, 2017 on humanization of penal policy and using alternatives to

⁴⁶<http://www.ombudsman.gov.az/az/view/news/1355/ombudsman-4-sayli-cezachekme-muessisesinde-achiq-qapi-qebulu-kechirmishdir>

punishment, comprehensive legal reforms taken by the Government. Also, the prisoners were extensively enlightened on legal issues. In addition to this, it should be noted that the law professor and LL.M students, specializing in human rights and criminal law of Baku State University have also participated during this open-door day, aimed specifically at legal awareness raising. From the practical point of view, it would be important for them, convinced that such opportunity was created at the initiative of the Ombudsman.

The events organized for the prisoners were based on live discussions where the questions on decriminalization of crimes, other criminal and civil law cases were explained in accordance with the law. As well as, the prisoners were explained their rights, eligibility criteria for pardoning as provided by the law, and the competences of the Ombudsman. They have been given appropriate explanations regarding their applications and requests. Furthermore, the prisoners have been also informed on the release of thousands of convicts, who have also socially integrated into the society, as a result of 65 pardoning and 11 amnesty acts issued at the national level from the very beginning of the state sovereignty.

Presenting the certificates on pardoning to the prisoners, released from the prisons, the staff of the HRCA has recommended them to effectively re-integrate into the society and family, observing the healthy life style, remaining loyal to the state and engaging in useful labor.

During Novruz holidays, the representatives of the HRCA took part in festive events, organized in the social institution for the retired persons, located in Bilgah settlement, in immigration detention center and the “X” military units of the Ministry of Emergency Situations Civil Defense Troops and Naval Forces of the Ministry of Defense. During these events, the HRCA staff increased the awareness of the participants about the varied activities of the Office in the field of human rights, including the rights of children, women and older persons.

As a part of the multilateral cooperation with the State Migration Service and Ministry of Labor and Social Protection, the HRCA has organized a joint round-table on the topic “Migration processes and protection of migrants’ rights in Azerbaijan”. This event particularly focused on discussions about the features, dynamics and regulation of migration processes in Azerbaijan, effective provision of human rights of migrants, preparing relevant proposals and suggestions to the competent government agencies. This should be noted that this event was aimed at expansion of network information and coordination of the work of state agencies, international organizations and the media outlets, along with the Ombudsman's Council of Experts as well as NGOs, as well as the Public Council under the State Migration Service. At the event, the Ombudsman highlighted the facts regarding Armenian ethnic cleansing policy against Azerbaijan lasted over 30 years and flow of over one million of refugees and IDPs, as one of the severe atrocities of the Armenia-Azerbaijan Nagorno-Karabakh armed conflict, as well as the global challenges in relation to xenophobia, Islamophobia, cruel, inhuman and torture incidents emerged in last years breaching the international law principles, including

the UNSC Resolutions. She underlined that, nevertheless, the number of the immigrants in the country increases due to the stable and tolerant environment.

This should be noted that the HRCA submitted proposals concerning effective protection of migrants' rights to the relevant state bodies. Subsequently, the Ombudsman's recommendations on the prolongation of the registration period for aliens at the place of residence, social protection of unaccompanied, deprived of parental care and asylum seeker children, detention conditions of irregular migrants, held in specialized detention centers and improvement of process of identifying their legal status were taken into account.

At the same time, under the monitoring jurisdiction, the NPG members conducted regular inspections in the immigration detention centers, learned the detention condition and treatment standards of the detained irregular migrants, who were necessarily assisted within the mandate of the Ombudsman.

It should be noted that the HRCA continued regularly working not only with immigrants, but also emigrants from Azerbaijan, who left the country for living abroad. The Ombudsman also progressing the multilateral cooperation with foreign NHRIs and Ombudsmen and diplomatic missions, accredited in the country, in the field of the protection of the participants of the migration process. The HRCA has concluded bilateral agreements, namely Memorandums of Understanding with foreign ombudsmen in a view to protecting the migrants' rights and promoting the process of legal migration. The impediments to the identification of legal status of Azerbaijani migrants living and working abroad, but with uncertain resident status, have been settled by virtue of those MoUs. Consequently, the violated rights of both immigrants and emigrants abroad and at the domestic level have been restored and the statuses of stateless persons have been legally defined with some documents.

The educational work addressed to the servants working in the subordinate bodies of the Ministry of Internal Affairs was continued in 2019 as well. During the monitoring, the NPM team held legal and consultative talks with the managerial staff and employees of the relevant bodies. The Constitutional Law, rights and duties of the detained and arrested persons, internal disciplinary rules of places of detention, the topics on how to further improve the registration and custody conditions have been taught in accordance with international standards.

CHAPTER 5

PUBLIC AFFAIRS AND INTERNATIONAL COOPERATION

In 2019, the cooperation with state bodies, local civil society organizations, including NGOs, mass media, regional and international organizations, foreign NPMs in the field of information and exchange of experiences, mutual participation at events, as well as organization of joint events have been continued as well.

The national and international communities have been regularly informed about the Azerbaijani NPM activities. The HRCA has published 33 news releases

about the NPM work. Of these, 24 were related to visits to facilities, where individuals could not leave voluntarily, 3 were related to legal awareness, 1 was related to pardoning, 5 were related to the participation in various events and other issues.

In general, within 2009-2019 years, 1007 news releases have been published regarding the NPM activity. The news releases, as well as NPM annual reports, the information about the composition of the NPM delegation, the relevant legal framework have been placed on the official website of the HRCA under special column in Azerbaijani and English languages. The NPM annual reports have also been placed on the official website and submitted to state agencies or international institutions.

The information provided by the appeals, incoming calls to the round-clock hotline of the Ombudsman, those received from NGOs, human rights defenders, lawyers, mass media, and online resources or the facts and materials obtained as a result of an investigation of one or another state body conducted upon request, as well as the relevance and quantity of the complaints checked directly on the spot and used during the preventive visits.

The NPG members, within the relevant jurisdiction, carried out regular meetings with persons, named in the media, detained, arrested or held in places, where persons could not leave voluntarily. The outcomes of those visits have been made public via news releases and posted on the Ombudsman's official website. As a part of the NPM activities, effective cooperation has been developed with government agencies, international organizations, NGOs, as well as the media outlets.

Within the activities of the NPM, the participation of civil society organizations and experts has been ensured on a regular basis through preventive visits, legal awareness events, the meetings with relevant government agencies and in discussions on legislation and in process of preparation of relevant reports.

The close bilateral cooperation has been continued also with the Public Committee, established under the Ministry of Justice, consisting of civil society members. The members of the Committee have been involved in the work of the NPM as experts.

During the reporting period, the Head of the Department on Prevention of Torture has participated in the events held by the Elected Commission of the Public Committee under the Ministry of Justice of Azerbaijan as a member of that Commission.

International cooperation: Further expansion of international relations and exchange of experiences and views have opened wide opportunities for the effective implementation of the activities of the Azerbaijan NPM.

Under the NPM jurisdiction, the HRCA collaborates and exchanges experience with the UN and its Treaty Bodies, including the CAT, the SPT, as well as the CPT, the Council of Europe, the European Union, the OSCE, the Association for the Prevention of Torture (APT) and other international organizations, as well as foreign NPMs.

As part of its international relations, organization of various effective meetings in the field of torture prevention, implementation of joint activities, and the participation of the Ombudsman and the NPM members in international events and mutual exchange of experience can be underlined as one of the main directions of the HRCA in a capacity of the NPM.

In the same context, the HRCA and UNICEF Country team built successful bilateral cooperation and both carried out joint monitoring of state children's institutions. Doctors, lawyers of the NPM team, as well as social workers and international experts from the UNICEF Country Office also took part in those visits. The mutual cooperation, including joint monitoring of state childcare institutions and joint work carried out within the NPM mandate to protect the child rights is highly appreciated by the UNICEF Country Office.

It should be noted that the HRCA and the UNICEF Country Team had concluded a joint action plan. In the frame of this Plan and guiding the principles of CRC and UN Treaty Bodies Recommendations, the HRCA continued its legal awareness work with the government agencies, law enforcement and local authorities, protecting the child rights in the regions, as well as civil society institutions and local communities through needs assessment and capacity building trainings. Moreover, educational materials have been produced and dispensed, as well as state child-care institutions have been jointly inspected.

In the reporting year, the HRCA held a number of meetings with representatives of international organizations. During these meetings, the diplomats got acquainted with the overall activities of the HRCA, including its NPM activities, and had discussed the perspectives of mutual cooperation.

At the meeting of the Ombudsman with the international delegation headed by Ms. Dunja Mijatović, the CoE Commissioner for Human Rights, who was on a visit to Azerbaijan, the NPM activities, along with other areas of jurisdiction has also been focused on by the CoE Commissioner. The guest was informed about the Azerbaijani NPM work from the very beginning of its establishment in 2008, including its monitoring of places of deprivation of liberty, conducted in the previous reporting year.

The guest was informed that the National Preventive Group regularly visited places where detainees could not leave voluntarily, including penitentiaries, temporary detention facilities, psychiatric hospitals, as well as social facilities, boarding houses and boarding houses for the elderly and people with disabilities.

CHAPTER 6

CONCLUSION AND RECOMMENDATIONS

Considering the analyses of the NPM findings and to ensure effective protection of the rights of detainees, the Ombudsman recommends the following:

Legal Framework

(1). To strengthen the legal and institutional mechanisms against ill-treatment and punishment; and to analyze the legislation and bringing them into conformity with international standards (*submitted to the Parliament*);

(2). To re-develop unified court practice about torture and ill-treatment cases (*Supreme Court*);

(3). To harmonize the national legislation on the rights of older persons with the UN Principles for Older Persons and other international standards (*Parliament*);

(4). To improve the juvenile justice system, including relevant procedures in the Criminal Procedure Code (CPM Articles 428-435) in accordance with the UN CRC and international legal documents on child rights (*Parliament*);

(5). To refrain from using offensive language in the national laws in relation to the persons with disabilities (*Parliament*);

(6). To amend the legislative acts with regard to the granting persons without reading and writing skills the right to oral communication (*Parliament*);

(7). To establish effective mechanisms for the placement of persons suffering from mental illness or whose mental health has significantly deteriorated during their imprisonment in inpatient psychiatric hospitals by amending the “Rules on Medical Examination of the Prisoners with Serious Diseases Preventing the Imposition of Imprisonment” (*Cabinet of Ministers*);

(8). To revise the food norms of persons in educational institutions, mental hospitals and other social institutions (*Cabinet of Ministers*);

Recommendations to the Ministry of Internal Affairs

(1). To strengthen control over the transfer of detainees and those remanded in custody to the Investigation Isolator within a timeframe as provided by the law, and to involve the medical staff from the outside of the institution and the documentation;

(2). To continue measures for improving the custody conditions in temporary detention places;

(3). To promote the Law of the Republic of Azerbaijan “On Ensuring the Rights and Freedoms of Persons held in Places of Deprivation of Liberty” among police officers extensively and to follow-up the implementation of the Law;

(4). To conduct comprehensive registration of each detainee in accordance with CPT standards, covering all aspects of detention and all measures taken in relation to detainees, by eliminating shortcomings in relevant registration books;

(5). To increase control to ensure that lawyers meet with their clients;

(6). To deepen control over the observance of detention periods by police as provided by the criminal procedure legislation;

Recommendations to the Ministry of Justice

(1). To improve the Guidelines on Security Measures in the Penitentiary System and the Rules for Their Application concerning the timeframe, extent and grounds for the use of special measures as a last resort in line with the UN Standard Minimum Rules for the Treatment of Prisoners, the European Prison Rules and the CPT and SPT Recommendations;

(2). To expand the activities of the Probation Service of the Ministry of Justice to exercise effective control over the execution of non-custodial sentences and increase the efficiency of management in this area; and to develop and implement social rehabilitation and reintegration programs of offenders and former offenders;

(3). To accelerate the construction works of a penitentiary for female prisoners in the Zabrat settlement (Baku), of juvenile correctional institution, of a prison in the Umbaki settlement, and of the penitentiary complexes in Ganja and Lankaran cities;

(4). To increase attention to the prison labor programs; to create new jobs; to carry out projects and to specialize the confinement institutions in terms of production;

(5). To improve the activities of precinct-type penitentiaries, and to consider their re-organization or combining in a new form;

(6). To renovate further the material and technical base in penitentiaries, and to increase the responsibility of the staff;

(7). To train the penitentiary staff on how to apply the special measures;

(8). To give preference to oral warnings or reprimands as administrative sanctions for the regime violations, instead of transfer to a penal isolator as provided by the law and driven from the international experience;

(9). To bring the number of staff into consistency with the number of prisoners and the arrested to increase special attention to correctional work of offenders and to level-up the relevant work, and to ensure effectiveness of the educational work;

(10). To take further measures for full and consistent implementation of the relevant provisions of the State Program on the Development of Justice in Azerbaijan for 2019-2023;

(11). To adjust a food ration to the approved norms, to improve a food supply, and to improve food quality;

(12). To take further measures for increasing the effectiveness of psychiatric care in penitentiaries;

Recommendations to the Ministry of Health

- (1). To promote the practice of non-isolation of patients in psychiatric clinics;
- (2). To take appropriate measures to implement public control in psychiatric institutions;
- (3). To accelerate the repair and construction works in psychiatric hospitals and to improve their living conditions;

Recommendations to the Ministry of Education

- (1). To re-organize the activities of open and closed special educational institutions in terms of prevention of juvenile delinquency as required by the law;
- (2). To conduct modular “cluster” trainings under the UN CRC, and to held comprehensive and interactive awareness work on combating and preventing ill-treatment, child rights and relevant protection mechanisms, children in conflict with the law and their legal status;
- (3). To carry out overhaul in boarding schools to improve the living conditions;
- (4). To expand measures for the effective organization of recreation activities for children living in state child-care institutions.

Recommendations to the Ministry of the Ministry of Labor and Social Protection of Population

- (1). To implement complex and modern rehabilitation and social integration programs for persons, released from penitentiaries, and to develop social services;
- (2). To carry out abilitation programs to ensure the right of persons with disabilities to the opportunity to gain a living by work freely chosen in places, where persons cannot leave on their own will, through increasing their potentials;
- (3). To provide social care institutions, especially newly established, rehabilitation and social shelters, as well as orphanages with the necessary staff (social worker, psychologist, speech therapist, etc.) and to increase salaries;
- (4) To bring the living conditions of older persons and the relevant legislative acts in line with the UN Principles on Older Persons and other international standards;
- (5). To support and implement practically individual resocialization programs for the long-term prisoners, and to re-organize the primary secondary and vocational education for prisoners in line with modern requirements.

Recommendations to the State Migration Service

- (1). To create a phone booth at the Yevlakh District Detention Center for Irregular Migrants to ensure the rights of non-nationals and stateless persons to access to phone call; and also, to create a medical unit;

- (2). To increase the number of female staff in the detention centers of irregular migrants;
- (3). To ensure and simplify flexibility in decision-making process regarding the placement of irregular migrants in detention centers;
- (4). To provide Yevlakh District Detention Center for Irregular Migrants with qualified doctors and psychologists.

Appendix 1

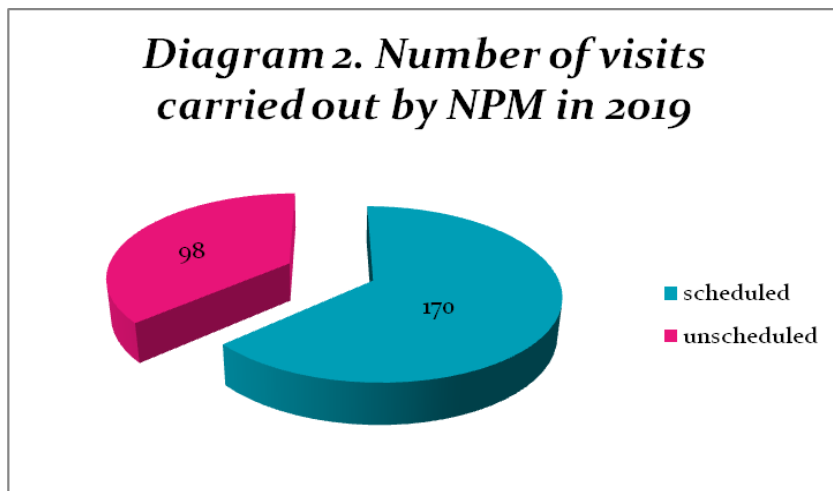
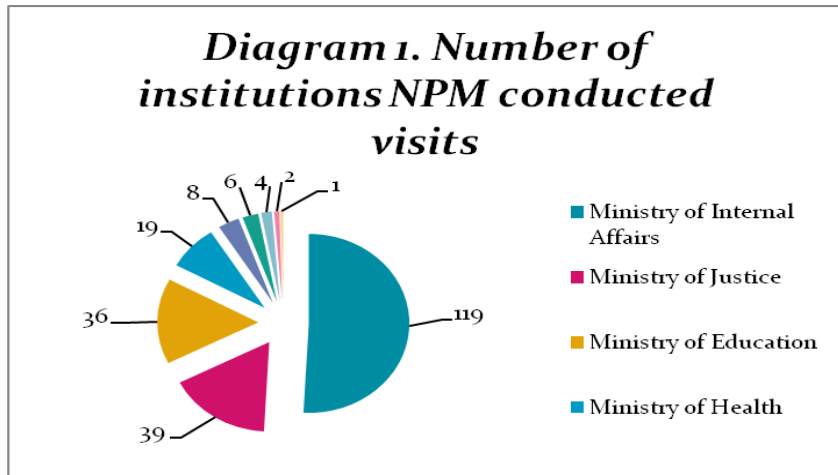


Diagram 3. Number of NPM visits per institution

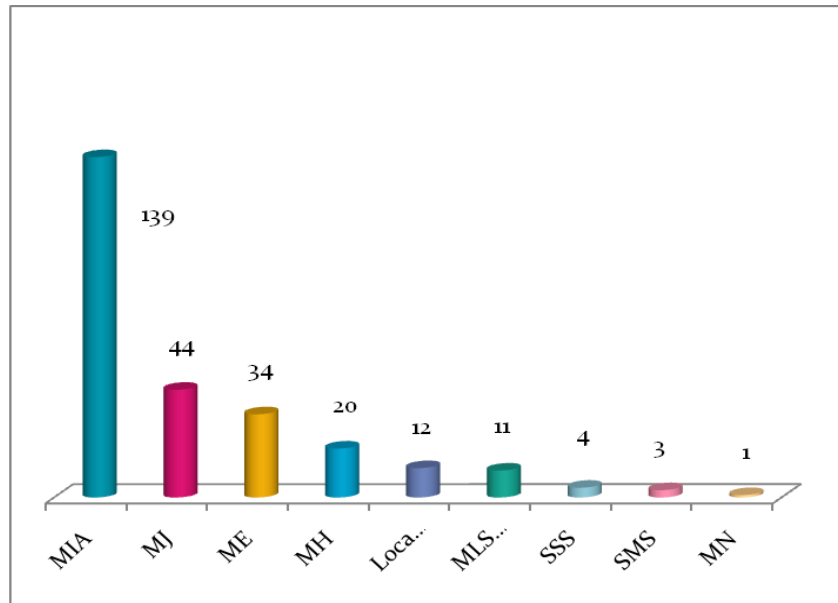


Diagram 4. Number of NPM visits per years

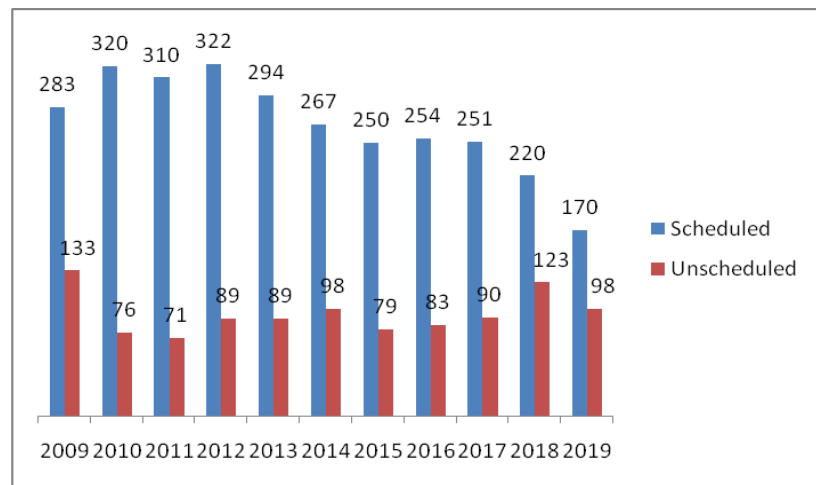
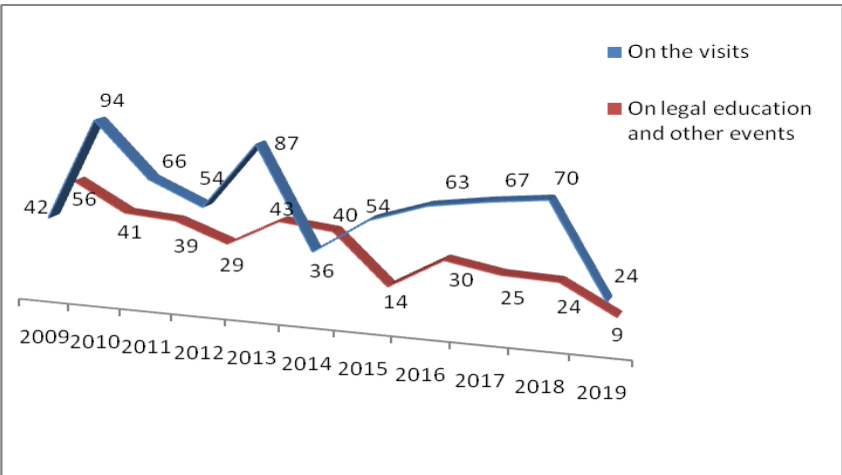


Diagram 5. Number of NPM press releases (per year)



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

Adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199 entered into force on 22 June 2006

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, inhuman or degrading treatment or punishment can be strengthened by non-judicial means of a preventive nature, based on regular visits to places of detention, Have agreed as follows:

PART I

General principles

Article 1

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

Article 2

1. A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as the Subcommittee on Prevention) shall be established and shall carry out the functions laid down in the present Protocol.
2. The Subcommittee on Prevention shall carry out its work within the framework of the Charter of the United Nations and shall be guided by the purposes and principles thereof, as well as the norms of the United Nations concerning the treatment of people deprived of their liberty.
3. Equally, the Subcommittee on Prevention shall be guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity.
4. The Subcommittee on Prevention and the States Parties shall cooperate in the implementation of the present Protocol.

Article 3

Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).

Article 4

1. Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if

necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.

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

PART II

Subcommittee on Prevention

Article 5

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

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

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

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

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

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

Article 6

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

2.

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

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

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

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

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

Article 7

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

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

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

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

(d) Elections of the members of the Subcommittee on Prevention shall be held at biennial meetings of the States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Subcommittee on Prevention shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.

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

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

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

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

Article 8

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

Article 9

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

Article 10

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

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

(a) Half the members plus one shall constitute a quorum;

(b) Decisions of the Subcommittee on Prevention shall be made by a majority vote of the members present;

(c) The Subcommittee on Prevention shall meet in camera.

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

PART III

Mandate of the Subcommittee on Prevention

Article 11

1. The Subcommittee on Prevention shall:

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

(b) In regard to the national preventive mechanisms:

(i) Advise and assist States Parties, when necessary, in their establishment;

(ii) Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;

(iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(iv) Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

(c) Cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.

Article 12

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

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

Article 13

1. The Subcommittee on Prevention shall establish, at first by lot, a programme of regular visits to the States Parties in order to fulfil its mandate as established in article 11.
2. After consultations, the Subcommittee on Prevention shall notify the States Parties of its programme in order that they may, without delay, make the necessary practical arrangements for the visits to be conducted.
3. The visits shall be conducted by at least two members of the Subcommittee on Prevention. These members may be accompanied, if needed, by experts of demonstrated professional experience and knowledge in the fields covered by the present Protocol who shall be selected from a roster of experts prepared on the basis of proposals made by the States Parties, the Office of the United Nations High Commissioner for Human Rights and the United Nations Centre for International Crime Prevention. In preparing the roster, the States Parties concerned shall propose no more than five national experts. The State Party concerned may oppose the inclusion of a specific expert in the visit, whereupon the Subcommittee on Prevention shall propose another expert.
4. If the Subcommittee on Prevention considers it appropriate, it may propose a short follow-up visit after a regular visit.

Article 14

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

- (a) Unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;
- (b) Unrestricted access to all information referring to the treatment of those persons as well as their conditions of detention;
- (c) Subject to paragraph 2 below, unrestricted access to all places of detention and their installations and facilities;
- (d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the Subcommittee on Prevention believes may supply relevant information;
- (e) The liberty to choose the places it wants to visit and the persons it wants to interview.

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

Article 15

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

Article 16

1. The Subcommittee on Prevention shall communicate its recommendations and observations confidentially to the State Party and, if relevant, to the national preventive mechanism.
2. The Subcommittee on Prevention shall publish its report, together with any comments of the State Party concerned, whenever requested to do so by that State Party. If the State Party makes part of the report public, the Subcommittee on Prevention may publish the report in whole or in part. However, no personal data shall be published without the express consent of the person concerned.
3. The Subcommittee on Prevention shall present a public annual report on its activities to the Committee against Torture.

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

PART IV

National preventive mechanisms

Article 17

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

Article 18

1. The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.
2. The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.
3. The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.
4. When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights.

Article 19

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

- (a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;
- (b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;
- (c) To submit proposals and observations concerning existing or draft legislation.

Article 20

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

- (a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;
- (b) Access to all information referring to the treatment of those persons as well as their conditions of detention;
- (c) Access to all places of detention and their installations and facilities;
- (d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;
- (e) The liberty to choose the places they want to visit and the persons they want to interview;
- (f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

Article 21

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

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

Article 22

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

Article 23

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

PART V Declaration

Article 24

1. Upon ratification, States Parties may make a declaration postponing the implementation of their obligations under either part III or part IV of the present Protocol.
2. This postponement shall be valid for a maximum of three years. After due representations made by the State Party and after consultation with the Subcommittee on Prevention, the Committee against Torture may extend that period for an additional two years.

PART VI Financial provisions

Article 25

1. The expenditure incurred by the Subcommittee on Prevention in the implementation of the present Protocol shall be borne by the United Nations.
2. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee on Prevention under the present Protocol.

Article 26

1. A Special Fund shall be set up in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations made by the Subcommittee on Prevention after a visit to a State Party, as well as education programmes of the national preventive mechanisms.
2. The Special Fund may be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organizations and other private or public entities.

PART VII

Final provisions

Article 27

1. The present Protocol is open for signature by any State that has signed the Convention.
2. The present Protocol is subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 28

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

Article 29

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

Article 30

No reservations shall be made to the present Protocol.

Article 31

The provisions of the present Protocol shall not affect the obligations of States Parties under any regional convention instituting a system of visits to places of detention. The Subcommittee on Prevention and the bodies established under such regional conventions are encouraged to consult and cooperate with a view to avoiding duplication and promoting effectively the objectives of the present Protocol.

Article 32

The provisions of the present Protocol shall not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1977, nor the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

Article 33

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

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

3. Following the date on which the denunciation of the State Party becomes effective, the Subcommittee on Prevention shall not commence consideration of any new matter regarding that State.

Article 34

1. Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the present Protocol with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all States Parties for acceptance.

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

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

Article 35

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

Article 36

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

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

Article 37

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