



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

Distr.
GENERAL

CAT/C/59/Add.1
16 January 2003

Original: ENGLISH

COMMITTEE AGAINST TORTURE

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

Second periodic reports of States parties due in 2001

Addendum

AZERBAIJAN*

[7 November 2001]
[Original: RUSSIAN]

* The initial report submitted by the Government of Azerbaijan is contained in document CAT/C/37/Add.3; for its consideration by the Committee, see document CAT/C/SR.401, 404 and 406, and Official Records of the General Assembly, fifty-fifth session, Supplement No. 44 (A/55/44), paragraphs 64-69.

The information submitted by Azerbaijan in accordance with the consolidated guidelines for the initial part of the reports of States parties is contained in HRI/CORE/1/Add.41/Rev.2.

CONTENTS

	<u>Paragraphs</u>	<u>Page</u>
I. INFORMATION ON NEW MEASURES RELATING TO APPLICATION OF THE CONVENTION	1 - 203	3
Article 1	1 - 7	3
Article 2	8 - 89	3
Article 3	90 - 93	19
Article 4	94 - 110	20
Article 5	111 - 112	22
Article 6	113 - 125	23
Article 7	126 - 131	26
Article 8	132 - 134	26
Article 9	135	27
Article 10	136 - 147	27
Article 11	148 - 168	28
Article 12	169 - 172	33
Article 13	173 - 187	34
Article 14	188 - 194	35
Article 15	195 - 198	36
Article 16	199 - 203	37
II. COMPLIANCE WITH THE COMMITTEE'S CONCLUSIONS AND RECOMMENDATIONS	204 - 224	38

I. INFORMATION ON NEW MEASURES RELATING TO APPLICATION OF THE CONVENTION

Article 1

1. The Constitution of the Republic of Azerbaijan, adopted in 1995, contains fundamental provisions designed to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment.
2. Article 46 of the Constitution states that the State shall protect the dignity of the individual and that there can be no justification for affronts to human dignity. No one may be subjected to cruel treatment or torture or to degrading treatment or punishment. The article further states that no medical, scientific or other forms of experiments may be conducted on any persons without their consent.
3. The new Code of Criminal Procedure and Criminal Code of the Republic of Azerbaijan entered into force on 1 September 2000. Article 15 of the Code of Criminal Procedure expressly prohibits the use of torture and other cruel, inhuman or degrading treatment or punishment in the conduct of criminal proceedings and lists actions by officials that fall under the category of inadmissible treatment. In their turn, articles 13 and 133 of the Criminal Code establish criminal liability for acts of torture and cruel treatment.
4. Under article 113 of the Criminal Code, entitled "Use of torture", the inflicting of physical pain or mental suffering on persons held in custody or subject to other forms of deprivation of liberty is deemed to be a criminal offence.
5. Criminal liability is also incurred by the inflicting of physical or mental suffering through systematic beating or other violent acts (article 113.1 of the Criminal Code - "Cruel treatment").
6. Article 113.3 of the Code categorizes as a criminal offence actions covered by articles 113.1 and 113.2 performed by, or at the bidding of, officials taking advantage of their official position with a view to extorting information from persons or forcing them to make confessions or with the aim of punishing them for actions which they have committed or are suspected of having committed.
7. At the same time, the principal factor preventing the Republic of Azerbaijan from fully implementing the Convention over its entire territory remains the continuing aggression by the neighbouring State of Armenia against Azerbaijan and its occupation of 20 per cent of the territory of Azerbaijan. According to a wide range of available data, human rights are systematically being violated in the occupied territories and Azerbaijani servicemen and hostages are being subjected to cruel treatment and torture.

Article 2

8. A human rights research institute has been set up under the auspices of the Azerbaijani Academy of Sciences, to promote research on human rights and freedoms and to broaden legal knowledge in this area.

9. Another important measure in the field of human rights was the reinstatement, in May 1995, of the system of presidential pardons and the establishment of a Pardons Commission under the head of State.

10. Over the period 1996-2001, amnesty acts (six in total) and pardons have been adopted at the behest of the President in respect of 63,477 persons, 18,891 of whom have been released from detention. The amnesty decision, adopted on 1 February 2001 by the Azerbaijani Parliament on the initiative of the head of State, pursuant to the admission of the Republic of Azerbaijan to membership of the Council of Europe, was swiftly passed into law. In order to ensure the prompt and correct implementation of the Amnesty Act, the Minister of Justice promulgated an enacting order and ratified a plan of measures. Implementation of the Amnesty Act led to the release from detention of 2,429 convicted persons, 320 sentences were cut by one third and 4,703 persons were granted amnesties by the courts. It should be noted here that the Pardons Commission ruled that amnesties or pardons would not be granted to persons convicted of torture or other cruel, inhuman or degrading treatment or punishment. Although there was no definition of the crime of torture in the country's former criminal law and the crime was covered by article 168 of the Criminal Code, on action *ultra vires*, persons convicted under this article were also excluded from amnesties and pardons.

11. With the help of foreign experts, including experts from Europe, a number of important statutes have been adopted to ensure protection of human rights and freedoms. Thus, the Police Act and the Police Inquiries Act, adopted on 28 October 1999 and 28 December 1999 respectively, define the organization and powers of the police, with due regard for the European Convention on Human Rights, article 8 of which outlines the right to privacy and family life. Interference in a person's private life, including searches and other investigative measures not authorized by the courts (except as specified otherwise by law), are prohibited. The law in this area clearly outlines the grounds and procedure for arrest, specifying the powers of the police and the rights of detained persons. It states that rights and freedoms may be restricted only by order of a court. It also provides for internal and external monitoring of police activities and establishes the right to challenge unlawful actions by police officers in the courts.

12. The Procurator's Office Act, adopted on 7 December 1999, significantly restricts many of the powers of the Procurator's Office. Under the new Act, the Procurator's Office has been stripped of powers which were a legacy of the old Soviet system and which do not properly belong within its jurisdiction. Redefining the powers of the Procurator's Office as an arm of the judiciary, the Act acknowledges the true role of the courts in a democratic society. The principal role of the Procurator's Office is to guide the procedural aspects of criminal prosecutions and to support the charges brought against suspects. Following the entry into force of the Penal Enforcement Code, with effect from 1 September 2000, the function of overseeing the execution of sentences was removed from the Procurator's Office. The Act also establishes a system whereby the Procurator's Office is monitored by the head of State, Parliament and the judicial authorities. Procedural actions previously performed by the Procurator's Office and involving restrictions on human and civil rights and freedoms may now only be conducted with a court order and in accordance with a procedure and in cases prescribed by law.

13. The Legal Profession and Legal Practice Act of 28 December 1999, which was drafted with the assistance of experts from the Council of Europe, the German Agency for Technical Cooperation (GTZ) and the World Bank, ensures the equality of the prosecution and the defence and establishes firm guarantees of the constitutional rights to legal protection, the right to a fair trial and the independence of the bar. The Act spells out the fundamental principles governing the independence of defence lawyers in the performance of their duties. Under the country's law, defence lawyers may participate in all investigative actions and in trials, submit evidence and confer with their clients confidentially and without hindrance. The Act enshrines the legal status of lawyers, their independence and the basic principles of their self-regulation, thereby guaranteeing the independence of the legal profession.

14. On 1 September 2000, the Criminal Code, the Code of Criminal Procedure, the Civil Code, the Code of Civil Procedure, the Code of Administrative Offences and the Penal Enforcement Code all entered into force. These instruments were drafted with the assistance of leading foreign experts on the basis of international and European standards.

15. On 11 December 1998, the State Protection (Parties to Criminal Proceedings) Act was adopted, laying down a system of measures to guarantee the safety and social protection of victims, witnesses and other participants in criminal proceedings.

16. Article 12 of the Code of Criminal Procedure obliges the authorities conducting criminal proceedings to ensure that the rights and freedoms of the parties to the proceedings are upheld.

17. Articles 13-22 of that Code set out procedural safeguards for the following constitutional human and civil rights and freedoms: the right to freedom, inviolability of the person and the home, protection of confidentiality, private life, honour and dignity, and the right to legal assistance.

18. Article 442 of the Code states that petitions and applications concerning police inquiries and pre-trial investigations that encroach on the rights referred to above shall be considered under the judicial supervision procedure.

19. Under article 90 of the Code, suspects have the following rights:

- Not to testify against themselves or their next of kin;
- To have the services of a lawyer from the moment of arrest or the moment they are informed of the preventive measure that is to be applied against them;
- Freely to choose and dismiss their counsel and, should they decline the services of a lawyer, to defend themselves;
- To meet their counsel in private, without restriction as to the number and duration of such meetings;

- To inform their families and next of kin without delay at their place of residence, work or study about their detention by telephone or by other means;
- To participate, at their own request, with the assistance of counsel, in investigative and other procedural measures.

20. The order on the institution of criminal proceedings must be passed within 24 hours of arrest, failing which the detainee must be released. But even when criminal proceedings have been instituted, the initial period of preventive detention must not exceed 48 hours (a court must determine the appropriate preventive measure).

21. Under article 85 of the Code of Criminal Procedure, investigators are obliged to uphold the right of suspects to the services of a lawyer from the moment of arrest, the laying of charges or the taking into custody. Under article 153 of the Code of Criminal Procedure, the criminal prosecution authorities must make arrangements for detainees to meet their lawyers or legal representatives in private. Detainees may, on a written application, decline the services of lawyers provided. The Code of Administrative Offences provides for administrative detention of not more than three hours (except for certain cases specified in the Code, when the detainee may be held for up to 24 hours).

22. Under the Criminal Code, the following are criminal offences: planning, preparing, launching or waging a war of aggression (art. 100); attacks on persons or organizations enjoying international protection (art. 102); genocide (art. 103); destruction of a population (art. 105); slavery (art. 106); deportation or forcible resettlement of a population (art. 107); persecution (art. 109); forcible detention (art. 110); racial discrimination (apartheid) (art. 111); deprivation of liberty in violation of international legal standards (art. 112); torture (art. 113); violation of the laws and customs of war (art. 115); violation of the standards of international humanitarian law during armed conflict (art. 116); and cruel treatment (art. 133). Finally, chapters XX, XXI and XXVII of the Criminal Code deal with offences against personal freedom and honour, the constitutional rights and freedoms of individuals and citizens and public morals.

23. Section II of the Code of Administrative Offences makes provision for administrative proceedings to be brought in connection with offences against citizens' political, social and economic rights.

24. Azerbaijani law proscribes unlawful deprivation of liberty. This offence is covered by article 145, on the unlawful deprivation of liberty, of chapter 19 of the Criminal Code (Offences against personal liberty and dignity), which specifies various punishments for different types of unlawful deprivation of liberty. Unlawful deprivation of liberty covers such cases as effectively depriving persons of the opportunity to move about in unenclosed areas of their own free will, locking them indoors, tying them up, or forcibly detaining them by, for example, threatening them with a weapon. The law makes provision for strictly defined circumstances in which persons may be deprived of their liberty by a public body, namely, administrative detention, committal to a psychiatric hospital, coercive measures taken pursuant to criminal proceedings, and criminal punishment in accordance with a procedure prescribed by law. A citizen is entitled to detain another individual only in self-defence, or when the latter is committing an offence, or

in emergencies. Any other form of detention constitutes unlawful deprivation of liberty. One form of this offence, according to the Criminal Code, is to deprive persons of their liberty by committing them to a psychiatric institution.

25. Article 292 of the Criminal Code proscribes unlawful detention and remanding or holding in custody. The article is designed to protect the inviolability of the individual, guaranteed by the Azerbaijani Constitution. This article differs from the previous Criminal Code in that it extends the elements constituting this crime to include, alongside unlawful detention and short-term imprisonment, unlawful remand in custody. The sanctions provided in the article have also been considerably increased.

26. Under article 290 of the Criminal Code, it is a criminal offence to institute criminal proceedings against knowingly innocent persons. The crime covered by this article flagrantly infringes the constitutional rights of citizens and the interests of justice. By contrast to the previous Criminal Code, the categories of persons capable of bringing criminal proceedings has been considerably extended, to include any official in whom this right is vested (judges, procurators, investigators and persons conducting initial inquiries).

27. The Constitution enshrines the principle of the separation of the legislative, executive and judicial branches. Based on that principle, the judiciary is an independent branch of State power; Azerbaijani law provides an array of guarantees of the independence of the judiciary and establishes conditions for significantly raising the status of the judiciary and of its representatives, the judges. Azerbaijani courts have uniform legal status, i.e., they enjoy equal rights and guarantees and are all subject to the same obligations. Taken as a whole, the various elements of the status of the courts are designed to ensure the independence of judges.

28. Under article 113 of the Courts and Judges Act of 10 June 1997, the following constitute grounds for relieving judges of their functions:

- Submission of a written application to resign from office at their own request;
- Handing down by a court of an enforceable guilty verdict against a judge or a ruling imposing coercive measures of a medical nature;
- Determination by a court that the judge is legally incompetent or of limited legal competence;
- Death;
- Determination by the court that the judge is deceased or has disappeared without trace;
- Failure by candidate judges to meet the requirements stipulated by the Act for the office of judge;
- Conduct by judges of activities incompatible with their office;

- Renunciation of Azerbaijani citizenship and adoption of the citizenship of another State or the undertaking of obligations to another State;
- Finding by a special judicial commission set up by the Supreme Court that, for reasons of illness, the judge has been unable to perform his or her duties over a period of more than four months;
- Commission of acts resulting in the institution of disciplinary proceedings for a second time within a period of one year.

29. The independence of the judiciary is guaranteed and enshrined by the Constitution and statutes of the Republic of Azerbaijan. The Courts and Judges Act is intended to ensure the administration of justice in Azerbaijan and to establish the independent judiciary provided for in the Constitution. The Constitutional Court called for by the Azerbaijani Constitution was established in 1998 and occupies a prominent position in the country's judicial system, playing a key role in developing legal standards and ensuring respect for human rights in Azerbaijan. According to the Constitutional Court Act, the Constitutional Court is an autonomous State body, which is organizationally, financially and in every other way independent of legislative, executive and other judicial bodies (art. 6). In carrying out their functions, the judges of the Constitutional Court are independent and subordinate only to the Azerbaijani Constitution (art. 11). To date, the Constitutional Court has adopted a number of decisions designed to bring the country's laws and the orders and decisions adopted by the executive authorities into line with the provisions of the Constitution.

30. The independence of judges is ensured by their absence of political bias, irremovability, and inviolability for the duration of their term of office; by the independence of the operation of the judiciary and the legally prescribed procedure for the administration of justice; by the prohibition of any restrictions on or interference in the judicial procedure; by measures to ensure the personal safety of judges and provide them with material and social guarantees; and by the rule that judgements of the court are mandatory and may not be revisited.

31. Under the Constitution, the Courts and Judges Act and the Constitutional Court Act, persons appointed to the office of judge may not engage in political activity or join political parties. Judges are irremovable for the duration of their term of office and may not be transferred to another post without their consent. Judges have the rights of independence, irremovability and inviolability. The inviolability of judges means that they may not be subject to criminal or administrative prosecution, to arrest or detention, or to searches of their property or person, nor may they be compelled to appear before the authorities. When the actions of judges contain indicia of a crime, they may be removed from office by the procedure outlined in article 128, paragraphs 4 and 5, of the Azerbaijan Constitution. Judges who have been removed from office may be subject to criminal prosecution and held in short-term detention only with the consent of the disciplinary bench of the Supreme Court. The inviolability of judges is further safeguarded by the stipulation that the consent of this body must be obtained, since the disciplinary bench naturally wishes to obtain as weighty as possible evidence of the involvement of a judge in a crime. Upon acquittal, or in the absence of facts and circumstances constituting a

breach of the law, or of evidence that an offence has been committed, the powers of a judge who has been removed from office are restored. The inviolability of judges also extends to their residence, workplace, transport, means of communication, correspondence and personal property and documents.

32. The regulations on inviolability, which establish one of the core elements of the status of judges, are thus intended to safeguard the foundations of the constitutional system, namely, the separation of powers and the autonomy and independence of the judiciary from external and arbitrary action or influence, and to prevent judges from being harassed on account of their work.

33. The following constitutional principles concerning judicial procedure provide important safeguards for the fair administration of justice:

- Principle of the subordination of judges to the Constitution and laws of Azerbaijan: In hearing cases, the courts shall be guided by the Constitution, the laws and other statutory instruments of the Republic of Azerbaijan, and also by international treaties to which Azerbaijan is a party;
- Principle of the adversarial nature of legal proceedings: According to article 23 of the Constitutional Court Act, the Constitutional Court shall not be bound by the arguments and evidence adduced by the parties to a dispute and must proceed to investigate and examine the issues comprehensively and dispassionately;
- Principle of openness of court proceedings: Under the Constitution, the Courts and Judges Act and the Constitutional Court Act, all court proceedings shall be held in open court. Cases shall be heard in camera only in circumstances prescribed by law. All court judgements shall be made public;
- Principle of equality before the law and the courts: Justice in Azerbaijan shall be administered on the basis of the equality of all before the law and the courts, regardless of race, nationality, official position, opinions, membership of political parties, trade unions or other social organizations;
- Principle of the right to defence at any stage of proceedings: No one may be deprived of the right to protection by the courts. Suspects, accused persons and defendants are guaranteed the right to defence as provided for under Azerbaijani law;
- Principle of the presumption of innocence: Article 63 of the Constitution and article 11 of the Courts and Judges Act state that justice shall be administered on the basis of the presumption of innocence, in other words, that all persons accused of the commission of a crime shall be considered innocent until such time as their guilt has been proved by the legally established procedure and a sentence has been handed down by a court and entered into force;

- Principle of the prohibition of changing legal jurisdiction: Article 62 of the Constitution and article 15 of the Courts and Judges Act prohibit changes to the legal jurisdiction assigned under Azerbaijani law and the unwarranted removal of cases from judges.
- Principle of the collegial nature of judicial proceedings and the direct administration of justice: Under article 4 of the Courts and Judges Act and articles 5, 25 and 26 of the Constitutional Court Act, the work of the courts shall be based on the principles of the primacy of the Constitution and of fairness, independence and the rule that the courts must speak with one voice;
- Principle of the prohibition of interference in judicial proceedings: Azerbaijani courts shall administer justice in a manner consistent with the high status of the judiciary, which ensures that all procedural requirements may be satisfied and which precludes encroachments on judges' freedom to express their opinions. Breaches of the provisions relating to the administration of justice shall incur the liability prescribed by law;
- Principle of impartiality and fairness: A judge who has heard a case in a court of first instance, a court of appeal or a court of cassation is debarred from taking part in further judicial proceedings on the same matter.

34. The Azerbaijani Constitution, which underpins the radical democratic reforms under way in the country, sets out the main areas for the extensive judicial and legal reform process being conducted in Azerbaijan.

35. The rules of procedure applied in the Azerbaijani judicial system, which are spelled out by the Constitution and the laws of Azerbaijan, and also the court statutes of the courts, safeguard the legality of the system and strengthen the independence of the judiciary, enabling it to function smoothly.

36. In response to the need to safeguard human rights and freedoms radical democratic legal reforms have been carried out in Azerbaijan. In order to give effect to the provisions of the Constitution a presidential order was passed in February 1996 establishing a legal reform commission, composed of prominent legal experts, judges, law professors and law-enforcement officials.

37. As part of the legal and judicial reform process in Azerbaijan, a range of measures has been carried out to bring the legal and judicial system into line with international and European standards.

38. One of the first steps in this legal and judicial reform process was to draw up a master plan for its implementation, setting out its main tasks and purposes - namely, to ensure the independent functioning of the judiciary in the context of a State based on the rule of law and to uphold the rights of citizens to a fair trial and to have access to legal assistance.

39. The judicial and legal reform process being systematically conducted in Azerbaijan is designed to strengthen and safeguard the implementation of human and civil rights in all areas.
40. A three-tier legal system has been established in the country, comprising courts of first instance, courts of appeal and courts of cassation, and the system has been in force since 1 September 2000.
41. The Azerbaijani judicial system also provides for the operation of a jury court, which will enter into operation once the appropriate legislative instruments have been adopted and entered into force.
42. Particular attention is given to the provision of material and social guarantees to judges, an essential measure in ensuring their independence and impartiality. Notwithstanding the social and economic hardships currently experienced by the country, in its concern to ensure the genuine independence of judges, the State has taken steps to increase their salaries. Currently, judges' salaries paid to judges are the highest paid to any State officials, and are several times higher than those of other categories of citizens. At the same time, efforts are being made to identify other types of material incentives for judges and these will undoubtedly enhance the efficiency of their work and strengthen their independence.
43. As part of the process to create a new judicial system and establish an independent and impartial body of judges, a presidential decree was adopted on 1 December 1998 on application of the Courts and Judges Act and measures to implement the judicial reform process, pursuant to which a judicial and legal council was established, which reports to the head of State and whose members comprise the presidents of the Constitutional, Supreme, Economic and Appeal Courts, the Supreme Court of the Naxçıvan Autonomous Republic and the Serious Offences Court, and also the Minister of Justice.
44. The Judicial Supervisors and Bailiffs Act and the presidential decree of 5 January 2000 adopted pursuant thereto establish a special service to coordinate the work of judicial supervisors and bailiffs in the Ministry of Justice and to follow up the work of the judicial authorities and to enforce court judgements pertaining to civil cases, economic disputes, administrative offences and criminal cases not involving the deprivation of liberty, as well as the decisions of other bodies the enforcement of which has been assigned by law to the bailiffs. Under the new conditions in the country, the Ministry of Justice bears a heavy burden of responsibility and its present-day role is of particular importance as one of the bodies chiefly responsible for the country's judicial and legal policies.
45. An investigative department has been established within the Ministry of Justice to prosecute criminal violations of the law. At the same time, to preclude any influence in the workings of the courts by the executive authorities in the Ministry, the Ministry's Judicial Control Service - a legacy of the Soviet era - has been abolished. To ensure better cooperation with local and international non-governmental human rights organizations and to safeguard the rights of convicted persons in places of detention, a human rights division has been created in the Ministry of Justice.

46. Other laws adopted to safeguard the constitutional principles of the independence of the judiciary and the equality of the parties to proceedings include the State Protection (Judicial and Law Enforcement Officers) Act, the Compensation (Injuries to Private Individuals resulting from Unlawful Actions of Initial Inquiry Authorities, Pre-Trial Investigation Authorities, the Procurator's Office and the Courts) Act and the State Protection (Parties to Criminal Proceedings) Act.

47. In chapter 32 (Criminal breaches of the law), the Criminal Code provides liability for the following types of crimes: obstructing the administration of justice and the conduct of preliminary investigations (art. 286), attempts on the lives of persons responsible for the administration of justice or the conduct of preliminary investigations (art. 287), making threats or perpetrating acts of violence relating to the administration of justice or the conduct of preliminary investigations (art. 288), contempt of court (art. 289), etc.

48. The passing of the presidential decree of 17 January 2000 on upgrading the rules for the selection of candidates for judgeships in the Republic of Azerbaijan was an important landmark in the process of reforming the judicial and legal system in Azerbaijan. Under this decree, it was decided that judges should be selected on the basis of a transparent procedure consistent with international requirements and following a process of examinations and interviews to determine the candidates best suited for the posts.

49. As part of this process, a number of essential steps were taken by the Judicial and Legal Council and an appropriate legal and regulatory framework was established to standardize the selection procedure for candidate judges, including the preparation of new selection rules which were ratified and published in the press.

50. The procedure for the selection of judges, which has been brought into line with these rules under the scrutiny of the public, international institutions and foreign and local non-governmental human rights organizations, and also a special independent expert, has been unanimously recognized by all observers as objective, impartial and transparent. A large number of positive appraisals in the press bear witness to the success of this process and even candidates who were not selected have expressed a high opinion of its merit.

51. As a result, the number of judges in Azerbaijan has been increased by 60 per cent. The country's judges now include representatives of all aspects of the legal profession, including independent lawyers, academics, military personnel, law-enforcement officials and judicial officers. In the process of selecting judges, primary consideration was given to the candidates' legal expertise and general competence, their personal and moral qualities, their analytical skills and their capacity for logical thought. Importance was also attached to their suitability for the high office of judge and the prior service of candidates who had already worked as judges was also taken into consideration.

52. New progressive laws which came into force in Azerbaijan on 1 September 2000 stand as an important landmark in the process of enhancing and strengthening the country's legislative framework and bringing it into line with international standards. In this context, particular importance attaches to the organization of special courses and other measures to ensure that judges are au fait with international norms and standards, and to familiarize them with the

progressive experience of other countries in the area of the administration of justice. To this end, contacts have been forged with such bodies as the Soros Foundation, the Association of American Jurists, and the German Agency for Technical Cooperation agency (GTZ). Plans are currently on the drawing board to extend such cooperation through the United Nations, the Council of Europe and the Organization for Security and Cooperation in Europe (OSCE).

53. In international practice, the overall system for the upholding of human rights and freedoms includes, alongside guarantees at the State level, arrangements for the regulatory participation of public institutions. Prominent among these is the institution of the ombudsman, or Commissioner for Human Rights. An ombudsman's bill has been drafted for the purpose of establishing this institution in Azerbaijan and the working methods of the ombudsman's office will be suited to specific Azerbaijani conditions and the national legal system. A range of international measures relating to the establishment of the institution of the ombudsman in Azerbaijan have been held, with the active involvement of the Ministry of Justice.

54. Thus, the ombudsman project has been studied, together with experts from the Bureau for Democratic Institutions and Human Rights of OSCE and the General Directorate for Human Rights of the Council of Europe, at various seminars and conferences both in Baku (in November 1999, July and November 2000), and in Paris, Ankara, St. Petersburg and Minsk. At these meetings, participants discussed the prospects for the establishment of such an institution in Azerbaijan, and engaged in a comprehensive exchange of views on the topic. They agreed on the need to study the experience of the Council of Europe in this area.

55. The ombudsman's bill which, was prepared with the assistance of international bodies, has already passed through its third reading in Parliament.

56. The Constitution grants aliens and stateless persons the right to exercise the same rights and fulfil the same obligations as Azerbaijani citizens, unless specified otherwise by law or an international treaty to which the Republic of Azerbaijan is a party. The rights of aliens and stateless persons may be restricted only in accordance with international legal standards and Azerbaijani law.

57. A number of steps of a legislative, organizational and economic nature have been taken to improve the conditions under which persons are detained and held in custody and to bring them into line with international standards.

58. On 9 January 1993, the President of Azerbaijan adopted a decree reorganizing the system for the enforcement of court decisions, the first such legislative act passed in any of the countries of the former USSR, which was designed to improve the system for enforcing court decisions, to enhance the organization of work in this area and to ensure that the system for the enforcement of penalties functioned independently of the authorities responsible for conducting initial inquiries and investigations. In early 2000, pursuant to a presidential decree of 9 October 1999, remand centres were placed under the jurisdiction of the Ministry of Justice. One outcome of the reforms to the correctional system was to grant human rights organizations access to places of detention in Azerbaijan. The importance attached by Azerbaijan to the promotion and protection of human rights and to cooperation in this area with international organizations, including those of a human rights profile, led to the signing on 1 June 2000 and the entry into force on 9 June of

the same year of an agreement between the Azerbaijani Government and the International Committee of the Red Cross (ICRC). As a result, ICRC representatives already enjoy unrestricted access to convicted persons in places of detention in Azerbaijan and the results of their visits are regularly published in the Committee's reports.

59. On 11 January 1999, the President of Azerbaijan signed into law a decree on measures to strengthen the legality and ensure the proper procedure for the enforcement of penalties and the implementation of legal reform in correctional labour establishments and remand centres. Pursuant to this decree, a State reform commission has been set up, directed by the Prime Minister and answerable to the President. The decree outlines measures for the further improvement of conditions for the detention of convicts and persons held in custody, to improve the infrastructure facilities of penitentiary establishments and remand centres and to bring them into line with international standards, and to improve the social protection afforded to their staff and to raise their salaries. In compliance with the decree, the salaries paid to the staff of penitentiary establishments and remand centres has more than doubled since 1 July 1999.

60. Pursuant to this same presidential decree, the State reform commission has prepared a programme of measures, ratified by the Azerbaijani Government on 26 May 1999. This programme sets out legislative, organizational and other measures to improve the work of penitentiary establishments and remand centres and to enhance the conditions for the detention of convicts. Under the programme, the Government has taken steps to increase the amount and calorific content of prison rations, to improve medical services for persons held in penitentiary establishments and remand centres, to uphold the right of convicted persons to make telephone calls and to set in place the necessary conditions for the full exercise of their rights to the freedom of belief, etc.

61. A decree on additional measures for the implementation of legal reforms in Azerbaijan and to improve the work of judges, correctional labour establishments and remand centres, signed by the President on 9 October 1999, makes provision for additional measures to implement the legal reforms designed to improve the work of the courts, penitentiary establishments and remand centres, to create new, mixed profile penitentiary establishments, further to improve the conditions for the serving of sentences, to provide better medical services for convicted persons and to set up a training centre for the training and further training of the staff of penitentiary establishments and remand centres.

62. Following recommendations by experts from the Council of Europe, a presidential decree was adopted on 9 October 1999, transferring remand centres from the jurisdiction of the Ministry of Internal Affairs to that of the Ministry of Justice. Pursuant to the decree, three remand centres have now been placed under the jurisdiction of the Ministry of Justice. Further measures are set out in the decree to improve the conditions for the detention of persons held in custody.

63. As noted above, Azerbaijan's Penal Enforcement Code entered into force on 1 September 2000. The code differs significantly from the Correctional Labour Code, which had been in force since 1 June 1971. Under the new code, for the first time, the

procedure for the enforcement of all types of punishment included in the country's new criminal code is entirely governed by statutes. Azerbaijan's new law is designed to ensure increasingly humane conditions for the serving of sentences, particularly those involving the deprivation of liberty for fixed terms and life sentences.

64. In drafting the new code, it has been brought fully into line with the provisions of the country's Constitution, other laws adopted since the entry into force of the country's basic law and the decisions of the Constitutional Court which relate to convicted persons. In the code, more extensive consideration is given to the requirements of international legal instruments relating to civil rights and freedoms, including those of convicted persons. Thus, when developing the code, recourse was had to the provisions of such international instruments relating to the treatment of convicted persons as the Standard Minimum Rules for the Treatment of Prisoners of 1955 and the European Penitentiary Rules of 1987.

65. This code includes among its tasks (art. 2.2) regulating the procedure and conditions for the enforcement and serving of all kinds of punishments and sentences, determining the means of correction for convicts, and protecting their rights, freedoms and lawful interests. The Penal Enforcement Code (art. 3) takes due account of international treaties to which Azerbaijan is a party, relating to the enforcement of punishments and the treatment of convicted persons.

66. If standards different to those provided by the code are established by an international treaty to which the Republic of Azerbaijan is a party, it is the rules of the international treaty which prevail.

67. The Penal Enforcement Code is based on the precept that convicted persons may not be subjected to torture, violence or other cruel or degrading treatment, in accordance with the principles and standards of the Constitution, the country's laws and international law.

68. Article 7 of the code sets out the principles of the (penal) enforcement legislation and of the correctional system. The penal enforcement legislation is based on the principles of lawfulness, humane treatment, democracy, the quality of convicted persons before the law, the tailoring of punishments to the offences in question, the rational use of coercive measures and other procedures for the correction of convicted persons, the fostering in them of respect for the law and the strengthening of the corrective force of punishments.

69. The code includes an entire chapter, comprising six articles (arts. 9-14), on the legal status of convicted persons, the first such provisions in Azerbaijani law.

70. Under the code, the staff of the establishment or authority carrying out the punishment are required to treat convicted persons in a civil manner.

71. Under article 9 of the code, convicted persons may not be subjected to cruel or degrading treatment. Coercive measures may only be applied against convicted persons where this is prescribed by law.

72. Article 9.1 of the code states that the Republic of Azerbaijan shall respect and safeguard the rights, freedoms and lawful interests of convicted persons, shall ensure legality in the application of corrective measures and shall guarantee their legal protection and personal safety in the administration of their punishments.

73. Under the law, in the administration of punishments, convicted persons shall be guaranteed the same rights and freedoms as all citizens of Azerbaijan, with the derogations and limitations established by the Criminal Code, the Code of Criminal Procedure, the Penal Enforcement Code and other laws. Convicted persons may not be exempted from the performance of their duties, except in cases provided by law.

74. Convicted aliens and stateless persons shall enjoy the rights and bear the responsibilities established by international treaties to which the Republic of Azerbaijan is a party, by the law on the legal status of aliens and stateless persons, with the derogations and limitations established by the Criminal Code, the Code of Criminal Procedure, the Penal Enforcement Code and other legislation of Azerbaijan.

75. The rights and duties of convicts, and also the limitation of those rights and duties, are determined by the Penal Enforcement Code and by other legal and regulatory instruments, in accordance with the arrangements and conditions for the serving of specific sentences.

76. The code stipulates that, in the administration of penalties and serving of sentences, convicted persons shall have the following rights:

- To serve their sentences in conditions which safeguard the dignity of their person;
- To engage in socially useful work;
- To rest;
- To receive pensions or social benefits;
- Pursuant to a medical finding, to receive free medical assistance, including first aid, in outpatient or inpatient facilities (an order issued by the Minister of Justice on 2 February 2000 on compliance with obligations deriving from the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment stipulates that, when detainees are remanded in custody, they must immediately undergo a medical examination);
- To be informed about their rights and duties, and also about the procedure and conditions for the administration of penalties handed down by the court;
- To submit proposals, applications and complaints, in accordance with the legally prescribed procedure in Azerbaijan, in the State language or in other languages for the purpose of protecting their rights and freedoms, and, where necessary, to have the services of an interpreter for these same purposes, provided by the establishment or the authority administering the punishment;

- To take part in the performance of religious rites;
- To receive legal assistance;
- To receive education and to undergo vocational training;
- In respect of aliens, stateless persons and persons with refugee status, to make contact with diplomatic and consular representatives of their States or with national or international organizations which have assumed guardianship responsibilities for such detainees;
- To apply to the courts for the deferment or setting aside of sentences or to be released from the serving of sentences for reasons of illness or upon expiry of the period for the execution of convictions, for parole, for the commutation of unserved portions of their sentences, for transfer to another type of correctional establishment, for the application of amnesties, for the deduction from their sentences of time spent detained in a medical establishment, for the expunging of convictions;
- To petition the President of the country for a pardon, either directly or through a legal representative, and, in the case of minors or convicted persons with physical disabilities or suffering from mental illnesses, through their defendants and legal representatives.

77. According to article 89 of the code, certain categories of persons convicted to periods of deprivation of liberty and serving sentences in penal colonies and settlements, young offenders' institutions and special-regime colonies, may be released for short periods (up to seven days), and allowed to leave their correctional establishments for compelling personal reasons - death or life-threatening illness of a relative, natural disaster or other emergency causing significant material losses to the convicted persons themselves or to their families family.

78. Convicted persons may not be made to undergo medical or other experiments which threaten their life and health. On 30 July 2000, the Tuberculosis Control Act entered into force, prescribing measures to step up the fight against tuberculosis, by ensuring the provision of specialized medical help for prisoners with tuberculosis, who are accommodated in separate detention facilities where they receive special attention, treatment and dietary standards. A new, specialized correctional establishment has been set up by the Ministry of Justice, equipped to treat prisoners suffering from tuberculosis. Thus, on 14 August 2000, the Minister of Justice signed an order establishing Specialized Corrective Labour Colony No. 17, accommodating 1,020 inmates and specially designed for convicts infected with tuberculosis.

79. As noted above, with the entry into force of the Penal Enforcement Code, the function of supervising the administration of penalties has been removed from the jurisdiction of the Procurator's Office with effect from 1 September 2000. Pursuant to article 4 of the Procurator's Office Act, the role played by the Procurator's Office in achieving the purposes of punishments is determined by the Code of Criminal Procedure.

80. Currently, supervision of the administration of penalties is exercised by the judicial authorities, the Ministry of Justice and the Ministry of Defence.

81. Following the adoption of a presidential decree on 25 August 2000, a special inspectorate for the supervision of the enforcement of penalties will be set up in the Ministry of Justice and will also be responsible for investigating alleged violations of the rights of convicts, including through the use of torture. The Ministry of Justice is currently conducting a programme of visits to places of detention, with a view to familiarizing itself with the work being carried out to uphold the rights of convicts and to investigate violations, by conducting meetings with the convicts themselves, and by receiving and processing their applications for the adoption of appropriate measures. These visits are held on a regular basis and are followed by specific measures to prevent further cases of the violation of convicts' rights.

82. Article 20 of the Penal Enforcements Code makes provision for public participation in the correctional system and for public monitoring of the work of the penal correction authorities. The precise form which this public participation and public monitoring will take shall be determined by a special law.

83. As already noted, the period 1999-2001 saw a steady increase in the financial allocations from the central budget for the upkeep of the penitential system. The authority to order remand in custody, house arrest and the granting of bail is now vested in the judicial authorities. It should be noted that the last two preventive measures are new to the judicial practice of the Republic of Azerbaijan.

84. At the same time, under criminal procedural law, the work of the pre-trial investigation authorities is now to be monitored at two levels - the Procurator's Office and the courts - with a view to preventing unlawful detentions. In the case of procuratorial supervision, the relevant procurator's office studies the materials of the criminal case on the basis of an application by the investigator and then makes a recommendation to the judicial authorities that they should order remand in custody, or sets aside the application by the investigator for the imposition of a custodial preventive measure against the person in question. Should the procurator recommend, on the basis of an application by the investigator, the issuing of a warrant for arrest, the court shall first review the materials of the case, hear the parties to the criminal proceedings (in the present instance, the prosecution and the defence), question the suspect and shall then be obliged either to pass a ruling, with grounds stated, approving the remand in custody of the person concerned or releasing him or her from custody. This entire process must be completed within 48 hours from the moment the person is taken into custody.

85. Under the Code of Criminal Procedure, witnesses may not be forced to give evidence or to submit materials or information incriminating themselves or members of their family (arts. 95 and 96.4).

86. In accordance with article 66 of the Constitution, no one may be forced to give evidence against themselves, their spouses, their children, parents, brothers or sisters. An exhaustive list of relatives against whom no one may be obliged to give evidence is established by law.

87. Under the Citizens Pensions Act, pensioners serving custodial sentences were entitled to receive only 20 per cent of their pensions.

88. The Constitutional Court has recognized that withholding 80 per cent of the pensions of convicted persons would infringe their constitutional right to social security; accordingly, this statute has been revoked and parliament has been recommended to define new rules for the payment of pensions to persons serving custodial sentences.

89. The articles of the Criminal Code prohibiting the use of torture contain no reservations regarding the use of torture and cruel treatment in exceptional circumstances, be this a state of war or threat of war, internal political instability or any other state of emergency, or pursuant to the order of a superior or State authority.

Article 3

90. The requirements of article 3 of the Convention have been reflected in the Surrender (Extradition) of Persons Committing Crimes Act, adopted on 15 May 2001. Pursuant to a presidential decree of 11 June 2001 on the application of the Surrender (Extradition) of Persons Committing Crimes Act, authority for execution of the Act, except with regard to the searching and remanding in custody of persons to be handed over, has been transferred to the Ministry of Justice.

91. The above Act clearly stipulates that the requested party may refuse to hand over a person who has committed a crime if there are sufficient grounds to believe that torture or other cruel, inhuman or degrading treatment or punishment will be used against that person (article 3.2.2 of the Act).

92. Under article 3 of the Act, the handover of persons may also be refused on the following grounds:

- If the legislation of the receiving country provides the death sentence for the crime in question;
- If there are sufficient grounds to believe that the person to be handed over will be subjected to torture or other cruel or degrading treatment or punishment in the receiving country;
- If there are sufficient grounds to believe that the person being handed over will be subjected, in the receiving country, to persecution on racial, national, linguistic, religious or sexual grounds or for reasons of citizenship or political views.

93. The legal arrangements for the handover of persons are governed in Azerbaijan by bilateral and multilateral treaties and by the country's legislation.

Article 4

94. While drawing attention to the provisions of the country's current statutes in the area of human rights and humanitarian law, we should also stress the importance of the regulatory machinery designed to ensure that human rights violations will not go unpunished. As indicated above, the offence of torture is dealt with in article 113 of the new Criminal Code. In the new Code, unlike the former, this article stipulates that punishment shall be imposed not only for causing physical pain, but also for psychological suffering.

95. Article 133 (Cruel treatment) of the new Criminal Code penalizes the infliction of systematic beating and other violent acts which cause severe physical or mental suffering.

96. Article 115 of the Criminal Code, entitled "Violation of the laws and customs of war", prohibits cruel or inhuman treatment of prisoners of war, the use against them of torture, the conduct on them of medical, biological and other research, including the removal of organs for transplanting, and their use as human shields for the protection of the country's own troops or facilities. It also prohibits the holding of prisoners of war as hostages, and compelling civilians to perform forced labour or their forced displacement from their places of legitimate residence for other purposes.

97. In this manner, the new criminal legislation of Azerbaijan ensures that all acts of torture are viewed as crimes.

98. The Criminal Code of Azerbaijan provides punishments for the commission of the following crimes:

- Causing a person to commit suicide (art. 125);
- Wilfully causing grievous injury to health (art. 126);
- Wilfully causing less grievous injury to health (art. 127);
- Wilfully causing minor injury to health (art. 128);
- Battery (art. 132);
- Cruel treatment (art. 133);
- Threatening to kill a person or causing grievous injury to health (art. 134);
- Unlawful deprivation of liberty (art. 145);
- Unlawful confinement to psychiatric hospital (art. 146);
- Taking of hostages (art. 215).

99. If, in the course of committing any of the above crimes, torture was used, the actions of the guilty party are categorized in accordance with the principle of the concurrence of offences, with reference to article 113 of the Criminal Code.

100. Statistics relating to persons serving sentences for the commission of the above crimes over the period 1999-2001 (first six months) are set out in the following table:

Articles	1999	2000	2001 (first six months)
125	9	8	7
132	8	4	21
133	1	-	7
134	23	15	14
145	31	17	26
146	6	1	1
215	2	16	2

101. Chapter 7 of the Criminal Code deals with the phenomenon of complicity in a crime.

102. Under article 31 of the Criminal Code, the deliberate joint participation in the commission of an offence of two or more persons is considered complicity.

103. Under article 32 of the Criminal Code, persons organizing, inciting and abetting the commission of an offence are considered to be accomplices in the offence, together with the perpetrator.

104. The category of perpetrator of an offence applies to persons directly committing offences or directly participating in their commission together with other persons (co-perpetration), as well as persons committing offences through the agency of other persons who do not incur criminal responsibility by virtue of circumstances stipulated in the Code.

105. The category of organizer applies to persons organizing the commission of an offence or organizing or running a criminal association or organization.

106. The category of instigator applies to persons inciting other persons to commit crimes through persuasion, bribery, threats or other means.

107. The category of abetter applies to persons assisting with the commission of an offence by supplying advice, instructions, information, funds or weapons or by removing obstacles, to persons who have given a prior undertaking to conceal the perpetrator of a crime, or the means or implements used in the commission of a crime, evidence of a crime, the proceeds of a crime, and to persons who have given a prior undertaking to obtain or to dispose of such objects.

108. Pursuant to article 32 of the Criminal Code, the liability of accessories to an offence is determined by the nature and actual degree of participation of each such person in the commission of the offence.

109. Under article 33.5 of the Criminal Code, should perpetrators of an offence fail to complete the commission of the offence for reasons beyond their control, any accessories to the offence shall still bear criminal liability for preparation of the offence or for its attempted commission. Criminal liability for preparation of an offence is also incurred by persons who, through circumstances beyond their control, have failed to persuade other persons to commit the offence.

110. Under article 61.1.3 of the Criminal Code, the commission of an offence by a group of persons by prior conspiracy, by an organized group or by a criminal association (criminal organization) is deemed to be an aggravating circumstance when determining the penalty.

Article 5

111. Article 11 of the Criminal Code (Application of criminal law to persons committing crimes in the territory of the Republic of Azerbaijan) reads as follows:

“11.1 Persons committing offences in the territory of the Republic of Azerbaijan shall incur criminal liability under the present Code. An offence initiated, continued or completed in the territory of the Republic of Azerbaijan shall be deemed to have been committed in the territory of the Republic of Azerbaijan.

“11.2 An offence committed in the territorial waters of the Republic of Azerbaijan, the sector of the Caspian Sea belonging to the Republic of Azerbaijan, the airspace above the Republic of Azerbaijan and in its economic zone shall be deemed to have been committed in the territory of the Republic of Azerbaijan.

“11.3 Persons committing offences on vessels or aircraft registered with airports or seaports of the Republic of Azerbaijan sailing on the high seas or flying in the airspace outside the limits of the Republic of Azerbaijan under the flag or distinguishing sign of the Republic of Azerbaijan shall incur criminal liability under the present Code.

“11.4 Persons committing offences on vessels or aircraft belonging to the Azerbaijani navy or air force shall incur criminal liability under the present Code, irrespective of where such vessels or aircraft are located.

“11.5 The question of the criminal liability of diplomatic representatives of foreign States and other persons enjoying immunity shall, in the event of the commission by such persons of offences in the territory of the Republic of Azerbaijan, be settled in accordance with the standards of international law.”

112. Article 12 of the Criminal Code contains the following provisions on the application of criminal law to persons committing offences outside the Republic of Azerbaijan.

“12.1 Citizens of the Republic of Azerbaijan and stateless persons permanently resident in the Republic of Azerbaijan who commit offences (acts or omissions) outside the Republic of Azerbaijan shall incur criminal liability under the present Code if such

offences are deemed to be crimes in the Republic of Azerbaijan and in the State in the territory of which they were committed and if these persons have not been convicted in the foreign State.

“12.2 Under the present Code criminal proceedings may be brought against aliens and stateless persons who commit crimes outside the Republic of Azerbaijan in cases where the crimes were directed against citizens of the Republic of Azerbaijan, the interests of the Republic of Azerbaijan and in other cases stipulated by international treaties of the Republic of Azerbaijan, if they have not been convicted of those crimes in the foreign State.

“12.3 Aliens and stateless persons who commit crimes against peace and humanity, military crimes, terrorism, the hijacking of aircraft, the taking of hostages, acts of cruel treatment, piracy, illicit trafficking in narcotic drugs and psychotropic substances, the manufacture or sale of counterfeit money or securities, attacks against persons or organizations enjoying international protection, crimes involving the use of radioactive materials, and also other crimes which are deemed to be punishable offences under international agreements of the Republic of Azerbaijan, shall incur criminal liability and be subject to punishment under the present Code, irrespective of where the crimes are committed.

“12.4 Servicemen of military units of the Republic of Azerbaijan which form part of peacekeeping forces shall incur criminal liability under the present Code for crimes committed outside the Republic of Azerbaijan, except as otherwise specified by international treaties of the Republic of Azerbaijan.

“12.5 When the courts of the Republic of Azerbaijan are handing down sentences on persons specified in articles 12.1-12.4 of the present Code, the punishment may not exceed the upper limit of the punishment provided for under the law of the foreign State in the territory of which the crime was committed.”

Article 6

113. Pre-trial custody (short-term detention as a preventive measure) is regulated by articles 155-158 of chapter 16, section 4, of the new Azerbaijani Code of Criminal Procedure.

114. Under article 155.3 of the Code, short-term detention (remand in custody) or alternative preventive measures (house arrest and bail) may, in accordance with the provisions of the Code of Criminal Procedure, be applied against persons who, under law, may be subject to terms of imprisonment of above two years for the commission of crimes and also against persons committing crimes who, according to reliable information, have concealed themselves from the investigative authorities or continued their criminal activity and obstructed efforts to ascertain the truth about the case.

115. Unlike the former code of criminal procedure, short-term detention may only be imposed on the basis of a court order passed on the recommendation of the procurator in charge of the proceedings.

116. Under article 157.6 of the Code of Criminal Procedure, appeals may be lodged with the Court of Appeal against the decision of a court to authorize short-term detention. Article 158 of the Code of Criminal Procedure stipulates the periods of short-term detention, in accordance with the gravity of the crime committed. If the crime committed does not involve aggravated public danger or if it is of a lesser order of gravity, the period of short-term detention shall not exceed two months and, in the event of a serious or particularly serious crime, it is set at three months.

117. The code also determines the periods by which short-term detention may be extended. Under article 159, depending on the gravity of the crime committed, the period of short-term detention may be extended by the court for a period of between one and four months. In the event that the court proceedings are exceptionally intricate, the period of short-term detention may be extended a second time for a period of between two and five months. Upon expiry of the maximum period for remand in custody, the persons concerned must be released forthwith.

118. Article 161 of the Code of Criminal Procedure clearly stipulates the tasks to be performed by remand facilities. The administration of such facilities is obliged:

- Without delay to register persons handed into custody;
- At the request of newly detained persons, without delay to give notification of the detention to their next of kin, friends and other persons whom they deem it important to contact;
- With due regard for safety requirements and the interests of criminal justice, to allow detained persons to have meetings under supervision and in decent conditions with members of their families, friends and other persons whom they deem it important to contact;
- To ensure the safety of persons held in custody and to render them all necessary assistance and protection;
- To hand over the procedural documents on the same day that they are received or, should they be received at night, by noon on the following day;
- To register all complaints and other applications by persons held in custody;
- Without delay to forward complaints and applications by persons held in custody addressed to investigating officials, procurators in charge of the investigation or to the court;
- To indicate in the record the reasons for any refusal by persons held in custody to appear in court;
- To admit without hindrance defence counsel and their legal representatives to persons held in custody and to provide the necessary conditions for their confidential meetings without restriction as to the number and duration of such meetings;

- To ensure the prompt delivery of persons held in custody to the authorities responsible for conducting the investigations;
- On the instructions of the investigating official, procurator or the court, to provide the necessary conditions for the conduct of investigative or other procedural measures in the place where detained persons are held;
- In accordance with the decision of the authorities conducting the criminal proceedings, to transfer detained persons to other places of custody;
- Seven days before expiry of the period of detention to notify the procurator in charge of the investigation accordingly;
- Promptly to release persons from custody when there are no adequate grounds for their further remand or persons in respect of whom the maximum allowable periods of custody have expired or for whom the amounts of bail stipulated by the court have been paid and to notify the judge or the court accordingly.

119. In accordance with the provisions of the Code of Criminal Procedure, remand in custody may be applied to persons where there are grounds to believe that those persons might conceal themselves from the authorities responsible for conducting the criminal procedure, impede through their actions the conduct of investigative measures and efforts to ascertain the truth about a case, commit further crimes and pose a danger to society, or obstruct the administration of a court judgement.

120. When preventive measures taking the form of remand in custody are being applied, consideration shall also be given to the circumstances in which the crime was committed, as well as its gravity, the character of the person committing the crime, his or her occupation, lifestyle, material status and other factors.

121. The Aliens and Stateless Persons (Legal Status) Act of 13 March 1996 and the Code of Criminal Procedure stipulate that immediate steps shall be taken to notify families, next of kin and other concerned persons and authorities about the remand in custody or short-term detention of persons suspected of the commission of a crime.

122. Under article 9 of the same act, the authorities or officials responsible for detaining or taking into custody aliens or stateless persons temporarily resident in the Republic of Azerbaijan shall immediately notify the Ministry of Foreign Affairs of the Republic of Azerbaijan accordingly.

123. Article 90 of the Code of Criminal Procedure enshrines the right of persons suspected of the commission of crimes to be able, without delay and by telephone or by other means, to notify their families, next of kin, neighbours, colleagues or fellow students about their detention.

124. Article 153 of the Code of Criminal Procedure obliges the criminal prosecution authorities to grant persons suspected of the commission of crimes access to telephones or other means of communication to give notification of their detention.

125. Article 161 of the Code of Criminal Procedure obliges the administration of remand facilities to notify, at the request of persons detained on suspicion of having committed a crime, their families, friends or other persons of their detention and the place where they are being held.

Article 7

126. In accordance with the provisions of article 13 of the Criminal Code of Azerbaijan, Azerbaijani citizens who have committed crimes in the territory of a foreign State may not be handed over to that State. The question of whether or not criminal proceedings should be instituted against such persons is settled in accordance with article 12 of the Criminal Code, entitled "Application of criminal law to persons committing crimes outside the Republic of Azerbaijan".

127. According to article 13.2 of the Criminal Code, aliens and stateless persons who commit crimes outside the Republic of Azerbaijan and who are currently within the territory of Azerbaijan may, in accordance with international treaties of the Republic of Azerbaijan, be handed over to a foreign State to answer criminal charges or to serve sentences.

128. According to article 13.3 of the Criminal Code, if persons who have committed crimes outside Azerbaijan are not handed over to the foreign country concerned and if their offence (action or omission) constitutes a crime under the Azerbaijani Criminal Code, they shall incur criminal liability in the Republic of Azerbaijan.

129. In accordance with article 13.4 of the Criminal Code, if international agreements to which the Republic of Azerbaijan is a party establish different provisions relating to persons committing crimes, the provisions of those international agreements shall prevail.

130. Articles 11-13 of the Code of Criminal Procedure guarantee fair treatment of detainees and accused persons at all stages of criminal proceedings.

131. Article 11 of the Code of Criminal Procedure explores the principle of the equality of all before the law and the courts.

Article 8

132. As noted above in the comments on article 3 of the Convention, article 3.2.2 of the Surrender (Extradition) of Persons Committing Crimes Act clearly stipulates that the surrender of persons committing crimes may be refused if the requested party has sufficient grounds to believe that torture or other cruel, inhuman or degrading treatment or punishment may be used against that person.

133. Accordingly, all extradition treaties to which Azerbaijan is a party contain a provision providing for refusal to surrender persons in the circumstance set forth above.

134. In accordance with the provisions of international treaties to which Azerbaijan is a party, the surrender of persons may be refused if they have previously been subjected to persecution and discrimination and if unlawful measures which violate human rights and freedoms have been applied against them on the basis of their racial, religious, sexual, national or linguistic attributes or political views.

Article 9

135. In addition to the information provided under this article in the initial report, the Republic of Azerbaijan has also acceded to the Moscow Convention on the Transfer of Convicted Persons for the Further Serving of their Sentences of 6 May 1998 (act of accession adopted on 4 December 1998), the European Convention on the Transfer of Sentenced Persons of 21 March 1983 (act of accession adopted on 12 December 2000) and the European Agreement on the Transmission of Applications for Legal Aid of 27 January 1977 (act of accession adopted on 17 March 2000).

Article 10

136. Pursuant to a presidential decree of 11 October 1999 and a Cabinet decision of 16 September 2000, a training centre for the training and further training of the staff of correctional establishments and remand centres has been set up within the Ministry of Justice.

137. The centre's curriculum for the training of such staff includes, besides legal and other special subjects, specialized courses on human rights and international instruments relating to the treatment of offenders.

138. Following the passing of an order by the Minister of Justice on 4 January 2000 on compliance with the obligations deriving from the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention has also been included in the curriculum of the Ministry of Justice training centre.

139. In 2000, the Office of the Procurator-General prepared a special compilation of documents, including the Convention against Torture, the recommendations of the Committee against Torture and of Amnesty International, relevant presidential decisions, orders by the Procurator-General, rulings by the Plenum of the Supreme Court and other instruments. The compilation has been distributed for use by all the country's law-enforcement agencies.

140. As part of a Council of Europe project on penitentiary systems, a series of expert meetings were held from 4 to 8 April 2001, under the auspices of the Council of Europe, to study experience in the use of non-custodial penalties, and a high-level meeting and seminars were held from 30 April to 2 May 2001 on the issue of the categorization of convicts, their placement in detention facilities and measures to improve their conditions. These meetings, which were organized by the Ministry of Justice, were held with the participation of experts from Austria, Italy, the United Kingdom and other European countries.

141. A particularly interesting seminar was held in Azerbaijan in April 2001 on the topic "Societies without torture". One remarkable innovation was the holding of this seminar in a so-called "strict-regime" correctional facility, with the participation of the convicts themselves, alongside representatives of State bodies, non-governmental organizations, the Council of Europe and international authorities in this area, including Mr. Bent Sorensen, a member of the Committee against Torture.

142. Courses on human rights and other subjects are held in the Academy of the Ministry of National Security of Azerbaijan.

143. The military training establishments of the Ministry of Defence, in particular, the Azerbaijani Higher Military College, run regular classes on the following topics:

- Concept, sources and principles of international law;
- Right of war;
- Protection of the human rights of persons taken prisoner in countries at war.

144. A special course on human rights has been organized in the Azerbaijani Police Academy, for the intensive study of human rights legislation and international instruments in that area. In addition, the provisions of the Convention against Torture are covered in the Academy's course on the police and human rights.

145. A human rights programme, developed as part of the training and routine work of the police, has been highly commended by experts from Essex University in the United Kingdom.

146. In 1999-2000, some 10 seminars were organized under Council of Europe and OSCE auspices, covering issues relating to the promotion of democratic values in the police force and the upholding of human rights, together with a wide range of working meetings with experts from various international organizations.

147. These and other steps are helping to promote the professionalism of police officers and to ensure legality in their dealings with members of the public, as well as to enhance their standing. Organizational and practical measures undertaken in this area are continuing.

Article 11

148. Pursuant to the provisions of the new Penal Corrections Code, the conditions in which all categories of convicted persons, and in particular women, minors and persons serving life sentences, are held have been considerably improved.

149. The minimum standards for living space have been increased for all convicts from two to four square metres, and for infirm convicts, from four to five square metres.

150. The monthly allowances for the purchase of food products and other necessities have been increased for all categories of convicts as follows:

- For general-regime convicts, from one standard accounting unit to eight standard accounting units;
- For strict-regime convicts - from one standard accounting unit to four standard accounting units;
- For special-regime convicts - from one standard accounting unit to three standard accounting units;
- For convicts in prison - from 0.5 standard accounting units to 3 standard accounting units;
- For convicts in reformatories - from 1 to 8 standard accounting units;
- For convicts serving life sentences - from 0.5 standard accounting units to 3 standard accounting units.

151. The number of telephone conversations which convicts can make during the year has been increased. For all convicts, this total has been increased from 6 to 12, except for those serving life sentences, for whom it has been increased from 4 to 6.

152. Pursuant to the provisions of article 76.1 of the Criminal Code, if a court finds that a person serving a sentence does not need to serve the sentence in full, it may release such person on parole.

153. On the basis of article 76.3 of the Criminal Code, parole may only be granted after convicts have served the following portion of their sentences:

- For crimes which do not pose great social danger or for less serious crimes, not less than half the sentence;
- For serious crimes, not less than two-thirds of the sentence;
- For especially serious crimes or where the convict has previously been paroled and such parole was revoked on the grounds detailed in article 76.6 of the Code, not less than three quarters of the sentence.

154. According to article 15 of the Criminal Code, offences (action or omission) shall be subdivided into crimes which do not pose great social danger, less serious crimes, serious crimes and especially serious crimes.

155. Criminal law and criminal procedural law set out the conditions under which unserved portions of sentences may be commuted to lighter forms of punishment, or convicts transferred to different types of penitentiary establishment, including those of an open type.

156. Under the Penal Corrections Code, all rights and freedoms of under age convicts shall be guaranteed on the same footing as those of other convicts during the serving of their sentences.

157. In accordance with the legislation, under age convicts enjoy certain privileges not granted to other convicts. Thus, in accordance with article 90 of the Criminal Code, under age convicts may be released on parole earlier than adult convicts.

158. Under age convicts also enjoy the following privileges:

- They may not be transferred to cell-type accommodation or to prisons for breaches of the correctional facility rules;
- They may be placed in disciplinary facilities for periods of seven days, subject to being able to continue their education, and with a limit of 30 days' detention in such disciplinary facilities in the course of one calendar year;
- When placed in such disciplinary facilities, they have the right to daily exercise of two hours;
- Subject to a court order, they may be retained in a reformatory until the age of 20;
- Upon completion of one quarter of their sentence in a general-regime reformatory or one third of their sentence in a strengthened-regime reformatory, they may be transferred to detention facilities with improved conditions;
- They are fed and clothed at State expense;
- They are granted improved living conditions and a special dietary standard;
- They are given work assignments in accordance with labour legislation;
- They have the right in person, and also through their defence counsel or legal representatives, to appeal to the courts to be released from their sentences on various grounds, or for commutation of their sentences to more lenient forms of punishment;
- They are entitled to receive in their personal accounts no less than 50 per cent of the wages paid to them in the reformatory, irrespective of all deductions from such wages;
- In general-regime reformatories, they may, if permitted by the reformatory administration, make brief trips during annual holidays, outside the reformatory in the company of their parents or guardians.

159. The Penal Enforcement Code attaches particular importance to the continued conduct of measures to ensure that women, in particular pregnant women and women with young children, are able to serve custodial sentences under more benign terms and conditions.

160. Women convicts have a number of privileges in addition to the rights accorded to their male counterparts serving custodial sentences. Unlike male convicts, women convicts who break the rules of the custodial facilities may not be placed in cell-type facilities as a disciplinary measure, nor may they be held in punishment units for periods of more than 10 days.

161. The privileges and rights established under the Penal Enforcement Code in respect of pregnant women convicts or women convicts with children aged under three include the following:

- Every month, to be able to spend an additional amount of money equivalent to three times the standard financial unit for the purchase of food products and other essentials;
- To receive parcels, transfers and packages without limit as to quantity;
- To live outside the custodial facility;
- If they have children in the children's home of the custodial facility and subject to permission from the facility administration, to make brief trips outside the facility for periods of up to 15 days (remaining within the country), with a view to placing their children with relatives, guardians or in children's homes;
- Subject to the usual conditions, to receive pregnancy and maternity benefits;
- To enjoy improved living conditions and special dietary standards;
- In pregnancy and childbirth, to be exempted from work for periods established by law;
- During periods of exemption from work, to be fed at State expense;
- To receive special medical care in childbirth and in the post-partum period;
- Not to be required to work or to undergo vocational training against their will;
- To receive not less than 50 per cent of the wages paid in custodial facilities, to be paid into their private accounts, and, for women living outside the facility, 65 per cent of such wages, irrespective of any deductions.

162. As prescribed by article 92 of the Penal Enforcement Code, children's homes are being set up in custodial facilities to house the children aged under three of women convicts. These children's homes offer the necessary conditions for the normal life and development of children. Women convicts shall have unrestricted access to their children during after-work hours and may be permitted to live together with their children. With the consent of their mothers, children may be handed over to relatives or, with the consent of their mothers and pursuant to a decision by the care and guardianship authorities, may be placed in the care of other persons and may also, on attaining the age of three, be transferred to appropriate children's facilities.

163. If a child who is being accommodated in the children's home of a correctional facility reaches the age of three and the child's mother has no more than one year to complete on her sentence, the facility administration may permit the child to remain in the children's home until the mother has completed her sentence.

164. Under article 57 of the Criminal Code, life sentences may only be imposed for the commission of particularly heinous crimes against the peace and security of humankind, military crimes, crimes against the individual and against State power. When convicts serving life sentences have spent at least 25 years of their sentences in prison and have committed no deliberate offence during that period, the courts may, if they conclude that there is no longer any need for further custody, commute such life sentences to fixed-term sentences or release the convicts on parole.

165. For its part, the Penal Enforcement Code has established improved conditions for the detention of prisoners serving life sentences, increasing the amounts of money they are permitted to spend every month on food products and essentials, as well as the number of visits, telephone conversations, parcels or packages that they may receive during the year. Life prisoners have been granted the right to extended visits and provision has been made for improving the conditions under which they are held once they have served a certain portion of their sentences. Pursuant to article 122 of the Penal Enforcement Code, life prisoners have the following rights in prison:

- To be kept apart from other convicts and in cells of not more than two prisoners;
- To spend three times the standard financial unit on the acquisition of food products and essentials;
- To receive three short visits and one extended visit during the year;
- To receive four parcels or packages per year;
- To make six telephone calls per year, of up to 10 minutes each;
- To have up to one hour's exercise per day in the open air.

166. On completion of not less than 10 years of their sentence, life prisoners may, provided that they have not broken the rules of the custodial facility and have shown a conscientious attitude to their work (if they are working), be granted improved detention facilities as a form of incentive. Such prisoners shall have the following privileges:

- To spend an additional amount of twice the standard financial unit on the acquisition of food products and essentials;
- To receive an additional two short visits and one extended visit per year;
- To receive a further two parcels or packages per year;

- To make a further six telephone calls per year.

167. Through subscriptions arranged by the authorities of the custodial facility, convicted persons receive new statutes and regulations adopted in Azerbaijan, the official and independent newspapers *Azerbaijan*, *Halk*, *Respublika*, *Vyshka*, *Ezhenedelnye novosti* and *Zerkalo*, covering events taking place in the country and in the world at large, as well as detailed information of interest to prisoners regarding amnesties and pardons. In addition, prisoners also receive two journals published by the Ministry of Justice on issues of the penal system and the law.

168. In addition to the arrangements described above, convicted persons have the right to use libraries operating in detention facilities, which are well stocked with books on law and history, with works of fiction and with literature in other fields. In addition, the International Committee of the Red Cross (ICRC) has donated some 260 books on a range of subjects in Azerbaijani, Russian and English to the country's prison libraries.

Article 12

169. Under the Code of Criminal Procedure, the issues covered by the Convention fall under the jurisdiction of the following bodies of the Republic of Azerbaijan:

- The courts;
- The procuratorial authorities;
- The national security authorities;
- The tax authorities;
- The customs authorities;
- The judicial authorities;
- The internal affairs authorities.

170. It should be noted here that article 215 of the Code of Criminal Procedure clearly delineates the powers of the law-enforcement authorities in respect of the investigation and conduct of pre-trial inquiries relating to offences falling within their jurisdiction.

171. On 14 March 2000, the Procurator-General issued an order on measures to be taken by the Procurator's Office in stepping up its campaign against the use of torture and other unlawful methods in the conduct of pre-trial inquiries and preliminary investigations, pursuant to the entry into force of the Procurator's Office Act.

172. The order provides for a range of specific measures to ensure more effective procuratorial supervision of the application and enforcement of the law and to uphold human rights during the pre-trial inquiry and preliminary investigation phases, in accordance with the requirements of the Convention.

Article 13

173. Article 37.2 of the Code of Criminal Procedure lists offences the perpetrators of which can only be subject to criminal prosecution on the basis of a private complaint brought by the victim (arts. 147, 148, 165.1 and 166.1).

174. Under article 46.2 of the Code of Criminal Procedure, a report by an individual about a crime that has been committed or prepared, or information provided by a legal entity or by the media constitute grounds for the institution of criminal proceedings.

175. Under article 204.1 of the Criminal Code, reports by individuals which are deemed to be grounds for the institution of criminal proceedings may be submitted both in writing or orally.

176. On 11 June 1999, the Complaints to the Courts (Decisions and Actions or Omissions Infringing the Rights and Freedoms of Citizens) Act was adopted. The act elaborates on the right to submit appeals to the court, defines the nature of complaints and set out the rules for their submission.

177. Pursuant to a presidential decree of 25 August 2000, a special inspectorate has been set up within the Ministry of Justice to oversee the administration of punishments and to investigate cases involving violations of the rights of convicted persons, including through the use of torture. Currently, the Ministry of Justice is carrying out a programme of visits to detention facilities, to inspect work under way to uphold the rights of convicted persons, to investigate allegations of the violation of such rights by holding meetings with the convicts themselves and by collecting and analysing their reports and complaints with a view to adopting appropriate measures. These visits are held on a regular basis and are followed by specific steps to prevent further such violations of the rights of convicted persons.

178. The Minister of Defence of the Republic of Azerbaijan passed an order on 27 December 1999 enacting the rules on the consideration of applications from citizens serving in the armed forces of the Republic of Azerbaijan, developed on the basis of the Applications from Citizens (Consideration Procedure) Act of 10 June 1997.

179. Reports relating to police officers are subject to special scrutiny and are carefully checked, following which the findings are submitted to senior officials in the Ministry of Internal Affairs.

180. The facts of each incident are carefully investigated at an official level and severe disciplinary measures are taken against culpable police officers.

181. During 2000, a range of disciplinary measures were taken against 138 internal affairs officers for such offences as gross discourtesy to citizens, their unwarranted detention, the unlawful institution of criminal proceedings, wrongful remanding in custody and conduct of searches, and violations of the rights of parties to criminal proceedings. Of these officers, 31 were summarily dismissed from their jobs in the internal affairs agencies and, in 38 cases, the case-files were handed over to the procuratorial authorities for further action on issues of criminal liability.

182. By a decision of the court of Xaçmas district of 2 May 2000, one B. Taibov, a private serving with the 3rd Xaçmas platoon of the Vital Facilities Protection Regiment under the Chief Protection Directorate of the Ministry of Internal Affairs was sentenced to one year's punitive deduction of earnings for inflicting slight bodily injury on citizens H. Tagiev and S. Gaibov.

183. On 18 May 2000, the Gäncä procurator's office filed criminal charges against one B. Mamedov, chief of the Barkhudarly transport police post, which falls under the Agstafa transport police branch, his operations deputy, G. Abbasov, and police officers S. Guliev and H. Mamedov, for causing grievous bodily harm resulting in death. By its verdict of 2 December 2000, the Serious Offences Court found the four accused guilty of having committed the crime.

184. On 5 October 2000, the Serious Offences Court found the chief of the investigative division of the Baku city procurator's office, V. Samedov, and the operations deputy of the 17th police division in the Nariman district of Baku city guilty of the use of torture against citizens Y. Fatiev and D. Aliev.

185. By its verdict of 1 November 2000, the Serious Offences Court sentenced the chief of police of Biläsuvar district, N. Shafiev, and district police officers M. Mustafaeu, M. Guliev, K. Orujev and E. Mikailov to custodial sentences of varying durations. The court found that the convicted men had used torture against one Z. Amanov, unlawfully detained in the police station on suspicion of having committed a theft.

186. On 5 May 2001, the Serious Offences Court, handed down a guilty verdict for action ultra vires and the causing of mild bodily harm against a Bärda district police officer, Z. Amirov.

187. Special sectoral services have been set up within the Ministry of Internal Affairs to promote higher professional standards, to strengthen official discipline and to monitor the observance of legality. Law enforcement officers who perform actions incompatible with police ethics or commit unlawful offences are subject to appropriate disciplinary measures, including summary dismissal and being brought before the courts.

Article 14

188. The Compensation (Injury to Individuals resulting from Unlawful Actions of Initial Inquiry Authorities, Pre-Trial Investigations Authorities, the Procurator's Office and the Courts) Act was adopted on 29 December 1998. The act determines cases where the right to compensation for such injury is engaged, defines the concept and the procedure for the payment

of such compensation, including for moral damage, and stipulates the obligation to explain the right to compensation for injury resulting from the unlawful actions of the initial inquiry or pre-trial investigation authorities, the procurator's office and the courts.

189. Under Azerbaijani legislation, there are various means by which the victims of acts of violence may receive compensation. Article 87.6.18 of the Code of Criminal Procedure accords victims the right to compensation from the State for injury caused by offences covered by criminal law, for expenses incurred during criminal proceedings and for injury resulting from the unlawful actions of the authorities conducting the criminal proceedings.

190. The right of victims to compensation, the levels of such compensation and the rules for its award are set out in articles 189-191 of the Code of Criminal Procedure. Victims are entitled to compensation for injury resulting from actions covered by criminal law in the event that the commission of such actions was established by the verdict of the court or the definitive ruling of the authority conducting the criminal prosecution. The level of such compensation depends on the degree of seriousness of the act from which the injury in question resulted.

191. In accordance with article 1101 of the Civil Code, compensation for harm caused to individuals through the unlawful actions of the initial inquiry or pre-trial investigation authorities, the Procurator's Office or the courts shall be paid by the Republic of Azerbaijan in full, irrespective of whether or not the officials in question are guilty, in accordance with the procedure established by law.

192. Under article 1118.1 of the Civil Code, individuals who suffered injuries or other damage to their health shall be entitled to compensation for any loss of earnings (income) which they were receiving or would definitely have received, together with any additional expenses incurred through the damage to their health, including expenditure on treatment, supplementary diet, the purchase of medicines, and prosthetic appliances, nursing care, treatment in sanatoriums and health spas, the acquisition of special vehicles, or training for another profession, if it has been established that the victim requires assistance and care of that kind and is not entitled to receive such assistance and care free of charge.

193. Under article 1120 of the Criminal Code, in the event of injury of any other damage to the health of a minor below the age of 14 who has no earnings (income), the person responsible for causing the injury or damage is obliged to pay compensation for any expenses entailed by the damage to the minor's health.

194. On 17 March 2000, the Republic of Azerbaijan acceded to the European Convention on the Compensation of Victims of Violent Crimes of 24 November 1983. Pursuant to a presidential order of 4 July 2001, the Ministry of Justice shall serve as the central authority for implementation of this European Convention.

Article 15

195. Article 125.2.2 of the Code of Criminal Procedure bars as evidence inadmissible in a criminal case any information, documents or other materials obtained through the use of violence, threats, deception, torture and other cruel, inhuman or degrading treatment.

196. Article 293 of the Criminal Code establishes liability for the coercion of suspects, accused persons, victims or witnesses into giving evidence in the course of interrogation or the coercion of experts into giving findings through the use of threats, intimidation, insults or other unlawful acts, including acts involving the use of torture, performed by or at the bidding of procurators, investigators or other persons conducting the initial inquiries.

197. Article 299.2 of the Criminal Code provides liability for the coercion of witnesses or victims into giving false testimony, experts into giving false findings or interpreters into distorting their translation, and also for the coercion of the said persons into refusing to give testimony, through the use of intimidation, the threat of murder, the infliction of physical injury, the destruction or damaging of their property or that of their near relations.

198. By its decision of 10 March 2000, the Plenum of the Supreme Court determined that evidence obtained by unlawful means could not form the basis of a judgement. If, in the course of legal proceedings, a court finds that any evidence submitted by the initial inquiry and pre-trial investigation authorities has been obtained by unlawful means, it must be struck from the body of evidence and designated as inadmissible. The court must make a ruling in respect of the official responsible for allowing the breach of the law, which may even include the institution of criminal proceedings against him or her.

Article 16

199. The Republic of Azerbaijan is taking steps to prevent other forms of cruel, inhuman or degrading treatment or punishment which do not fall under the definition of torture contained in article 1 of the Convention, when such acts are performed by government officials or other persons acting in an official capacity.

200. To that end, the Criminal Code contains a number of specific articles providing liability for crimes committed by officials.

201. Thus, under article 308 of the Criminal Code, the offence of abuse of authority by officials applies to the deliberate use by officials of their position contrary to the interests of their service, where such use is for mercenary gain or personal interest and causes substantial harm to the rights and lawful interests of citizens or organizations or to the legally protected interests of society and the State.

202. Article 309 of the Criminal Code categorizes as action ultra vires the performance by officials of actions which patently exceed their authority, where such actions lead to the causing of substantial harm to the rights and lawful interests of citizens or organizations or to the legally protected interests of society or the State.

203. According to statistics for the period 1999-2001 (first six months), 122 officials received convictions under the said articles of the Criminal Code in the Republic of Azerbaijan.

II. COMPLIANCE WITH THE COMMITTEE'S CONCLUSIONS AND RECOMMENDATIONS

204. The President of Azerbaijan attaches particular importance to the work by the country's authorities to implement the recommendations of the Committee against Torture.

205. Specific measures have been taken to implement the recommendations adopted by the Committee against Torture on the basis of its consideration of the country's initial report. On 10 March 2000, President Heydar Aliyev promulgated a special order on measures relating to the recommendations by the United Nations Committee against Torture and Amnesty International in respect of Azerbaijan. Pursuant to this order, a commission was established, including among its members officials from the President's executive staff, from the country's law-enforcement authorities and from the Supreme Court. The commission was entrusted with verifying the facts adduced in the report relating to Azerbaijan and adopting appropriate measures and also with preparing responses for the two organizations in question. At the same time, the country's ministries of justice, internal affairs, national security and defence were instructed to prepare and implement appropriate measures to suppress any offences in the area of human rights and freedoms. At the same time, the Supreme Court and the Office of the Procurator-General were enjoined to take necessary measures to remedy the shortcomings identified by the Committee against Torture in its recommendations and by Amnesty International in its report.

206. In the light of the recommendations of the Committee against Torture and of Amnesty International, the courts have been entrusted with special responsibility for upholding the rights and freedoms and citizens and suppressing the use of torture and other unlawful means of influencing individuals.

207. The Supreme Court has conducted an analysis of judicial practice in this area, with a view to ascertaining the extent to which the citizens' rights and freedoms enshrined in the Constitution are properly exercised and observed in the course of the administration of justice.

208. The results of this analysis were discussed by the Plenum of the Supreme Court sitting on 10 March 2000 and, on the basis of the Plenum's findings, a ruling was passed reflecting the recommendations of the Committee Against Torture. The provisions of rulings passed by the Plenum of the Supreme Court are binding on all courts of Azerbaijan and on all initial inquiry and pre-trial investigation authorities.

209. One of the findings was that in their work, courts should follow the principle that, when incidents of the use of torture, cruel treatment or physical and mental violence against citizens are ascertained, such actions must be properly categorized by the courts, since they are criminal offences.

210. The Plenum of the Supreme Court also determined that no exceptional circumstances, including a state of war, internal political instability or an emergency, may serve as grounds for the use of torture or other unlawful measures.

211. Evidence obtained by unlawful means may not be used to substantiate the judgement of a court. If, during legal proceedings, a court finds that any piece of evidence produced by the initial inquiry or pre-trial investigation authorities has been obtained by unlawful means, it must be struck from the body of evidence and designated as inadmissible. The court must make a ruling in respect of the official responsible for allowing the breach of the law, which may even include the institution of criminal proceedings against him or her.
212. The ruling was circulated to all courts and pre-trial investigation authorities.
213. The recommendations of the Committee Against Torture were also discussed by the Office of the Procurator-General, the Ministry of Justice and the Ministry of Internal Affairs, and following discussion special measures were adopted to put the recommendations into effect.
214. Thus, the Procurator-General issued an order on supplementary measures in compliance with the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, reaffirming the need to ensure more effective supervision by the procuratorial system with a view to preventing and suppressing cases of the use of torture and other unlawful methods during initial inquiry and pre-trial investigation procedures and to ensure that the officials culpable of such offences were brought to justice.
215. The same order stipulates that the Convention Against Torture and other international human rights instruments must be included in the syllabus of procuratorial training courses and that, when the performance of procuratorial officials is being appraised, special attention must be given to their compulsory study of these instruments.
216. On 18 January 2000, the Minister of Justice signed an order to put into effect the recommendations of the Committee Against Torture in the country's penitentiary system, and to ensure that the requirements of Azerbaijani law relating to the rights and lawful interests of convicts and detainees was fully complied with. Pursuant to the order, those in charge of correctional labour facilities are required to take steps to uphold the rights of convicts and detainees, to prevent attacks against their lives, health and safety, and to suppress any actions which might be categorized as torture or cruel and inhuman treatment. The order makes provision for special courses for the staff of correctional labour facilities, to train them in the rules for the treatment of convicts and detainees. It also contains a reminder that the use of torture and other cruel, inhuman or degrading treatment or punishment is a criminal offence.
217. With a view to implementing the recommendations of the Committee Against Torture, the Chief Directorate for the Administration of Judgements under the Ministry of Justice was directed to grant Azerbaijani and international non-governmental organizations access to the country's penitentiary establishments, so that they could see for themselves the physical conditions under which prisoners were held and their living conditions and have meetings and discussions with them. The Ministry was instructed to keep the public informed about all these changes in the penal administration system.

218. Responsibility for conducting official investigations into reports of the use of torture and other unlawful measures against prisoners has been assigned to the internal investigations inspectorate of the Chief Directorate for the Administration of Judgements under the Ministry of Justice. The inspectorate is required to adhere to the provisions of the Convention against Torture in its work.

219. On 10 March 2000, the recommendations of the Committee against Torture were reviewed at a special meeting of the Pardons Commission in the office of the President. A decision was taken to bar the granting of amnesties or pardons to persons convicted or prosecuted for the commission of crimes involving the use of torture and cruel treatment.

220. In order to improve the conditions under which prisoners are held in custodial facilities, to ensure compliance in their treatment with the United Nations Minimum Standard Rules for the Treatment of Prisoners and to promote more effective cooperation with international organizations in this area, on 10 March 2000 the President issued an order on ensuring that the International Committee of the Red Cross could exercise its functions in the country's custodial facilities.

221. A special compilation of texts has been prepared by the Azerbaijani Procurator's Office, which includes the Convention Against Torture, the recommendations of the eponymous Committee and of Amnesty International, presidential orders, the order by the Procurator-General, rulings by the Plenum of the Supreme Court and other instruments.

222. Mr. Nigel Rodley, Special Rapporteur of the United Nations Commission on Human Rights, visited Azerbaijan from 7 to 15 May 2000 at the invitation of the Government. The Special Rapporteur submitted a report to the Commission at its fifty-seventh session, presenting the findings of his visit, which had coincided with a process of intensive judicial and legal reform under way in the country, and putting forward appropriate recommendations.

223. The Special Rapporteur's report was discussed at a meeting of the Commission established pursuant to the presidential order of 10 March 2000. Following exhaustive verification of the facts mentioned in the report, a conclusion was adopted and transmitted to the Special Rapporteur for inclusion in his report to the United Nations Commission on Human Rights at its fifty-eighth session.

224. The said conclusion included, among other things, an expression of the country's willingness to supply the Special Rapporteur with any additional information and materials relating to specific cases referred to in the report involving allegations of torture.
