

AZERBAIJAN

Time to abolish the death penalty

Introduction

Since gaining independence from the Soviet Union, Azerbaijan has taken several welcome steps towards abolition of the death penalty, including exempting all women, and men over 65, from this punishment, and reducing the number of capital crimes. In addition official sources report that there have been no executions in the country since 1993, and President Heydar Aliyev has regularly exercised his constitutional power to commute death sentences in recent years.

Amnesty International welcomes these steps and hopes that, if not ready to abolish the death penalty immediately, Azerbaijan will continue to move steadily towards total abolition so that it will come into line with over half the countries in the world today who have abolished the death penalty in law or practice.

Amnesty International remains concerned, however, about a number of aspects connected with the death penalty in Azerbaijan. The welcome stay on executions, for example, appears to be the *de facto* policy of the current authorities but, unless enshrined as official policy, could be reversed swiftly and easily. Although executions have halted in recent years, death sentences have not - 41 were handed down by the courts in 1996 - and conditions on death row are said to be extremely difficult owing to severe overcrowding. In addition, there have been allegations that law enforcement officials have used physical or other means of duress in seeking to obtain confessions, including in cases where the offence carries a possible death sentence.

Amnesty International considers that the death penalty violates the right to life and is the ultimate cruel, inhuman and degrading punishment, and opposes its use in all cases without reservation. This paper reviews the use of the death penalty in Azerbaijan, and ends with recommendations urging moves to abolish this punishment totally and permanently.

The death penalty in law

The new Azerbaijani Constitution, adopted in 1995¹, retains the death penalty “as an exceptional measure of punishment until its complete abolition...only for especially serious crimes against the state, and against the life and health of an individual”.² Application of the death penalty is regulated by provisions in the Azerbaijani Criminal Code. Pending the adoption of a new criminal code, Azerbaijan is continuing to use the one inherited from its time as a republic of the USSR, with numerous amendments. This code currently contains

¹ The Constitution was adopted following a referendum on 12 November, and entered into force on 27 November.

² Article 27 of the Constitution.

Human rights and the death penalty - why do states kill?

Amnesty International opposes the death penalty in all cases throughout the world, and without reservation, on the grounds that it is a violation of the universally guaranteed right to life and constitutes the ultimate cruel, inhuman and degrading punishment. No matter what reason a government gives for killing prisoners and what method of execution is used, the death penalty cannot be divorced from the issue of human rights. Article 3 of the Universal Declaration of Human Rights proclaims that "Everyone has the right to life". Article 5 categorically states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Amnesty International believes that the death penalty violates these rights.

Many governments share this view, and have recognized that the death penalty cannot be reconciled with respect for human rights. The United Nations has declared itself in favour of abolition. The Council of Europe has included a moratorium on executions and moves towards complete abolition among its provisions of entry for states of the former Soviet Union. Ninety nine countries in the world today have abolished the death penalty in law or practice.

Why then do other states retain the death penalty? One of the most common justifications is that, terrible as it is, the death penalty is necessary as a *deterrent* against crime. Countless men and women throughout the world have been executed on the assumption that their deaths will deter others from crime, especially the crime of murder. Yet study after study in diverse countries has failed to find convincing evidence that the death penalty has any unique capacity to deter others from committing particular crimes. It is wrong to assume that all those who commit such a serious crime as murder do so after rationally calculating the consequences. Murders are often committed in moments of passion, when extreme emotion overcomes reason. They are also committed under the influence of alcohol or drugs, or in moments of panic when the perpetrator is caught in the act of stealing. Some murderers are highly unstable and mentally ill. In none of these cases can fear of the death penalty be expected to act as a deterrent.

There is another serious flaw in the deterrence argument. People who plan serious crimes in a calculated manner may decide to proceed, despite the risk, in the belief that they will not be caught. Criminologists have long argued that the way to deter such people is not to increase the severity of the punishment but to increase the likelihood of detection and conviction.

The death penalty may even have the reverse effect to that intended. Someone who knows that they risk death for the crime they are committing may be more likely to kill witnesses or others who could identify or incriminate them.

Furthermore, crime figures from abolitionist countries fail to show that the abolition of the death penalty produces a rise in the crime rate. A study of research

findings on the relationship between the death penalty and homicide rates, conducted for the United Nations Committee on Crime Prevention in 1988, concluded that “this research has failed to provide scientific support that executions have a greater effect than life imprisonment. Such proof is unlikely to be forthcoming. The evidence as a whole still gives no positive support to the deterrent hypothesis”. Every society seeks protection from crime, but the argument that the death penalty is a better protection than other punishments is illusory.

Another argument is that permanently *incapacitating* a prisoner - by killing them - prevents that person from repeating the crime. But there is no way to be sure that the prisoner would have repeated the crime if allowed to live, nor is there any need to take the prisoner’s life for the purpose of incapacitation: dangerous offenders can be kept safely from the public without resorting to execution, as shown by the experience of many abolitionist countries. The death penalty takes the lives of offenders who might have been rehabilitated as well as the lives of the innocent. Incarceration in prisons and other institutions which isolate offenders from society also has another great advantage over the death penalty as a means of incapacitation: the mistakes which result from fallible judicial systems can be corrected, at least partially.

When the arguments of deterrence and incapacitation are discounted, there is a more deep-seated motivation for the death penalty: that of just *retribution* for the particular crime committed. According to this argument, certain people deserve to be killed as a repayment for the evil done: there are crimes so offensive that killing the offender is the only just response. Basing the death penalty on retribution, however, makes impossible demands on the criminal justice system. Risks of error and unfairness exist in all such systems. No criminal justice system is, or conceivably could be, capable of deciding fairly, consistently and infallibly who should live and who should die.

In its simplest form the argument for retribution is also often no more than a desire for vengeance masked as a principle of justice. The desire for vengeance can be understood and acknowledged but the exercise of vengeance must be resisted. The history of the endeavour to establish the rule of law is a history of the progressive restriction, in public policy and legal codes, of personal vengeance.

The argument for retribution is an emotionally powerful one. It is also one which, if valid, would invalidate the basis for human rights. Central to fundamental human rights is that they are inalienable. They may not be taken away even if a person has committed the most atrocious of crimes. Human rights apply to the worst of us as well as the best of us, which is why they protect all of us.

In practice the death penalty is an arbitrary punishment. It is irrevocable and always carries the risk that the innocent may be put to death. The irrevocable punishment of death removes not only the victim's right to seek legal redress for wrongful conviction, but also the state's capacity to correct its errors.

12 offences carrying a possible death sentence (see Appendix I for a list of these offences). A death sentence may not be passed on anyone under 18 at the time of the offence or when sentence is passed, or on anyone ruled to have been insane when the crime was committed or when judgment was passed. Women are exempt from the death penalty, as are men aged over 65. Execution is by shooting. Those sentenced to death may appeal, although appeal by way of cassation is apparently denied to those sentenced by the Supreme Court acting as a court of first instance. It appears that in these cases the person sentenced may submit an appeal to the Supreme Court for a judicial review.³

If the death sentence is upheld on appeal, and no other judicial protests are pending, the last resort against execution is a petition for clemency to the President of Azerbaijan, who has the constitutional authority to exercise pardon and grant clemency.⁴ All death sentences are passed automatically to a presidential clemency commission,⁵ which prepares recommendations for consideration by the President, regardless of whether the prisoner concerned has submitted a petition. The commission seeks the views of the Supreme Court and the office of the Prosecutor General in making recommendations, as well as taking into consideration the circumstances of the crime, the family status of the prisoner and other mitigating or aggravating factors. A dossier on the case is then passed to the President, who issues a decree containing the decision.⁶

The death penalty in practice

Death sentences are passed regularly in Azerbaijan and the totals handed down annually have risen sharply, according to official figures, from three in 1990 to 41 in 1996.⁷ Speaking to

³ When Azerbaijan was part of the Soviet Union, sentences passed by its Supreme Court could be appealed to the Supreme Court of the USSR. With the demise of the Soviet Union the Azerbaijani Supreme Court became the court of highest instance in the country. Amnesty International has frequently requested clarification of the current appeals procedure when the Supreme Court passes a death sentence as the court of first instance, but has not received a response.

⁴ Article 109, part 22 of the Constitution.

⁵ Formed by a presidential decree of 4 May 1995.

⁶ Information from Ramiz Mehdiyev, Chairman of the Presidential Clemency Commission, in a letter to Amnesty International dated 1 February 1996.

⁷ The following statistics on death sentences passed in Azerbaijan were given to Amnesty International by official sources: three death sentences handed down in 1990, 18 in 1991, 27 in 1992, 22 in 1993, 23 in 1994 and 37 in 1995. The 1996 figures were reported by the Azerbaijani news agency TURAN on 1 and 10 February 1997, quoting official sources. Twelve of the 41 death sentences in 1996 were passed by military courts.

Amnesty International delegates in 1992, a member of the Supreme Court explained that the jump from three death sentences in 1990 to 18 in 1991, and a further 18 in just the first six months of 1992, was connected with increased violence surrounding the situation of armed conflict over the disputed enclave of Karabakh.⁸ Similarly the unstable political situation in Azerbaijan in recent years, including attempted coups d'état, has been reflected in death sentences being passed for convictions of "anti-state" charges such as treason for the first time in recent years. Of the 76 death sentences handed down between 1986 and the first half of 1992, for example, all but two were for premeditated, aggravated murder.⁹ In 1996 at least five of the 41 death sentences passed were for treason.

Among those sentenced for treason last year were Alakram Alakbar oglu Hummatov (also known as Aliakram Humbatov), a former department head in the Ministry of Defence, and Nariman Shamo oglu Imranov, a former Minister of National Security. In June 1993, amid general political unrest in Azerbaijan, Alakram Hummatov had announced the creation of a self-proclaimed "Talish-Mugan Autonomous Republic", based around the southern city of Lenkaran, with himself as President. He was detained on 9 December 1993 and transferred to Baku, the capital, where he was held in the investigation-isolation prison of the Ministry of National Security until he and three other prisoners escaped nine months later. Nariman Imranov, who was Minister of National Security at that time, was arrested following the September 1994 escape, and charged with complicity in organizing it. Alakram Hummatov was recaptured in August 1995. There are allegations that his wife, Sudaba Rasulova, had been detained without charge the previous month, effectively as a hostage to force her husband to give himself up, and that the couple's eldest child, 14-year-old Ramal Hummatov, was beaten by police on several occasions in an attempt to force him to reveal the location of his mother who had herself gone into hiding after she was released following the detention of her husband.¹⁰

The trial opened on 7 November 1995 before the Military Collegium of the Supreme Court, and the two men were sentenced to death with confiscation of their property on 12 February 1996.¹¹

⁸ Intercommunal violence in this disputed region of Azerbaijan, populated now almost exclusively by ethnic Armenians, escalated from 1988 into a large-scale armed conflict between Azerbaijani forces and those fighting on behalf of the self-proclaimed Nagorno-Karabakh Republic. A cease-fire has been in force since May 1994.

⁹ The exceptions were one death sentence each for sabotage and endangering the life of a police officer.

¹⁰ For further details of this case see the AI document *Azerbaijan: Allegations of ill-treatment in detention*, AI Index: EUR 55/01/96.

¹¹ According to Eldar Zeynalov, director of the non-governmental Human Rights Centre of Azerbaijan, Nariman Imranov was charged with aiding the escape of prisoners (Articles 17 and 185 of the Criminal Code), treason (Article 57), abuse of authority (Article 255), theft or destruction of official

Other death sentences were passed on a charge of premeditated murder where the motivation was alleged to be political assassination, rather than for solely criminal reasons. On 3 March 1996, for example, the Supreme Court sentenced to death former police officer Elchin Garaoglan oglu Aliyev for the murder of a senior official. Elchin Aliyev, a member of the special police unit known as OPON, was arrested in September 1994 and accused of killing Shamsi Ragimov, the head of a special directorate in the presidential administration, earlier that month.

The continuing influence of the conflict over Karabakh was also reflected in three death sentences passed during 1996. On 4 May two members of the Lezgin ethnic minority, Rahib Mahsumov and Telman Suleymanov, were convicted and sentenced to death for bombing a metro train at the '20 January' station in Baku on 19 March 1994, as a result of which 14 people died.¹² Other defendants received long periods of imprisonment. The men, said to be members of the Sadval (Unity) organization¹³, were reported by Azerbaijani officials to have been trained by Armenian special services in the Nairi region of Armenia with the aim of fomenting ethnic unrest in the Lezgin areas of Azerbaijan.

On 10 June a former soldier held as a prisoner of war by ethnic Armenian forces was sentenced to death by the Military Collegium of the Supreme Court, in a trial that began on 24 May. Ilham Kurbanov had been taken prisoner in 1993 by ethnic Armenian forces, and held with other Azerbaijani soldiers until released in December 1995. His fellow prisoners of war said that he had been placed in charge of them while they were in detention, and "had committed numerous crimes against them". He was convicted of treason (Article 57 of the Criminal Code), sodomy (Article 113), infliction of bodily injuries (Article 105) and criminal activities by a soldier held in captivity (Article 260).¹⁴

documents (Article 193) and illegal passing of banned objects to a prisoner (Article 185-3). Alakram Hummatov was charged with treason, establishing illegal armed formations (Article 70-2), premeditated murder (Article 94), unauthorized appropriation of the title or powers of an official (Article 192), unlawful deprivation of freedom (Article 120), breach of the inviolability of a citizen's residence (Article 132), illegal possession of a weapon (Article 220) and escape from a place of imprisonment (Article 185).

¹² According to press reports the charges against them were sabotage (Article 61 of the Criminal Code), propaganda of war (Article 64), activity aimed at the commission of especially serious state crimes and participation in an anti-state organization (Article 65), and violating national and racial equality (Article 67).

¹³ The Lezgins are an ethnic minority living in the north of Azerbaijan and across the border in Dagestan in the Russian Federation. According to the TURAN news agency, Sadval was formed in Dagestan in the late 1980s with the aim of creating a single territorial unit, Lezginistan, in areas with a predominant Lezgin population.

¹⁴ Interfax news agency, 10 June 1996, and *Zerkalo*, 15 June 1996.

Other sentences passed during 1996 included those for premeditated murder in criminal cases, with no political aspects, which appeared to constitute the majority of those handed down.¹⁵

Procedures for executions

According to official sources there have been no executions since 1993,¹⁶ when President Heidar Aliyev came to power. Until then the procedures followed were those laid down from the Soviet era¹⁷, and executions took place in the fifth block of Baku's Bailov prison where, then as now, all those sentenced to death are held.

Under these procedures the director of Bailov prison, on receiving an official communication that a prisoner's petition for clemency had been refused, was obliged to ensure that the execution was carried out within 24 hours. To this end the director would forewarn members of a special commission that they would need to convene within the specified time. The prisoner was given no advance notice of this. The commission members consisted of a prosecutor, the prison director, a doctor and an official from the Ministry of Internal Affairs. When the commission had assembled, the condemned person would be summoned from the cell, with hands cuffed behind the back and a rubber stopper placed in the mouth to prevent him or her from crying out. The text of the decree refusing clemency would be read out, and the prisoner would then be taken immediately to a cell a short distance away and shot in the head two or three times with a revolver.

Neither the prisoner nor his or her relatives were given any advance notice of the date of execution, or an opportunity for a last visit, and the prisoner had barely minutes to come to terms with imminent execution after the clemency refusal had been announced. The prisoner would be removed and buried in secret, with relatives having no right to the return of the body or even to know where their loved one was buried.

¹⁵ TURAN news agency reported on 1 February 1997 that the Chairman of the Azerbaijani Supreme Court, Hanlar Hajiyev, had noted that 90 per cent of the death sentences passed by the civil (as opposed to military) courts in 1995 and 1996 were for premeditated, aggravated murder and banditry.

¹⁶ To Amnesty International's knowledge, no official statistics have been released detailing executions that year. The one reported execution made known to Amnesty International from unofficial sources was that of Islam Mammadov, sentenced to death on 11 April 1991 by the Azerbaijani Supreme Court for murder and shot in February 1993.

¹⁷ Information on procedures for executions was given to an Amnesty International delegate in Baku in November 1996 by a former employee of the Ministry of Justice.

Moves towards abolition

Since independence, moves towards abolition in Azerbaijan have been gradual, but slow. In October 1994 women were exempted from the death penalty, and this was followed in May 1996 by the decision to exempt men aged over 65. Also in May 1996 parliament voted to approve President Aliyev's decree on reducing the number of offences carrying a possible death sentence in the Azerbaijani Criminal Code from 33 to 12 (see Appendix I). Among the offences for which the death penalty was abolished were all but one of those crimes in the military section of the Criminal Code which, for the most part, had stipulated a possible death sentence if committed during time of war of combat operations. The amendments were made in order to bring the Criminal Code into line with the Constitution adopted the previous year, which limits the death penalty to serious offences against the state, or against the life and health of an individual.

Although welcome, these moves would appear to have little direct impact on the number of death sentences currently being passed. Unofficial sources report, for example, that no woman had been executed in Azerbaijan for many years prior to the decision to exempt women from the death penalty. Also, the great majority of death sentences passed in recent years appear to have been for offences which currently still carry this punishment. President Aliyev has, however, used widely his constitutional power to exercise pardon and this has included granting clemency to at least 16 people on death row over the past two years: seven men had their death sentences commuted to between 16 and 20 years' imprisonment by a presidential decree of 27 December 1995¹⁸, a further five men had their sentences commuted to between 15 and 20 years' imprisonment under a presidential decree dated 19 April 1996¹⁹, and four ethnic Armenians under sentence of death were released and flown out of the country

¹⁸ According to copies of the decrees made available to Amnesty International by the Azerbaijani authorities, the seven men whose death sentences were commuted in December 1995 were as follows: Deyanet Kemal oglu Babayev, sentenced by Baku City Court on 29 September 1993; Igor Viktorovich Bayramov, sentenced by Baku City Court on 24 November 1994; Ismail Ibad oglu Bakhshaliyev, sentenced by the Supreme Court on 10 August 1995; Agalar Hajimirza oglu Mehmanov, sentenced by the Supreme Court on 27 October 1995; Mail Mirismail oglu Muradov, sentenced by Baku City Court on 26 April 1995; Viktor Aleksandrovich Osminkin, sentenced by Baku City Court on 17 February 1995; and Mammed Hasan oglu Mustafayev, sentenced by the Supreme Court on 3 October 1995. Mammed Mustafayev's sentence was commuted to 16 years' imprisonment, the rest to 20 years' imprisonment.

¹⁹ The men were named in Decree No. 454 of 19 April 1996 as: Firuz Ali oglu Alakbarov, sentenced on 14 November 1995 by the Military Tribunal of Baku garrison; Kitatali Shirinali oglu Isayev, sentenced on 13 November 1995 by the Supreme Court; Vasily Vladimirovich Logovoy, sentenced on 12 October 1994 by the Supreme Court; Elchin Mirsahib oglu Mayilov, sentenced on 28 December 1995 by the Supreme Court; and Aga Ibadulla oglu Mammadov, sentenced on 14 January 1996 by the Military Tribunal of Nahchivan garrison. The sentences on Alakbarov and Mayilov were commuted to 20 years' imprisonment, those on the others to 15 years' imprisonment.

in May 1996 in an exchange of prisoners to mark the second anniversary of the cease-fire in the Karabakh conflict.²⁰

Amnesty International's concerns

While Amnesty International welcomes these recent moves towards reducing the scope and range of the death penalty, and the presidential decrees granting clemency, the organization still has a number of concerns about the death penalty in Azerbaijan.

Alleged use of duress to obtain confessions in potentially capital cases

One of the foremost concerns is the possibility of judicial error, linked with a number of recent reports that law enforcement officials have used physical and other means of duress in seeking to obtain confessions in cases where the offence carries a possible death sentence. Under Azerbaijani law evidence obtained through violation of legal proceedings has no legal force.²¹ It is also a criminal offence for investigators and others to force a person to give testimony by use of threats or other illegal actions.²² Nevertheless it has been alleged by some prisoners facing charges carrying a possible death sentence that testimony was obtained from them under duress, and also that such testimony was not excluded at their trial although they repudiated it in court.

At the trial of 37 members of the special police unit known as OPON, for example, which opened on 1 October 1996 in Baku, 24 defendants alleged that they had been subjected to physical or mental duress during the first half of the year in order to extract testimony implicating them in a failed coup d'état in March 1995. Defendant Murshud Mahmudov, for example, stated that he had been subjected to electric shock treatment applied to his ears, Abulfat Kerimov testified that he had been hung upside down and beaten, and Tahir Ragimov said that he had been regularly and severely beaten during questioning sessions²³ (defence lawyers requested medical examinations as a result of the claims, and X-ray tests carried out

²⁰ They were Kamo Saakov, sentenced to death for murder in 1995, and Garnik Arustamyan, Gagik Arutyunian and Arvid Mangasarian who had been sentenced to death in 1992 for the murder of an Azerbaijani journalist and service personnel in Karabakh.

²¹ Article 63 of the Constitution.

²² Article 177 of the Criminal Code states: "The compelling to give testimony by means of application of threats or other illegal actions on the part of a person conducting an inquiry or preliminary investigation shall be punished by deprivation of freedom for a term not exceeding three years. The same actions combined with the application of force or with humiliation of the person interrogated shall be punished by deprivation of freedom for a term of three to 10 years."

²³ TURAN news agency, 17 December 1996.

at the end of November are said to have shown that at least three of the defendants had sustained broken ribs, although attributing a time and cause was not possible). Amnesty International's concern about these allegations was heightened by the fact that the majority of the defendants faced a charge, among other things, of treason (Article 57 of the Criminal Code), which carries a possible death sentence on conviction.²⁴

In another political²⁵ trial taking place at around the same time, popularly known as "the case of the generals", 19 of the 21 defendants appealed to Amnesty International and other organizations at the end of December 1996, repudiating their testimony and claiming that it had been extracted under duress. In the text of their appeal²⁶ they wrote:

"We were forced to sign testimony against ourselves under torture, physical and moral humiliation, abuse of our honour and dignity... We were broken morally and physically, and confessed to crimes we did not commit."

Among the signatories was General Vahid Musayev, for whom the state prosecutor demanded the death penalty on 15 January 1997.²⁷

Possible sources of error and inconsistency are inherent in any criminal justice system devised and administered by fallible human beings. Judicial errors which deprive people of their liberty are unacceptable and should be corrected. Judicial errors which can deprive people of their lives are intolerable and without remedy. If accepted standards for a fair trial are set aside or ignored, the risk of executing the innocent is further increased.

²⁴ The trial ended on 16 January 1997. Two defendants - Tahir Ragimov and Galib Abdullayev - were found guilty of treason and sentenced to 12 and 13 years' imprisonment respectively. The others were cleared of treason but sentenced to up to nine years' imprisonment for other crimes.

²⁵ Amnesty International uses a broad interpretation of the term "political prisoner" so as to cover all cases with a significant political element, for example criminal offences committed with a political motive or within a clear political context. Amnesty International does not call for the release of all political prisoners within this definition, nor does it call on governments to give political prisoners special conditions. Governments are, however, obliged to ensure they receive a fair trial in line with international standards, and Amnesty International opposes the use of torture and the death penalty in all cases - both criminal and political - without reservation.

²⁶ Passed to Amnesty International on 4 January 1997 by the non-governmental Institute of Peace and Democracy in Baku, headed by Leila Yunusova.

²⁷ He was subsequently sentenced to 15 years' imprisonment on 29 January 1997 by the Supreme Court. Other defendants received up to 13 years' imprisonment.

Continued passing of death sentences

Although there is a *de facto* moratorium on executions, courts have continued to pass death sentences. Forty-one were handed down in 1996, and at the time of writing Amnesty International has recorded two death sentences so far in 1997 - on a man named as Natig Zeynalov who was convicted by the Military Board of the Supreme Court on 11 January, accused of murder among other offences,²⁸ and a second at the beginning of February on a 61-year-old man named as Nazim Javadov, accused of a double murder.²⁹

The presidential decrees granting clemency, although welcome, have not affected the majority of those waiting on death row and their numbers have continued to rise in recent years. Eighty-five men were awaiting execution on death row in Baku in September 1996, according to statistics passed to Amnesty International by the Azerbaijani authorities, and unofficial sources report that the conditions in which they are held are extremely difficult owing among other things to isolation and overcrowding. Five to six men are said to be held in cells designed for two at the most, with no opportunity for exercise³⁰, and the poor conditions are reported to have contributed to the deaths of 16 men who died on death row in Baku during 1996.³¹

In addition to the physical difficulties of confinement, there are also the mental rigours of waiting for execution. Inmates on death row - some held there for several years - face continued uncertainty as to their ultimate fate. Several studies have indicated that the cruelty of the death penalty is not restricted to the actual moment of execution; the waiting period with its prolonged periods of isolation and enforced idleness can lead to severe depression, apathy, and both physical and mental deterioration.³²

The death penalty in Karabakh

The self-proclaimed Nagorno-Karabakh Republic (NKR), an enclave with a majority ethnic Armenian population in the west of Azerbaijan, is currently outside the *de facto* control of the Azerbaijani authorities. Amnesty International understands that the criminal code in use there

²⁸ TURAN news agency, 11 January 1997.

²⁹ *7 Gun*, 8 February 1997.

³⁰ Lawyer Hagigat Huseynova, at a press conference on the death penalty held by the non-governmental Institute of Peace and Democracy in Baku on 27 February 1997. See also comments by the lawyer Teymur Ismiyev, quoted in the Baku journal *Advokat*, 1 September 1995.

³¹ Saida Gojamanly, head of the Department for Human Rights at the Institute of Peace and Democracy, at the same press conference.

³² See for example the Amnesty International publication *When the State Kills...The death penalty v. human rights*, AI Index: ACT 51/07/89 (ISBN 0 86210 164 6), 1989.

is still that based on the model inherited from the Soviet Union, which provides for the death penalty for a number of offences, although Amnesty International has not learned of any judicial executions carried out by the NKR. At least one death sentence was passed in recent years, however. Captain Yury Belichenko, a Ukrainian citizen, was sentenced in May 1994, accused of being a mercenary for Azerbaijan and carrying out a number of bombing raids over the NKR which resulted in loss of life and material damage. He was sentenced without right of appeal by a military tribunal, but was later pardoned and his sentence commuted by the NKR parliament.

Those in power in Karabakh are extremely unlikely to regard as binding on them any decisions the Azerbaijani Government may take with regard to abolition of the death penalty, and Amnesty International is urging them in line with worldwide trends to take concrete steps towards abolition.³³

Public opinion and the death penalty

One reason sometimes given for retaining the death penalty - and put forward even by officials who say that they personally oppose the punishment - is that public opinion demands it. They cite polls apparently showing strong support for the death penalty, then argue that the time is not ripe for abolition, and even that it would be undemocratic in the face of such support for the punishment.

The first response to this argument is that respect for human rights must never be dependent on public opinion. Torture, for example, would never be permissible even if there were public support for its use in certain cases.

Secondly, public opinion on the death penalty is often based on an incomplete understanding of the relevant facts, and the results of polls can vary according to the way questions are asked. Amnesty International believes it is incumbent on officials responsible for policy on this matter not only to listen to the public but also to ensure that the public is fully informed. Many more people might well support abolition if they were properly informed of the facts surrounding the use of the death penalty and the reasons for abolition.

One of the strongest reasons often put forward in opinion polls for retaining the death penalty is its supposed deterrent qualities, especially in the crime of murder. Yet study after study in diverse countries has failed to find convincing evidence that the death penalty is a more effective deterrent against crime than other punishments (see page 3 above). Criminologists have long argued that the way to deter would-be criminals is not to increase the severity of the punishment but to increase the likelihood of detection and conviction. Increased public confidence in such measures in Azerbaijan would greatly help to combat what many fear - in the absence of the death penalty - would otherwise be a tendency to take the law into one's own hands.

³³ Amnesty International takes no position on territorial issues and approaches the NKR in view of its *de facto* control of the relevant territory, rather than as a recognition of the NKR *de jure*.

Amnesty International's recommendations

The death penalty requires the state to carry out the very act which the law most strongly condemns. In virtually every legal system the severest sanctions are provided for the deliberate and premeditated killing of a human being; but no killing is more premeditated or cold-blooded than an execution, and just as it is not possible to create a death penalty system free of caprice, discrimination or error, so it is not possible to find a way to execute a person which is not cruel, inhuman and degrading.

Scientific studies have consistently failed to find convincing evidence that the death penalty deters crime more effectively than other punishments. For example, the most recent survey of research findings on the relation between the death penalty and homicide rates, conducted for the United Nations in 1988 and updated in 1996, concluded that:

*“Research has failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment and such proof is unlikely to be forthcoming. **The evidence as a whole still gives no positive support to the deterrent hypothesis** [emphasis added].³⁴”*

Similarly, the South African Constitutional Court, whose judges were appointed by President Nelson Mandela, in its judgment of June 1995³⁵, expressly rejected the contention that the death penalty was an effective specific deterrent.

The majority of the countries in the world have now abolished the death penalty in law or practice. In addition, the United Nations Security Council, when it established the International Criminal Tribunals for the former Yugoslavia and Rwanda, expressly ruled out the death penalty for the gravest of crimes: genocide, other crimes against humanity, and serious violations of humanitarian law. The United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions has also stated that "the abolition of capital punishment is most desirable in order fully to respect the right to life."³⁶

³⁴ See the Amnesty International report *When the State Kills...The death penalty v. human rights*, AI Index: ACT/51/07/89 and Roger Hood, *The Death Penalty: A World-wide Perspective*, Oxford, Clarendon Press, 1996.

³⁵ State v. MaKwanyane and Mchunu, Case No. CCT/4/94.

³⁶ Extrajudicial, summary or arbitrary executions: Note by the Secretary-General, UN document No. A/51/457, 7 October 1996, paragraph 107.

In the light of this, Amnesty International is calling on the Azerbaijani authorities to:

- , Commute all existing death sentences, as well as any that may be imposed in the future;
- , Declare officially a moratorium on all executions;
- , Prepare public opinion for abolition of the death penalty;
- , Sign the second Optional Protocol to the International Covenant on Civil and Political Rights. Signing this instrument, the first treaty of worldwide scope aimed at abolition of the death penalty, would be a very significant sign of Azerbaijan's commitment to abolition;
- , Prepare and enact legislation to remove the death penalty completely as a possible punishment from the Azerbaijani Criminal Code and Constitution;
- , Publish timely, accurate and comprehensive statistics for the application of the death penalty, in accordance with Azerbaijan's commitments as a member of the Organisation for Security and Co-operation in Europe (OSCE)³⁷ and as requested by international bodies³⁸.

³⁷ As a member of the Organisation for Security and Co-operation in Europe (formerly the Conference on Security and Co-operation in Europe), Azerbaijan has undertaken to "exchange information within the framework of the Conference on the Human Dimension on the question of the abolition of the death penalty and keep that question under consideration", and to "make available to the public information regarding the use of the death penalty" (document of the Copenhagen Meeting of the Conference on the Human Dimension of the Death of the CSCE, 29 June 1990, paragraphs 17.7-17.8).

³⁸ See for example United Nations Economic and Social Council (ECOSOC) Resolution 1989/64 (extract in Appendix III).

APPENDIX I - Offences carrying a possible death sentence

The following offences currently carry a possible death sentence under the Criminal Code of the Azerbaijani Republic (first adopted on 8 December 1960):

Article 57	Treason.
Article 57-1	Using the armed forces of the Azerbaijani Republic ...against the Azerbaijani people or constitution.
Article 58	Espionage.
Article 59	Terrorist act.
Article 61	Sabotage.
Article 70	Banditry.
Article 70-2	Establishment of illegal armed groups.
Article 94	Premeditated murder.
Article 109	Rape.
Article 212-2	Hijacking
Article 212-3	Terrorism
Article 255	Abuse of authority, exceeding authority, and negligent attitude toward duty.

The death penalty was abolished for the following crimes following a decision by the Azerbaijani parliament on 29 May 1996 (Articles 233 to 262 are military crimes, many of which carried a possible death sentence only in time of war or a combat situation):

Article 80	Making or passing counterfeit money or securities.
Article 70-1	Activities causing disruption to the work of corrective labour institutions.
Article 233	Insubordination.
Article 235	Offering resistance to a superior or forcing him to violate official duties.
Article 237	Forcible actions against a superior officer.
Article 242	Desertion.
Article 243	Unwarranted abandonment of unit in a combat situation.
Article 244	Evasion of military service by maiming or any other method.
Article 246	Intentional destruction or damaging of military property.
Article 250	Violation of service regulations for guard duty.
Article 252	Violation of rules for performing combat lookout.
Article 256	Surrendering or abandoning to the enemy of means of waging war.
Article 257	Abandonment of a sinking warship.
Article 258	Unwarranted abandonment of battlefield or refusal to use a weapon.

- Article 259 Voluntary surrender into captivity.
Article 261 Pillage.
Article 262 Use of force against the population in an area of military operations.

Also on 29 May 1996 parliament voted to abolish completely the following three separate crimes which carried a possible death sentence, and subsume them into other articles of the criminal code:

- Article 60 Terrorist act against a representative of a foreign state
Article 65 Organizational activity directed to commission of especially dangerous crimes against the state, and participation in an anti-state organization.
Article 191-1 Attempt on the life of a police officer.

Earlier amendments had removed three offences carrying a possible death sentence from the criminal code:

- Article 81 Violation of regulations on currency operations (amendment of 27 January 1993).
Article 88-1 Theft of state property on an especially large scale (amendment of 1 February 1996).
Article 170 Bribe taking (amendment of 1 February 1996).

APPENDIX II - Extracts from international human rights standards relating to the death penalty

1. *Universal Declaration of Human Rights (selected articles)*

Article 3

Everyone has the right to life, liberty and security of person.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

2. *International Covenant on Civil and Political Rights (selected articles)*

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his right.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

3. *United Nations Economic and Social Council (ECOSOC) Resolution 1984/50: Safeguards guaranteeing protection of the rights of those facing the death penalty (selected articles)*

Annex

4. Capital punishment may be imposed only when the guilt of the person charged is based on clear and convincing evidence leaving no room for an alternative explanation of the facts.
5. Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.
6. Capital punishment should not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence.

4. ECOSOC Resolution 1989/64: Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty (selected articles)

Article 1

Recommends that Member States take steps to implement the safeguards and strengthen further the protection of rights of those facing the death penalty, where applicable, by:

- b) Providing for mandatory appeals or review with provision for clemency or pardon in all cases of capital offence;
- c) Establishing a maximum age beyond which a person may not be sentenced to death or executed;

Article 5

Urges Member States to publish, for each category of offence for which the death penalty is authorized, and if possible on an annual basis, information about the use of the death penalty, including the number of persons sentenced to death, the number of executions actually carried out, the number of persons under sentence of death, the number of death sentences reversed or commuted on appeal and the number of instances in which clemency has been granted.

5. United Nations General Assembly Resolution 32/61 of 8 December 1977 (selected article)

Article 1

[The General Assembly] Reaffirms that...the main objective to be pursued in the field of capital punishment is that of progressively restricting the number of offences for which the death penalty may be imposed with a view to the desirability of abolishing this punishment.

6. Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at abolition of the death penalty (selected extracts)

The States parties to the present Protocol,

Believing that abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights;

Convinced that all measures of abolition of the death penalty should be considered as progress in the enjoyment of the right to life,
Have agreed as follows:

Article 1

No one within the jurisdiction of a State party to the present Optional Protocol shall be executed.

Article 2

Each State party shall take all necessary measures to abolish the death penalty within its jurisdiction.

7. Council of Europe: Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms Concerning the Abolition of the Death Penalty (selected article)

Article 1

The death penalty shall be abolished. No one shall be condemned to such penalty or executed.