



ASSESSMENT OF JUVENILE JUSTICE REFORM ACHIEVEMENTS IN AZERBAIJAN

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Note on the Assessment Mission

The assessment mission took place from 8 to 19 September 2008. The team consisted of Dan O'Donnell, international consultant, and Nabil Seyidov, national consultant. Support was provided by M. Mammadov and R. Rzehak of UNICEF Azerbaijan.

The team interviewed representatives of the Ministry of Internal Affairs, the Ministry of Justice, the Ministry of Education, a member of the Judicial-Legal Council, a Member of Parliament and the Commissioner for Human Rights (Ombudsman), as well as representatives of the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Organization for Security and Co-operation in Europe (OSCE), Baku State University, the NGO Alliance for Children's Rights and, of course, UNICEF.

Visits were made to the juvenile correctional facility, the juvenile pretrial detention centre, two 'special schools', a pilot diversion project and the Children's Rights Legal Clinic. Focus group discussions were held with NGOs involved in juvenile justice and the Interministerial Coordination Council on Child Rights, which oversees the implementation of the pilot diversion project. The lists of persons interviewed and documents consulted are attached (see Annexes 2 and 3).

Background

Azerbaijan became independent of the Union of Soviet Socialist Republics (USSR) in 1991. The country is divided into 71 districts and one autonomous republic.¹ Part of the national territory, Nagorny Karabakh, is not under control of the Government of Azerbaijan.²

Azerbaijan has a population of 8.46 million, of which 2.5 million (30 per cent) is under age 18.³ Approximately half of the population is urban and half is rural. Ethnic minorities make up 11 per cent of the population.⁴ Approximately 690,000 persons have been displaced within Azerbaijan by the conflict in Nagorny Karabakh.⁵

The years following independence were marked by political instability and a dramatic decline in the economy, which is based largely on the export of oil and gas. Since 2000, however, the economy has been growing steadily. In 2007, the Gross National Income (GNI) per capita was US\$ 2,550.⁶ The national budget has increased sixfold since 2001.⁷ One third of the child population nevertheless lives below the poverty line.⁸

The Constitution was adopted in 1995, and a Law on the Rights of the Child in 1998.⁹ The Criminal Code and the Code of Criminal Procedure, which in the absence of a law on juvenile justice apply to juvenile offenders, were adopted in 1999 and 2000, respectively.

¹ Nakhichevan, which is separated from the rest of Azerbaijan by Nagorny Karabakh.

² Some 30,000 persons were killed in fighting, which broke out shortly after independence and ended with a ceasefire in 1994.

³ United Nations Children's Fund, *The State of the World's Children 2009*, UNICEF, New York, 2009, Tables 1 and 6.

⁴ United Nations, International Human Rights Instruments, Core document forming part of the reports of States parties: Azerbaijan, HRI/CORE/1/Add.117, 31 January 2002, para. 1 (1999 Census).

⁵ Norwegian Refugee Council/Internal Displacement Monitoring Centre, *Internal Displacement*, 2008, p. 90.

⁶ *The State of the World's Children 2009*, Table 7.

⁷ Mid-Term Review of [the UNICEF] Country Programme, UNICEF, Baku, 2008.

⁸ Ibid., citing draft 'Azerbaijan Extended Poverty Profile 2002–2004', The World Bank, 2006.

⁹ Law on the Rights of the Child, Act No. 499 of 19 May 1998.

Azerbaijan became a party to the Convention on the Rights of the Child in 1992. Its initial report to the Committee on the Rights of the Child was examined in 1997, and its second report in 2006. Azerbaijan joined the Council of Europe in 2001 and became a party to the European Convention on Human Rights the same year. Treaties form part of the national law and, in the event of a conflict, prevail over ordinary legislation.¹⁰

UNICEF established a Country Office in Azerbaijan in 1993. Juvenile justice was not part of the present Country Programme (2005–2009); it was added after the 2007 Mid-Term Review. Juvenile justice was incorporated into the United Nations Development Assistance Framework at the same time.

Executive Summary

Azerbaijan has some of the components of a juvenile justice system, but not a complete system. Specialized juvenile police units have existed since Soviet times, but their task is essentially preventive and they do not investigate offences committed by juveniles. There is no juvenile justice law and neither juvenile courts nor specialized judges. Juveniles over the age of criminal responsibility accused of an offence are tried by ordinary criminal courts or by the Court of Grave Crimes, under provisions of the Criminal Code and the Code of Criminal Procedure applicable to juveniles. There is one correctional facility for convicted male juvenile offenders, whereas female juvenile offenders, when given custodial sentences, are confined in the women's prison. Most juveniles detained while awaiting trial are kept in a separate section of the pretrial detention facility in the capital. The Ministry of Education operates a closed facility for children who commit offences before reaching the age of criminal responsibility, as well as children placed there for other reasons. There is a pilot diversion project, but no programme for juvenile offenders given alternative sentences, no programme to assist children at risk of offending and no programme to assist persons released from facilities for offenders. A specialized, non-governmental centre for legal assistance has been established recently.

The number of offences committed by juveniles over the last decade has been relatively low and generally in decline, from 601 in 1998 to 485 in 2007.¹¹ The number of juveniles convicted is substantially lower and is also generally diminishing, from 399 in 1998 to 305 in 2007.¹² The rate of offending, measured by convictions, has also decreased during the last decade, from 67 per 100,000 population in 1998 to 42 per 100,000 in 2007.¹³

The number of juveniles convicted of serious crimes of violence has fluctuated between as low as 25 and as high as 45.¹⁴ The appearance of the first juvenile 'gang' in 2007, and two more in 2008, is a new development.

The marked reduction in the number of juvenile offenders serving sentences in correctional facilities is another positive development. Although data are not published regularly, various sources report

¹⁰ They do not prevail over the Constitution, nor statutes adopted by referendum. See *Core document*, paras. 72–75, citing Articles 12, 148.2 and 151 of the Constitution.

¹¹ State Statistical Committee, *Crimes and Offences in Azerbaijan*, Baku, 2009, Table 4.2. The lowest number during this decade was 412, in 2003. Data do not include offences committed by children under age 14.

¹² *Ibid.*, Table 4.4.

¹³ *Ibid.*, Table 8.6.

¹⁴ Murder, assault causing serious injury, sexual assault and kidnapping. (By the government's broader definition of 'serious crime', the numbers have fallen dramatically, from 174 in 1998 to 46 in 2007. *Ibid.*, Table 4.1.)

89 juvenile prisoners in 2001; 94 in 2002; 70 in 2004; and 60 in 2005.¹⁵ At the time of the assessment mission, the population of the juvenile correctional facility was 47. Physical conditions remain poor, especially in the juvenile correctional facility and the closed special vocational school, but plans for replacing them exist.

Since 2005, international organizations, in particular UNICEF but also OHCHR and OSCE, have made a concerted advocacy effort. Considerable training has taken place during this time and two training manuals have been prepared. Recently, two pilot projects became operational: the Children's Rights Legal Clinic and a community-based diversion project.

Advocacy has been successful and the government is committed to adopting a juvenile justice law and to establishing a juvenile justice system, although many important details remain to be determined.

Despite greater openness to monitoring by civil society and international organizations, accountability for child rights' violations, including physical and psychological violence as well as procedural rules violations, remains a problem.

UNICEF Azerbaijan does not have a juvenile justice programme as such, although some juvenile justice components were added to its protection programme following the 2007 Mid-Term Review. Its work on juvenile justice has been financed through the child protection budget and small contributions for specific activities and events. Its main counterparts are the Ministry of Internal Affairs and the NGO Alliance for Children's Rights.

The conclusions of the assessment team include the following:

The government recognizes the need to establish a juvenile justice system. It has decided to adopt a law on juvenile justice and to establish an interministerial, intersectoral Juvenile Justice Task Force. There is a window of opportunity to influence the shape of the future juvenile justice system, whose development is in its first stage.

Although a considerable amount of training has been conducted, many practitioners still have to be trained. Training materials have been developed and the process of institutionalizing juvenile justice training is underway in one sector, the police.

The principle that children should not be deprived of liberty except as a last resort is recognized, but the legislation lacks specific standards on detention of juveniles. While the law concerning the sentencing of juvenile offenders is, in principle, compatible with international standards and the number of convicted offenders given custodial sentences has declined to less than one third, the number of long sentences is a source of concern. Practices, such as physical and psychological violence, detention for periods in excess of those allowed by law and soliciting bribes, still exist. Accountability mechanisms are not functioning effectively.

A pilot diversion project has been established, but has not yet been evaluated. There is no national strategy for prevention of offending, and responsibility for secondary prevention lies largely with the police. There are no programmes to help juvenile offenders reintegrate their community after

15 Hamilton, C., *Azerbaijan: the position of children in conflict with the law*, UNICEF, Baku, 2006, pp. 10–11, citing the Eighth United Nations Survey on Crime Trends; Committee on the Rights of the Child, Second periodic report: Azerbaijan, CRC/C/83/Add.13, 2005, para. 449; NGO Alliance for Children's Rights, *NGO Alternative Report to the Committee on the Rights of the Child*, 2005, p. 36. (Which portion of these figures are juvenile offenders who had reached age 18 while awaiting trial or serving their sentence is unclear.)

release. Progress has been made in ‘humanizing’ the treatment of juveniles in the juvenile prison and the special vocational school, but the infrastructure of both facilities is in urgent need of repair and some policies and programmes need to be reviewed and improved.

UNICEF had made an important contribution to the creation of a juvenile justice system, despite limited funds and the lack of a clearly defined strategy. This has been achieved largely through the situation analysis; persistent and intensive advocacy; good cooperation with civil society; effective coordination with other international actors, such as OHCHR, OSCE and the British Embassy; extensive training; and some well chosen pilot projects.

The main recommendations of the assessment team are the following:

- UNICEF should participate actively in the development of the juvenile justice system, in particular by helping the authorities obtain access to expertise and information; by encouraging the development of evidence-based laws and policies; and by continuing to promote government/civil society cooperation.
- A specialized juvenile court should be established in Baku and specialized prosecutors should handle all cases within the jurisdiction of this court. The authorities should determine the most appropriate way to ensure that cases arising outside the capital are handled by especially trained judges. Training should continue: in-service training activities should be based on needs assessments and their effectiveness evaluated; efforts should continue to incorporate training into the curricula of the institutions responsible for training judges, police, prosecutors and correctional officers; investigators handling the cases of juveniles accused of crimes should be specially selected and trained; plans to establish separate facilities for interviewing juvenile suspects should be implemented without delay; and accountability mechanisms should become more transparent and effective.
- The need for community-based prevention services should be evaluated and, if required, an appropriate pilot project developed and tested. Once the pilot diversion project has been evaluated, plans for its consolidation should be drawn up, and the possibility of other forms of diversion, such as mediation and community service, considered.
- Priority should be given to renovating the juvenile prison and reviewing policies and programmes to ensure that they are compatible with international standards and effective in preparing the return of children to their families and communities. A policy should be developed to ensure that female juvenile prisoners receive access to education. Post-release support programmes should be implemented to reduce the risk of re-offending.
- Data concerning the length of custodial sentences should be disaggregated in order to facilitate the monitoring of their compliance with the principle that deprivation of liberty shall be for the shortest appropriate period of time. Research on offending, sentencing and re-offending should be undertaken, with a view to making prevention and sentencing policies more evidence-based.
- The future law on juvenile justice should include time limits on the duration of trials and detention; recognize victim-offender mediation as an alternative to prosecution and/or alternative sentence; regulate responsibility for the preparation of social background reports; acknowledge the rights of juveniles deprived of liberty; prohibit disciplinary measures incompatible with international standards; and establish norms and procedures regarding

conditional release. Norms concerning the measures to be taken with regard to offenders (e.g., diversion and sentencing) should be based primarily on the characteristics of the offender (e.g., the probability of re-offending or the type of rehabilitation or assistance required) rather than the nature of the offence as such. The cost of implementing the new juvenile justice law should be calculated before the law is adopted and, since the establishment of a juvenile justice system will require extensive changes, consideration should be given to drafting a law that can be implemented in stages.

- UNICEF Azerbaijan should adopt a three-year strategy to contribute to the juvenile justice reform and seek the funds needed to work on a steadier basis that allows for a more coherent planning.

Part I. The Process of Juvenile Justice Reform

1) Policy and advocacy

Although the changes undertaken in the criminal justice and the correction systems during the first decade of independence had some positive consequences for juvenile offenders, juvenile justice reform – or, to be more precise, efforts to create a juvenile justice system – did not appear on the social and political agenda until more recently.

The emergence of this issue on the national agenda was closely linked to the preparation of Azerbaijan's second periodic report on the implementation of the Convention on the Rights of the Child and the observations of the Committee on the Rights of the Child. The report was submitted to the Committee in February 2004 and examined in January 2006.

A 'shadow report' by the NGO Alliance for Children's Rights prepared and submitted to the Committee on the Rights of the Child in 2005 described in detail the need for changes in the treatment of juvenile offenders. The Committee, after meeting with the Azerbaijani delegation, expressed concern about the inhumane treatment of juvenile offenders, lengthy detentions prior to trial, overcrowded facilities, the failure to separate juvenile and adult detainees, and the lack of an "integrated and well defined juvenile justice system."¹⁶

In April 2006, only months after the consideration by the Committee on the Rights of the Child of Azerbaijan's second periodic report, a high-level National Conference on Juvenile Justice Development in Azerbaijan took place. The Conference contributed greatly to building a consensus on the need to reform the juvenile justice and on the problems to be addressed.

Also in 2006, UNICEF published the first situation analysis of juvenile justice in Azerbaijan prepared by an international consultant.¹⁷ Some of her recommendations were far-reaching, in particular the closure of the Temporary Isolation Centre and the Special Security Correctional Institution as well as repeal of the 2005 Law on Juvenile Homelessness and Prevention of Delinquency.¹⁸ Other recommendations include:

- create a specialized police unit for the investigation of offences committed by juveniles;
- develop, as an urgent matter, community-based services for children involved in anti-social behaviour and offending, including programmes designed specifically for girls;
- stop placing non-offenders in the special school, other than those who represent a serious risk to themselves or to society;
- end the 'administrative detention' of children under age 14 who commit offences, unless they pose a serious risk to themselves or to society;
- review the sentencing policy, prepare pre-sentence reports and eliminate the bar on suspension of sentences for repeat offenders;
- improve conditions in the juvenile correctional facility.¹⁹

¹⁶ Committee on the Rights of the Child, Consideration of reports submitted by States parties under Article 44 of the Convention, Concluding observations on the second periodic report: Azerbaijan, CRC/C/AZE/CO/2, 2006, paras. 35 and 67.

¹⁷ Prof. Carolyn Hamilton, Children's Legal Centre, University of Essex, *Azerbaijan: the position of children in conflict with the law*, UNICEF, Baku, 2006.

¹⁸ *Ibid.*, pp. 5–7.

¹⁹ This includes, *inter alia*, the closure of 'isolation cells', staff training and the implementation of a family contact programme.

Later in 2006, a delegation of high-ranking officials participated in a five-day study tour to England. Participants included representatives from the Office of the President, the Cabinet of Ministers, the Ministry of Justice, the Ministry of Internal Affairs, the Office of the Prosecutor General, the State Committee for Family, Women and Children's Affairs, the UNICEF Country Office and the NGO Alliance for Children's Rights. They attended a series of presentations by experts and practitioners and visited a legal clinic for children, a police station, a juvenile court, an 'early intervention' delinquency prevention programme, a pilot diversion project, two juvenile correctional facilities (one open and one closed) and a criminal mental health facility.

A formal policy on juvenile justice had not yet been adopted at the time of this assessment mission. Some policy elements have been incorporated into the 2005 Law on Juvenile Homelessness and Prevention of Delinquency and, in April 2008, the Ministry of Justice presented the 'outline' of a draft law on juvenile justice.

2) Law reform

Most of the law in force applied to juvenile offenders has been adopted since independence. Most of the legislation applied to juvenile offenders has been incorporated into the Criminal Code and the Code of Criminal Procedure, which have special chapters on juvenile offenders. One exception is the 2005 Law on Juvenile Homelessness and Prevention of Delinquency.

The 1998 Law on the Rights of the Child also contains an article on the rights of juvenile offenders inspired by Articles 37 and 40 of the Convention on the Rights of the Child. A Presidential Decree on enforcement of this law directed the Cabinet to prepare proposals for bringing other legislation into conformity with the Law on the Rights of the Child.²⁰ In 1999, the principles contained in this law were incorporated into the new Criminal Code and, in 2000, into the Code of Criminal Procedure.

The Code on the Execution of Sentences, also adopted in 2000, opened the door to the monitoring of prison conditions by civil society and its participation in activities benefiting prisoners. A Council of Trustees on the Right of Young Offenders created by this law monitors juvenile offenders' conditions in the correctional facility, supports the involvement of NGOs, organizes events and seeks donations. Membership of the Council, which meets at least bimonthly, includes the Commissioner for Human Rights (Ombudsman), the State Committee for Family, Women and Children's Affairs, the Soros Foundation, the NGO Alliance for Children's Rights, the Association of Young Lawyers, the Parent-Teacher Association, other national NGOs and UNICEF.

In May 2008, the Parliament announced plans to draft a law on juvenile justice, which will create a juvenile justice system. A draft law was prepared by the relevant Parliamentary Committee after the assessment mission, but the text was not available in English at the time this report was finalized.

3) Administrative reform and restructuring

Little administrative reform or restructuring has taken place thus far in the area of juvenile justice.

The 'special school', in Mardakan settlement, Baku, was transformed from a closed into an open facility. The Director indicated that even though this had little impact on the physical environment of the school, it did have one significant consequence, namely, that children can visit their families if a parent comes to pick them up. Another outcome, according to the Director, is that the school is no longer able to receive underage offenders. Other sources expressed the opinion that this is probably

²⁰ Presidential Decree No. 761 of 24 August 1998.

a policy decision rather than a consequence of the law that modified the status of the school. In any event, the greatly reduced population of the school now consists entirely of children with disciplinary problems, not offenders. Therefore, there is no reason to consider this facility as part of the juvenile justice system. The possibility of redefining its functions to include the rehabilitation of convicted juveniles who are not dangerous and should be separated from older, more serious juvenile offenders has been suggested and may deserve further consideration.

According to independent sources, the establishment by the Commissioner for Human Rights (Ombudsman) of a Child Rights Unit has had a positive impact on detention conditions. Even though representatives of the Ombudsman make regular visits to facilities where juveniles are detained or serving sentences, information about complaints received and the reaction to them is not public.

One negative change is the elimination, soon after independence, of the special unit of prosecutors dedicated to children. This was the consequence of a broader effort, supported by international donors, to reduce the role of the Procurator in the legal system.

4) Training and capacity-building

Training has been the main form of capacity-building thus far. A series of training activities have been organized during the last four years, such as training for professionals (police, judges and prosecutors); training of pilot projects' staff; and training of trainers.

In 2005 and 2006, some 300 juvenile inspectors were trained in international standards related to juvenile justice. Three-day training programmes were designed in response to an assessment on training needs prepared by international consultants.

Two hundred officers who participated in one or more training activities were interviewed as part of an independent assessment on the impact of the training. Although most respondents (85 per cent) evaluated the training positively, only 50 per cent declared that they used the information acquired "often", 21 per cent said that they "never" used it and 30 per cent that they used it "sometimes."²¹ In response to another question, 79 per cent of the respondents considered most of the materials presented as "inapplicable" in their daily work and 15 per cent found that the course was "too far from our reality" or "too theoretical and not suitable for practical use."²² While only 1 per cent of the officers surveyed viewed the experiences of other countries presented during trainings as "unacceptable" for Azerbaijan, 25 per cent thought that such experiences are only "partly applicable" and with great difficulty. More than 50 per cent expressed no opinion on the question.²³ Fewer than one in five considered such experiences "readily applicable." Among the factors that interfere with the application of the information acquired during trainings, the respondents mentioned deficiencies in the law, the lack of necessary conditions and staff turnover.²⁴ These results were taken into account in designing the training programme that is in the process of being incorporated into the curriculum of the Police Academy.

In another activity, some 30 members of the Baku Commission on Minors, including representatives of the juvenile police, were trained as part of a 'peer-to-peer' pilot project.

²¹ Assessment of effectiveness of training for police inspectors on international juvenile justice standards, SIGMA Survey Centre, Baku, undated, p. 17.

²² Ibid., p. 19.

²³ Ibid., pp. 20–21.

²⁴ Ibid., p. 20.

Three training activities took place in 2007. An international expert, member of the Committee on the Rights of the Child,²⁵ participated in a training organized by OHCHR, the Ministry of Justice and the NGO Alliance for Children's Rights for some 30 candidates preparing for careers as judges and prosecutors. Preparations for the pilot diversion project included two 10-day trainings for project staff and members of the Judicial-Legal Council. Monthly training sessions for the pilot project staff continue to take place. In December 2007, OSCE and the Council organized a training seminar for judges, which counted with the participation of a German juvenile court judge.²⁶

A three-day training seminar for judges and prosecutors was held in 2008. Participants included Professor J. Doek, a retired juvenile court judge and former Chair of the Committee on the Rights of the Child, and Professor Nevena Vučković Šahović, a Professor of Law and member of the Committee on the Rights of the Child. There were 25 participants.

Two trainings of trainers were organized in 2006. The first, a nine-day training of trainers, was held in September, with 20 participants: four from the Office of the Commissioner for Human Rights (Ombudsman), one from the State Committee on Family, Women and Children's Affairs, one from the Ministry of Labour and Social Protection, and the rest from national NGOs. The implementing partner, a British NGO, concluded that the training was a success and recommended that 19 of the 20 trainers be certified.

The second training of trainers was organized by the NGO Alliance for Children's Rights with the support of OSCE. The beneficiaries included some 20 trainers from the Ministry of Internal Affairs, the Office of the Prosecutor General and the Department of Corrections. One international expert, a retired Swiss judge, participated in this activity.²⁷

All of the Azerbaijani trainers who participated in the activities are still actively involved in child rights training.

In order to institutionalize training in child rights, the NGO Alliance for Children's Rights has prepared a curriculum for the Police Academy.²⁸ Approval is pending. The NGO Alliance also developed two training manuals, one for law students and one for practitioners.

5) Allocation of resources

Information is not available on the budgets of institutions that deal with prevention of delinquency and juvenile offenders. Some fragmentary, general information about the resources available for some aspects of juvenile justice was obtained through interviews with different sources.

As indicated above, some social programmes that could be considered part of primary prevention, in particular sports and other recreational and cultural activities for adolescents, were eliminated after independence, in part for financial reasons. Several sources mentioned that the number of judges in Azerbaijan is too small, which also presumably reflects, at least partly, financial constraints. Police juvenile inspectors are poorly paid, and physical conditions of the juvenile prison also suggest that its budget does not suffice to ensure proper conditions. Because of financial constraints, many of

²⁵ Nevena Vučković Šahović, Professor of Law at the University of Belgrade, member of the Committee on the Rights of the Child and founder of the Belgrade Child Rights Centre.

²⁶ Dierk Helmken.

²⁷ André Dunant, former President of the International Association of Youth and Family Judges and Magistrates.

²⁸ This approach was adopted, in part, to avoid the problems revealed by the evaluation of earlier *ad hoc* training. The NGO Alliance for Children's Rights has some 80 member organizations.

the local Commissions on Minors have difficulty in recruiting the psychologist who is supposed to be part of their small staff.

Although these pieces of information are no substitute for a proper analysis of the resources dedicated to juvenile justice, they do give the impression that the funds available at present are limiting the effectiveness of many of the relevant institutions and programmes.

The national budget has increased sixfold since 2001.²⁹ As preparations for the creation of a juvenile justice system move forward, it is important to calculate the cost of the various components of the system and thus ensure that it does not fail because of insufficient funding.

6) Accountability mechanisms

Mechanisms for ensuring compliance with laws and regulations concerning the treatment of juvenile suspects, accused juveniles and juvenile offenders are weak. The Ombudsman is concerned about the rights of juveniles in conflict with the law and, although she and/or her staff regularly visit facilities in which juveniles are deprived of liberty, they have never received any complaint concerning any violation of the rights of a juvenile suspect, accused or offender.³⁰ Since other sources mention that violence continues to occur, the only possible conclusion is the need to strengthen efficiency and transparency.

Even though some 200 cases of abuses committed by police officers are investigated annually, the police representative stated that the level of violence against juveniles was low. He could only remember one case in which psychological pressure had been reported. The officer responsible received a sanction.

The newly established Judicial-Legal Council is responsible for evaluating the performance of judges, but lacks a case management system that would allow monitoring compliance with the rights of accused juveniles, such as the principle that cases involving juveniles, especially those in detention, should be adjudicated without delay.

In sum, existing mechanisms seem to be weak.

7) Coordination

At the time of the assessment mission, there was no mechanism to coordinate the activities of the various ministries and institutions dealing with offending by juveniles and juvenile offenders. The broad mandate of the National Commission on Minors covers some aspects of juvenile justice, in particular prevention and the treatment of underage and older offenders who receive 'educational measures' instead of a sentence. However, this is only part of the Commission's mandate, which also includes many other issues, such as adoption and the care of children with disabilities. Moreover, the Commission does not have a mandate to deal with juvenile offenders over the age of criminal responsibility. On the other hand, the courts, the prosecutors, the Prison Department and civil society do not participate in the Commission. Furthermore, the National Commission meets very rarely.

A Task Force on Juvenile Justice, established after the assessment mission, had its first meeting in December 2008. Members include the Ministry of Justice, the Ministry of Internal Affairs, the Ministry

²⁹ Mid-Term Review of Country Programme, UNICEF, Baku, 2008.

³⁰ Preliminary results of a survey of offenders indicate that those who complained to researchers of abuse in the juvenile correctional facility also stated that they had not complained to the Ombudsman, suggesting a lack of confidence in the effectiveness of this procedure.

of Education, the Ministry of Labour and Social Protection, the State Committee on Family, Women and Children's Affairs, the Office of the Prosecutor General, the Commissioner for Human Rights (Ombudsman), representatives of civil society (NGO Alliance for Children's Rights) and international agencies, including OHCHR, OSCE and UNICEF. Neither the judiciary nor the Parliament nor the university is represented. The Task Force will meet quarterly, or more often if necessary. Minutes of the meetings will be presented to the Cabinet of Ministers. Activities foreseen for 2009 include research on juvenile justice in other countries; training; using the media to raise public awareness; and consideration of a draft law on juvenile justice. The experience of other countries indicates that task forces of this kind can play a key role in the development of juvenile justice systems.

8) Data and research

Data on offending are collected by the Ministry of Internal Affairs, the Ministry of Justice and the Office of the Prosecutor General. Since 2004, the State Statistical Committee has published an annual bilingual compilation of data received from these sources, entitled *Crimes and Offence in Azerbaijan*, which contains a great deal of valuable data.

Data on convictions are disaggregated by the family background of juvenile offenders (i.e., raised by both parents, by one parent or in a residential facility). Since 2001, these data are also disaggregated by the educational status of the offender (student or not). Data for 2007 show that 36 per cent of convicted juvenile offenders were schoolchildren; 77 per cent were raised by both parents; and fewer than 3 per cent were raised in orphanages or similar institutions.

These data are further disaggregated by age, sex and offence. Data for 2007 indicate, for example, that of 11 murders committed by juveniles, 1 was committed by a girl, 3 by adolescents aged 14–15 years and 7 by schoolchildren. Of the other 12 girls convicted, 1 was convicted of a drug offence, 2 of assault causing serious injury, 3 of disorderly conduct, but none of theft.³¹

Data on convictions are disaggregated by the circumstances in which the offence was committed. Three categories are used: commission of the offence while under the influence of alcohol; commission of the offence in a group; and commission of the offence jointly with an older person. Data for 2007 show that only 2 per cent of offences by juveniles were committed while the offender was intoxicated; 22 per cent were committed by a juvenile acting as part of a group; and 24 per cent were committed jointly with an older person.

Data on recidivism are published, but not disaggregated by the age of the offender (either by the age at first conviction or at most recent conviction). It would be useful to disaggregate these data so as to shed light on the future conduct of juvenile offenders, while they are still under age 18 or after reaching the age of majority.

Data on offending and offenders are not either disaggregated by ethnicity. The assessment team is not aware of any allegations of discrimination with regard to the juvenile justice system. However, since ethnic minorities represent over 10 per cent of the population, and given the importance attributed by the Committee on the Rights of the Child to the disaggregation of data on juvenile justice by ethnicity,³² an effort to disaggregate data according to this criterion would seem appropriate.

³¹ The remaining half was convicted of 'other crimes'.

³² Committee on the Rights of the Child, General Guidelines regarding the Form and Content of Periodic Reports to be submitted by States parties under Article 44, paragraph 1 (b), of the Convention, CRC/C/58, 1996, paras.142 and 145; Committee on the Rights of the Child, Children's rights in juvenile justice, General Comment No. 10, CRC/C/GC/10, 2007, paras. 40, 62 and 98.

The compatibility of the indicators presently in use with regional and international indicators is commented in Annex 1 of this report.

Documenting the experiences of children

In 2007, the NGO Alliance for Children's Rights published *Monitoring the Juvenile Justice Administration in Azerbaijan*, an important report based in part on interviews with juveniles in pretrial detention facilities and in the juvenile correctional facility. Four women in the women's prison who had entered as juvenile offenders were also interviewed. The information obtained from the children shed light on important issues that are generally difficult to document, such as the frequency of visits by family members, corporal punishment and nocturnal mistreatment by their peers.

Another survey of children confined or previously confined in institutions for accused and convicted children was being carried out in parallel to this assessment report. The survey will summarize and analyse the experiences and views of more than one hundred children. Preliminary results suggest that the survey will offer valuable information. The authorities will hopefully take them into account in improving the services provided to children in residential facilities.³³

Research on offending and offenders

Little or no academic research on offending by juveniles has been carried out in Azerbaijan since independence. While data on offending are useful for some purposes and could easily become even more useful with further disaggregation and additional indicators, qualitative and longitudinal research would help develop and evaluate policies regarding issues such as prevention, diversion, sentencing and rehabilitation.

Questions on which scientific research would be valuable in shaping the juvenile justice system now being developed would include the extent of unreported offending by juveniles and the causation of specific categories of crimes as well as factors that correlate with the risk of repeat offending and affect the reintegration of released juvenile prisoners into the community.

³³ Assessment of the situation of juveniles in conflict with the law and those released/graduated from juvenile justice institutions in Azerbaijan Republic, first final draft report, Baku, November 2008.

Part II. The Juvenile Justice System in Azerbaijan

1) Prevention³⁴

Insofar as primary prevention is concerned, both governmental and independent sources believe that the disappearance of the diverse and low-cost social, cultural, athletic and recreational programmes for children and adolescents, which existed during the Soviet period, is a significant cause of offending. There is also general agreement that social changes during the last two decades have undermined the ability of families to provide children with appropriate guidance and supervision. Data reveal, however, that offending has decreased, especially during the last decade. The average number of offences registered since 2000 is lower than the average for the last two years prior to independence.³⁵

Main responsibility for secondary prevention (activities directed to children at higher risk of offending) lies with the Ministry of Internal Affairs, in particular the Juvenile Inspection Department of the National Police. There are 321 officers in this unit, which has a presence in every department in the country.

Juvenile inspectors make presentations to children and parents, liaise with schools and register and supervise children at risk. Registered children include truants, street children, children under the age of criminal responsibility who have committed an offence and those who are released from facilities for underage offenders or juvenile offenders. The number of children 'registered' fell by half in 2000, and since then has averaged 647 annually. The Head of the Juvenile Inspection Department indicated that approximately 3,000 children were registered at the time of the assessment mission, though, which suggests that many remain registered for several years.

Independent sources interviewed believe that police supervision of children – which normally consists of meeting with them and sometimes their parents twice a month – plays a useful role in the prevention of offending. The police themselves recognize, however, that other types of preventive services are required. The staff and council of the pilot diversion project also agreed that prevention programmes designed for children are badly needed. The Commissions on Minors coordinate the provision of social services to children at risk – including those at risk of offending and those requiring protection or alternative care – but they lack capacity to provide assistance, and community-based services for children at risk of offending are non-existent.

In 2006, a pilot programme involving mentoring and peer-to-peer assistance for children at risk of offending was implemented in three districts of the capital. The project ended after six months, due to lack of funds. The peer-to-peer dimension was considered unviable, because peer counsellors became inactive within a relatively short time when they completed their secondary education. The mentoring aspect was considered more promising, although the results were not formally evaluated.

The situation described above suggests that the development of community-based social services to provide assistance to families in crisis and children at risk of offending should be a priority.

In addition, it may be desirable to assess the cost and benefits of reviving some of the low-cost recreational and similar programmes for adolescents, at least in the urban areas where juvenile offending is greatest.

³⁴ In this report, the term 'primary prevention' refers to measures calculated to prevent offending that are directed to the child population as a whole, or large parts of it (e.g., adolescents, inhabitants of the capital or children living in poverty). The term 'secondary prevention' refers to activities and programmes that have the same objective but target individuals at high risk of offending and, possibly, their families.

³⁵ The average number of offences for 1989 and 1990 was 510, while the average from 2000 to 2007 was 441. See Moestue, H., *Lost in the Justice System: Children in conflict with the law in Eastern Europe and Central Asia*, UNICEF Regional Office for CEE/CIS, Geneva, May 2008, Appendix 2; *Crimes and Offences in Azerbaijan*, Table 4.1.

The contradiction between commonly held views on the causes of offending and the documented decrease in offending highlights the need for more research on the causes of offending and the impact of different kinds of preventive activities.

2) The police and the investigation of offences

The investigation of crimes has various stages. The first is the preliminary or informal investigation carried out by the police independently.³⁶ The second consists of the investigation that takes place once a criminal case is opened and the suspect is formally informed of the offence being investigated.³⁷ This investigation is carried out by police inspectors.

When the investigation carried out by a police inspector is complete, the results are sent to the prosecutor, who reviews the evidence. If it is found to be sufficient, he/she must, as a rule, prosecute; if not, the prosecutor may close the investigation or return the matter to the police for further investigation.³⁸

The powers of the police to detain are quite limited. Suspects may be detained for questioning for three hours.³⁹ Depending on the results of this questioning, the police may decide to formally declare the person a suspect, which allows detainment for up to 24 hours.⁴⁰ If a suspect who has been identified does not live in the area where the crime was committed or has no known abode, he/she may be detained for 48 hours in the order of an investigator or prosecutor.⁴¹ Further detention requires a formal accusation or charge and must be ordered by a court.⁴²

When an individual is captured in the act of committing an offence or while trying to escape, or found in the presence of evidence of an offence, a written order opening a criminal case must be made within 24 hours.⁴³ Such persons may be detained for an additional 24 hours only with permission from a court.⁴⁴ If continued detention prior to trial is considered necessary, a request must be made to the competent court within these 48 hours. These rules apply to juveniles and adults alike.

The Code of Criminal Procedure provides, "The investigation concerning a minor shall be conducted, as far as possible, by special departments of the investigating authorities or by persons who have relevant work experience with minors."⁴⁵ Neither the prosecutor nor the police have special departments for the investigation of crimes committed by juveniles. The Code also recognizes the right to respectful treatment, to be informed of the charge, to remain silent as well as to the confidentiality of the investigation.⁴⁶

³⁶ Code of Criminal Procedure, Article 7.0.22 and 7.0.25.

³⁷ Ibid., Article 7.0.22 and 7.0.24

³⁸ Ibid., Articles 38.2, 41.3, 42 and 46.3

³⁹ Ibid., Article 148. (The term refers to persons identified as the possible perpetrators during the investigation of a reported offence, not those apprehended during the commission of an offence or in similar circumstances.)

⁴⁰ Ibid.

⁴¹ Ibid., Article 150.

⁴² Ibid., Article 156.2.

⁴³ Ibid., Article 148.4.

⁴⁴ Ibid.

⁴⁵ Ibid., Article 432.1.

⁴⁶ Ibid., Article 432.3, 432.4.1–432.4.2, 432.4.5.

A suspect has the right to legal assistance as from the first interrogation and an accused person as from the time charges are placed.⁴⁷ A psychologist or pedagogue must be present during the interrogation of juveniles under age 16 as well as those aged 16 or 17 years who show signs of mental disability.⁴⁸

The Code of Criminal Procedure establishes time limits for the completion of criminal investigations. The limit for completing the preliminary investigation is 10 days; the limit for completing the entire investigation is, in principle, two to four months, depending on the gravity of the case.⁴⁹ Delays caused by the defence are not taken into account. Extensions of up to 14 additional months may be granted in complex cases.⁵⁰ These time limits apply to adults and juveniles alike, whether or not the accused is deprived of liberty.⁵¹

Thirty police stations are authorized to detain suspects under age 18. They do not have special rooms for children, which can cause them to be detained in close contact with adult suspects. The Ministry of Internal Affairs recently agreed to establish special rooms in three police stations for the questioning of children, including juvenile suspects and child victims.

3) Diversion

In Azerbaijan, as in most of the Commonwealth of Independent States region, the police have limited discretion not to refer to the prosecutor cases in which the evidence shows that a crime has been committed. Similarly, prosecutors have limited discretion not to prosecute when evidence indicates that a suspect is guilty of a crime.⁵²

The investigation of a crime may be discontinued if the suspect shows remorse, has pled guilty, has reconciled with and compensated the victim, or no longer represents a danger to society.⁵³ Discontinuance is allowed, in any of these circumstances, only for first offences and for crimes that do not represent a significant danger to the public. The prosecutor may desist in the prosecution of a case after proceedings have begun, on the same grounds.⁵⁴ In addition, a court may discontinue a criminal case if the victim and offender are reconciled.⁵⁵ The same prerequisites apply to the decisions of a prosecutor or court to desist or discontinue.⁵⁶

A pilot diversion project covering one district in the capital was established in 2007 and expanded in 2008 to cover 3 of Baku's 11 districts. The project has five staff, including a psychologist, a teacher, a social worker and a sports trainer. Activities include counselling (group, individual and family), social work with families, art therapy, IT training, teaching of English, sports and recreational outings. Some children attend the project two or three days a week and others five days a week, according

⁴⁷ Ibid., Article 19.4.1.

⁴⁸ Ibid., Article 432.5. The law is silent as to the role such persons play during interrogation, suggesting that their presence is intended to prevent intimidation and to provide the juvenile with moral support.

⁴⁹ Ibid., Article 218.1–218.2.

⁵⁰ Ibid., Article 218.4 and 218.6–218.8.

⁵¹ They also apply whether or not the accused is deprived of liberty.

⁵² The obligation to prosecute is set forth in Article 46.3 of the Code of Criminal Procedure.

⁵³ Code of Criminal Procedure, Article 40.2 and Criminal Code, Articles 72.1, 73–74.

⁵⁴ Code of Criminal Procedure, Article 41.6.

⁵⁵ Ibid., Article 43.3.

⁵⁶ Namely, that the crime be a first offence, which does not represent a serious danger to the public.

to an individual plan established after their referral.⁵⁷ A council, including representatives of the police, the district court, the district prosecutor and the local government (Commission on Minors), supervises the implementation of the project.

Referrals to the project are not based on the provisions of the Code of Criminal Procedure described above, but on the competence of the Commission on Minors. Even the small number of cases (three) referred to by the courts is remitted by means of a decision placing the offender under the supervision of the Commission on Minors.

During the first months of operation, 23 children aged 10–18 years joined the project.⁵⁸ Four were girls. Most children were referred by the Commission on Minors, at the suggestion of the police; three were convicted and placed in the project as an alternative sentence. Most participated for a period of three to six months. The police indicated that did the project not exist the children who had been referred to it would have been placed in a residential facility. They also assured that more children would be sent to the project if it had the capacity to receive them.

The project accepts children involved in offending whether they are below or above the age of criminal responsibility, but not violent offenders.⁵⁹ Street children are excluded as work with children and their family is an essential part of the programme. Substance abusers are not accepted either because it is considered that the proper place for such children is a clinic that provides medical attention in a residential setting.⁶⁰

Some juveniles who have completed the programme have become peer educators. Only one has re-offended to date.

The initial results of the pilot diversion project – especially the reaction of the authorities involved in the council – are promising. The impact of the project on the juvenile beneficiaries has not yet been evaluated and could not be documented within the framework of this assessment. An evaluation of the project is planned for end 2009 or early in 2010.

The assessment team is nevertheless concerned about the extent to which the project is actually diverting accused offenders from the juvenile justice system. According to the Beijing Rules, diversion signifies “dealing with juvenile offenders without resorting to formal trial.”⁶¹ Although different forms of diversion have been developed to fit different kinds of legal systems, it seems questionable whether the referral of children under the age of criminal responsibility who could not be tried as juvenile offenders is diversion. Ten of the juveniles referred to the pilot project were under the age of criminal responsibility and twelve were referred for truancy. Only five were referred because of an offence, and three of them after their case was heard by a court. The referral by a court of juveniles whose cases have been heard is alternative sentencing, not diversion.

This is not to suggest that the project is not performing a useful function, but rather that it would be good to reconsider what purposes it is presently serving, and how its potential contribution to the development of a juvenile justice system should be conceived. There are no multidisciplinary community-based prevention programmes for children at high risk of offending, nor community-

⁵⁷ The facilities of the pilot diversion project are closed on weekends.

⁵⁸ Four children did not agree to participate and five others could not be located at the addresses shown in police records.

⁵⁹ Except for robbery.

⁶⁰ The most commonly abused substances are glue and solvents.

⁶¹ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (‘The Beijing Rules’), rule 11.1 and 11.2.

based alternative sentence programmes. Both have an important part to play in a fully developed juvenile justice system, yet in Azerbaijan the relatively small number of juvenile offenders is an obstacle to the creation of additional separate programmes. Consequently, it would seem advisable to consider whether this pilot project could develop into a programme designed to respond to a broader range of needs.

The pilot diversion project, as it presently operates, relies heavily on the competence of the Commissions on Minors to impose disciplinary measures rather than the discretion of the police and prosecutors to discontinue the investigation or prosecution of a case, recognized by the Code of Criminal Procedure. Yet the capacity, procedures and working methods of the Commissions on Minors have been criticized by UNICEF's situation analysis as well as the NGO Alliance's study on juvenile justice.⁶² The forthcoming evaluation of the pilot project should document what kinds of cases have been handled, i.e., the number of children under the age of criminal responsibility involved in offences; the number of children over the age of criminal responsibility involved in offences; and the number of children involved in behaviour, such as truancy, but not offences. The extent to which the beneficiaries voluntarily agree to participate, as required by Rule 11.3 of the Beijing Rules, also should be documented in the forthcoming evaluation.

The strategic question that participants in the process of reform need to address is whether, in the longer term, diversion should be based on the powers of the Commissions on Minors or on the discretion that the law gives to police and prosecutors.

4) Detention of juvenile suspects and accused juveniles

Standards and procedures

The 1998 Law on the Rights of the Child requires that detention or arrest of any person under age 18 be lawful and exceptional and that the child's parents or other legal representative be informed immediately.⁶³ The duty to inform parents without delay is also recognized by the Code of Criminal Procedure.⁶⁴

Article 42 of the Law on the Rights of the Child is clearly inspired by Articles 37 and 40 of the Convention on the Rights of the Child. It provides that "Investigations involving children shall be conducted on the basis of a special methodology that protects their dignity and self-esteem and takes into consideration their age and individual characteristics" and that detention facilities shall offer conditions allowing children "to grow as honest and worthy citizens and acquire the necessary education and occupational habits." It also provides that children shall have access to a lawyer as soon as they are arrested or detained as suspects or accused and that parents, guardians or teachers shall be present during the questioning of children.⁶⁵ Physical or mental pressure designed to force the child to confess or give evidence is prohibited, as is the detention of children with adult prisoners or detainees.

The Code of Criminal Procedure provides that the detention of accused juveniles shall be "exceptional ... and for the shortest possible time," and may not be imposed unless the offence charged is a violent or other serious offence.⁶⁶ Serious offences are those bearing a sentence of seven years or

⁶² *Azerbaijan: The position of children in conflict with the law*, pp. 27–28; NGO Alliance for Children's Rights, *Monitoring the Juvenile Justice Administration in Azerbaijan*, Baku, 2007, pp. 12–15.

⁶³ Law on the Rights of the Child, Article 12.

⁶⁴ Code of Criminal Procedure, Article 431.1.

⁶⁵ Literally: "Investigations shall be carried out with the participation of parents..."

⁶⁶ Code of Criminal Procedure, Article 434.1–434.2.

more (simple theft is not a serious offence).⁶⁷ Release under supervision – of parents or guardians – is an alternative to pretrial detention applicable only to juvenile offenders.⁶⁸

These provisions of the Code of Criminal Procedure must be read together with the more detailed provisions applicable to all suspects and accused persons. According to the general rule applicable to all accused persons detained while awaiting trial, such detention shall not exceed three months.⁶⁹ This can be extended for certain reasons, up to 12 months, depending on the gravity of the crime.⁷⁰ Delays caused by the defence are not taken into account.⁷¹

Data on the number of accused juveniles detained prior to trial or on the duration of their detention are not published, and efforts to obtain such data were unsuccessful. A visit to one detention facility in the capital, in 2006, found that of 24 juvenile detainees who knew how long they had been in detention, 11 indicated that they had been detained for 6 months or more and, of this number, 3 had been in detention for 12 months or more.⁷²

Although the conduct of defence attorneys is no doubt responsible for some, and perhaps a considerable part, of such delays, there appears to be a need to adopt and enforce stricter limits on the detention of accused juveniles prior to trial.

The juvenile section of the pretrial detention centre

There are three facilities for pretrial detention in Azerbaijan, operated by the Ministry of Justice. Two of them are used to detain accused juveniles. Most juveniles arrested prior to trial are confined in the juvenile section of the pretrial detention facility in the capital,⁷³ as juveniles accused of serious crimes anywhere in the country are brought to the capital for trial by the Court of Grave Crimes. At the time of the assessment mission, 23 accused juveniles were detained there, and 2 in the other pretrial detention facility, in Ganja.

The building in which male juveniles are confined is separated from the buildings occupied by adult detainees. The courtyard used by juveniles is also separated from the one assigned to adults.

The Director of the juvenile section was interviewed in the offices of the facility, but logistical considerations prevented visiting the area occupied by detainees.⁷⁴ He indicated that the youngest detainees were 15 years old and that although most of them remained in the facility from one month to three and a half months one stayed for one year. He also mentioned that most children, eventually, are not given custodial sentences. The implications of this are not clear and should be considered by the appropriate authorities.⁷⁵

⁶⁷ Criminal Code, Articles 15.3–15.4 and 177.

⁶⁸ Code of Criminal Procedure, Article 154.3.

⁶⁹ Ibid., Article 158.1.

⁷⁰ Ibid., Article 159. This does not include detention while a sentence is being appealed, which may extend from one to six months depending on the gravity of the crime (Article 158.5).

⁷¹ Ibid., Article 158.4.

⁷² *Monitoring the Juvenile Justice Administration in Azerbaijan*, p. 477.

⁷³ “Investigatory Isolator [sic] No. 3.”

⁷⁴ Permission to visit was not received until the last day of the assessment mission. The visit took place in the evening, when shifts of guards were being changed.

⁷⁵ There are at least two possible conclusions, which are not necessarily mutually exclusive: that some detainees are in effect being sentenced to the time spent in detention prior to trial and that their detention may not be compatible with the ‘last resort’ principle. Only a closer study of the background and circumstances of individual cases would indicate whether further efforts should be made to reduce the use of pretrial detention.

The juvenile section has a capacity of 52 and a staff of 50. A medical and psychological examination is done upon admission. Two years ago a request for evidence of torture or mistreatment was added to the form used for recording the results. Education is provided on an informal basis, using volunteers. Juvenile detainees have access to television, sports, chess and religious services.⁷⁶ There are no restrictions on visits by parents. New regulations allow children to leave the facility for up to eight hours a year to visit their families.

Earlier visits concluded that conditions are generally acceptable, but expressed concern over the practice of housing some adult detainees in the juvenile section to maintain order and over the use of isolation cells as a disciplinary measure.⁷⁷ According to the Director, the assignment of adult detainees to juvenile cells is not a routine practice, but an exceptional measure applied only when juvenile detainees are “very difficult.” The adult detainees reportedly are carefully selected – for example, a teacher detained for a non-violent crime. The administration considers this practice compatible with the principle that juveniles shall not be detained with adults recognized by the Convention on the Rights of the Child, namely, that detention with adults is in the best interests of the child.

The construction of a new pretrial facility for accused juveniles, incorporating classrooms/vocational workshops, is planned.

5) Trial and sentencing

The minimum age for prosecution

Sixteen is the general age of criminal liability and 18 the age of majority for purposes of the criminal law. Persons aged 16 or 17 years accused of participation in any crime recognized by the Criminal Code may be prosecuted under the special provisions of that Code and the Code of Criminal Procedure applicable to ‘minors’.⁷⁸ Children aged 14 or 15 years also may be prosecuted under the relevant provisions of the Criminal Code and the Code of Criminal Procedure when accused of any of 17 listed offences, including murder, rape, kidnapping, assault resulting in injury, sexual assault, robbery, theft, destruction of property, theft or firearms, ammunition, explosives or drugs, terrorism and aggravated hooliganism (disorderly conduct).⁷⁹

Little data is available on the number of juveniles prosecuted, but the number of persons aged 14 or 15 years convicted during the last decade ranges from 9 to 60, i.e., from 3 per cent to 15 per cent of all convicted juveniles.⁸⁰

Trial procedures

The Code of Criminal Procedure recognizes the primacy of the Constitution and international treaties over ordinary legislation and provides that procedural rules of laws other than the Code that are incompatible with human rights and, in particular the right to a fair trial, “shall not be applied.”⁸¹

⁷⁶ The Director reported that children fasting during Ramadan were provided with meals at the times required by religious norms.

⁷⁷ *Monitoring Juvenile Justice Administration*, pp. 27–29.

⁷⁸ Criminal Code, Articles 20.1 and 84.1. (Sixteen also is the minimum age for persons prosecuted for administrative offences.)

⁷⁹ *Ibid.*, Article 20.2.

⁸⁰ *Crimes and Offences in Azerbaijan*, Table 4.5. (Data on the number of juveniles prosecuted in 2003 and 2005 suggest that almost all were convicted. In 2003, 268 were prosecuted and 269 convicted. In 2004, 293 were prosecuted and 299 convicted.)

⁸¹ Code of Criminal Procedure, Article 2.2–2.4.

The Code, which is applicable to juvenile offenders over the age of criminal liability, also recognizes key principles of due process, such as the principle of legality, the presumption of innocence, the right to professional legal assistance, including free legal assistance if needed, the equality of all the parties and the right to appeal.⁸²

Special provisions applicable to accused juveniles are contained in chapter L of the Code of Criminal Procedure. One provides that criminal proceedings concerning minors “shall be conducted without delay.”⁸³ Juveniles must be represented by an attorney during all criminal proceedings, including trial.⁸⁴ The parents of the accused have a right to “participate” in the trial, and the court has discretion to order them to attend, or to remove them if their presence is considered prejudicial to the interests of the accused.⁸⁵

Even when law provisions reflect international standards, in practice trials of juveniles do not meet international standards. For example, one gap in the law is that it does not provide that proceedings involving juveniles (whether as offenders or victims) should be closed to the public.⁸⁶ Courts do not have special rooms for trials involving children and accused juveniles, and no particular steps are taken to make children and juveniles feel at ease in court.⁸⁷ Indeed, as recently as 2006, juvenile defendants were confined in cages during trial in the Court of Grave Crimes.⁸⁸ A report based on observations carried out in 2006 found that courts often changed the date and time of proceedings without notice to children, their parents and their attorney, sometimes resulting in lengthy delays.⁸⁹

The most serious problems with the trial of juveniles are the lack of specialization of judges and prosecutors and the poor performance of defence lawyers. While some judges have participated in some training activities related to child rights, the absence of judges and prosecutors specially designated to handle cases involving juvenile offenders – even in the capital where the number of cases is sufficient to justify specialization – is an obstacle to training.

Legal assistance

Lawyers appointed to handle the cases of accused juveniles who cannot afford private counsel are poorly paid and often fail to carry out their duties with professionalism.⁹⁰ The recent creation of the Children’s Rights Legal Clinic is intended to remedy this situation. The Legal Clinic is a pilot project funded by OSCE, UNICEF and the British Embassy. It became operational in September 2007.

Staff of the Legal Clinic includes a director and two lawyers. Until July 2008, they took cases from three districts of the capital; they have since established a presence in three other cities. Some 40 cases have been handled, about half of which consisted in providing legal advice only. They defend accused juveniles in criminal proceedings and provide legal assistance to juveniles confined in

⁸² Code of Criminal Procedure, Articles 10.2, 21, 19.4.4, 32 and 35, respectively. See also Committee on the Rights of the Child, Second periodic reports of States parties: Azerbaijan, CRC/C/83/Add.13, 2005, para. 383.

⁸³ Code of Criminal Procedure, Article 432.2.

⁸⁴ Ibid.

⁸⁵ Ibid., Article 435.3.

⁸⁶ See Convention on the Rights of the Child, Article 40.2(b)(vii); the Beijing Rules, Rule 8.1; Children’s rights in juvenile justice, General Comment No. 10, CRC/C/GC/10, para. 66.

⁸⁷ The Beijing Rules, Rule 14.2; General Comment No. 10, CRC/C/GC/10, para. 46.

⁸⁸ *Monitoring Juvenile Justice Administration*, p. 34.

⁸⁹ Ibid., p. 18.

⁹⁰ Ibid., p. 33. (One source stated that assigned lawyers are paid the equivalent of US\$ 1.20 per hour.)

the 'special schools'. The staff appears to be knowledgeable and committed to defending the rights of children, in particular children 'in conflict with the law'. Their strategy endeavours to solve individual children's problems by maintaining good working relations with authorities, rather than challenging illegal practices through 'impact' litigation.

The pilot project had not been evaluated at the time of the assessment mission. However, the assessment team believes that legal clinics specialized in cases involving juvenile offenders (as well as those providing legal services to other children in need of legal advice or representation) can play an important role, not only in defending the rights of individual children but also in helping ensure that the law is applied correctly in practice and contributing expertise to training, law reform and similar activities.

Sentencing

The provisions of the Code of Criminal Procedure concerning the sentencing of convicted juveniles reflect Rule 17 of the Beijing Rules. Article 435 provides that sentences should correspond not only to the circumstances and seriousness of the offence committed, but also to the situation and requirements of the juvenile and the community; that custodial sentences should be imposed only after meticulous examination of the matter and should be reduced to the minimum; and that sentences are 'not advisable' unless a juvenile is convicted of a violent offence deliberately causing serious damage or other serious offence. The court may also substitute educational measures for a punitive sentence if it concludes that the juvenile may be reformed without being sentenced under the Code of Criminal Procedure.⁹¹

The Criminal Code also requires that the personal characteristics of juveniles, including the influence of third parties, be taken into account in sentencing.⁹² However, no specific agency has responsibility for preparing reports on the background of an offender. To the extent that courts do take such factors into account, it is probably on the basis of information provided by the police and, possibly, the defence attorney.

The maximum sentence that can be imposed on a juvenile offender is 10 years.⁹³

The Criminal Code distinguishes between 'punishments' and 'educational measures', both of which may be custodial or non-custodial. Non-custodial punishments include fines and public works (i.e., community service) sentences. Non-custodial educational measures include warnings, release under parental supervision, restitution and reparation, and restrictions or obligations concerning movement or activities (e.g., curfews, school attendance).⁹⁴

Educational measures may be imposed instead of a criminal sentence provided the convicted juvenile is a first offender, the offence is not serious and educational measures appear likely to be an effective means of rehabilitation.⁹⁵ Release under parental supervision may be imposed instead of a criminal sentence even if the convicted juvenile is not a first offender, provided the other conditions mentioned above are met.⁹⁶

⁹¹ Code of Criminal Procedure, Article 435.5.

⁹² Criminal Code, Article 86.

⁹³ Ibid., Article 85.5.

⁹⁴ Ibid., Articles 87–88.

⁹⁵ Ibid., Article 88.1.

⁹⁶ Ibid., Article 89.1–89.2.

The percentage of convicted offenders receiving custodial sentences during the last decade has ranged from 22 per cent to 39 per cent. The trend has been generally downwards, especially in the last three years: 37 per cent in 2004; 22 per cent in 2005; 31 per cent in 2006 and 27 per cent in 2007.⁹⁷

The percentage of convicted offenders receiving 'conditional' or suspended sentences increased dramatically in 2001, from below 30 per cent to around 50 per cent.⁹⁸ In 2001, the courts also began to impose sentences of community service and fines in some 60 to 70 cases annually in recent years.⁹⁹

Perhaps paradoxically, the overall trend of the number and percentage of convicted juveniles given longer sentences has been upwards over the last decade. During the past three years, more than half of all sentences were for periods of 5 to 10 years.¹⁰⁰

Juveniles serving custodial sentences may be released after serving as little as one third of the sentence, depending on the gravity of the crime.¹⁰¹ Data on early release are not available, but the Director of the juvenile correctional facility estimated that each year two or three juvenile prisoners are released before completing their sentence.

6) Rehabilitation and treatment of juvenile offenders

Types of residential facilities

Custodial sentences may be served in a correctional facility for juveniles or a special educational facility. There is one correctional facility or 'colony' for juvenile offenders, operated by the Ministry of Justice and located in the capital. There are two 'special schools' operated by the Ministry of Education, one located in Guba, some 170 kilometres from the capital, and one located in Mardakan, near the capital. The former is a closed facility for persons aged 14 to 18 years, and the latter, an ostensibly open facility for children aged 11 to 14 years. All three facilities were visited during the assessment mission.

All of these facilities are for boys only; girls given custodial sentences are detained in the women's prison. This is a rare occurrence.¹⁰² No girls were serving sentences when the first situation analysis was undertaken in 2006 and none when the present assessment mission took place. When it does occur, girls confined in the women's prison receive inferior access to education than boys in the juvenile correctional facility.¹⁰³

The correctional colony

The correctional facility for juvenile offenders is located in the same complex as the women's prison, in buildings constructed during the 1950s, originally used for storage. The floors, walls, painting and fixtures are generally of poor quality and in poor repair. The facility is surrounded by two fences

⁹⁷ *Crimes and Offences in Azerbaijan*, Table 4.7.

⁹⁸ *Ibid.*, Table 4.8. (22% in 1998; 19% in 1999; 30% in 2000; 46% in 2001; 51% in 2002; 49% in 2003 and 2004; 53% in 2005; 37% in 2006 and 44% in 2007.)

⁹⁹ *Ibid.* (In 2007, 21 community service sentences and 50 fines.)

¹⁰⁰ *Ibid.*, Table 4.8. (In 2005, 45 persons; in 2006, 39 persons; and in 2007, 40 persons. This corresponds to 59%, 54% and 48% of juveniles given custodial sentences in those years. During the years 1998–2004, the average number of juveniles given such sentences was 32.)

¹⁰¹ Criminal Code, Article 90.

¹⁰² Data on sentencing of juveniles are not disaggregated by sex, but data on convictions indicate that, on average, less than 10 girls are convicted annually.

¹⁰³ *Monitoring the Juvenile Justice Administration in Azerbaijan*, p. 50. (2006 interviews with young women in the women's prison sentenced and imprisoned while under age 18.)

topped by razor wire. There is a sports field and an open space with a poorly maintained lawn and a few flowers. The guards do not carry arms.

The capacity is 150, and the population aged 16–20 years was 47 at the time of the visit. Eight prisoners convicted as juveniles have been allowed to stay after reaching their 18th birthday, because the staff believes that their transfer to the adult prison would have a very negative impact on them.

Approximately one quarter of the prisoners are from the capital. About half of them are repeat offenders, and some 20 per cent are violent offenders.

The staff of 42 includes 11 teachers, 12 guards, 15 correctional officers and 1 psychologist.

The school curriculum is the standard secondary school curriculum. Some prisoners receive remedial education and 15 participate in vocational training (auto repair). Students also receive training in the use of computers, thanks to a donation of equipment from OSCE. Incorporation of IT into the curricula is currently being negotiated with the competent authorities.

In 2006, a pilot project financed by the Asian Development Bank and implemented by an NGO and the State Student Examinations Committee prepared inmates for college. Of 12 juveniles who participated in the pilot project, 8 successfully took the entrance exam for technical college and completed their first year. During the second year, however, students are required to participate in on-the-job internships. Since prison regulations do not allow juvenile inmates to leave the facility for such purposes, their studies are suspended until they regain their freedom. Incorporation of this project into the activities offered by the facility on a permanent basis requires the amendment of the relevant legislation, which is under consideration. The Director of the facility indicated that the enrolment of some of the juvenile prisoners in technical college had a very positive impact not only on the beneficiaries, but on the population of the facility as a whole.

Cultural activities, notably art and theatre, have been expanded thanks to a project supported by the Soros Foundation. The Director believes that theatre, in particular, can be very useful in helping some juvenile prisoners communicate. Educational programmes on HIV/AIDS, substance abuse and human rights have been organized with the participation of NGOs. There is a roomy 'club room' with a television and a larger activity room, equipped with a library, a stage and some musical instruments. A poster on how to contact the Children's Rights Legal Clinic is on display in the activity room, and NGO publications on child rights are available in the library. The Ombudsman also visits the facility periodically. Religious observance is facilitated, for example, by serving meals after sunset to juveniles (about 20 per cent) who fast during Ramadan. There is a very small prayer room, not much larger than a closet.

Sports activities, including football, volleyball and table tennis, are organized. The juveniles sometimes compete against students from other schools in academic games. A Guardianship Council composed of the Ministry of Justice and interested NGOs helps facilitate contact between the juveniles and the community. Famous Azerbaijani athletes are invited to visit.

There is a Parents' Committee and an annual open house. Most juveniles do not receive visits from their parents, in part because most are not from the capital. The right to make phone calls to parents or relatives was recently increased from one call per month to four. A recent Presidential Decree also gives juveniles the right to leave the facility for up to eight hours per year, with the Director's permission.

The juveniles sleep in dormitories, of which some have a capacity of 6 and others of 14. Beside each bed is a small piece of furniture for personal belongings. The décor is generally bleak, although

some photos of the best students and some artwork by students are on display. The walls of the dormitories are bare.

The daily diet includes meat, fruit juice and dairy products. However, prisoners depend on their families and on voluntary contributions for clothing, soap, toothpaste and similar necessities. Prisoners' heads are shaved.

The staff tries to resolve disciplinary problems through dialogue and warnings. When necessary, prisoners are punished and placed in a small, poorly lit barred cell for up to seven days. They are allowed to leave the cell during the day, however, to attend classes and to walk about in a separated outdoor area.

The Director and staff seek early release for prisoners when they have completed their minimum sentence, provided they are ready to return to the community. The Director estimated that two to three prisoners are released before completing their sentence annually. This year, three residents of the juvenile facilities benefited from presidential pardons. When prisoners reach age 18, the staff tries to have the remainder of their sentences commuted to placement in half-way houses ('location-based sentences').

The Director, who has many years of experience in the prison system and has been in charge of the minors' correctional facility for four years, believes that his main accomplishment has been to "change the mindset of the children, improving their self-respect and respect for others." Self-mutilation, a frequent problem in the past, has ceased. NGO representatives confirmed that conditions have improved considerably under this director. The preliminary results of a survey among prisoners suggest that levels of violence are low, although violence by supervisory staff has still not been eliminated. While half of the population believed that their stay had been positive for them, the other half declared it had had no impact, either negative or positive. The lack of psychosocial services was seen as significant.

The programmes offered in this facility, the policies applied and the attitude of staff are generally quite positive. The pilot project allowing inmates to obtain higher education is innovative and particularly impressive. In contrast, the physical conditions are poor. There reportedly are plans to open a new facility in two years. This should be achieved without delay. While present conditions may not pose a risk to health, they do not convey the feeling that society cares for these children and values their potential contribution to Azerbaijani society. In the meantime, more could be done, with the participation of the prisoners, to maintain the facility (e.g., painting, gardening) and decorate it in a brighter and livelier manner. The authorities should also assume responsibility for providing prisoners with the necessary hygiene materials.

The closed special vocational school in Guba

The Guba closed special vocational school was established in the 1960s, but is located in buildings that date back to the nineteenth century. The location is attractive and grounds are spacious, but the physical plant is in very poor condition. The Director indicated that for two decades no funds had been allocated for maintenance, but a modest amount had been received during the last two years. Facilities include an infirmary, a 'club room' equipped with a television and a small library, a hall with a stage, dormitories, classrooms, workshops for vocational education and the office of the psychologist. Although the school is classified as a closed facility, the level of security is not high. It is surrounded by a wall, but the wall is not topped by wire. There are no bars on the windows.

The facility has a capacity of 100, a staff of 34 (including 6 teachers) and a population of 13. At the time of the visit none of the prisoners were offenders, although we were informed that three convicted offenders were expected. The main purpose of the school at present seems to be the admittance of students, whose behaviour is disruptive, from other residential schools, including the open 'special school' in Mardakan. Most of the population at the time of the visit was placed for this reason, upon decision of a Commission on Minors.

Placement by a Commission on Minors is for an indefinite period. In principle, the need for continued placement is reviewed annually by the local Commission, but the Director noted that this does not occur in practice, unless parents request that the child be returned to them. Offenders placed in this facility by a court are placed for a specified time.

Despite the poor conditions of the physical plant, the atmosphere was good. Children smiled and chatted with the local consultant. Discipline is maintained through prevention and persuasion. The Director commented, "By forbidding, you don't achieve anything." Since his appointment, in 1985, there has been less than one escape per year, on average. According to the Director, staff is highly motivated although salaries have deteriorated dramatically since Soviet times.¹⁰⁴ He would like regulations to change so as to allow children to visit their families and attend school in the community.

The head of the department of the Ministry of Education responsible for the special schools agreed that community-based alternatives are needed and indicated that the possibility of modifying the nature and purpose of this school is being considered.

The special school in Mardakan

The Mardakan special school, with a capacity of 150, had a population of fewer than 20 at the time of the assessment mission. In 2006, it was reclassified as an open facility.¹⁰⁵ During the last year its population decreased by two thirds, as authorities (Commissions on Minors and juvenile inspectors) are beginning to realize that placement should be a last resort. Parents' changing attitudes towards institutional placement has also contributed to the decline. Perhaps paradoxically, renovation of the building has started.

Non-custodial rehabilitation

There are presently no community-based programmes for the rehabilitation of convicted juvenile offenders.

7) Underage offenders

Underage offenders include children under age 14 who commit any offence, and those aged 14 or 15 years who commit any offence other than the serious crimes listed in Article 20.2 of the Criminal Code (see above). The main law applicable to such children is the 2002 Act on the Commissions on Minors' Affairs and Protection of their Rights.¹⁰⁶ Some provisions of this law are echoed in the 2005 Law on Juvenile Homelessness and Delinquency Prevention.

¹⁰⁴ One indication of staff's commitment is that they established a fund to give money to students who are released, because there is no budget line for that purpose. The Director also commented, "No one can work here unless he sees these children as his own."

¹⁰⁵ The limited implications of this measure are described above.

¹⁰⁶ Act of 31 May 2002 on the Commission on Minors' Affairs and Protection of their Rights.

Article 5(21) of the Law on Juvenile Homelessness and Delinquency Prevention authorizes the Commissions on Minors to “consider material received from the corresponding State agencies [i.e., the police] about minors having committed crimes” while under the age of criminal responsibility. The Commissions have competence to impose ‘disciplinary measures’ designed to instil respect for the law and prevent the commission of new offences.¹⁰⁷ Some of these measures, such as warnings, reparation of the victim or placing a child under parental supervision, are non-custodial. One provision of the law allows children having committed misdemeanours to be placed in the ‘open special school’, with parental consent.¹⁰⁸ Another empowers Commissions to request a court to place juveniles under the age of criminal liability who have been involved in a serious crime in the ‘closed special vocational school’.¹⁰⁹ Both of these provisions are, in principle, compatible with international standards concerning juvenile justice.¹¹⁰ Whether in practice they are compatible with international law on child rights is another question.

The meaning of a third provision, Article 9.6, concerning the placement in the special school of juveniles over the age of criminal liability who have committed a minor offence is unclear.¹¹¹ If it gives Commissions the power to deprive such children of liberty without parental consent and without judicial review, it would be incompatible with international standards. Although the special school is classified as an open facility, placement there meets the definition of deprivation of liberty under the relevant international law.¹¹²

In practice, the proceedings of the Commissions on Minors diverge from acceptable standards in several respects. The Commissions are neither independent nor impartial bodies. Their composition is variable, and there is no requirement of a quorum for decisions affecting individual children. The most active members include the representative of the local government and the police. Where children involved in offending or antisocial behaviour are concerned, the police cannot be seen as impartial.

Although international standards provide that proceedings concerning juvenile offenders should be closed to the public, proceedings before a Commission are open to the public, unless the Commission

¹⁰⁷ Ibid., Article 8.

¹⁰⁸ Ibid., Article 9(7), echoed by Article 9.0.6 of the Law on Juvenile Homelessness and Delinquency Prevention.

¹⁰⁹ Ibid., Article 9(8), echoed by Article 9.0.7 of the Law on Juvenile Homelessness and Delinquency Prevention.

¹¹⁰ The author does not believe that Article 40 of the Convention on the Rights of the Child is legally applicable to these cases, in which the child is not accused of an offence and the aim of the measures is not punishment. The Committee on the Rights of the Child has indicated, in effect, that offenders under the age of criminal responsibility should be dealt with by the child welfare or child protection system, “For these children special protective measures can be taken if necessary in their best interests.” (General Comment No. 10, CRC/C/GC/10, para. 31) Consequently, the standards applicable are those set forth in Article 9, if the separation of the child from his parents against their will is a possible outcome, and Article 37, if deprivation of liberty is a possible outcome. Article 37(b) provides that the deprivation of liberty shall be used only as a “last resort and for the shortest appropriate period of time,” whatever the reason for it. General principles, in particular the principle that “the best interests of the child shall be a primary consideration” must also be respected. Moreover, the fact that Article 40 is not legally applicable to children referred to child protection authorities because of their involvement in offending is not a reason to ignore the principles and safeguards contained in Article 40; rather, they should be respected to the extent that they are compatible with the best interests of the child and can be adapted to the child protection proceedings. Indeed, the Committee on the Rights of the Child has indicated that the “legal safeguards... in place [should] ensure that their treatment is as fair and just as that of children” within the jurisdiction of the juvenile justice system (General Comment No.10, CRC/C/GC/10, para. 33). Similarly, the Beijing Rules provides, “The relevant provisions of the Rules shall be applied not only to juvenile offenders but also to juveniles who may be proceeded against for any specific behaviour that would not be punishable if committed by an adult [e.g., truancy]” and “Efforts shall be made to extend the principles embodied in the Rules to all juveniles who are dealt with in welfare and care proceedings.” (Rule 3.1 and 3.2)

¹¹¹ Act of 31 May 2002, Article 9(6).

¹¹² The 1990 United Nations Rules for the Protection of Juveniles Deprived of their Liberty provides, “The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.”

decides otherwise.¹¹³ The presence of parents or guardians is obligatory in cases involving underage offenders.¹¹⁴ The child's lawyer, if any, has the right to examine the file before the hearing and to participate in it, but the participation of a lawyer is not required and the child does not have the right to legal assistance.¹¹⁵ The child and his parents have the right to 'participate' in the proceeding and to make representations to the Commission, but there is no mention of any right to present witnesses or evidence, or challenge evidence presented by the authorities. Indeed, there is no requirement that the Commission's decision should be based on a determination that the child in fact participated in an offence, nor that it should consider issues such as self-defence or compulsion that have a bearing on responsibility for acts prohibited by law. Nor does the law provide that decisions of the Commission must comply with the best interests' principle, and with the principle that deprivation of liberty should be the last resort. Although some members of several Commissions have received training in child rights in another capacity, no effort has been made to systematically train members of Commissions as such.¹¹⁶

The law does provide that the decision of a Commission must identify the evidence and the law on which it is based, and recognizes the right to appeal against the decision to the local court.¹¹⁷ The filing of an appeal suspends the implementation of the Commission's decision.¹¹⁸ Which legal and/or factual issues could be reviewed by the court is unclear. In practice, however, appeals are rarely, if ever, made.

Whether or not the Commissions on Minors are a useful institution and should be retained or replaced by some other institution, or whether they should retain competence over matters concerning underage offenders, are policy questions for the national authorities to resolve.

If the Commissions on Minors are retained and they keep their competence over underage offenders, the following conclusions and recommendations can be made: First, the Commissions should not have the power to place juveniles in closed facilities. There is no reason why they should not be able to refer to the competent court those juveniles for whom they believe placement is appropriate; but in this case the standards to be applied and the procedures to be followed by such courts would need to be reviewed.

Second, if the Commissions retain the power to place children in residential facilities with the consent of their parents, procedures should be modified to ensure, *inter alia*, that the parental consent is informed and freely given; the views of the child are heard and taken into account; the child receives the necessary assistance in presenting his views; and the decision is based on a study of the case prepared by competent professionals and on the principles set forth in the Convention on the Rights of the Child.

Insofar as the Commissions' competence to impose measures like warnings, apologies, reparation and parental supervision is concerned, the consequences of these measures for the child are such that major changes in the Commissions' composition and procedures (e.g., regarding evidence) do not seem necessary. The relevant international standards should, however, be incorporated expressly into the law regulating the Commissions on Minors, and their capacity and professionalism strengthened. The establishment of victim-offender mediation programmes would enhance the professionalism and effectiveness of measures of this kind.

¹¹³ Act of 31 May 2002, Article 14.

¹¹⁴ Ibid., Articles 13 and 14.

¹¹⁵ Ibid., Article 14.

¹¹⁶ The deficient capacity of the Commissions is described in detail in *Monitoring the Juvenile Justice Administration in Azerbaijan*, pp. 12–15.

¹¹⁷ Act of 31 May 2002, Articles 15 and 18.

¹¹⁸ Ibid., Article 18.

Part III. UNICEF's Support to Juvenile Justice Reform

1) Strategy

UNICEF has not adopted a clearly defined strategy on juvenile justice reform. The main reason for this is the lack of budget for juvenile justice.

In 2006, a two-year 'Programme for the Reform of Juvenile Justice in Azerbaijan' was adopted. It contains three components: one concerning the pilot diversion project described in Part II of this assessment; one concerning complementary components in the pilot district, and one on 'other juvenile justice components'. UNICEF's staff indicated that this was considered as a strategy of sorts.

A two-year programme is no substitute for a strategy in an area as complex as juvenile justice reform. In most countries, including Azerbaijan, the creation of a juvenile justice system that complies with international standards requires a more sustained effort over a period of at least five years. The Programme recognized that the pilot project must be accompanied by broader efforts, including law reform, strengthening of legal services, the appointment and training of specialized judges, and the reform of correctional institutions. However, certain important elements of juvenile justice (e.g., pretrial detention and the role of investigators and prosecutors) are not addressed and the specific objectives of law reform are not clearly identified. The Programme does not distinguish sufficiently between core juvenile justice issues (the prosecution of juveniles accused of an offence and juveniles confined in correctional facilities) and the grey area between juvenile justice and child protection (the Commissions on Minors and facilities operated by the Ministry of Education). Although the Programme does address some broader issues, the centrality of a single pilot diversion project tends to undermine a holistic approach to juvenile justice reform. This, combined with the failure to distinguish between core juvenile justice issues and peripheral ones, has led to the situation where, after one year of implementation, most beneficiaries are not accused juveniles or juvenile offenders.

The assessment team believes that a broader strategy has been implicit in UNICEF's work on juvenile justice since 2005. This tacit strategy has emphasized advocacy. Other key elements have been:

- close cooperation with civil society, in particular the NGO Alliance for Children's Rights;
- close cooperation with the Ministry of Internal Affairs;
- cooperation with the State Statistical Committee;
- advocacy with potential international donors;
- support to three pilot projects on prevention, diversion and legal aid;
- extensive training.

UNICEF's advocacy has been successful. The government is, in principle, committed to the development of a juvenile justice system that complies with international standards and is interested in learning from the experience of other countries. There are plans to adopt a juvenile justice law during 2009.

Advocacy efforts have also had an impact on the number of accused and convicted juvenile offenders who are deprived of liberty, which has fallen by over 25 per cent since the 2006 situation analysis.¹¹⁹

¹¹⁹ The 2006 situation analysis indicates that there were 38 accused juveniles in detention and 59 convicted juveniles serving custodial sentences; at the time of the assessment mission these numbers were 25 and 47, respectively.

Close cooperation with national NGOs was a good strategic decision. The NGO community is very knowledgeable and committed. Through its cooperation, UNICEF has helped transform the relationship between government and civil society, while gaining access to knowledge and improving its own capacity to prepare assessments, training materials, proposals and plans. Supporting the active participation of civil society in the reform of juvenile justice will make the process and its achievements sustainable.

The strategic choice to give priority to cooperation with the Ministry of Internal Affairs is more difficult to assess. On one hand, the Ministry plays an important role in juvenile justice, especially in the Commissions on Minors, and is pleased with its cooperation with UNICEF. On the other hand, cooperation with the Ministry has had its most visible practical consequences with regard to the juvenile police, whose role is essentially preventive, whereas the impact of cooperation on those who investigate offences committed by juveniles has been modest. Despite efforts undertaken, the work with judges and prosecutors has been a lower priority. Whether devoting higher priority to collaboration with those sectors would have positively influenced the reform process as a whole is impossible to say.

The priority given to training had mixed results. For a variety of reasons described above, many trainees are not putting the training to use in their respective professional areas. A UNICEF programme officer commented that the real value of training lies in advocacy, and from this perspective it does appear that training has helped create an atmosphere conducive to reform. Another positive result is the creation of a core of national trainers who are knowledgeable and competent and who do continue to use the knowledge and skills developed through the training provided.

The strategic decision to include the three pilot projects mentioned above in the activities carried out during the past three years also had mixed results. The prevention project, as indicated earlier, was not very successful and was abandoned, at least temporarily. The Children's Rights Legal Clinic is well conceived and staff is competent and committed and may make an important contribution to the development of juvenile justice, but it would be premature at present to assess its impact either in terms of services provided to individuals or in terms of fostering better respect for the law and the rights of children by police, prosecutors and courts in general. The pilot diversion project, based on a successful experience elsewhere in the region, has been in operation for less than one year, which also cautions against premature conclusions as to its effectiveness and impact. One concern is that it may have a greater impact on children involved in antisocial behaviour than children involved in offending. In this sense, it may have more impact in prevention than actual diversion of cases that might be sent to courts, and could involve pretrial detention or custodial sentences. Prevention is, of course, no less important than diversion, and it may be that the project could evolve in such a way as to respond successfully to both needs. This remains to be seen.

Finally, another concern with the strategic decision as to the kinds of pilot projects to support is that the issues of alternative sentences, mediation and post-release support have not been addressed. This is understandable given the small numbers of juvenile offenders, the lack of a budget for juvenile justice and the existence of other important priorities, including children displaced by the conflict in Nagorno-Karabach. It is nevertheless a problem, especially since the government intends to draft a juvenile justice law in the near future, and as one of the reasons for implementing pilot projects is to demonstrate the value of programmes that should be incorporated into or influence the parameters of the law that will provide the legal framework of the future juvenile justice system.

Supporting the State Statistical Committee in the development of indicators concerning juvenile offenders was a good strategic choice. The Committee publishes more data on juveniles than many

of its counterparts in other countries in the region, although there is room for improvement, and the challenge of ensuring that decision makers make appropriate use of the data available remains.

UNICEF's advocacy with other international agencies has had three dimensions: seeking political support for its advocacy vis-à-vis the government on the need for juvenile justice reform; advocacy aimed at securing financial support for specific projects; and advocacy designed to ensure that the rights of children are taken into account in broader programmes concerning the administration of justice, law enforcement and correction.

Each of these efforts has been successful to some extent. The European Commission's Progress Report on the Implementation of the European Neighbourhood Policy reviews progress in the area of juvenile justice.¹²⁰ The British Embassy and OSCE have supported a variety of activities, including monitoring, training and a study visit to the United Kingdom. Furthermore, OSCE has incorporated a child rights' perspective into several activities, such as the training of judges, and OHCHR has supported training activities. Thus far, however, efforts to persuade the World Bank to incorporate children's concerns into its programme in order to strengthen the judicial system have not been successful.

2) Planning

Juvenile justice reform was not part of the present UNICEF Country Programme when it began in 2005. During the period under review, the work on juvenile justice was considered as part of the general child protection programme. Juvenile justice was added to the Country Programme after the 2007 Mid-Term Review.¹²¹

A modest work plan, consisting of a list of activities, was prepared in 2006.

In 2007, a project entitled 'Child Protection Reform Project' was adopted. It has three components, all concerning juvenile justice: the creation of a pilot diversion project in the capital, the creation of the Children's Rights Legal Clinic and the training of specialized police officers. Initially for a period of one year, the project has been extended until the end of 2009. Counterparts include the Ministry of Internal Affairs, the NGO Alliance for Children's Rights and the UK Children's Legal Centre.

The longer-term objectives of the project – to be achieved if the project is extended for a second and third year – include the reduction of the number of juveniles deprived of liberty, including those in pretrial detention and those given custodial sentences; the establishment of a national network of legal clinics for minors, and the incorporation of child rights and juvenile justice into the curriculum of the Police Academy.

In 2007, UNICEF also signed a Memorandum of Understanding (MoU) with the Ministry of Internal Affairs, OSCE and the NGO Alliance for Children's Rights. The MoU calls for the development of preventive work on behalf of children at risk; the development of community-based alternatives in order to reduce the number of children being sent to closed institutions; and the institutionalization of training in child rights for the police.

The child rights component of UNICEF's 2008 work plan contained three parts, describing its cooperation with the Ministry of Labour and Social Protection, the Ministry of Education, and

¹²⁰ Commission of the European Communities, Implementation of the European Neighbourhood Policy in 2007, Progress Report Azerbaijan, Brussels, 3 April 2008, SEC(2008)391, p. 5.

¹²¹ Juvenile justice reform was also incorporated into the United Nations Development Assistance Framework in 2007, largely as a result of UNICEF's work in this area.

the Ministries of Justice and Internal Affairs. The part concerning the Ministries of Justice and Internal Affairs envisaged to strengthen professional capacity, to model delinquency prevention methods and to draft the juvenile justice legislation. Planned results include the establishment of a National Juvenile Justice Task Force Group; the documentation of the pilot diversion project; the incorporation of lessons learned into national plans and policy; the drafting of the juvenile justice legislation; the training of a core group of 20 judges and prosecutors; the adoption of a juvenile justice training module for the Police Academy; the creation of a model police station children's room; and the inauguration of a peer counselling programme for the prevention of offending.

Planning in the absence of a defined longer-term strategy may appear somewhat arbitrary, as the reasons for incorporating certain activities instead of others are often not identified expressly; aims tend to be defined in terms of outputs rather than impact on the rights of children; and links to activities undertaken in previous years may not be described. The component of the Child Protection Reform Project concerning juvenile justice overcomes these limitations, to some extent, in particular by defining the results expected in the event the activities are continued after the first year.

Some aspects of the plans raise questions, however. The reasons for including another training activity, for example, are not self-evident. While the assessment team fully appreciates the reasons for the inclusion of some of the activities in this most recent plan, such as the establishment of a National Juvenile Justice Task Force Group, the documentation of the pilot diversion project and the drafting of the juvenile justice legislation, it believes that the context and the reasons for incorporating certain activities into annual plans, and their longer-term implications, should be explained.

3) Management

UNICEF's work on juvenile justice is coordinated by two child protection officers, one national and the other international. Neither works exclusively on the juvenile justice reform. Other activities include: an important de-institutionalization programme, support to the Child Rights Unit of the Ombudsman, and assistance in reporting to the Committee on the Rights of the Child.

The lack of a specific budget for juvenile justice made it necessary to fund some projects for a very short period (less than one year). This, occasionally, contributed to poor implementation (not enough time to solve initial problems). It also prejudiced sustainability, since projects had to be evaluated after a short period of time. It also, of course, increased the administrative burden on UNICEF's staff and implementing partners.

Despite these handicaps, UNICEF has managed its juvenile justice work successfully, in the sense that most of the resources invested have produced positive results proportionate to the investments made; partners in government and civil society as well as other international donors have a positive impression of UNICEF's contribution and are interested in continued cooperation; and advocacy has resulted in a commitment to developing a juvenile justice system and building momentum towards this goal. In short, UNICEF has been able to identify opportunities, develop relationships with relevant partners and support activities that have been both feasible and strategically significant.

4) Evaluation

A substantial effort has been undertaken to evaluate juvenile justice activities supported by UNICEF. This assessment is, of course, an integral part of that effort.

There are plans to evaluate late in 2009 or early in 2010 the activities of the Children's Rights Legal Clinic and the pilot diversion project.

An independent evaluation was conducted on the effectiveness of the large police training project carried out in 2005–2006. The evaluation, as indicated above, revealed that nearly half of the respondents used the knowledge acquired during the training often, while some 20 per cent did not use it at all. Answers also revealed widespread doubts about the applicability of foreign experience to national conditions, and beliefs about the causes and the prevention of delinquency, which will be useful in future activities. The inability to survey more than 30 per cent of the trainees also highlighted the fact that the extensive turnover is an obstacle to effective training. Many of the officers trained were no longer assigned to the Juvenile Inspectorate.

Other aspects of the evaluation are not as useful. No meaningful correlations were identified between the trainees' social background and the impact of the training; there is no analysis of the effectiveness of different training activities, which varied in length from one to three days, or the impact of the participation in more than one activity. Despite these shortcomings, the evaluation provided objective and useful feedback on one of the most important activities carried out that has been taken into account in subsequent plans.

UNICEF wished to support a similar evaluation on the training of judges and prosecutors, but permission was not obtained.¹²²

¹²² In many countries, judges and prosecutors consider evaluation of training beneath them.

Part IV. Conclusions and Recommendations

POSITIVE DEVELOPMENTS

1. The Government of Azerbaijan recognizes the need to establish a juvenile justice system and has decided to prepare a law on juvenile justice, which will form the legal framework for such a system. There is now a window of opportunity to influence the shape of the future juvenile justice system, whose development is presently in the first stages.
2. An interministerial, intersectoral Juvenile Justice Task Force has been established. Members include line ministries (Justice, Internal Affairs, Education, and Labour and Social Protection), the State Committee on Family, Women and Children's Affairs, the Office of the Prosecutor General, the Parliamentary Legal Commission, the Commissioner for Human Rights (Ombudsman) and representatives of civil society and international agencies, including OHCHR, OSCE and UNICEF. The experience of other countries indicates that such mechanisms can play a key role in the development of a good juvenile justice system.
3. The Criminal Code and the Code of Criminal Procedure provide for fines, community service and 'conditional sentences', which is similar to probation but without a probation service to supervise and assist the beneficiary. In recent years, 60 to 70 per cent of convicted juveniles have received non-custodial sentences. More conditional sentences are imposed on juvenile offenders than any other type of sentence.
4. A considerable amount of training has been undertaken, which has helped create an atmosphere favourable to juvenile justice reform. The training provided to police officers was evaluated independently, allowing improvements to be made in the training methodology and materials.
5. The Ministry of Internal Affairs recently established, on a pilot basis, special rooms in selected police stations for the questioning of juvenile suspects and children who are victims of offences.
6. A pilot diversion project has been set up in Baku. The local authorities participating in the board that supervises the implementation of this project are pleased with the results to date.
7. Another pilot project provides legal services to accused juveniles and juvenile detainees and prisoners. The quality of the services provided is good.
8. Progress has been made in humanizing conditions in the correctional facility for convicted juveniles and in the special vocational school, where offenders are sometimes placed as an alternative to confinement in the former facility. Plans exist to replace both facilities, which are old and in bad repair.
9. Population of the 'special school' and the 'special vocational school' has declined. Consideration is being given to closing them, as per the recommendation of the situation analysis prepared for UNICEF in 2006, or converting them into open facilities.
10. Civil society is making an important contribution to the development of a juvenile justice system, through research, including surveys of the experiences and views of juvenile offenders; advocacy; the development of training materials; and through the implementation of the pilot projects on legal assistance and community-based, non-custodial rehabilitation/prevention services mentioned above.

11. The data collection system presently in place produces valuable information on offending by juveniles and on the operation of the legal system presently applicable to juvenile offenders.
12. UNICEF has made a key contribution to the process of creating a juvenile justice system, despite limited funds and the absence of a clearly defined strategy. This has been achieved largely through the 2006 situation analysis, persistent and intensive advocacy and extensive training. Some well chosen pilot projects have also helped.

CHALLENGES

1. The rights of juvenile offenders continue to be violated by practices, such as physical and psychological violence, detention for periods in excess of those allowed by law, and soliciting bribes in exchange for release from detention or for closing an investigation.¹²³ Authorities are reluctant to recognize that these practices continue. The lack of data on investigations of such abuses suggests that accountability mechanisms are not functioning effectively.
2. Custodial facilities for juvenile offenders – the juvenile ‘colony’ and the ‘special vocational school’ in which juvenile offenders are sometimes placed – are old and in bad repair. Disciplinary measures do not fully comply with international standards. Convicted female juvenile offenders, when there are any, are confined in the women’s prison and have inadequate access to education.
3. Although existing law recognizes the principle that juveniles’ deprivation of liberty should be exceptional and for the shortest appropriate period of time, the complicated and flexible provisions of the Code of Criminal Procedure regarding the time limits for various stages of criminal proceedings are the same for juveniles and adults.
4. While the law concerning the sentencing of juvenile offenders is, in principle, compatible with international standards, anecdotal evidence is suggesting that this principle is not adequately applied in practice (e.g., sentences of five years for theft are a source of concern).
5. Training programmes have taken place and yet many practitioners working in the area of juvenile justice have still not been trained. There is no requirement that cases involving juveniles be tried by judges and prosecutors who have been specifically selected and trained for this purpose, nor any system for assigning cases to qualified judges and prosecutors.
6. Most secondary prevention consists of supervision by the juvenile inspectors (police), which is useful but insufficient. Other government agencies play a minimal role in the prevention of offending at present.
7. The pilot diversion project has not yet been evaluated. Preliminary data indicate that most children being referred to the project are under the minimum age for prosecution and are referred for antisocial behaviour, not crimes. This suggests that the goal of diversion is not being sufficiently met.
8. There are at present no programmes to help juveniles or young adults sentenced as juvenile offenders reintegrate into the community after release from serving a custodial sentence.

¹²³ One case involving all three practices was reported to the Children’s Rights Legal Clinic during the assessment mission.

9. Recent academic research on juvenile offenders is non-existent.
10. Published data on juvenile offenders have some gaps (e.g., on repeat offending, and the correlation between offences and sentences) and are not disaggregated to the extent desirable.

RECOMMENDATIONS

The National Juvenile Justice Task Force

1. The experience of some other countries suggests that the participation of practitioners, such as the heads of juvenile correctional facilities and juvenile court judges, can help ensure that the work of such bodies is better attuned to the needs and characteristics of offenders.

The future juvenile justice law

2. The following are some general recommendations regarding the law on juvenile justice that the government plans to draft and adopt:
 - the law should include time limits designed specifically to ensure that trials of accused juveniles comply with international standards;
 - the law should also include time limits designed specifically to ensure that juveniles are not detained during investigation for longer than strictly necessary;
 - a case monitoring system should be established to enforce time limits, and sanctions should be established for judges, prosecutors, investigators, defence attorneys and other participants in proceedings who are accountable for unjustified delays;
 - the law should recognize and regulate the possibility of referring cases for victim-offender mediation instead of prosecution or instead of a sentence;
 - responsibility for supervising community service sentences should be established;
 - responsibility for the preparation of background reports should be established;
 - norms concerning the measures to be taken with regard to offenders (e.g., diversion, sentencing) should be based primarily on the characteristics of the offender (e.g., the probability of re-offending or the type of rehabilitation or assistance required) rather than the nature of the offence as such;
 - periodic review of the progress made in rehabilitating juvenile offenders serving sentences, especially custodial sentences, should be required; entitlement to early release or substitution of one kind of sentence for another should be recognized when sufficient progress in rehabilitation has been achieved;
 - provisions concerning the rights of juveniles confined in pretrial detention facilities and in juvenile correctional facilities should be incorporated into the law, and should, *inter alia*, prohibit disciplinary measures incompatible with international standards, such as solitary confinement, forced labour, physical punishment and suspension of family visits.
3. The cost of implementing the new juvenile justice law should be calculated before the law is adopted and sufficient resources should be allocated.
4. Since the establishment of a juvenile justice system will require significant changes in the existing law enforcement, judicial and correctional systems, it may be useful to draft a law that can be implemented in stages. While some changes should be effective immediately, it may be appropriate for others (such as victim-offender mediation procedures) to be done on a trial basis, and for some provisions of the law to come into force once the results of the first stage of implementation can be evaluated.

Sentencing

5. Custodial sentences, when appropriate, should be long enough to enable offenders' rehabilitation, but not so long as to foster the development of criminal tendencies or raise obstacles to reintegration into society. An analysis of the kinds of custodial sentences imposed in recent years, the amount of time actually served and the relationship between the sentences and factors such as the nature and the circumstances of the crime would help determine whether changes in the law on sentencing should be incorporated into the juvenile justice law.
6. Azerbaijani law does not recognize all the kinds of alternative sentences recommended by international standards. Given the small number of juveniles serving custodial sentences, recognition of additional forms of alternative sentences may not be necessary. Some alternatives, such as counselling or compensation of the victim, could and should be made part of a conditional sentence.

The establishment and location of juvenile courts

7. There is an ongoing debate about the best way to provide accused juveniles with access to specialized justice. Although the number of juveniles prosecuted annually is relatively small, the number of cases arising in the capital is sufficient to warrant the establishment of a specialized juvenile court, which would be a better way of ensuring the proper administration of juvenile justice than appointing specialized judges in the 11 district courts located in the capital. A specialized prosecutors' unit should have exclusive competence over cases within the jurisdiction of this court.
8. The assessment team is not prepared to make a recommendation as to the best way to ensure that cases arising outside the capital are handled by especially trained judges. One possibility would be to establish outside the capital specialized courts having competence over different kinds of cases involving children. Another might be to provide specialized training to one judge and prosecutor in each district outside the capital, and establish a specialized jurisdiction to review the way cases involving juveniles are handled in such courts. Each approach has advantages and disadvantages, and in deciding which is best suited to Azerbaijan the authorities should take into account the experience of other countries in the region that are facing this problem.¹²⁴
9. While the process of establishing one or more juvenile courts is underway, steps should be taken as an interim measure to identify the judges and prosecutors best qualified by character and training to handle cases of accused juveniles, and to ensure that all such cases are assigned to them.

Diversion

10. Diversion is an essential part of any juvenile justice system.¹²⁵ Diversion should be recognized and regulated by the juvenile justice law now being developed. The criteria for allowing diversion should, in principle, be defined mainly in terms of the circumstances most favourable to the rehabilitation of the offender, not the nature of the crime as such. Diversion does not necessarily involve the kinds of services provided by the pilot project; it may take the form of supervision, victim-offender mediation, or community service. Once the pilot project has been evaluated, plans for further development of diversion should be adopted.

¹²⁴ See, for example, *Assessment of Juvenile Justice Reform in Albania*, UNICEF Regional Office for CEE/CIS, Geneva, July 2009.

¹²⁵ The Beijing Rules, Rule No. 11; Convention on the Rights of the Child, Article 40.3(b); Children's rights in juvenile justice, General Comment No. 10, CRC/C/GC/10, paras. 22–27.

Training

11. Training should continue focusing on practitioners, especially in sectors that have not yet received training (e.g., police investigators and staff of correctional and detention facilities for juveniles). In-service training activities should be based on training needs assessments, and their effectiveness should be evaluated systematically. Efforts to incorporate training in child rights into the curricula of the institutions responsible for training judges, police, prosecutors and correctional officers should continue. These efforts should take into account the lessons learned from the evaluation of earlier training about its relevance and related matters.

Secondary prevention

12. The need for multidisciplinary community-based prevention services should be evaluated and, if a substantial need is identified, an appropriate pilot project developed and implemented. The needs evaluation should take into account the causes of offending, the kinds of services which would help counteract them as well as the extent to which such services are presently available, either in the community or in residential facilities. To the extent they are available in institutions but not in the community, the assessment should analyse whether providing similar services in the community would be a viable alternative, and advantages and disadvantages of the institutional and programmatic frameworks, which might be used for this purpose (e.g., NGOs, Commissions on Minors, the pilot diversion project or the family support centres, which form part of the de-institutionalization project).

The police

13. Investigators responsible for the cases of juveniles accused of crimes should be specially selected and trained, and their respect for the rights of children should be closely monitored.
14. The pilot experience regarding the establishment of special rooms for the questioning of juvenile suspects and children who are victims of offences should be evaluated and action taken to ensure that all children be questioned in an environment respectful of their right to confidentiality and to humane treatment in a child-friendly setting.

The juvenile correctional facility

15. Replacement of the juvenile 'colony' should be given highest priority.

The 'special schools'

16. The imminent adoption of a juvenile justice law and the replacement of the physical plants offer a valuable opportunity for a new review of policies and programmes applied in these facilities. The Director of the special vocational school is in favour of converting the school into an open facility. A draft Master Plan reportedly calls for the closure of this school.

Given the facility's relative isolation, its small population and the fact that most juveniles are not offenders, the assessment team tends to agree with the proposal that it should be closed. If it is renovated and converted to an open facility, policies and programmes should be reviewed to ensure that disciplinary measures incompatible with international standards are prohibited and that the vocational training provided is adapted to the evolving needs of Azerbaijan's economy and society. Standards for the qualifications and training of staff should be reviewed, and effective mechanisms established to monitor child rights' violations.

Data and research

17. The following three significant gaps should be filled:

- data on offending by children under age 15, which are important to determine and evaluate preventive policies, should be compiled and published;
- data on the number of juveniles confined in pretrial detention facilities and the juvenile prison should be published and not considered confidential;
- data on the duration of detention should be compiled and published.

In addition, it would be useful to disaggregate currently published data regarding repeat offending and the processing and resolution of criminal investigations in order to distinguish between juvenile and adult offenders.

18. Research on certain issues is needed to help develop effective policies for preventing offending and re-offending. The following three areas of research would be especially useful:

- research on the current extent of offending (not reported offending), which would provide better evidence on which to base preventive policies;¹²⁶
- research on the causes of more serious offending and repeat offending, which is relevant to sentencing policies;
- research on the short- and longer-term impact of different kinds of sentences on juvenile offenders, including research on factors that affect the social reintegration of offenders released from custodial sentences.

UNICEF

19. UNICEF should actively participate in the crucial next stage of development of a juvenile justice system, in particular by helping authorities obtain access to expertise and information about the experiences of other countries; by encouraging the development of laws and policies that are evidence-based; and by continuing to support the government-civil society cooperation in the process of establishing a juvenile justice system.

UNICEF Azerbaijan should adopt a three-year strategy to contribute to the development of a juvenile justice system, seek the funds needed to pursue its work and establish a steadier basis, which allows for more coherent planning. Its continued support should, however, be conditional on the understanding that the government is prepared to allocate the funds required to make the new system operational.

¹²⁶ Such data are usually obtained through anonymous surveys of young people or through household surveys.

Annex 1: Data collection and analysis

National data collection system and international and regional indicators

Data on offending are collected by the Ministry of Internal Affairs, the Ministry of Justice and the Office of the Prosecutor General. Since 2004, the State Statistical Committee has published an annual bilingual compilation of data received from these sources, entitled *Crimes and Offence in Azerbaijan*. The Committee also cooperates in the TransMONEE project. The indicators and corresponding observations of the assessment team are as follows:

(1) *Crimes committed by juvenile offenders*

This indicator is defined by the TransMONEE matrix¹²⁷ as “the number of crimes committed by persons aged 14–17,” disaggregated by the kind of crime, i.e., violent, property, or other.¹²⁸

The number of crimes committed by persons aged 14 to 17 is published in *Crimes and Offence in Azerbaijan* (Table 4.2). Data are available for the years 1995 and 1997–2007, and are disaggregated by 10 categories. (The data are summarized in previous sections of this report.)

The data published in the TransMONEE matrix as “crimes committed by or with the participation of juveniles” are not the number of crimes committed by juveniles, but the number of juveniles who have committed a crime. In Azerbaijan, the number of crimes committed by juveniles is larger than the number of juveniles, in most years. In 2007, for example, 428 juveniles committed 485 crimes.

(2) *Children in conflict with the law/children arrested*

The term ‘arrest’ is defined by the UNODC-UNICEF Manual as “placed in custody by the police ... or other security forces because of actual, perceived or alleged conflict with the law.” ‘Conflict with the law’ is, in turn, defined as “having committed or [being] accused of having committed an offence,” although the definition adds, “depending on the local context,” the term may also mean “children dealt with by the juvenile justice or adult criminal justice system for reason of being considered to be in danger by virtue of their behaviour or the environment in which they live.” TransMONEE defines this more clearly as “the number of children/juveniles taken into police custody (following arrest on suspicion of having committed an offence)...”

Leaving aside the possibility of including children taken into custody for protective reasons, the indicator could be interpreted to include juveniles in two situations contemplated by Azerbaijani law: persons formally identified as suspects and detained for a preliminary investigation, and those captured during the commission of an offence while trying to escape or in the presence of evidence, who may be detained for up to 24 hours before a criminal case is opened.¹²⁹

Data on these forms of detention apparently are not compiled, however. Even if they were, they would not be a reliable indicator of the number of juveniles considered criminal suspects or the subject of criminal investigations, because a suspect may be charged without being taken into custody.¹³⁰

¹²⁷ See *Lost in the Justice System*, Appendix 2.

¹²⁸ This indicator is not contained in the UNODC-UNICEF Manual. See United Nations, *Manual for the Measurement of Juvenile Justice Indicators*, Office on Drugs and Crime (UNODC) and UNICEF, New York, 2007.

¹²⁹ Code of Criminal Procedure, Articles 148 and 150.

¹³⁰ Data on children taken into police custody and the reasons why they are taken into custody are, of course, important in their own right because of the implications of this experience for children.

The indicator used by Azerbaijani sources that best identifies the number of juveniles who come into contact with the criminal law as suspects or accused is the number of offenders 'registered' by the police, referred to in data published by the State Statistical Committee as "the number of minors [having] committed crime." These are, as indicated above, the data published by TransMONEE as "crimes committed by or with the participation of juveniles."

Data on crimes committed by juveniles published by the State Statistical Committee are disaggregated by district, which is valuable for planning the development of a juvenile justice system. In most years, some 200 offences by juveniles are committed in the capital and from 50 to 80 in each of two other regions.¹³¹ In 2007, offences committed in these three regions made up 70 per cent of the offences committed by juveniles.

(3) Children in detention

The UNODC-UNICEF Manual describes this indicator as "the children detained in pretrial, pre-sentence and post-sentencing [sic] in any type of facility (including police custody)." This indicator is defined by TransMONEE matrix as "the total number of children/juveniles in conflict with the law in closed correctional/punitive institutions or open/semi-open institutions at the end of the year."

Data for this indicator are not published by the State Statistical Committee because they are classified as confidential. This seems anomalous and anachronistic. Data on the number of juveniles in correctional facilities have been published from time to time by both governmental and non-governmental sources, cited elsewhere in this report.

Since these data do not seem to be considered sensitive, and since they are useful as an indicator of how juvenile justice is working, it would be advisable to classify the data as public and develop tools for identifying and collecting them. The data collected should include three groups of children: those serving sentences in the juvenile correctional facility, those confined in pretrial detention facilities and those confined in the special vocational school by reason of the commission of an offence. Ideally, the data should be disaggregated to identify these categories or subgroups.

At the time of the assessment mission, there were 47 sentenced juvenile offenders in the juvenile correctional facility, 25 in pretrial detention facilities and none in the closed special vocational school. It should be noted, however, that some of these persons, although deprived of liberty because of offences committed or allegedly committed while under age 18, are now above age 18. The exact number is not known, but it is probably at least 10 per cent.

Since the detention of suspects in police facilities is limited to 48 hours, the value of including data on children in such facilities may not be proportionate to the effort required to collect and compile it.

(4) Children in pretrial or pre-sentence detention

The TransMONEE definition of this indicator is "the number of children who are placed in pretrial detention during the year." The UNODC-UNICEF Manual describes it as including children deprived of liberty while awaiting trial and convicted juveniles awaiting sentencing, but not those who are sentenced and awaiting the outcome of an appeal.

These data are not published by the State Statistical Committee. Information on the number of juveniles confined in pretrial detention facilities has been provided to NGOs on request, as indicated above, so it does not seem to be regarded as sensitive. It appears, however, that neither the number

¹³¹ Ganja-Gazakh and Aran.

of accused juveniles placed in pretrial detention annually nor the percentage of juveniles prosecuted has ever been calculated. Such data should be collected and evaluated systematically, because it is essential to monitor compliance with the fundamental principle that deprivation of liberty should be the last resort.

(5) Duration of pretrial detention

Data on this important indicator are not compiled either at present. This gap in data collection should be remedied as a matter of priority, in order to facilitate monitoring of relevant national and international standards.

(6) Child deaths in detention

Information on this indicator is not compiled systematically. Independent sources indicate that they could not recall a single death of a minor in a detention or correctional facility since independence.

(7) Separation from adults

This indicator is defined by the UNODC-UNICEF Manual as “the percentage of children in detention not wholly separated from” adult prisoners.¹³²

In Azerbaijan, the only persons under age 18 confined in adult facilities are female juvenile offenders, and suspects confined in police stations temporarily before a court has considered whether pretrial detention is warranted. However, as in most other countries in the region, offenders detained or serving sentences for crimes committed (or allegedly committed) while under age 18 may be allowed to remain in juvenile facilities for some time after reaching their 18th birthday.¹³³ In this sense, few juvenile prisoners and detainees are ‘wholly separated’ from adult prisoners.

In addition, the pretrial detention facilities also sometimes place selected adult detainees in the juvenile unit to help maintain order. The administration argues that this is in the best interests of the juvenile detainees. Determining the number of juveniles affected by this practice, as well as the number of juvenile females in the women’s prison or women’s section of the pretrial detention facility, would require the identification of a point in time at which the data should be collected.

(8) Contact with parents and family

This indicator is defined by the UNODC-UNICEF Manual as “the percentage of children in detention who have been visited by, or visited, parents or guardian or an adult family member during the last three months.”

Data on this indicator are not published, nor are they collected systematically by any of the institutions in which juvenile offenders are or may be confined.

(9) Convictions

This indicator is defined by the TransMONEE matrix as “the number of juveniles convicted during the year,” disaggregated by sex, age and type of crime, i.e., violent, property, or other.¹³⁴

¹³² The TransMONEE project does not include this indicator.

¹³³ In 2006, there were 16 boys aged 16 or 17 years in the juvenile correctional facility, and 45 aged 18 or 19 years. See *Monitoring the Juvenile Justice Administration*, p. 29.

¹³⁴ The UNODC-UNICEF Manual does not include this indicator.

The State Statistical Committee publishes the number of convictions, disaggregated by the crime or type of crime. Eleven categories are employed for this purpose. The number of convictions is also disaggregated by age (14–15 or 16–17) and sex.

(10) Custodial sentences

This indicator is defined by the UNODC-UNICEF Manual as “the percentage of sentenced children who receive a custodial sentence,” i.e., one of confinement to an open, semi-open or closed facility. The TransMONEE matrix limits this to children aged 14–18 years.

Disaggregated data on kinds of sentences imposed on juvenile offenders are published by the State Statistical Committee. The number of custodial sentences imposed on juvenile offenders is disaggregated by the length of the sentence, although only two categories are used: sentences of less than five years and sentences of more than five years. In 2007, almost half of imprisonment sentences were for more than five years. These data are further disaggregated by offence or category of offence.

Prisoners can be released after serving part of their sentence and may be pardoned for minor offences, but data on juvenile prisoners benefiting from these possibilities are not compiled systematically.

(11) Alternative sentences

The TransMONEE matrix requests information on the kinds of sentences imposed on convicted juveniles. The 12 categories used are the following: committal to a penal institution; committal to an educational/correctional institution; pre-sentence diversion; formal warning/conditional discharge; apology; fine/financial compensation; community service or corrective labour; supervision order; probation order; postponement of sentencing; release from sentencing; and other.

Regional or global indicators inevitably do not correspond exactly to the kinds of sentences recognized by national legislation. The number of juveniles convicted is disaggregated by five kinds of sentences: imprisonment, community service, fine, ‘conditional conviction’ and ‘reformatory works’. ‘Conditional conviction’ is similar to probation, although there is no probation service to supervise the convict. ‘Reformatory works’ is an obligation imposed on persons with employment to pay part of their earnings to the State for a certain period of time. In 2007, 44 per cent of convicted juveniles received a ‘conditional conviction’ and 27 per cent (83 persons) received a sentence of imprisonment.

Sentences imposed on juvenile offenders also are disaggregated by the crime for which the offender was convicted. In 2007, for example, most juveniles convicted of simple theft were given fines or conditional sentences, and about one in five (22 persons) were given a custodial sentence. Of these, five were given a sentence of five years or more.

(12) Pre-sentence diversion

The UNODC-UNICEF Manual defines pre-sentence diversion as “the percentage of children diverted or sentenced who enter a pre-sentence diversion scheme,” and adds that it is intended to measure “the number of children diverted before reaching a formal hearing.” As this is somewhat confusing,¹³⁵ the Manual recognizes that what constitutes diversion “will need to be identified in the local context.”

¹³⁵ Hearings often occur before trial begins, which means that diversion before any hearing takes place would be only part of ‘pre-sentence diversion’. And it is unclear why the percentage of offenders diverted should be calculated with reference to the number diverted or sentenced, rather than the number accused or prosecuted.

In Azerbaijan, there is a significant gap between the number of juveniles who commit crimes and the number of convictions. In 2007, for example, according to official data, 428 juveniles committed an offence, but only 305 (71 per cent) were convicted.

Data on the number of juveniles prosecuted in certain years published in other official documents suggest that the number of those prosecuted who are not convicted is small.¹³⁶ The law allows investigators and prosecutors to close an investigation if sufficient evidence is not obtained, or if the evidence shows that the suspect or accused is not guilty of the crime.

Cases also may be closed in certain circumstances similar to diversion (e.g., remorse and reparation of the damage).¹³⁷ However, no diversion programme existed until the pilot diversion project became operational late in 2007, so diversion in the sense of referral to a community-based programme does not explain the difference between the number of criminal investigations opened and the number of convictions.¹³⁸

The annual publication of the State Statistical Committee contains detailed information on criminal investigations, including data on the time spent in different stages of the investigation, but these data are not disaggregated to distinguish between cases involving juveniles and those involving adults.

As a new system of juvenile justice is being developed, it will become important to document the flow of cases between the entry point into the system and the point at which the case is resolved, including the number of cases prosecuted and the outcome of cases opened but not prosecuted, mainly those diverted to community-based programmes, those closed for lack of evidence, those for which the investigation is underway, and so on.

(13) Aftercare

This indicator is defined as “the percentage of children released from detention receiving aftercare.” There is a problem with the way this indicator is defined, because aftercare programmes are generally considered important for offenders released from custodial facilities after serving a sentence, not those released from pretrial detention.

There is no established system for providing assistance to juvenile offenders released after serving sentences. Nor are there any data indicating how many persons given custodial sentences for crimes committed as juveniles are still under age 18 when they are released and return to the community.¹³⁹

Other relevant data and information

Children prosecuted or charged with an offence during the year

Data published by the State Statistical Committee include information on criminal cases filed with trial courts.¹⁴⁰ This information is disaggregated by the nature of the offence, but not by the status (juvenile or adult) of the accused.

¹³⁶ In 2003, 268 juveniles were prosecuted and 269 convicted; in 2004, 293 were prosecuted and 299 convicted.

¹³⁷ See Part II, p. 17.

¹³⁸ The modest number of cases referred to in this pilot project is of course known, although it is not expected to appear in official data.

¹³⁹ In 2008, the NGO Alliance for Children’s Rights began a study on juvenile offenders released from correctional and educational institutions, but the results were not available when this assessment was drafted.

¹⁴⁰ *Crimes and Offence in Azerbaijan*, Table 9.1.

Annex 2: List of persons interviewed

Government

- R. Rzayev, Member of Parliament
- J. Huseynov, Head of the Office, Judicial-Legal Council
- K. Imamverdiyev, Deputy Head of the Division of General Public Security, Ministry of Internal Affairs
- B. Bagirov, Head of Department, Preventive Work with Juveniles, Ministry of Internal Affairs
- A. Alihuseynov, Ministry of Internal Affairs
- I. Mammadov, Head, Juvenile Prison, Baku
- E. Sadigov, Head, Juvenile Section, Pretrial Detention Centre, Baku
- M. Hajiyeva, Coordinator, Working Group on De-Institutionalization, Ministry of Education
- A. Safarov, Department for Special Education Institutions, Ministry of Education
- N. Mammadov, Department for Special Education Institutions, Ministry of Education
- E. Suleymanova, Commissioner for Human Rights (Ombudsman)
- R. Samadov and F. Agayev, staff, Office of the Commissioner for Human Rights (Ombudsman)
- M. Amirova, Department Head, State Statistical Committee
- H. Alizade, Dean, Faculty of Social Work and Psychology, Baku State University

Civil society

- N. Seyidov, NGO Alliance for Children's Rights
- N. Guliyev, Director, Children's Rights Legal Clinic
- T. Sharifova, Member, Guardianship Council of Juvenile Prison
- E. Alekperova, Director, 'EL' Center of Development Programs
- D. Akhmedov, Director, Rehabilitation Centre for Juveniles in Conflict with the Law
- K. Ashumova, A. Kerimov and N. Heydarov, staff, Rehabilitation Centre for Juveniles in Conflict with the Law

UNICEF

- G. Wilcox, Officer in Charge
- M. Mammadov, Programme Officer
- R. Rzehak, Programme Officer

Other international agencies and organizations

- T. Malik-Asianov, Programme Officer, Office of the United Nations High Commissioner for Human Rights (OHCHR)
- M. Martinez, Head, Rule of Law Programme, Organization for Security and Co-operation in Europe (OSCE)
- K. Baghirov, National Legal Officer, OSCE

Annex 3: List of documents consulted

Legislation

Constitution of the Republic of Azerbaijan, 1995

Republic of Azerbaijan, Law on the Rights of the Child, 1998

Republic of Azerbaijan, Criminal Code, 1999

Republic of Azerbaijan, Code of Criminal Procedure, 2000

Republic of Azerbaijan, Law on the Commissions on Minors' Affairs and Protection of their Rights, 2002

Republic of Azerbaijan, Law on Juvenile Homelessness and Delinquency Prevention, 2005

Other government documents

Minutes of the first meeting of the Juvenile Justice Task Force, 23 December 2008

State Statistical Committee, *Crimes and Offences in Azerbaijan*, Baku, July 2009

State Statistical Committee, *Crimes and Offence [sic] in Azerbaijan*, Baku, 2007

UNICEF documents

The State of the World's Children 2009, UNICEF, New York, 2009

Assessment of the situation of juveniles in conflict with the law and those released/graduated from juvenile justice institutions in Azerbaijan Republic, first final draft report, Baku, November 2008

Mid-Term Review of Country Programme, Baku, 2008

Moestue, H., *Lost in the Justice System: Children in conflict with the law in Eastern Europe and Central Asia*, UNICEF Regional Office for CEE/CIS, Geneva, May 2008

Ministry of Internal Affairs, UNICEF, OSCE, NGO Alliance for Children's Rights, *Memorandum of Understanding*, Baku, 2007

Child Protection Reform Project in Azerbaijan Republic, 2007

Hamilton, C., *Azerbaijan: the position of children in conflict with the law*, UNICEF, Baku, 2006

The Child Protection System in Azerbaijan: situation analysis, Baku, 2005

Other United Nations documents

Committee on the Rights of the Child, Consideration of reports submitted by States parties under Article 44 of the Convention, Concluding observations on the second periodic report: Azerbaijan, CRC/C/AZE/CO/2, 2006

Committee on the Rights of the Child, Written replies by the Government of Azerbaijan concerning the list of issues (CRC/C/AZE/Q/2) received by the Committee on the Rights of the Child relating to the consideration of the second periodic report of Azerbaijan, CRC/C/AZE/Q/2/Add.1, 2005

Committee on the Rights of the Child, Consideration of reports submitted by States parties under Article 44 of the Convention, Second periodic reports of States parties: Azerbaijan, CRC/C/83/Add.13, 2005

Committee on the Rights of the Child, Consideration of reports submitted by States parties under Article 44 of the Convention, Concluding observations: Azerbaijan, CRC/C/15/Add.77, 1997

Committee on the Rights of the Child, Consideration of reports submitted by States parties under Article 44 of the Covenant, Initial reports of States parties: Azerbaijan, CRC/C/11/Add.8, 1996

Committee on the Rights of the Child, General Guidelines regarding the Form and Content of Periodic Reports to be submitted by States parties under Article 44, paragraph 1 (b) of the Convention, CRC/C/58, 1996

United Nations, *Manual for the Measurement of Juvenile Justice Indicators*, Office on Drugs and Crime (UNODC) and UNICEF, New York, 2007

United Nations, Core document forming part of the reports of States parties: Azerbaijan, International Human Rights Instruments, HRI/CORE/1/Add.117, 31 January 2002

NGO documents

NGO Alliance for Children's Rights, *Monitoring the Juvenile Justice Administration in Azerbaijan*, Baku, 2007

NGO Alliance for Children's Rights, *Filling in the Gap: Protecting the Rights of Juveniles in Conflict with the Law*, Baku, 2006

NGO Alliance for Children's Rights, *NGO Alternative Report to the Committee on the Rights of the Child*, 2005

Other documents

Ministry of Education, Table, students and staff of special schools in Mardakan and Guba, unpublished, September 2008

Data on children referred to Diversion Centre, November 2007–September 2008, unpublished

Commission of the European Communities, Implementation of the European Neighbourhood Policy in 2007, Progress Report Azerbaijan, Brussels, 3 April 2008, SEC(2008)391

Norwegian Refugee Council/Internal Displacement Monitoring Centre, *Internal Displacement*, 2008

Assessment of effectiveness of training for police inspectors on international juvenile justice standards, SIGMA Survey Centre, Baku, undated

ANNEX 4

RESPONSES FROM THE AUTHORITIES OF AZERBAIJAN

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Annex 4a

*From: The Ministry of Justices of the Republic of Azerbaijan
To: Head of UNICEF Resident Office*

We have reviewed the draft report on Assessment of Juvenile Justice in Azerbaijan which was prepared by Mr. Dan O'Donnely, International Adviser of the UNICEF Regional Office, CIS and Eastern Europe Countries and considered that inclusion of below-mentioned comments into final report would be expedient.

Attachment: 13 pages, 1 copy

Sincerely,

Faig Gurbanov
Head of Human Rights and Public Relations Agency

Opinions and Recommendations

*on Draft Report
Assessment of Juvenile Justice in Azerbaijan*

On the whole, the draft report was prepared in comprehensive manner and several important issues on juvenile justice were reflected therein. Yet at the same time, taking into account of following comments would be expedient.

Third paragraph of Section "Background" states that one third of children in Azerbaijan are living in miserable conditions, while this information doesn't reflect the actual situation. Thus, 2007 indicators showed that poverty level in Azerbaijan amounted to 15.8%.

In first and second paragraphs of pages 4 and 24, words "ordinary legislations" may be replaced by words "national legislation".

Section "Executive Summary" states that there is no juvenile justice law, and neither juvenile courts nor specialised judges in Azerbaijan; in connection therewith, it should be noted that approximately 59 laws (including, "Law on the Rights of The Child", "Law on Approval of the Statute of Commission on Adolescents' Affairs and Protection of Their Rights", "Law on Prevention of Juveniles' Negligence and Violation of Their Rights", "Law on Combating the Human Trafficking") which regulate the protection and development of child rights and their social protection were adopted, various decrees, resolutions and orders were signed by the President and the Cabinet of the Ministers.

Moreover, the Republic of Azerbaijan is signatory to UN Convention "On the Rights of the Child" of November 20, 1989, "Minimum Standard Rules on Fair Trial of Adolescents" (Beijing Rules) of November 29, 1985, UN Optional Protocols "On Child Trafficking, Child Prostitution and Child Pornography" and "On children In Armed Conflicts" of UN Convention "On the Rights of the Child", "Convention "Against Transnational Organized Crimes", its complementing protocols "On Prevention, Elimination of and Sentencing for Human Trafficking, especially trafficking of women and children" and "Against Illegal Crossing of Boundary through Land, Sea and Air" and other similar international treaties.

Though currently there are not juvenile courts in Azerbaijan Republic, the fundamental criteria defined by juvenile justice concept i.e. provisions on under-mentioned issues were included into relevant national legislation:

1. bringing of minors to criminal responsibility;
2. carrying out of relevant primary investigation and judicial survey on juveniles;
3. sentencing and its execution;
4. improvement of detention conditions of minor offenders.

Thus, characteristics of pre-trial proceedings as well as proceedings in court of first instance, court of appellate instance and court of cassation instance on minors are defined by Code of Criminal Procedure of the Republic of Azerbaijan. Chapter 50 of Code of Criminal Procedure is entitled as Proceedings Concerning Minors and pre-trial proceedings of minors, as well as proceedings in Court of First Instance, Court of Appellate Instance and Code of Cassation Instance are carried out based on provisions defined therein and in accordance with general rules stipulated by mentioned Code.

Provisions of above-mentioned Chapter of Code of Criminal Procedure is in conformity with international legal principles and regulations endorsed by Convention “On the Rights of the Child” of November 20, 1989, “Minimum Standard Rules on Fair Trial of Juveniles (Beijing Rules)” of November 29, 1985 and “Cumulative Principles on Protection of Arrested or Detained Persons” of December 9, 1988.

At passing of final court decision, if it is defined that person may be corrected without sentencing, court can release person from sentencing by assigning legally-binding tasks that promote his or her correction. The results of judicial survey, and legally-binding correctional tasks assigned on juvenile offender and type of task which is feasible to be fulfilled should be discussed by court in consultation room.

From amongst **13 types of sentences** defined by criminal legislation (Article 42) only **penalties and fines, public works, correctional works, deprivation of freedom for certain period of time** can be assigned on juveniles.

At sentencing of punishment, living conditions and upbringing of offender, the level of his or her physiological development, other personal features and external influences exerted on him are taken into account by court. At imposing of punishment, **the fact of adolescence** is taken into account as *alleviating factor* together with other factors aggravating or alleviating the punishment.

Criminal legislation in force, guided by principles of humanism, defines numerous concessional cases during setting of criminal responsibilities and punishments by taking into account the age-range and physiological constitution of minors.

It should be noted that out of 276 types of crimes defined by relevant articles of Specific Section of Criminal Code only 17 types are referred for bringing to criminal responsibility of persons who reached **age of 14**.

As far as comments “there is no national strategy for prevention of offending” concerned, it should be stated that “Plan of Actions on Eradication of Problems on Neglected Children and Children Working on the Streets in Azerbaijan” was approved by the Cabinet of Ministers in 2003, while Law “On Prevention of Minors’ Negligence and Violation of Their Rights” was adopted by Parliament of Azerbaijan Republic in 2005. These documents define range of works on prevention of minors’ negligence and violation of their rights and reflect the relevant obligations of authorities (paragraph 3, p. 6) in this field.

- Adoption of Criminal Code and Code of Criminal Procedure in 2000 is not linked with the fact whether or not juvenile justice system is available (p. 1, paragraph 5);
- With regard to comment “the responsibility for secondary detention lies with police”, it should be noted that based on Code of Criminal Procedure the responsibility for the detention lies exclusively with court.
- With regard to comment “specialised judges are not available”, it should be mentioned that proceedings on minors’ crimes are conducted by more experienced judges (**Article 435.1 of Code of Criminal Procedure**). Special mention must be made of Resolution “On Judicial Practices on Criminal Cases of Juveniles” adopted during Plenary Session of Supreme Court of Azerbaijan Republic in June 30, 2008.

According to Resolution, proceedings concerning minors shall be carried out under the chairmanship of more experienced, more competent judges and in courts of first instances where there are two or

more judges by court chairman in order to ensure strict observation of legislative requirements on criminal procedures, including provisions regulating minors' proceedings. Draft report highlighted the necessity of establishment of specialized court in city of Baku, while recommendation on consideration of similar cases by Courts of Appeal and Cassation was not put forward.

With regard to comments indicated in draft report on cases of physical and physiological violence, power abuse, soliciting bribes by chiefs of detention and correctional centers, it should be stated that in the course of 2003-2008, evidences of cases committed against children in penitentiary centers weren't recorded, complaints weren't submitted to the Ministry of Justice by accused and condemned persons, by their close relatives, barristers, representatives of non governmental organizations and other bodies (p.5, paragraph 5, p.6, paragraph 3, p.40, paragraph 1).

Moreover, "practices of detention in investigation centers and correctional institutions for the period in excess of those allowed by law" were not observed. The term of detention of arrested persons in investigation center is defined by the Code of Criminal Procedure, while term of detention of sentenced persons in confinement centre by court decision. Observation of this period is controlled by chiefs of penitentiary centers and of penitentiary service departments.

We deem that withdrawal of comment "long-standing problem of over-crowding in penal institutions where minors are detained" from draft report would be expedient. Thus, the mentioned problem has not been encountered in these institutions over a many of years. Currently, only 41 sentenced persons are placed in correctional institution with the capacity for holding of 100 persons. Construction of separate building for detention of minor offenders is being continued in new Baku Detention Center which was putted into operation in May, 2009. New building is planned to be putted into operation until the end of 2009. Creation of all conditions consistent with international standards, that is, facilities for detention, recreation, entertainment, involvement in labour activities, education are planned to be ensured. In regard to correctional institutions, it should be mentioned that construction of new detention center for juveniles is planned in Sabunchu district.

We are bringing to your notice that provisions on respect of rights and freedoms of juveniles were incorporated into the Law of Azerbaijan Republic "On Ensuring of Rights and Freedoms of Persons Detained in Confinement Centers" which was developed in accordance with the requirements of international acts on treatment of prisoners (p. 6 and 8).

As the number of convicted underage girls is very small and in certain years persons falling to this category weren't convicted, allocation of separate confinement centers deemed as inexpedient. Nevertheless, new confinement center for the detention of female prisoners is planned to be constructed in the nearest future and construction of additional buildings and improvement of the infrastructure for detention of juvenile girls therein is on the agenda.

In accordance with Article 128 of Code of Execution of Sentences of Azerbaijan Republic, prisoners that reached age of 18 based on court decision can be transferred to confinement centers for juveniles. Moreover, based on court decision these prisoners can be detained in correctional institutions till they reach age of 20. Analysis shows that prisoners that reached age of 18 are being detained in correctional institution for the next two years. But if prisoner isn't in good terms with other prisoners, lays claim to being a leader, doesn't behave, or makes attempt to hamper efficiency of work done by management he can be transferred to another confinement institution based on submissions provided by management (p.23, paragraph 3).

Psychologist staff in correctional institution was available even before 2007 structural changes in penitentiary services. Currently, psychological assistance to prisoners detained in confinement centers is rendered by physiologist of that center and by group of psychologists of General Agency of Penitentiary Center (p.29, paragraph 5).

With regard to comments on inconsistency of discipline works to international standards, it should be stated that Code of Execution of Sentences of Azerbaijan Republic prepared in accordance with the requirements of international acts on treatment of prisoners stipulates imposing of reprimanding tasks for prisoners who violate the rules of sentence execution. Yet at the same time, concessional rules for minor prisoner violating rules of execution of sentences was defined by legislation. It should be noted that punishment in the form of "transfer to penitentiary ward for the period of 6 months" assigned on adults prisoners is not being imposed on minor prisoners, the term of transfer to reprimand section is defined as 7 days (for adults 15 days). In case of adoption of such decision, contrary to adult prisoners, minor prisoners are allowed to continue their education during reprimanding period. At the same time, maximum term of minor's detention in penalty center in the course of year was defined as 30 days which twice as small as period defined for adult prisoners.

It should be noted that minor prisoners' transfer to penalty centers is assigned by paying due regard to the gravity of infringement committed by them and the greatness of its consequences.

Legislation in force doesn't envisage imposing of reprimand which is out of line with international standards i.e. transfer to one-man penitentiary ward, forced labour, physical punishment and prohibition of contact with visitors deprivation or meal (p.40-42) on minor offenders.

In the meantime, it should be noted that in accordance with the Article 87 of Law "On Courts and Judges", Courts of Azerbaijan Republic develop the statistical report in manner defined by legislation no less than once a year.

Statistic findings on minor prisoners can be received from the Ministry of Justice and these findings don't contain any secret information (p.45, paragraph 5).

With regard to comments "prisoners are reliant on clothes, soap, toothpaste and other similar stuff from parents and voluntary donations", it should be stated that based on Resolution #154 of Cabinet of Ministers of Azerbaijan Republic of September 25, 2001, quota on financial means, household stuff and meal was defined. Annex #24 of above-mentioned Resolution envisages provisioning of personal hygiene products, i.e. laundry soap; face soap, detergent powder, toothbrush and toothpaste. In accordance with relevant quotas, minor offenders are provided with 400 grams of laundry soap, 100 gram of facial soap, 200 gram of detergent powder per months, one toothbrush per year and toothpaste per every three months. Amendments and changes on provisioning of other hygiene products and reduction of their utilization period were developed and submitted for approval (p. 29).

We recommend revising of sections of draft report on "there is no system for rendering of assistance for released minor offenders" (p.52).

Thus, during recent years numerous laws were adopted by government, decrees and orders were signed by the President, plans of actions on state programs were prepared in order to facilitate re-integration of minor offenders to society in the capacity of physically and personally healthy and able-bodied persons, strengthening of their social ties and continuation of their education after release from confinement.

Thus, in accordance with “State Program on Development of Creativity Potential of Talented Children (Youths) covering the years of 2006-2010” endorsed by President’s Resolution of April 17, 2006, the Penitentiary Centre together with Institute of Education functioning under the auspices of Penitentiary Centre and Ministry of Education prepared Plan of Actions (2008-2009) in January 15, 2008 in order to define intellectual level of offenders in correctional and confinement centers, to identify gifted children, to support and ensure their development through engagement into socially valuable works; in accordance with this Plan of Actions juvenile offenders in correctional centers were tested. Furthermore, numerous sport competitions were organized by Baku City General Office of Youth and Sport.

In accordance with Article 7.21 of Action Plan pertaining to implementation of State Program on implementation of employment strategy of Azerbaijan Republic (2007-2010), Work Plan was developed by Ministry of Labour and Social Protection of Population and Penitentiary Center in April, 24, 2009 on works to be carried out on engagement of juveniles offenders into vocational training courses to facilitate their employment within short period of time after release from confinement.

The Law of Azerbaijan Republic “On Social Adaptation of Persons Released from Confinement” of May 31, 2007 should also be highlighted.

In accordance with mentioned law, 3 months prior to the expiration of term of sentence, certain works are being carried out as a preparation for release from confinement, discussions of educational character are hold by management among all offenders detained in penitentiary centers, including juvenile offenders, persons who are in need of social adaptation, that is, persons who don’t have place to go and premises to live in, are being identified. Then, the list of these persons is submitted to the Ministry of Labour and Social Protection of Population. The ministry, in its turn, together with other state bodies, carries out measures such as receipt of relevant documents, provision of temporary housing, employment for released persons, rendering of assistance for their education, provision of lump-sum financial assistance and other measures.

Furthermore, in accordance with Article 176 of Code of Execution of Sentences, the management of correctional center provides assistance to released offenders. The assistance is rendered in the form of financial means to reach home, food stuff and, if necessary, additional provision of seasonal clothes, shoes, and lump-sum cash allowances. At release of juveniles from confinement, they can be accompanied by the employees of correctional centers. If person released from confinement who lost her or his parents or deprived from parental care doesn’t possess housing, then management of correctional center, in accordance with the Article 175.4 of Code of Execution of Sentenced, dispatches him or her to boarding school and the full state support is provided for him.

The Plan of Actions developed by Penitentiary Centre in accordance with “Program on Combating Illegal Turnover of Narcotic Drugs, Psychoactive Drugs and Spreading of Drug Addiction” endorsed by Decree of President of Azerbaijan Republic of July, 15, 2000, included special provisions on prevention of drug addiction and spreading of risky behaviors among prisoners

In order to ensure implementation of Plan of Actions endorsed by Resolution of President of Azerbaijan Republic “On Announcement of 2009 as the Year of Child” of February, 18, 2009, round table on the theme “ Children in War and Armed Conflicts” was conducted in Correctional Institution in April 17, 2009 with participation of State Committee of Family, Women and Child’s Affairs, Baku City General Agency of Youth and Sport, the Ministry of Labour and Social Protection, Ombudsman Office and NGOs.

The Penitentiary Center continues to carry out measures aimed at strengthening of social ties of prisoners, especially juveniles with society, ensuring of prerequisites for their social adaption after release. Penitentiary Center, based on mutual understanding with Ministry of Education, Ministry of Culture and Tourism, Ministry of Communication and Information Technologies, Ministry of Labour and Social Protection of Population, State Committee on Religious Organizations' Affairs, State Committee on Family, Women and Child's Affairs and Baku City General Agency of Youth and Sport developed 2009 Plan of Actions in order to deepen the efficiency of carried out measures.

In accordance with mentioned Plan of Actions, in May 6, 2009 "Computer Users" courses were commenced in Correctional Institution which was attended by 12 minors.

With regard to comments "accountability mechanisms are still weak" in paragraph 6 of section "Reforms in Juvenile Justice", it should be noted that along with mechanism defined by legislation, other mechanism of efficient control over activities of penitentiary institutions are available.

Thus, within the framework of system of control over functions of these institutions, International Red Cross Committee, European Commission on Prevention of Torture (CPT), Ombudsman Office, as well as Public Committee engaged to education of prisoners and carrying out public control over activities of penitentiary institutions carry out relevant monitoring activities. Representatives of International Red Cross Committee made 332 visits in 2000-2009, while representatives from Public Committee made more than 189 visits in the course of 2006-2009. European Commission on Prevention of Torturing made two periodic and three "ad hoc" visits. In the course of 2008-2009 Ombudsman Office and its representatives made 91 visits. At the same time, Inspection Office on Control over Execution of Sentences and Agency on Human Rights and Public Relations were established within the Ministry of Justice for the purpose of strengthening of control over activities of Penitentiary Institutions.

With regard to mechanisms on coordination of activities of different state bodies, it should be stated that one of the tasks of Commission on Juveniles' Affairs and Protection of Their Rights under the auspices of the Cabinet of Ministries is coordination of relevant functions of state bodies. The commission is body specialized in juveniles' affairs and in protection of their rights; the chairman of commission is the Deputy Prime Minister. The commission consists of 5 ministers, 1 committee chairman and deputy minister, as well as high ranking officials of concerned bodies and organizations (p. 13).

In accordance with National Plan of Actions endorsed by Resolution of the President of Azerbaijan Republic of December, 28, 2006, international conventions on human rights, including disciplines on juveniles' rights are widely used for training and qualification upgrade of judges, candidates for judges, employees and barristers of law-enforcement bodies. In 2007, Special Centre under the auspices of Judicial Council on Education and Training of Judges, State Prosecutors and Candidates for Judges was established. Judicial Council together with International Institutions organizes workshops on juvenile justice, child rights and other fields. In 2006, the Academy of Justice was established within the Ministry of Justice; familiarization with international treaties on human rights and training on conventional regulations in the field of child rights were included into relevant educational program.

- We deem that in paragraph 4 of page 34, words "committed to establish" shall be replaced by "is interested in improvement" and the last sentence of that paragraph shall be removed;
- words "for change of attitude" can be replaced by words "for efficient collaboration";
- the third sentence of paragraph 5, Section 4, Part II and the fourth sentence of paragraph 14, Section 6 of the same section should be defined more exactly by taking into account provisions of Article 159.8 of Code of Criminal Procedure;

- Article 158.5 of Code of Criminal Procedure referred in Note 71 was removed based on Law #939-IIQD "On making of amendments and changes into several legislative acts of Azerbaijan Republic"
- Article 435.5 of Code of Criminal Procedure referred in Note 92 was removed in accordance with Law #209-IIIQD "On making of amendments and changes into Code of Criminal Procedure of Azerbaijan Republic".

Control over execution of sentences in the form of "conditional confinement" which is not linked with deprivation of freedom is being conducted in accordance with Article 179 of Code of Execution of Sentences by law enforcement agencies (p.51, paragraph 5).

As far as findings and studies concerned, it should be stated that State Program on Development of Justice System in Azerbaijan Republic (2009-2013)" approved by President of Azerbaijan Republic envisages expansion of capacity of information-registration bank in accordance with up-to-date requirements by application of modern information technologies on registration and movement of prisoners detained in confinement institutions and on whom decision on arrest was made. Alongside with above-mentioned, we are recommending editing of document in terms of terminology and more precise definition of names of referred laws.

Ministry of Justice of Azerbaijan Republic

Annex 4b

Opinion

on Draft Report
Assessment of Juvenile Justice in Azerbaijan
developed by
UNICEF Assessment Mission

The Office of the General Prosecutor of the Republic of Azerbaijan has reviewed the draft report on Assessment of Juvenile Justice in Azerbaijan which was prepared by Assessment Mission headed by Mr. Dan O'Donnell, International Adviser of the UNICEF Regional Office, CIS and Eastern Europe Countries and considered that inclusion of the below-mentioned comments into the final report would be expedient.

Section "Executive Summary" states that issues of accountability for violations of children's rights, including psychological violence and violations of procedural rules still remains as problem, accountability mechanisms are not functioning effectively, practice of detention for periods in excess of those allowed by law and soliciting bribes still exist (p.5, paragraph 5 and p.6, paragraph 2).

With regard to abovementioned, it should be noted that since this information has not been backed up with concrete facts, and evidences confirming its authenticity have not been reflected in draft report, their inclusion into the draft report is considered as inexpedient.

The Republic of Azerbaijan is signatory to the main international treaties and conventions on protection of human rights and freedoms; an efficient legal framework ensuring protection of those rights and freedoms especially of children's rights is available. One of the main elements of this framework is availability of an efficient legislative framework. Thus, in July 21, 1992, the Republic of Azerbaijan acceded to International Treaties "On Economic, Social and Cultural rights", "On Civil and Political Rights" which along with other rights and freedoms envisages ensuring and protection of children's rights. In April 2, 2002 the country has joined UN Convention on the Rights of Children and UN Optional Protocol On Child Trafficking, Prostitution and Pornography" of UN Convention on Rights of the Children".

Main provisions of fundamental policies adopted by UN in the field of ensuring of fair judgments such as "Regulation of Minimum Standards on the Treatment of the Prisoners", "UN Fundamental Principles on Elimination of Criminality Among Minors (Al-Riad principles)", "UN Regulation of Minimum Standards on Implementation of Juvenile Justice (Beijing Rules) and "Rules on Protection of Imprisoned Minors" were incorporated into national legislation of Azerbaijan Republic.

The Laws of Azerbaijan Republic "On Rights of the Children", "On Social Protection of Children without Parents and Parental Care", "On Youth Policy", "On Approval of the Statute of Commissions on Minors Affairs and Protection of Their Rights'", "On prevention of minors' negligence and violation of their rights" were signed in 19.05.1998, 22.06.1999, 09.04.2002, 31.05.2002, 24.05.2005 respectively.

As a result of introduction of changes and amendments into Constitution of Azerbaijan Republic by means of nation-wide referendum held in March 18, 2009, Article 17 "Family and State" of Basic Law was renamed as "Family, Children and State" and additional 4 sections were added therein. In accordance with those amendments, rules envisaging the state care for the children without parents,

guardians or parental support, prevention of children's involvement in activities endangering their lives, health or morality and inadmissibility of employment of children under the age of 15, ensuring of state control over implementation of child rights were incorporated into the Constitution.

Moreover, as mentioned in draft report, Chapter L "Proceedings Concerning Minors", provisions on protection of rights and legal interests of persons accused or convicted in committing a crime and victims of the crime as well as minors involved in procedural processes and provisions on ensuring efficient implementation and realization of those rights and interests were endorsed in the Code of Criminal Procedure. In Chapter XI "Assignees and Legal Heirs" of Code of Criminal Procedure, rules on protection and implementation of rights of minors in the course of criminal process by their legal assignees were regulated by defining the essence of legal capacity to sue,.

At the same time, Section V "Criminal Responsibility of Minors" was endorsed in Criminal Code of Republic of Azerbaijan. Furthermore, the Chapter 22 containing article on responsibility for the crimes against minors and domestic relations, as well as Article 21 on criminal responsibility of mother for intentional murder of newly-born child, Article 152 on responsibility for having sexual relations or other acts of sexual nature with person who has not reached age of 16 and Article 153 on responsibility for depraving actions, carried out without application of force against the person who is wittingly known as person who has not reached age of 14 are reflected in this Code.

It should be mentioned that in several articles of Criminal Code, the responsibility for committing crime against minors was defined as an element aggravating the responsibility. It refers to Article 133.2.4 (Torture), 139.2 (Spreading of Sexually Transmitted Diseases), 140.3 (Communicating Human Immunodeficiency Virus), 144.3 (Kidnapping of the person), 144-1.2.3 (Human trafficking), 144-2.2.3 (Forced Labour), 145-2.3 (Illegal Deprivation of Freedom), 149.3.3 (Rape), 150.3.3 (Acts of Violence of Sexual Nature), 167-1.3.1 (Impending implementation of religious activities), 168.2 (Encroachment of citizens rights on pretext of commitment of religious activities) and 215.2.5 (Capture of Hostage).

In addition to that, it should be mentioned that the definition "person in helpless situation" reflected in national criminal legislation, along with other parameters, implies that this person is juvenile. I.e. as the victim is minor and in the case when he doesn't apprehend the act committed against him or in case if does, he is in no condition to show resistance, he is considered as a person in helpless situation. With regard to abovementioned, it should be noted that in Articles 120.2.9 (Intentional homicide), 126.2.3 (Intentional Infliction of Severe Injury to Health) and 137.3 (Sale-purchase and compulsion to withdrawal for transplantation of body organs or tissues of a person) of Criminal Code of Azerbaijan Republic, the responsibility for the crimes committed against persons in helpless condition was defined.

The Chapter XV stipulating the particular characteristics of imprisonment of minors in the form of deprivation of freedom was endorsed in the Code on the Execution of Sentences of Azerbaijan Republic. In Article 78 of this Code, the concrete measures on prevention of violation of working regime in detention centre were envisaged by defining the possibility of application of physical force, specialized means, tracker dogs and fire-arms. This Article also states that application of fire-arms while juveniles are trying to escape is prohibited.

In accordance with the requirements of Article 13.12 of Law of Azerbaijan Republic "On Prevention of Minors' Negligence and Violation of Their Rights " of May, 24, 2005, which was mentioned in draft report repeatedly, application of physical force against minors detained in closed type of training prison is admissible in exceptional cases where other means don't yield any result. Application of physical force against persons with physical or mental disabilities is prohibited. Prison staff, within

24 hours, shall notify Prosecutor of concerned area on case of application of physical force and relevant opinion shall be drafted in the result of spot checks.

With regard to the practice of detention for periods in excess of those allowed by law and soliciting bribes, it should be noted that in accordance with requirements of Articles 148.4, 150.3 and 151.5 of Code of Criminal Procedure, term of detention of suspected offenders or accused persons who violate the conditions of the relevant rules shall not exceed 48 hours. The person, within 48 hours from the moment of detention, shall be persecuted and sentence on his imprisonment or on his release shall be rendered.

Moreover, the period of detention of condemned persons during pre-trial process of investigation was fixed as follows: 3 (three) months on minor offence and offence that does not represent a serious danger to the public, 6 (six) months for offences of minor gravity, 9 (nine) months on grave offences, 12 (twelve) on especially grave offences (Article 159.7). Based on Articles 159.8 and 159.9 which were incorporated into the Code of Criminal Procedure in 14.06.2005, in exceptional cases in which immense volume of material on criminal case or a large number of convicted persons causes delay of investigation or creates other obstacles, the period of detention could be extended for up to 3 month on offence that does not represent a serious danger to the public and grave offences, 6 (six) months on especially grave offences (Article 159.8). In any case where convicted person detained beyond the territory of Azerbaijan Republic is brought back and period of detention defined in Article 159.7 expired, due to investigation requirements, period could be extended up to 6 (six) months (Article 159.9).

Article 162 of Code of Criminal Procedure empowers the head of detention centre to release person from imprisonment without a resolution of body carrying out criminal case by producing relevant protocol, once the copy of resolution of court, prosecutor or investigator is received or the term of imprisonment indicated in decision on accusation expired or the period is not extended.

It should be mentioned that Article 292 "On illegal arrest, detention and imprisonment" of Criminal Code defines the criminal responsibility for intentional illegal arrest or imprisonment and stipulates punishment in the form of imprisonment for the period from two to four years. If, as a result of this misdemeanor severe damage is inflicted, the person committing this crime carries out punishment in the form of imprisonment for the period from four to eight years.

As is evident from foregoing, the control over precise fulfillment of laws by means of establishment of the efficient legal framework which excludes the possibility of detention for periods in excess of those allowed by law is exerted by prosecutor offices and judicial bodies.

Implementation of legislative, administrative and other types of measures has been ensured in Azerbaijan Republic by taking necessary steps on combating the bribery which is one of the most dangerous manifestations of corruption..

Thus, Articles 311, 312 and 312-1 on responsibility for reception of (passive bribery), presentation of (active bribery) and illegal exertion of influence on decision-making process of authorities (abusive exercise of power) were endorsed in Criminal Code of the Republic of Azerbaijan. The Republic of Azerbaijan has acceded to several international conventions existent in this field, including UN Convention on Corruption, as well as European Conventions on Criminal Responsibility for the Cases of Corruption, on Civil Liability for the Cases of Corruption. In January 13, 2004 the Law of Azerbaijan Republic on Combating the Corruption, State Program and Action Plan on Combating the Corruption covering the years of 2004-2006, National Strategy and Action Plan on Increasing of Transparency and

Combating the Corruption (2007-2011) were adopted. Azerbaijan Republic Commission of Combating the Corruption and Agency on Combating the Corruption under the auspices of Office of General Prosecutor are functioning in Azerbaijan Republic as specialized agencies combating the corruption.

In Section "Note" of Article 312 of Criminal Code of Republic of Azerbaijan, endorsement of the fact of voluntary disclosure of information on bribery by person to state bodies as a ground for the release of that person from criminal liability, as an incentive regulation, proves that state takes all necessary steps for the combating such crimes.

In Section "Executive Summary, the meaning of words "There is no national strategy for prevention of offending, and responsibility for secondary prevention lies largely with the police" (p. 6, paragraph 3) and implications of the authors of report is unclear. Thus, the procedures on arrest and imprisonment of persons committed the administrative violations or crimes were endorsed in Code of Administrative Violations and Criminal Code of Azerbaijan Republic in comprehensive manner, imprisonment of person in all cases is carried out based on decision on accusation and police bodies don't possess any exclusive power thereon.

As far as reintegration of minors discharged from prisons into society concerned, the provisions on list of bodies and institutions involved into implementation of measures on social adaptation of above-mentioned persons, including minors, objectives and types of measures on social adaptation, rules and terms of their implementation, rights of persons discharged from confinement, provision of housing, employment, medical services, education and vocational training and rendering of social, legal, psychological and informational support were included into the Law of Azerbaijan Republic "On Social Adaptation of Persons Discharged from Imprisonment" of May 31, 2007.

At the same time, as a result of changes and amendments to the Law of Azerbaijan Republic "On approval of the Statute on the Commissions on Minors' Affairs and Protection of Their Rights" of May 31, 2002 introduced in December 30, 2005, paragraph 27 was incorporated into the first Section of Article 5 of Law on Authorities and Responsibilities of the commissions on minors' affairs and rights protection. In accordance with this paragraph, commissions are rendering assistance to minors discharged from detention centers, open and closed type of training prison in improving their working and life conditions, identifying the minors in need of state care and implementing other functions stipulated by legislation of Azerbaijan Republic on social rehabilitation of persons falling to this category.

Moreover, based on Law of Azerbaijan Republic "On Voluntary Activities" adopted in June, 9, 2009, one of the main directions of voluntary activity in Azerbaijan Republic is provisioning of assistance to persons discharged from detention centers.

Furthermore, provisions on rendering of assistance to persons discharged from confinement, including minors and on exercising of control over them were endorsed in Chapter XX of Code on Execution of Sentences of Azerbaijan Republic.

In "Executive Summary" Section, main recommendations of assessment team highlighted the necessity of establishment of specialized juvenile courts in city of Baku, of carrying out of investigations by trained investigators and prosecutors and legal proceedings by trained judges country-wide.

With regard to abovementioned, it should be noted that conducting of the training courses for the staff of law bodies on mentioned topics would be expedient. As far as establishment of specialized agencies and recommendations reflected in mentioned part of document concerned, addressing

of such issues within the framework of conception on implementation of legal reforms would be reasonable.

In Chapter 1 "Policy and Advocacy" and Chapter 2 "Law Reform" of "Juvenile Justice Reforms" Section and in Annex 3 "List of Documents", the name of Law of Azerbaijan Republic "On Prevention of Minors' Negligence and Violation of Their Rights" of May 24, 2005 was incorrect (p.9: paragraphs 7 and 8, p.31, p.36).

Moreover, "Law Reform" Section states that legislation on juvenile offenders is reflected in Criminal Code and Code of Criminal Procedure (p.8, paragraph 8), while Code of Execution of Sentences of Azerbaijan Republic which envisages special regulations on condemned juveniles was not mentioned therein. In view of fact that international treaties to which Azerbaijan Republic is signatory (in accordance with Section II of Article 148 of Constitution of Azerbaijan Republic) constitute integral part of country's legislative system, inclusion of before-mentioned international treaties to relevant section of draft report would be expedient.

Continuation of the measures on inclusion of international standards on juvenile justice into national legislation is an obvious evidence of implementation of coherent and purpose-oriented policies by Republic of Azerbaijan in mentioned field. Thus, the provisions of paragraph 25 (regulation) "Mobilization of volunteers and other public services" of UN Rules of Minimum Standards on Implementation of Juvenile Justice which envisage utilization of volunteers and volunteer organizations for efficient facilitation of juveniles rehabilitation in society were included into the Law of Azerbaijan Republic "On Voluntary Activities" of May 9, 2009. In accordance with the requirements of this law, one of the directions of public and non-commercial activities related to implementation and provision of voluntary i.e. legal activities and services is education, upbringing, physical and mental development of children and youths and rendering of assistance to persons discharged from confinement, drug addicts and victims of domestic violence.

Chapter 6 "Accountability Mechanisms" of Section 1, though, states that the mechanisms for ensuring the respect of laws and regulations on treatment of juvenile suspects, accused juveniles and juvenile offenders are weak, any facts and evidences were not introduced. As noted before, sufficiently strong legislative framework and efficient law-application mechanisms are available in Azerbaijan Republic. The detention centers are monitored not only by Human Rights Ombudsman of Azerbaijan Republic but also by non government organizations functioning in Azerbaijan Republic; Inspection Centre on Execution of Sentences exercising control over compliance with rules and regulations in the course of execution of sentences is functioning as an independent structural division under the auspices of the Ministry of Justice of Azerbaijan Republic; Public Committee which consists of rights defenders and representatives of non-government organizations was established within the Ministry of Justice for the purpose of ensuring of the transparency and strengthening of public control over penitentiary services.

Last paragraph of Chapter 6 "Coordination" (p.14) states that Task Force on Juvenile Justice was established in Azerbaijan, information on composition of Task Force was provided, but the name of the Office of Chief Prosecutor which is one of the members of the Task Force wasn't mentioned. It should be noted that in paragraph 2 of Section "Positive development" (p. 34) information on Task Force was provided without omission and it was indicated that the Office of Chief Prosecutor is the member of the Task Force. Taking into account above-mentioned, relevant correction shall be made to Chapter 7 "Coordination" of draft report.

In Chapter 2 "Police and the Investigation of Offences" (p. 17), several mistakes were made in the course of explanation of national procedural legislation.

With regard to issues commented in the first paragraph of mentioned Chapter, it should be noted that “the preliminary or informal investigation” stage of investigation wasn’t defined in the Code of Criminal Procedure”. In accordance with Articles 7.0.22, 214 and 215 of Code of Criminal Procedure, pre-trial investigation consists of two types: preliminary investigation and investigation. Preliminary investigation can be in the form of conduct of investigative procedures which cannot be delayed in criminal cases subject to mandatory investigation and simplified pre-trial proceedings concerning obvious offences which do not represent serious danger to the public. With regard to this, it should be noted that preliminary investigation in the form of simplified pre-trial investigation is carried out within 10 days on crimes mentioned in Article 214.4 of Code of Criminal Procedure of Azerbaijan Republic and envisaged by Article 16 of Criminal Code of Azerbaijan Republic, while pre-trial proceedings on other criminal cases is carried out only in the form of preliminary investigation and in such cases, investigation is carried out only within 10 days from the date of commencement of criminal case in order to carry out urgent investigation actions aimed at defining and registering officially of vestigial traces of crime. Following commencement of criminal case, within the period of not later than 10 days, the investigator submits the material on criminal case to investigatory agency for further investigation. It should be taken into account that preliminary investigation in the form of investigative procedures which can not be delayed in criminal cases subject to mandatory investigation is carried out only in case of commencement of criminal case by investigator and emerging of necessity for the fulfillment of urgent investigation actions, while in case of commencement of criminal cases of such type by investigator or prosecutor, investigation shall be conducted in the form of direct preliminary investigation.

Furthermore, it is necessary to point out that draft report mistakenly states that primary investigation (both, preliminary investigation and investigation) is carried out by police (police investigators). As a matter of fact, in accordance with the provisions 214.2 and 215.2-215.5 of Code of Criminal Procedure of Azerbaijan Republic, as well as paragraph 2 and paragraph 3 of Decree #387 of President of Azerbaijan Republic of August 25, 2000 “On Application of Law of Azerbaijan Republic on endorsement, entering into force of Code of Criminal Procedure of Azerbaijan Republic and issues of legal regulations hereon and application of Code on Criminal Procedure endorsed by that law” investigation is carried out by investigators of internal affairs (police), national security, frontier service, emergency, tax and customs bodies and on crimes committed in premises of military units, military agencies, prisons and detention centers by heads of military units, military agencies, prisons and detention centers, captain of sea vehicles and other assigned persons, while preliminary investigation is carried out by internal affairs (police), national security, frontier service, emergency, tax and customs bodies and Office of Chief Prosecutor of Azerbaijan Republic, Ministry of Justice (in the territory of Nakhchivan Autonomous Republic by Ministry of Justice of Nakhchivan AR) by respecting the investigation referral defined by above-mentioned Code and Decree.

It should be especially noted that in accordance with the requirements of Article #430 of Code on Criminal Procedure of Azerbaijan Republic, pre-trial investigation on crimes of minors is carried out only in the form of preliminary investigation. It means that conducting of preliminary investigation on crimes committed by minors in the form of comprehensive investigation (including crimes enumerated in Article 214.4 of Code on Criminal Procedure of Azerbaijan Republic) is inadmissible. Obligatory nature of conducting of investigation on juveniles in the form of preliminary investigation along with better protection of their rights and legal interest allows the identification of relevant cases stipulated in Article 429 of Code of Criminal Procedure.

With regard to issues stated in second paragraph of this Chapter, it should be noted that a decision on detention of criminal offender in the capacity of suspected person and if grounds are found to be sufficient, in the capacity of convicted person by filling accusation is among the issues to be

addressed by the investigator in the course of preliminary investigation. Materials of criminal case, whose primary investigation completed, together with bill of indictment drafted by investigator, should be submitted to the prosecutor leading preliminary investigation. Thus, when criminal case, whose primary investigation completed, is submitted to prosecutor, offender appears not in capacity of suspected but in capacity of accused, i.e. convicted person, and prosecutor doesn't address the issue of his prosecution as it was mistakenly stated in draft report (since the person was already prosecuted by investigator), but the issue whether or not the drafted bill of indictment can be approved. It should also be noted that it is necessary to define distinction between the bill of indictment on criminal case and decision on accusation announced to person, i.e. verdict on his detention in the capacity of convicted person. Thus, the bill of indictment, whose rules of preparation and procedural form defined in Article 289 of Code of Criminal Procedure of Azerbaijan Republic is end product of preliminary investigation and contains information on completion of preliminary investigation and on its results. Moreover, it should be noted that in mentioned part of chapter, the Articles 38.2, 41.3 and 46.3 were mistakenly referred. Thus, submission of criminal case, whose investigation has been completed to prosecutor and the procedures on taking of relevant decision by him are regulated by Article 290 of Code of Criminal Procedure.

Paragraph 3 of Chapter (p.18) mistakenly states that suspects may be detained for questioning for 3 hours. Thus, Article 148 of Code of Criminal Procedure doesn't stipulate detention of suspects for questioning for 3 hours. The mentioned provisions are endorsed in Articles 398.1 and 399.1 of Code of Administrative Violations of Azerbaijan Republic. In accordance with the requirement of mentioned Articles, the administrative detention for short period of time may be carried out for the purpose of investigation of case on administrative violation in expedient and timely manner or ensuring of the fulfillment of the decision on administrative violation. With some cases envisaged by Code of Administrative Violations excluded, the administrative detention can not exceed 3 hours.

Moreover, in mentioned paragraph of Chapter, the period of detention of suspect is divided to stages (types), which is out of line with relevant legislation. Thus, relevant regulations of Code of Criminal Procedure of Azerbaijan Republic envisage that suspects may be detained for 48 hours and state-by stage or other types of approaches weren't defined therein. With regard to "24 hours" referred by the author of draft report", it should be noted that in accordance with the requirements of Article 148.4 of Code of Criminal Procedure of Azerbaijan Republic, in the course of one of the cases defined by Article 148.1 and 148.2 the detention may be carried out till opening of relevant criminal case. But in such cases, order on opening of criminal case must be given within 24 hours from the moment of detention of person; otherwise, the person should be released immediately. If, even decision on commencement of criminal case is made, the detention of person shall not exceed 48 hours. Detained person should be persecuted within 48 hours, in case of availability of prosecutors submissions, should be brought to court and order on his imprisonment or release must be rendered.

The above-mentioned mistakes are also encountered in paragraph 4 of the Chapter. Thus, as was noted before, in case of detention of person before opening of criminal case, decision on opening of criminal case must be made within 24 hours. In mentioned part of draft report, decision on commencement of criminal case was mistakenly named as "written order on opening of criminal case". Moreover, draft report highlights the necessity of ensuring of court permission for detention of suspect for second 24 hours before commencement of criminal case by referring to Article 148.4 of Code of Criminal Procedure of Azerbaijan Republic, while, as it is evident from above-mentioned, such kind of requirement or procedure was stipulated neither in Article 148.4 nor in other articles of Code of Criminal Procedure.

In paragraph 6 of Chapter, information on rules of minors interrogation introduced. With regard to that, it should be noted that the rules of interrogation of person falling to this category were defined in Articles 228 and 233.6 of Code of Criminal Procedure. In accordance with mentioned requirements, pedagogue or, if necessary, doctor and legal assignee must be present during the interrogation of juveniles under the age of 14 and 16 on investigator's consideration. The witness who doesn't reach age of 16 is explained the duty to tell the truth, while he or she is not forewarned on responsibility for failure to give evidence, refusal to testify and purposeful stating of false evidence. Mentioned section of draft report reflects comments on presence of psychologist or pedagogue in the course of interrogation of juveniles under the age of 16, as well as those aged 16 or 17 who show signs of mental disability, by referring to Article 432.5 of Code of Criminal Procedure. It is necessary to point out that the mistake was made by referring to Article 432.5 of Code of Criminal Procedure. Thus, according to that article, the presence of pedagogue or psychologist "...is necessary during proceedings on minors under the age of 16 who show signs of disability". In other words, unlike report authors, in Article 432,5 of Code of Criminal Procedure persons under the age of 16 and persons with signs of disability weren't defined separately; as evident from the article, the presence of pedagogue or psychologist is necessary for interrogation of person who possesses both features, i.e. person who doesn't reach age of 16 and shows the sign of disability.

In paragraph 7 of Chapter, the definition "preliminary investigation" was used instead of "investigation" which is the type of primary investigation, and difference between preliminary investigation and investigation which are different types of primary investigation wasn't defined. Moreover, mentioned paragraph states that preliminary investigation may be extended up to 14 months, while direct dependence of this extension on classification of crime (crime that doesn't represent serious danger to public, crime of minor gravity, grave and especially grave crimes) wasn't mentioned. Thus, under Article 218.10 of Code of Criminal Procedure, primary investigation on criminal case must be completed within 6 months on crimes that don't represent serious danger to public, 9 months on crimes of minor gravity, 12 months on grave crimes and 18 months on especially grave crimes. In addition to that, pursuant to Article 218.11 of Code of Criminal Procedure, length of primary investigation on unsolved criminal cases may be extended several times by Chief Prosecutor until case is solved. Following solution of the case the length of primary investigation may be extended by Chief Prosecutor only once. In circumstances where, due to objective reasons, person, whose participation in crime is identified, is not attracted to criminal responsibility, the length of primary investigation may be extended by Chief Prosecutor until accusation is filed in the bill of indictment.

In second paragraph of Chapter 3 "Diversion", the definition "discontinuance" was wrongly used. Thus, the persecution (criminal case) of person is being terminated based on requirements of law referred to in mentioned paragraph, while discontinuance of persecution (criminal case) is completely different component of legislation on criminal procedure which envisages temporary discontinuance of investigation until specific cases defined in Article 53 of Code of Criminal Procedure are alleviated.

Chapter 4 "Detention of juvenile suspects and accused juveniles" states that pre-trial detention of persons shall not exceed 3 months and depending on the gravity of the crime can be extended up to 12 months. Taking into account our comments on "Executive Summary" concerning Article 159 of Code of Criminal Procedure, clarifications on term of detention and provision of information on term of detention in comprehensive manner would be expedient. Moreover, in page 22 of draft report, Article 158.5 of Code of Criminal Procedure was mistakenly referred, while as a result of changes and amendments introduced into Code in June 14, 2006, this Article was withdrawn therefrom.

Similarly, in Chapter 5 "Trial and Sentencing" of second section of draft report reference was made to Article 435.5 of Code of Criminal Procedure of Azerbaijan Republic, while pursuant to changes and amendments introduced into relevant Code in December 22, 2006, the mentioned Article was withdrawn therefrom (p.26). New Articles 435-1 and 435-2 which regulate procedures on dispatching of persons under the age of criminal responsibility to closed training prisons were added to the Code of Criminal Procedure in December 22, 2006.

Although, mentioned section of draft report reflects types of sentences imposed on juveniles in accordance with criminal law, sentence in the form correctional activities defined in Article 85.1.3 of Criminal Code of Azerbaijan Republic wasn't reflected therein (p. 26).

Moreover, considering that in "Trial procedures" Section of "Trail and Sentencing" Chapter (p. 24), characteristics of trial procedures of juveniles are analyzed, inclusion of Resolution #4 of June 30, 2008 of Plenary Session of Supreme Court of Azerbaijan Republic "On trial procedures of criminal cases on juveniles" aimed at formation of system of integral trial procedures on criminal cases of juveniles therein would be expedient..

In first paragraph of Chapter 7 "Underage offenders", the name of AR Law of May 31, 2002 should be stated as Law of Azerbaijan Republic "On approval of the Statute of Commissions on Minors Affairs and Protection of Their Rights".

With regard to references made to above-mentioned Law in indicated chapter, meaning of words "participation of a lawyer is not required and the child does not have the right to legal assistance" is out of line with the content of that Law. Thus, pursuant to requirements of Articles 12 and 14 of Law, alongside with others, the child's lawyer has the right to examine the file and to get acquainted with the case; layer is allowed to participate in commissions' proceedings starting with the process of preparation of files for commission's hearing. As is evident from foregoing, the right of child's lawyer to examine relevant files and materials in advance and to participate in commission's proceedings was unconditionally endorsed in Law. Considering that, these regulations are of obligatory nature, it would be unreasonable to state that child's lawyer's power to participate in commissions' proceedings and to render legal aid to child is restricted.

Mentioned section of draft report states that child's and parents' rights to present witnesses or evidences, or challenge evidence presented by the authorities were not endorsed by Law, whereas, as is obvious from Article 14 of the Law, during of commission hearings, alongside with announcement of the documents and investigation of case or material, petitions are considered and speeches of participants are heard. Juvenile, his lawyer, parents and other legal assignees possess the right to petition on considered case or material. Notes on petition results are included to the minute of commission proceedings.

Moreover, as noted before, in consequence of changes and amendments introduced to the Code of Criminal Procedure in December 22, 2006, new Articles 435-1 and 435-2 which regulate the procedures on dispatching of persons under the age of criminal responsibility to closed training prisons were added into the Code. The mentioned Articles define rights and obligations of body carrying out the criminal proceeding and commissions on minors affairs and protection of their Rights, rules of conducting of trial proceedings, the range of issue to be addressed by the trial, issues to be included in court decision and types of court decisions as well as issues pertaining to dispatching of juveniles to closed type of training prison.

With regard to third paragraph of “Positive Development” Section of Part IV “Summary and Recommendations”, it should be noted that types of sentences imposed by trial for committed crime, as well institution, imposing conditional sentence, defined by Criminal Code of Azerbaijan Republic, while legal regulations on execution of verdict and other final decisions of court by Code of Criminal Procedure (Section LVIII). Moreover, the words “conditional sentences are similar to probation although there is no probation service to supervise and assist the beneficiary” reflected in third paragraph is unclear (Note: the same sentence included into section (k) alternative sentences).

Thus, under the requirements of Article 70 “Conditional condemnation”, at assignment of conditional condemnation on grounds stipulated therein by court, shall be established suspension period for the term from six months up to five years. The court, appointing conditional condemnation, can assign on condemned the following duties: to not change a constant residence, study, work without notice to appropriate body which is carrying out control of condemned behavior, to not attend certain places, to pass course of treatment from alcoholism, narcotics, glue sniffing or venereal diseases, to render material support and other duties promoting his correction. The Control on behavior of conditionally condemned shall carry out appropriate state bodies (executive bodies of local courts), and concerning military men- shall carry out command of military units and establishments. During a trial period court on presentation of the state body which is carrying out the control over behavior of conditionally condemned, can cancel in full or in part or add other duties. Article 71 of Criminal Code of Azerbaijan Republic defines grounds and rules of cancellation of conditional condemnation or extension of probation period, authorities and duties of state bodies which are carrying out control over behavior of conditionally condemned and other related issues.

Moreover, the rules for the organization and implementation of control over conditionally condemned persons, scope of authorities of appropriate state bodies and duties of conditionally condemned persons were endorsed in section VII of Code of Execution of Sentences of Azerbaijan Republic”.

With regard to comments reflected in first paragraph of Section “Challenges”, it should be noted that detailed comments were provided at the beginning of this document concerning similar issues. Therefore, elimination of issues indicated in mentioned paragraph would be reasonable.

We consider that alongside with mentioning of works which are to be done on juvenile justice development, provision of more comprehensive comments on achieved successes and positive developments would ensure high effectiveness of the UNICEF Mission Assessment.

Taking into account all above-mentioned, inclusion of several advanced provisions of Criminal Code of Azerbaijan Republic on juveniles into draft report would be expedient.

Thus, in accordance with the requirements of Article 85 of Criminal Code of Republic of Azerbaijan, the amount of fines imposed on juveniles contrary to that of adults can not exceed 600 MAN. Similarly, persons falling into this category are assigned with public works for the period from 40 to 160 hours, corrective works for the period from 2 months to 1 year. As mentioned in draft report, the maximum term of sentence in the form of deprivation of freedom that can be imposed on a juvenile offender is 10 years. Furthermore, based on Article 90 of Criminal Code of Azerbaijan Republic, conditional-prescheduled release of minors from punishment can be applied to the minor, after serving which is: not less than one third of punishment term appointed for a crime, that doesn't represent a serious danger to the public (for adults at least half of this term), not less than half of punishment term appointed for the grave crime (for adults not less than two third of that term), not less than two third of punishment term appointed for especially grave offences (for adults not less than three-fourth of that length).

Moreover, in accordance with Article 91 of Criminal Code of Azerbaijan Republic, at release of minors from criminal liability or imprisonment, the total terms defined in Articles 75 (release from criminal liability in connection with expiration of time-limits) and 80 (release from serving punishment in connection with expiration of time-limits for decision on accusation) of Code shall decrease half. Similarly, in accordance with Article 92 of Criminal Code, for the minors from mentioned category, who have made crimes, terms of removing a previous convictions shall be reduced: to one year (for adults 3 year) from the date of serving a punishment at imprisonment for a crime with minor gravity and to three years (for adults 6 and 8 years accordingly) from the date of serving punishment at imprisonment for grave or especially grave offences.

Annex 4c

To the acting representative of UNICEF Azerbaijan

Dear Mr. Mohammed Bendris Alami,

Letter BK\2009\2495\ER-106-01\MM dated 10 July 2009 of UNICEF Azerbaijan addressed to the Cabinet of Ministers of the Republic of Azerbaijan has been reviewed in the Office of Prosecutor General.

In regard to the issues indicated in the letter, the following information is brought to your attention:

According to the article 17 of the Constitution of the Republic of Azerbaijan, it is prohibited to engage the children to the activities that are insecure for their life, health and personality. The state oversees the implementation of children rights.

It should also be noted that the Law "On preventive measures for neglect and violation of rights of juveniles" was adopted on 24 May 2005 in order to prevent the crimes against juveniles, engagement of juveniles in criminal activities and increase the state care to juveniles. This law enforces the state agencies to take measures for criminalization of persons who violate the rights of and involves and compels the juveniles to activities that are in contradiction with the law by means of various tools and methods.

In addition, the juveniles are protected by the norms, in particular, involvement of juveniles to criminal activities (Article 170), involvement of juveniles to prostitution and immoral deeds (Article 171) defined in Chapter "Crimes against juveniles and family relations" of the Criminal code of the Republic of Azerbaijan. Commission of number of criminal activities envisaged in the Code is considered qualifying or specially qualifying circumstances towards the juveniles. For instance, the commission of crimes towards juveniles such as, trafficking in human being (Article 144-1), forced labour (Article 144-2), as envisaged in Chapter "crimes against sexual immunities and sexual freedom of person", sexual intercourse or other acts in sexual nature with the person under sixteen (Article 152), incitement to consumption of narcotics and psychotropic substances (Article 236) are considered aggravating circumstances.

Moreover, the law does not preclude the opportunities of commitment of the crimes by means of various means and tools – information technologies, as well as, computer technology, internet and media.

In addition, according to the Code of Administrative Offences, number of illegal deeds against juveniles and children are defined as administrative offences and application of administrative reprimand measures are envisaged for the commitment of these offences. As, the aforementioned norms can include Article 187-1 that envisages the responsibility for violation of special rules defined for the programs that can cause physical, mental and moral development of the juvenile, as well as programs reflecting erotic and cruelty (violation of the legislation on television and radio broadcasting), Article 297 that envisages the responsibility of parents or persons replacing parents for the small hooliganism of juveniles, Articles 307-308 that envisage the responsibility for involvement of juveniles to inebriation and idleness.

In addition, as per the decree of the National Television and Radio Council dated 01 March 2006, "Special Rules for the programs that can cause physical, mental and moral development of juveniles, as well as programs reflecting erotic and cruelty" were adopted.

In 2008, 2,5% of 14.201 persons with criminal cases reviewed in courts were formed of juveniles. 2,3% of reviewed 11.549 criminal cases were about juveniles.

26,6% of crimes perpetrated by juveniles were crimes of minor public insecurity, 46.6% small grave crimes, 22.2% grave crimes, 4.8% special grave crimes.

As seen from the analyses conducted on criminal cases, the crimes perpetrated by juvenile boys were most reviewed. As, among 335 juveniles were 12 girls (3.6%) and 323 (96.4%) boys. The crimes perpetrated by girls, total of 4 minor public insecurity, 7 small grave crimes and 1 grave crime was reviewed in the court.

10 boys out of 16 juvenile boys convicted for perpetration of grave crimes were convicted with crimes against sexual immunity and sexual freedom (9 persons with Article 150.3 of the Criminal code, 1 person with articles 149.3.2, 149.3.3), 5 persons with deliberate murder in aggravating circumstances (Article 120.2 of the Criminal Code).

Criminal legislation in force restricts the circle of punishments identified for the juveniles in comparison with other persons and specifies the lists of punishments that can be applied for the juveniles. So, according to the Article 85 of the Criminal Code of the Republic of Azerbaijan, only penalty, public work, disciplinary work and imprisonment for certain period can be applied to juveniles. As per the Article 85 of the Criminal Code of the Republic of Azerbaijan, the level of these punishments is also decreased in comparison with other persons.

These punishment forms and requirements fully complies with the "minimum standards in regard the implementation of fair trial of juveniles" adopted by the General Assembly of the United Nations dated 29 November 1985.

In 2008, out of 335 juveniles committing the crimes, 194 (57.9%) were sentenced to imprisonment, 13 (3.9%) public work, 24 (7.1%) disciplinary work, 61 (18.2%) fine penalty were applied. 121 persons (64%) sentenced with the imprisonment as per the Article 70 of the Criminal Code of the Republic of Azerbaijan, were given suspended punishment, 18 (9.3%) persons were applied with lower level punishment than envisaged in the sanctions of articles as per the Article 62 of the Criminal Code.

During 2008, criminal cases of 31 persons of 335 juveniles on various bases.

Concurrently, it should be noted that only 3 (9.9%) juveniles of 335 committed the crimes during their previous sentence in 2008.

Sincerely,

Rustam Usubov
2nd level state judicial advisor

Annex 4d

Commission for Human Rights of the Republic of Azerbaijan

OBMUDSMAN

To the UNICEF representative in Azerbaijan

I draw to your attention the comments and suggestions concerning the report on the Assessment of Juvenile Justice in Azerbaijan conducted by Mr. Dan O'Donnell, international consultant of the UNICEF Regional Office for CEE and Eastern European countries:

1. confirmation of country information and relevant amendments (this amendment should be made according to the official sources to the paragraph about Nagorno Karabakh conflict) should be made (page 3, reference 2);
2. all statistical information to be confirmed as per the reliable sources;
3. precise elaboration of and relevant amendments to the exist information describing juvenile institutions in view of legislation and institutionalization should be made;
4. precise elaboration and relevant amendments of the references to the legislation of the Republic of Azerbaijan (references to the invalid norms, as well as incorrect description can be found in the text) should be made;
5. the notes about ombudsman mentioned in the last paragraph of page 10, 4th paragraph of page 13, as well as reference No.29 does not comply with reality. As, during the tenure of the Ombudsman, sufficient number of confirmed and unconfirmed complaints and appeals about suspected, accused and convicted juveniles, by their parents or relatives were addressed to ombudsman and each of these were reviewed, studied and responded according to the mandate of the Ombudsman. It should also be noted that, the similar temporary detention facilities and disciplinary institutions for children are regularly monitored by the Ombudsman and her office staff. Moreover, a special request was made to the head of the state by the ombudsman in regard to the special attention of juveniles during pardoning and extension of application of alternative sanctions in punishments. Opportunely, as per the request of the Ombudsman, up to now, 5 children were pardoned by the President of the Republic of Azerbaijan.

We also consider that, in order to assess the reliability of the survey indicated in reference 29, the date and author of the survey should be indicated or the aforementioned part of the report should be removed.

I request your consideration.

Prof. E. Suleymanova

Annex 4e

1-583/09

21/08/2009

Chairperson
State Committee for Family, Women and Children Affairs

Mr. Mark Herevard
UNICEF Azerbaijan
Country Representative

Dear Mr. Herevard

Referring to your letter BK/2009/2508/ER-100-01/MM/07 of July 28, 2009, the State Committee for Family, Women and Children Affairs of the Republic of Azerbaijan reviewed the latest draft report on the Juvenile Justice Assessment in Azerbaijan.

The Committee highly appreciates UNICEF's activities aimed at development of the Juvenile Justice System in Azerbaijan and believes that the projects implemented in this field and the mentioned assessment will play significant role in bringing the country's juvenile justice system to compliance with international standards.

We present to your attention the opinion and suggestions of the State Committee for Family, Women and Children Affairs on the latest draft report on the Juvenile Justice Assessment in Azerbaijan.

Attachment: 3 pages

Chairperson

Hijran Huseynova

**THE OPINION AND SUGGESTIONS OF THE STATE COMMITTEE FOR
FAMILY, WOMEN AND CHILDREN AFFAIRS
ON THE LATEST DRAFT REPORT ON
THE JUVENILE JUSTICE ASSESSMENT IN AZERBAIJAN.**

1. There is need for correct indication of criminal legislation notions in the report:
 - to use “the age limit allowing to institute criminal liability” instead of “criminal liability age”;
 - to use “correctional facility” instead of “prison”, since pursuant to Article 56.1.5 of the Criminal Code of the Republic of Azerbaijan, persons sentenced to life imprisonment are kept in prisons.
 - to use “closed-type institution” instead of “closed institution”;
 - to use “penalty of deprivation of liberty” instead of “custodial sanction”, since Article 42 of the Criminal Code of the Republic of Azerbaijan (Types of Punishment) does not specify a type of punishment called custodial sanction;
 - to use “persons not reached the age of majority” instead of “minors”
 - to use “educational institutions” instead of special vocational schools”.
2. In many parts of the report, the name of the Law of the Republic of Azerbaijan “On Prevention of Negligence toward the Persons not Reached the Age of Majority and Delinquency” of December 30, 2005 is not given correctly.
3. It becomes clear from the content of the first sentence of **Section 2 – “Police and investigation of crimes”** that the subject of this section is preliminary investigation and its types. It would be better to have the following edition of that sentence: “Pre-trial proceedings are undertaken in the type of preliminary investigation and enquiry on criminal case”.

It is recommended to make changes to second and third sentences and give them in the following editions:

- Article 214 of the Criminal Code of the Republic of Azerbaijan indicates the conditions for conducting of enquiry as a type of preliminary investigation and the bodies and persons conducting it.
- Article 217.1 of the Criminal Code states that both types of the preliminary investigation shall be conducted only after the decision on commencement of the criminal case is made. Based on this, it would be inappropriate to agree with the idea of informal conduct of the enquiry.

The information in the second paragraph of the section does not correspond with sources it refers to, i.e. with the indicated Articles of the Criminal Code of the Republic of Azerbaijan.

4. The ideas expressed in first two sentences of the first paragraph and in the second paragraph on page 21.
5. To add word “suspected and” before the word “accused” in the first sentence of the first paragraph on **page 22**.

The words “suspected persons” should be replaced with “accused persons” in the second sentence of the second paragraph. As Article 154.3 of the Criminal Code of the Republic of Azerbaijan sets forth that the arrest as the measure of restraint can be applied only to accused person.

It would be expedient to clarify the last, fourth sentence of this paragraph in accordance with the article it is referred to.

The number of investigatory isolation wards should be clarified in the first and second sentences of the fifth paragraph.

6. In the first paragraph on **page 24**, it would be more appropriate to indicate the titles of criminal deeds causing criminal liability of the persons who have reached the age of 14 in correspondence with the referred article.

The predominance of international treaties along with the Constitution over “ordinary laws” is stated in the first sentence of the third paragraph. However, according to Article 147 of the Constitution of the Republic of Azerbaijan, judicially most powerful legal-normative act in the Republic of Azerbaijan is the Constitution of the Republic of Azerbaijan.

The principle stated in the second sentence of the same paragraph should be brought to compliance with the main principles of judicial proceedings indicated in the second chapter of Article 147 of the Constitution of the Republic of Azerbaijan.

In the second sentence of the fourth paragraph, to use “criminal case proceedings with the persons who have not reached the age of majority” instead of “criminal case proceedings with minors”.

7. In the fourth paragraph on page 26, the types of punishments and compulsory educative measures given to the persons who have not reached the age of majority should be stated in compliance with Articles 85.1 and 88 of the Criminal Code of the Republic of Azerbaijan. The used term “non-custodial” does not comply with the terminology used in the criminal legislation.
8. On page 27, to use “women correctional facility” instead of “women prison” and “educational institution for persons who have not reached the age of majority” instead of “correctional colony”.
9. On page 28, “The State Student Enrolment Committee” to replace with “The State Committee on Student Enrolment”.
10. On page 30, to use “Quba qapalı tipli” instead of “Quba bağlı tipli”. To use “open type institution” instead of “open institution” in the last paragraph of the same page.
11. On **page 31**, to use “The Regulation on Commissions for Affairs of the Persons who have not Reached the Age of Majority and Protection of Their Rights ” instead of “The Regulation on Commissions for Affairs of the Persons who have not Reached the Age of Majority”.
On the same page, names of the laws referred to in the fourth sentence of the second paragraph of Section 7 called “Delinquent Minors” are not correct and the information is not relevant to the referred Articles 9(7), 9.0.6.
12. In the first paragraph of page 32, to use “the persons younger than the age of criminal liability” instead of “the persons older than criminal liability age”.

Annex 4f

Suggested Changes and Additions to the Joint Report on Juvenile Justice Assessment in Azerbaijan prepared by UNICEF's Regional Office for CIS and Eastern European Countries

- **Page 3 of the Report, end of the Paragraph 1, Background section:** to change the phrase "Nagorno-Karabakh is not under the control of the Government of Azerbaijan" to "Nagorno-Karabakh is not under the control of the Government of Azerbaijan as a result of the occupational policy of Armenia";
- **Line 4, Paragraph 1, Executive Summary Section:** the sentence "They do not investigate the crimes committed by minors" must be deleted, since it is not grounded.
- **Last paragraph at the end of page 4 of the same Section:** numbers "399" and "305" must not be indicated as the number of crimes committed by juveniles, but as the number of people involved in crimes and brought to criminal proceedings.
- **Line 2, Paragraph 1, Page 5, the same Section:** The sentence "Appearance of the first youth gang in 2007 and another one in 2008 is a new phenomenon" must be deleted, and changed by using the terms "a group of people gathered based on the previous concert" or "organized group".
- **Paragraph 5, Page 5, the same Section:** the sentence "Despite the large openness of the civil society and international organizations toward the monitoring, criminal liability for violation of child rights, including for physical and psychological violence against children and violation of the procedural guidelines still remains problematic".
- **Line 7, Paragraph 2, Page 6, the same Section:** with regard to the content of this part, it must be noted that in accordance with the Regulations approved by Order #428 of MIA of 06.11.2001, the minors accused and suspected in committing crime are kept in the specially outlined cells in pre-trial isolators of the bodies of internal affairs and separately from adults. Article 157.3 of the Criminal Procedure Code of the Republic of Azerbaijan states that the juveniles arrested based on a court decision cannot be kept more than 24 hours in the temporary detention cells and after this term they shall be transferred to the investigation isolator of the Ministry of Justice within 48 hours and in accordance with the set procedures.

During last year there were no cases of detention of juveniles in excess of the specified period of time, physical or psychological violence against them, as well as attempts to bribery.

The following must be taken into consideration in Paragraph 3 of Page 6 of the same Section:

- Application of arrest as the measure of restraint towards minors is administered only by court depending on the crimes they committed, including the type, gravity, repeated or recurrent character of the crime. Police is not responsible for application of the arrest sanction for the first-time or repeated crimes. Pursuant to Article 27 of the Law of the Republic of Azerbaijan of 31.05.2002 "On Commissions on Minors' Affairs and for Protection of Their Rights", as well as Items 1.7.9, 1.7.10 and 5.4.1 of the Regulations approved by the Order of the MIA on the mentioned Law, dated 24.02.2007, police and special commissions on the minors' affairs under the district executive bodies undertake joint set of preventive measures for social reintegration, employment and solution of other problems of the minors released from detention institutions and the results of this work is regularly discussed and evaluated at the Commissions' meetings and meetings of the community councils.

The following must be taken into consideration in Line 2 of Page 7 of the same Section:

Pursuant to Articles 430 and 432 of the Criminal Procedure Code of the Republic of Azerbaijan, pre-trial proceedings regarding the crimes committed by minors must only be administered in the form of preliminary investigations. The preliminary investigations and examinations shall be conducted by special units of the mentioned services or by the persons having special experience of working with children. According to the requirements of Item 3 of the Order of the Collegium announced by the Order #554 of MIA of 02.10.2008, and the State Program on Development of the Juvenile Justice System in the Republic of Azerbaijan, and taking into account the Memorandum of Understanding signed with the International Organizations operating in this field, there was made a decision to start special training of investigators on work with children and the decision is begun to implement in Baku and in the towns and districts of the country with population of more than 100 thousand people. Special training sessions were organized with of Baku City Police Department, police departments of districts, as well as about 30 investigators and detectives of the pilot Narimanov district of Baku during last year and first half of this year and the methods and techniques of Juvenile Justice Reforms and mechanisms for their practical application were learned at the events where UN regional and local experts took part.

The following must be taken into consideration in Line 5 of Paragraph 4 of Page 7 of the same Section:

In accordance with Item 4.15 of the Regulation approved by the Order of MIA of 24.02.2007 and requirements of the Instruction # 91 of MIA of 27.02.2003, service investigation are conducted by town and district police departments in relation with all crimes deliberately committed by minors, as well as suicides or attempts to suicide, and service investigations are conducted by the relevant unit of the Ministry of Internal affairs in relation with the cases of deliberate homicide, corporal injuries resulted in death, suicide of two and more children; all necessary measures are ensured to detect the objective and subjective motives of the crimes, for organization of preventive measures and avoidance of such cases in the future. Additional examination, investigation and checking are conducted to prevent repeated crimes by the convicted persons, their registration documents are inquired and examined, and additional instructions are given to the relevant bodies for activation of the work in this field.

The following must be taken into consideration in Paragraph 2 of Page 12 of the Resource Allocation Section:

Pursuant to the provisions of the State Program on Improvement of Activity of Police Organs of the Republic of Azerbaijan, important measures have been taken during last 5 years for improvement of the material and technical capacity of police bodies through provision of modern equipment and supplies, for improvement of living conditions of the staff, the salaries of policemen were increased stage-by-stage for 3 times during this period, and it is envisaged to continue these measures based on the constant improvement of the economic situation in the country. It should be noted that the policemen operating in the rural areas are provided with additional payments and compensations to cover their transportation and house rental costs, so to foster their improved performance.

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