

The Child Protection System in Azerbaijan: Situation Analysis

Available Resources, Referral Mechanisms, Gaps and Risks
seen from a Child Rights Perspective

For every child
Health, Education, Equality, Protection
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Its contents do not necessarily reflect the policies or the views of UNICEF.

Introduction. Background Information

The Context

With its 2,907,500 children from 0 to 18 years,¹ representing the 35% of the total population (8,266,000), Azerbaijan is still facing the consequences of the hectic transition that followed the collapse of the Soviet Union and the gain of independence in 1991.

The situation has been particularly aggravated by the armed conflict with Armenia related to the occupation of the region of Nagorno-Karabakh, which led to the presence in Azerbaijan of around 800,000 IDPs and refugees, more than one third being children.

Despite the increase of GDP per capita brought about by the economic growth since 1996, the economic conditions of the population are very weak: with an average salary of around 100 US\$, and a food basket per person calculated by trade unions of about 50\$, around a third of the total population lives under the absolute poverty line (27\$ person/month). It is worth mentioning that the salary of personnel of health and social services and of education services is below the average respectively of the 81% and the 37%.²

The transition-related lost of economic power of the individuals – leading to massive migration, segregation of families, increase of socially ill-adapted life styles – is not contained by the collapse of the welfare system, still functioning according to the Soviet model but without the necessary resources to maintain it. The conversion to market economy and the decentralisation process didn't correspond to the shift towards community-based services, centred on individual needs rather than on a collectivist paradigm.

As far as human rights are concerned, Azerbaijan has in the last decade ratified a number of international convention and obligations, starting from the Convention on the Rights of the Child (ratified in 1992), and including the Convention on the Elimination of All Form of Racial Discrimination (CERD), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the Convention against Torture and other Cruel, Inhuman, Degrading Treatment or Punishment (CAT).³ The weight of such international regulations is clearly defined in the article 151 of the Constitution of Azerbaijan: «Whenever there is disagreement between normative legal acts in legislative system of Azerbaijan Republic (...) and international agreements wherein the Azerbaijan Republic is one of the parties, provisions of international agreements shall dominate».

Furthermore, during last years the legislation in the country was consistently renewed and improved. A strong impulse came from the accession of Azerbaijan to the Council of Europe in January 2001, which was conditioned to the ratification of several European conventions and national laws. As recently reported by the press, all the normative obligations toward the Council of Europe have been recently fulfilled.

Focusing on the children's universe, after the ratification of the Convention on the Rights of the Child the country adopted a considerable number of laws, decrees of the President, and resolutions of the Cabinet of Ministers aimed at improving the child welfare system.

However, the change is not facilitated by the general and diffused lack of law enforcement measures and of procedures to improve the service delivery. Together with the difficult socio-economic situation, this contributes to define a picture of the Azerbaijani society where the risk of exposure to several abuses is increasing for children, and the initiatives to protect them are incoherently scattered and insufficient.

¹ See State Statistical Committee of the Azerbaijan Republic, *Children in Azerbaijan. Statistical Yearbook 2004*

² See Human Rights Center of Azerbaijan, FIDH, *Alternative Report on the Implementation of the International Covenant on Economic, Social, and Cultural Rights by Azerbaijan Republic 2004*

³ See Azerbaijan Federation of Human Rights Organisation (AFHRO), OMCT, *Violence Against Women in Azerbaijan*, § 1

As a general rule, which will follow us during the whole development of the report, it has to be kept in mind that very often the good principles recognised in laws and conventions are not followed by good practices; and that the almost total absence of independent monitoring and referral mechanisms seriously hinders the possibility for citizens – and for children in particular – to see their rights respected.

Objectives and Contents

In consideration of what above mentioned, the objective of this report is to draft a **map of the institutional system** related to the child welfare, and to identify the **priority protection needs of children** in the country.

In particular, the first part of the report lists the levels of governance and the structures/services relevant to child protection, trying to describe the system coverage and the decision-making and reporting mechanisms.⁴

The description is condensed in the visual maps reported in Annex II (State Powers and Child Protection Institutional System), which give an immediate representation of the complexity of the system. In the maps, the relationships between the institutional (and non institutional) entities are represented by:

- **subordination** lines (black);
- **reporting** lines (red, almost always corresponding to the subordination lines, but in the opposite direction. In fact, we can assume in general that supervisors are at the top of the decision-making process, and that each subordinate unit reports to its supervisor. However, the choice of showing either one or the other relationship is made upon the evaluation of its relevance within this document; furthermore, in some cases the reporting line is not related to a subordination relationship);
- **referral** lines (light blue), showing the sequence of contacts between the citizens and the institutional system – with focus on issues related to child protection. Some paths are described more in details in the flowcharts added to the maps;
- **monitoring** lines (yellow).

The second part of the report sketches the situation of specific groups of children in need of protection, through the screening of available second-source information.

In Azerbaijan, a particularly vulnerable group of children is under the attention of national and international organisations: **IDP and refugee children** – to whom we would add the **asylum seekers** - live in unstable conditions since several years, and have to bear the consequences of the traumatic exposure to an armed conflict.

The analysis starts from **children deprived of parental care**, the firsts for whom the State is called to activate protection mechanisms, due either to abandonment or to forced separation from their families. To continue, **children with disabilities** and challenging behaviours deserve particular attention, since the risk of social exclusion is very high for them, even when they live with their families. Furthermore, in a society where the coping skills of families are decreasing, several children are progressively confined at the margin of the community life, and for this reason are constantly exposed to threatening environments. We are thinking in particular of **street children**, early dropped out of school, becoming easy victims of abuse in several circumstances, to the extreme of being involved in **trafficking for sexual or labour exploitation**. Particularly widespread and alarming are the spheres of **violence against children** and **child labour**, both in domestic settings and outside. Another group of children

⁴ Based also on the guidelines provided by the Advisor on Child Protection of the UNICEF CEE/CIS and Baltic States Regional Office

deserves particular attention in terms of protection: those in **conflict** (or at risk of being in conflict) **with the law**.

While describing the situation of all these children, the attention will be focused on the description of the **referral procedures** - i.e. of the steps through which children enter in contact with the welfare services – and on the **quality of services**. The analysis intends to identify **gaps** in the protective environment around the child, the evident or hidden **emergencies** and the **priorities** to be addressed in a child rights perspective; in several cases, the referral system itself constitutes 'the emergency', due to mere inefficiency or lack of a protection dimension.

The final outcome of this report doesn't expect to be a complete and detailed photography of the situation – which would request further in-depth surveys and review of documentation on specific aspects. It is rather a first analytical draft of the emerging protection problems for children in Azerbaijan, seen from the two points of view of the service providers and the beneficiaries. The attempt is to contribute with useful information to the collective effort to improve the child welfare.

In conclusion, recommendations are briefly provided for the short and medium-term plan of action of UNICEF – also in consideration of available resources and feasibility variables - to be further developed in project proposals.

Several factors - such as the complexity of the system described, the considerable amount of data, and the time constraints of the mission - oblige to reiterate the nature of 'work in progress' of this paper, and the probable inaccuracy of some information.

Most of the issues are thoroughly described in reports produced by other international organisations and national NGOs, whose efforts to provide detailed analysis and innovative proposals deserve acknowledgment and attention. For this reason remnants to other documents are frequently included.

The Survey Methodology

Information has been collected through four main sources:

- ⇒ Excerpts of laws and codes. As easily understandable, only a small portion of the laws and regulations closely or remotely referred to child protection could be analyzed. The systematic description of the related legal establishment is not in the objectives of this document (also in consideration of the already mentioned fact that, despite the recognition of several child rights on paper, in practice the exercise of such rights still encounters consistent obstacles). Legal documents have been consulted to substantiate assumptions collected elsewhere, and to assess when possible the mandates and reporting mechanisms of institutional bodies included in the mapping.
- ⇒ National statistics publications and reports produced by IOs/NGOs on specific issues. From a statistical point of view, it has to be anticipated that multiple limits didn't allow to reach consistent results: (i) the lack of reliable data collection mechanisms (and the related weaknesses in data reporting, in particular for relevant breakdowns); (ii) the absence of specifications re data collection methodologies in several reports, that however remain the sole source of information on specific issues; and (iii) the frequent discrepancies of data coming from different sources. The report will not be concentrated on the comparison of numbers, but will rather point out when necessary the need of further improvement in data collection. The list of documents consulted is reported in Annex I.
- ⇒ Meetings with key stakeholders, belonging to both the institutional system and the environment of international agencies and NGOs. In absence of official analysis and

reports, the experience and opinions of several persons directly involved in the child welfare system, or working in related fields, have been of fundamental importance for the outcomes of the document. However, given the nature of such kind of contacts, some inaccuracies in the information reported could be encountered.

- ⇒ Field visits to some institutions, focus groups with children (open-question interviews). The direct contact with children, and the assessment of their living conditions, far from providing - once again - an exhaustive picture, allowed adding to the overall assessment a more in-depth qualitative analysis of some aspects. Unfortunately, some planned visits couldn't be organised due to time constraints and bureaucratic obstacles. Meetings and field visits are listed in Annex I.⁵



⁵ The report includes also information gathered during field visits to institutions for children without parental care and children with disabilities organised during the previous mission in Azerbaijan (October/November 2004)

1. The Child Protection Institutional System in Azerbaijan

1.1. State Powers Relevant to Child Protection: Executive, Legislative, Judicial

In order to fully understand the child protection components of the welfare system in Azerbaijan, it is opportune to briefly start from the main State powers, which are relevant to all the aspects of the economic, social and cultural life of the population.

Map I in Annex II shows the three branches into which the exercise of the public power is divided.

Executive Branch

The **President** is the chief of the State, elected by popular vote to a five-year term. The head of the Government is the **Prime Minister**, appointed – as the **18 Ministers** composing the Cabinet - by the President and confirmed by the National Assembly. Are members of the **Cabinet of Ministers** also **5 Deputy Prime Ministers**, responsible for specific issues, among which Humanitarian Issues; IDPs and Refugees (the Deputy PM in charge is also the head of the *ad hoc* State Committee).

The executive power is exercised through, among other tools, decrees and instructions of the President of the Republic (ratifying laws approved by the Parliament and providing additional directives) and by resolutions of the Cabinet of Ministers.

Azerbaijan is administratively divided into **76 districts** (63 regional districts – including cities - plus 11 town districts in Baku and 2 in Ganja); districts are governed by the Executive Committees, defined in the Constitution as the local representatives of the executive power. The Heads of Executive Committees are appointed by the President of the Republic, and report to him through the Head of the Presidential Apparatus, which administers large part of the powers directly related to the President. Several district commissions relevant for child protection respond at local level to the Heads of the Executive Committees, and at national level to the relevant Ministries.⁶

Municipalities represent the most decentralised level of power: they are local self-governing bodies, completely independent from the executive power but with a very limited role: all the welfare, finance and administration units are concentrated in the Executive Committees. Municipalities are in total **2,735**, with considerable differences re the density per district and the number of inhabitants per municipality: from a minimum of around 300 persons to a maximum of 50,000. The Members of Municipalities (21,647 persons) are democratically elected.⁷

Legislative Branch

Laws are discussed and approved by the unicameral **National Assembly** (Milli Mejlis), whose 125 members are elected by popular vote (single mandate constituencies) to serve

⁶ The double referral channel facilitates the permanence of some inefficiencies in the assistance to citizens, as we will see later on

⁷ Which means that citizens can exercise a political control on the administrative level with the lesser power (Municipalities) but cannot influence the decisions taken in the places where the public affairs are administered (Executive Committees)

five-year terms. Bills, presentable by recognised agencies or persons, are transformed into acts through a process of readings (generally three) and finally examined by the President, who has the power to reject them.⁸

Within the National Assembly are established 11 Standing Commissions, which provide technical advice on laws related to their mandate. Among such commissions three are relevant to child protection issues: the **Commission on Human Rights**, the **Commission on Education** and the **Commission on Social Policies**. The head of the last-mentioned commission has recently been appointed as focal point for children's rights.

The child welfare system is legally based on the Constitution, approved in 1995, which possesses the highest juridical force; on the Civil and Penal Codes, the Criminal Procedural Code and the Sentence Execution Codes (approved in 2000); and on the Family Code (approved in 1999). Several other laws, decrees, instructions and resolutions regulate the child protection also on the base of international conventions.

Judicial Branch

The Constitution of Azerbaijan provides for political and individual rights, and mandates the separation of powers and the independence of the judiciary.

The judicial power is exercised through four levels: the **District Courts**, the **Appellate Court**, the **Supreme Court**, and the **Constitutional Court**, which overviews the coherence of new laws with the principles stated in the Constitution and Codes, but since January 2004 can also pronounce itself on individual complaints.⁹

Since Azerbaijan is also party to the European Convention on Human Rights, violations can be brought before the European Court on Human Rights in Strasbourg after all domestic remedies have been exhausted.¹⁰

The organ of supervision of judges is the Legal-Court Council; it raises some concern on the independence of magistrates the fact that, rather than being an autonomous entity, the Council is part of the Ministry of Justice.

In the exercise of the judicial power the State is represented by **Public Prosecutors**, appointed in each district by - and reporting to - the **General Prosecutor**, who in his turn is appointed by and reports to the President of the Republic.

In 2002, upon recommendation of the Council of Europe, the **Office of the Ombudsperson on Human Rights** has been appointed by the National Assembly, upon proposal of the President of the Republic. The Ombudsperson's mandate is to monitor the overall implementation of human rights in the country and to report annually to the National Assembly.

Since 2001 the Azerbaijan Government made individual applications to CAT, CERD and CEDAW possible.

⁸ This is absolute for constitutional laws; in other cases the Parliament can re-adopt the law, but such eventuality never occurred so far

⁹ According to Human Rights Center of Azerbaijan, *op. cit.*, 1,700 individual complaints have been presented only in the first half of 2004

¹⁰ See American Bar Association and Central European and Eurasian Law Initiative, *Legal Profession Reform Index for Azerbaijan*, pages 5-6

1.2. The Child Protection Institutional System

Children constantly need manifold forms of protection from the State, in relation to their peculiar living conditions, or to the exposure to abuse and violation of basic rights.

The network of institutional bodies daily engaged, at national and local level, in the aid relationship with children and their families, is articulated and complex. Referral mechanisms, reporting and decision-making processes are distributed among several levels, units and professional figures, often cross-cutting in the delivery of multiple services.

This universe will be described here below according to a segmentation that starts from the main decision-making powers at national (political) level, and follows the subordination lines till the level of direct contact with the beneficiaries.

The official **mandate** of each entity is not systematically reported, due to the difficulty to trace certified information sources (regulations, professional guidelines, mission statements), often allegedly not existing; however, each role is described in relation to its relevance to child protection.

Similarly, the profile and number of the **professional figures** involved in each unit are mentioned only in some cases; a further assessment would be needed to measure the comprehensive availability of human resources in the child welfare system.

The **quality monitoring** of professional performances (regular appraisals, evaluations) and services (complaints mechanisms, regular inspections, self assessment exercises) is nearly not mentioned, since it doesn't seem to represent a relevant component of the working style of the Azerbaijani State apparatus. The control units distributed throughout the system have supervisory and auditing functions rather than quality assessment purposes. The few monitoring initiatives are carried out by non-governmental organisations.

The overall representation of the child protection institutional system is visually reported in Map II of Annex I – being aware that the overlapping and intersections of lines doesn't facilitate the reading.

1.2.1. Institutions under the Ministry of Interior

The Ministry of Interior is entrusted with the task to ensure public order and security. A number of **police stations**, distributed all over the country, coordinate police units patrolling the territory. They are often in contact with children: minors in conflict with the law, but also abandoned children, street children and victims of trafficking and abuse. Often police are involved in the transfer of children to care institutions.

Police stations are equipped with **temporary detention cells** (commonly known, according to the Russian acronym, as KPZ). Suspected offenders – including minors - are kept under custody in such units during the very first phase of investigations.

Every district benefits of the services of **two Police Child Inspectors**, mainly involved in the investigations on crimes committed by children. They have more an 'accusatory' rather than a 'protective' profile; the same can be said for all the figures mandated to deal with children with disruptive or ill-adapted behaviours.

Child Inspectors report to the **Unit of Prevention and Prophylaxis of Adolescents** (1 responsible, 5 full time employees, all belonging to the police), under the Department of Public Security of the Ministry; its mandate is to supervise the work of police with children and collect data on minors accused of law infringement (with breakdown per type of crime) and sentenced during the year. The unit supervises also the activities of **2 transit centres** (one in Baku and one in Ganja) where children encountered on the streets are brought upon

decision of patrolling units, and kept till when either the parents/guardians are traced, or another care solution is found.

Within the Ministry of Interior a **Counter Trafficking Unit** has been recently created, under the responsibility of the Deputy Minister of Interior, appointed as National Coordinator of the Action Plan to Combat Trafficking in Human Beings, approved by a decree of the President of the Republic in May 2004.¹¹

1.2.2. Institutions under the Ministry of Justice and other related figures

As mentioned in chapter 1.1, the judicial system in Azerbaijan is composed of four levels (which can be justifiably located 'under' the Ministry of Justice since the council of supervision of magistrates is part of it):

- ⇒ first-instance civil and penal trials are celebrated in the **District Courts (76 in total)**; **ordinary judges** are requested to exercise their function against all categories of defendants (adults and minors indistinctively). The same judges have the responsibility to appoint legal tutors (guardians and trustees, adoptive families) for children deprived of parental care: specific family or juvenile courts don't exist in Azerbaijan. The judicial system comprises also the **judges of preliminary inquiry**, the first informed of a suspected crime, who dispose for investigations and pre-trial detention measures also for children;
- ⇒ all district courts refer to a unique **Appellate Court**, located in Baku, which constitutes the second judiciary level for those defendants who refuse the first condemnation;
- ⇒ the **Supreme Court** (Court of Cassation) represents the third level, and exercises its function nationally;
- ⇒ the fourth judiciary level is represented by the **Constitutional Court**, where, as previously pointed out, also individual complaints can be presented for revision.

Penitentiaries

Out of all the detention centres and forced labour establishments supervised by the Ministry of Justice (precisely by the **Head Administration of Court Decisions Execution**, the main information source on detainees),¹² children can be found in:

- ⇒ **pre-trial "isolators"**, where supposed offenders are kept during investigations (commonly known, using the Russian acronym, as SIZO). Previously supervised by the Ministry of Interior, since 1999 the **3** institutions (two located in Baku and one in Ganja) have been transferred under the jurisdiction of the Ministry of Justice. Not having an area dedicated to minors, such centres facilitate the exposure of boys (and rarely girls) to the contact with mature (presumed) criminals;
- ⇒ one **juvenile detention centre**, located in Baku, and ruled according to a mild regime. Attached to the only prison for women - where the rare cases of condemned girls are detained - the centre accepts young male offenders from all over the country. Children - who cannot be in any case sentenced for more than ten years - are detained in this centre till the age of 18, extensible to 20, and then transferred to

¹¹ During the mission it has not been possible to organise a meeting with this unit.

¹² As reported by the Centre of the Programme for Development "El", the detention institutions are in total 46, divided into: (i) closed establishments; (ii) semi-open guarded establishments with different regimes, including one hospital for prisoners; (iii) open establishments (colony settlements and special commandant's offices). See the very interesting report on *Health Care in Prisons of Azerbaijan*, page 12

adult's prison to serve the remaining part of the condemnation. The director of the prison can concede conditional release after serving two thirds of the penalty.

In general, the imprisonment is conceived – for minors as well as for adults – as a punitive measure, with a high preventive value, rather than a rehabilitation opportunity. The awareness of children's rights is often very low among duty bearers, when not openly contrasted in favour of a restrictive interpretation of the need to impose 'law and order'.

The Law on Courts and Judges enacted in 1997 provides the institutional framework for a consistent judicial reform, and several improvement measures have been already adopted in the codes, introducing a higher degree of respect of the offenders' dignity. Yet, the total absence of specified enforcement measures seriously hinders the possibility to ensure the implementation of the principles stated on paper. Nevertheless, it has to be recognized that in the last years the importance of the participation of NGOs in assisting to young and adult offenders has been recognised by the State. According to the recently approved article 20 of the Sentence Execution Code, «Public organisations participate in the tutelage of prisoners and exercise public control over the penitentiary facilities and the activities therein implemented (...) according to normative legal acts».¹³ As a result, a **Council of Trustees on Rights of Young Offenders** has been created, and a **Public Monitoring Council for Justice Issues** is starting to be operational within the Ministry of Justice.¹⁴

Prosecutors and Lawyers

Particular importance in the administration of justice is given to the **74 Public Prosecutors Offices** present in each district (with the exception of two occupied ones). Prosecutors are juridical figures, independent from magistrates, representing the State against criminal defendants.

Prosecutors are involved in investigations and trials, and their opinion is determinant both on preventive detention measures and on convictions. During the Soviet era, the prosecutor's office stood at the apex of the legal system and essentially imposed the verdict over judges. As reported by the American Bar Association, due to the still ongoing «imbalance of power in the courtroom, for the most part the prosecutor's office continues to dictate the outcome of cases».¹⁵

The Missing Advocates

To understand the role at present played by lawyers (advocates) within the exercise of justice, and how this ends up denying to defendants the right to a fair representation, here below are reported excerpts of the above-quoted *Legal Profession Reform Index for Azerbaijan*.¹⁶

«Although the Soviet Constitution included a right to counsel and presumption of innocence, the role of the advocate was limited: the guilt of the defendant was assumed and the advocate's job was simply to negotiate a more lenient sentence if possible. (...) Private legal practice, as it is known in the West, was largely non-existent. (...)»

«In criminal cases the injured or complaining part has a constitutional right to representation. The complainant's representative is required to be an advocate; that is, a member of the Collegium of Advocates. (...) The Law on Advocates also provided the structure for admittance to the Collegium, requiring a university degree in law, three years experience and passing of a written exam before the professional commission. Since its inception, however, the mechanism for admitting new members has not been established. Thus, no members have been admitted to the Collegium of Advocates since 1999.»

¹³ *Ibid.*, page 6

¹⁴ Already created, the second one needs to solve some legislative issues before being officially authorized to start activities. UNICEF has been invited to be a permanent member of the council

¹⁵ American Bar Association and Central European and Eurasian Law Initiative, op. cit., page 7

¹⁶ *Ibid.* Quotations are taken from page 5 and following

«The effect of failing to admit members into the Collegium of Advocates is a legal profession that is unable to meet the demands and needs of the country. There are only 350 members of the Collegium of Advocates. (...) The ratio of advocate to person is, therefore, 1 every 22,887 people. (...) A 1999 report by the International League of Human Rights addresses the closed criminal bar as a major curtailment to defending victims of human rights abuse stating: "Preventing independent lawyers from defending dissidents charged with criminal offences will undermine the broader struggle for human rights and criminal justice".»

«The problem associated with the diminutive number of advocates is compounded by the imbalance of power in the courtroom. (...) The Collegium's lack of independence leaves advocates vulnerable to the influence of the police, investigators, prosecutor's office and higher political authorities. The power of prosecutor's office combined with rampant judicial corruption results in a diminished role for the advocate. Advocates are not selected based on their advocacy skills but rather on their ability to negotiate a bribe.»

«Until the 2004 Law on Advocates is fully and fairly implemented (...) the criminal defence bar (...) will not become independent but will remain under the influence and power of the prosecutor's office. It will remain subject to the corrupt judicial system. Advocates will remain 'decorative figures' in the courtroom.»

With referral to the legal services for the disadvantaged:

«The lack of available advocates, resources and an infrastructure for executing legal aid services results in thousands of individuals, especially the indigent and those deprived of their liberty, being deprived of their right to legal services.»¹⁷

Given the absence *de facto* of lawyers, no other figure is appointed to safeguard the rights of minors in conflict with the law.¹⁸

1.2.3. Institutions under the Ministry of Health

Among the numerous health services provided to citizens, the Ministry of Health is entirely responsible for the care of babies from 0 to 3 years (including in particular abandoned children) and for the health assistance to children with disabilities and chronic diseases. Being exposed to high risk of social exclusion and institutionalisation, all these children deserve attention from a protection point of view. The institutions involved are:¹⁹

- ⇒ the **emergency unit for babies abandoned** at birth, known with the Russian acronym of OMD. Located in Baku, it provides the first health assistance to children neglected in maternity hospitals; the health personnel are also involved (with the police) in the definition of a longer-term care plan (i.e. they act as social workers);²⁰
- ⇒ **4 baby homes** (2 in Baku, 1 in Ganja, 1 in Nakhchivan), including 1 home for babies with "psycho-neurological problems". Set up according to a heavily 'medicalized' model, baby homes employ medical staff (physicians and nurses, working in their white coats) to take care of children up to 3 years. They accept orphans, abandoned babies, babies separated from their families upon authority's decision and babies accompanied by parents who, allegedly due to difficult economic conditions, cannot provide for their apt breeding. Data on the annual presence of children in such institutions are reported by the Ministry of Health to the State Statistical Committee of the Azerbaijan Republic, and are also collected by the Ministry of Finance, which annually provides the resources for the maintenance of the services.²¹

¹⁷ *Ibid.*, page 32

¹⁸ The role of the Commission on Minors will be further analyzed in chapter 1.2.6

¹⁹ For a detailed description of the institutions and the institutionalisation procedures, see the very accurate and acute report of the NGO "Initiative for Development", *Children's Rights and Possibilities of the De-Institutionalisation Reform. Study on Institutionalised Children in Azerbaijan*

²⁰ The referral mechanisms will be described more in detail in chapters 2.1 and 2.2

²¹ Further observations on the data collection system in institutions are reported in the second part of the document

Positioned among the professional categories receiving the lowest salary in the country, health workers have to struggle with the lack of resources affecting baby homes as the whole public healthcare system;

- ⇒ **sanatoriums** for children with chronic/infectious diseases and psycho-neurological problems. Although the hospitalisation period should be limited only to the time needed for the health treatment, sanatoriums have to be reckoned as residential institutions, since in several cases children are reported to remain in such facilities for years.²² Belonging to the same group is the dispensary for women and girls with sexually transmitted diseases, who are reportedly kept in isolation;²³
- ⇒ **one rehabilitation centre**, providing daily treatment to children with disabilities and training to families on daily care practices. Poorly equipped and with the personnel in need of professional updates, the centre - located in Baku - is the only one that survived to the collapse of the Soviet healthcare system: other similar centres previously operating at district level have been closed.²⁴

Since the responsibility for abandoned children is entirely given to the Ministry of Health till the third year of age, the ministry comprises a **Department for Adoptions** (2 full time employees, one for cases registered in the districts, the other for cities), where information on children without parental care and potential adoptive families are collected from the district authorities, and individual cases are matched.²⁵

Are also to be included in the child-care network the **Psycho-Neurological Dispensaries** of the district polyclinics, where in case of disability the diagnosis and the related therapy are pronounced in first instance, upon request of the paediatricians of the primary health care services. The "neuro-pathologists" working in the dispensaries have a major role in writing the case history ("epicrisis")²⁶ of children with disabilities, the document based on which all the future institutional decisions regarding the child are taken.

1.2.4. Institutions under the Ministry of Education

The Ministry of Education has the widest responsibility over children's residential institutions, with the exclusion of the few facilities that are not expected to exercise an educative function.²⁷

The following institutes are under control of the **two Departments for Primary Schools** (one in charge for the districts and the other for cities, according to a questionable territorial division) – from where data are annually reported to the State Statistical Committee:²⁸

²² See UAFA, *Situation Analysis of Children's Institutions in Azerbaijan*, where at least 10 sanatoriums are reported to house children on a residential basis. Stories of unnecessary prolonged hospitalisation have been collected also by UNICEF in discussions with children and caregivers of other residential institutions

²³ Located in the Baku district of Ramana, the dispensary could not be visited, notwithstanding the numerous attempts to arrange an appointment. Reportedly from several sources, women are segregated in the facility, i.e. their movements are restricted and the contact with the external world strictly limited, while they are submitted to no better-specified treatments. The allegations are supported by the complex bureaucratic procedures needed to access to the centre

²⁴ Physiotherapy is provided to children in some district polyclinics; other specific treatments are very rare

²⁵ Further observations on the adoption procedures are reported in the second part of the document

²⁶ The use of the term, a Latin word meaning "secondary, pick crises in disease", gives a precise idea of how disabilities are considered by physicians: not as a life condition, but as an acute disease. Further information on the referral system will be reported in the chapter dedicated to children with disabilities (2.2)

²⁷ I.e. the ones listed in the previous chapter and those for children with severe disabilities, under the responsibility of the Ministry of Labour and Social Security, as we'll see later on

²⁸ The Committee represents the State official source of data. Therefore, the following numbers are reported from the *State Statistical Yearbook 2004 (cit.)*

- ⇒ **8 institutes for children deprived of parental care** (orphanages), out of which two including a boarding school (and thus becoming 'total institutions', since children are deprived of any contact with external services). Created to give hospitality to 'biological' orphans, in reality such institutes frequently accept so-called 'social orphans', i.e. children separated from their families due to living difficulties of the parents (because of poverty or because socially ill-adapted);
- ⇒ **12 Special Boarding Schools for Children with Disabilities.** The education system in Azerbaijan, inherited by the Soviet times, despite the latest efforts to initiate inclusive practices,²⁹ doesn't allow the mainstreaming of children with special needs. It is based on a pedagogical model focused on the 'production' abilities of pupils rather than on the system's capacity to adapt to children's education needs; therefore, it tends to exclude all the children who fall out of 'normality'. For this reason, special schools (with or without boarding regime) currently represent the only option for children with disabilities (and chronic diseases) to access to education. Such schools are in any case open only to children with physical or moderate learning disabilities;
- ⇒ **39 boarding schools of the general type,**³⁰ where children are supposed to stay only during the school year. In reality, in a vast number of cases children are left in the institutions during almost all the year; frequently the volatile bonds with the family, often very poor and living far away from the schools, are completely cut. As for all the residential facilities, the living conditions within the schools are very much related to the amount of private donations received, and to the management capacity of the directors (in terms of resources expenditure, education rules and control over caregivers). Among these institutions it is worth mentioning the **two 're-education' schools** with special regime for boys with 'disruptive behaviours'. Difficult children are sent there upon either decision of parents or suggestion of local authorities (including juridical bodies),³¹ with a clear intention to punish them - as declared by the director of one of the schools. The separation from the family and the community - for a period of one to three years - responds to the purpose to raise the awareness of children about their wrong behaviours, and obtain (allegedly almost always with success) their 'repentance'. During previous times the main goal of such schools was to inculcate a strict discipline through military-like rules. In the last years, as reported by the same director, the disciplinary measures have been considerably revised, and the programmes are now compared to the ones of other boarding schools.³²

The **Medical Psycho-Pedagogical Commission** established within the Ministry ratifies the care solution for children with special needs at national level. Composed by 11 members, for the majority with medical background, the commission defines either the placement of

²⁹ Among which it has to be mentioned the recently approved Development Plan on Inclusive Education 2005/9. For a more detailed analysis see also "Reliable Future" Youth Organisation, *Justification and Perspectives for inclusive Education and Deinstitutionalisation with Inclusive Education of Children with Disabilities and Special Needs in Azerbaijan*

³⁰ This number doesn't correspond to the list prepared by the Ministry of Finance, on which the annual budget and the allocation of resources to institutions is based. In particular some secondary high schools (lyceums) included in this list don't seem to be reported in the data of the statistic committee. Therefore, data mismatching is noticeable also in the number of children hosted in institutions. The issue will be further analysed later on

³¹ See NGO "Initiative for Development", *op. cit.*, page 22 (English version)

³² It deserves particular attention the fact that, despite the recent changes inspired by a higher attention to children's needs and rights, a new bill has been presented to the Parliament, for the establishment of further correctional measures for children with disruptive behaviours. It foresees new institutes with strict educational regime, and the possibility for educators to use, among other measures, corporal punishment. The bill is currently under revision; UNICEF already sent its observations to the Head of the Parliamentarian Standing Commission on Social Policies, and intends to closely follow the evolvement of events

children in a special school (or in long-term institutes for children with severe disabilities), or the access to home education.

⇒ **3 centres for home education** (located in Baku, Ganja and Sumgayit) register children entitled to receive the service and send teachers at home. In other districts home education is provided by the schools. It is not clear how the control over teachers and educative programmes is exercised; informal exchanges of opinions brought to the conclusion that there is no structured monitoring system in place to ensure that children have real access to home education. Moreover, lessons are not organised regularly, and the quality of education provided is reportedly very low.³³

Like the Ministry of Health, also the Ministry of Education includes a **Department for Adoptions** (2 full time employees, responsible for districts and cities), to coordinate the adoption procedures for children from 4 till 18 years: data on children in need of a family and on potential parents are matched here, with the involvement of tribunals for the final approval.

The responsibility of international adoptions stays within the Ministry of Foreign Affairs.³⁴

1.2.5. Institutions under the Ministry of Labour and Social Security

The Ministry of Labour and Social Security assists needy families and children more in terms of financial support than of social services.

The figure of social worker, as conceived in other welfare systems, doesn't exist. The few social workers present at district level provide assistance uniquely to elderly people, and in general are appointed to deal with the bureaucratic procedures related to the entitlement of social allowances.

Financial contributions are at present not targeted, and a disproportionate number of children (1.5 million, more than 50% of all the children) receive an inconsistent monthly allowance (less than 2\$).

As far as the allowances for children with disabilities are concerned, the monthly amount is reasonably higher (around 20\$), but is distributed to all the registered children regardless to the kind and degree of disability. The number of children with disabilities reported by the State Statistical Committee is derived from the reports of the Ministry.

As part of the Poverty Reduction Strategy, a major reform on targeted social allowances will be implemented from 2006 - under the auspices of the European Commission Food Security Programme – starting from the revision of entitlement criteria for 'social cases'. Not based on a taxation system, the assessment of the real income of families is particularly difficult in Azerbaijan.

At national level, three are the relevant departments for the assistance to children:

- ⇒ the **Department of Social Support**, from where resources are transferred to the districts for the distribution of allowances to all the entitled categories of citizens (among which the mentioned generic allowance for children, allowances for IDPs and refugees, the ones for children with disabilities, and several other – however minimal – contributions);
- ⇒ the **Medical Commission for Disabilities**, commonly known with the Russian acronym of VTEK, which reviews the documentation needed for the entitlement to the

³³ An additional assessment would be needed to provide a reliable description of the situation. Yet, further observations on home education are retaken in chapter 2.2

³⁴ Due to the recent scandal related to international adoptions – recalled later on – the practice is at present suspended in Azerbaijan

disability allowance. Rather than a technical commission providing a relevant opinion, the unit seems to constitute another bureaucratic layer added to the already complicated procedure of access to the contribution. That is to say, the assistance to children with disabilities is not corresponded in any other form;

- ⇒ the **Department of Disabled and Lonely People**, mandated to supervise the
- ⇒ **two residential institutes for children with severe learning disability**. The main function of such institutions is to provide them with shelter and basic material life conditions; they are not supervised by the Ministry of Education since they are not supposed to provide any form to education to children considered “unable to learn”.

1.2.6. Institutions under the Executive Committees

The welfare services in Azerbaijan are administered, at district level, within the Executive Committees. Lower administrative levels (i.e. the Municipalities) don't have a role in this sense.³⁵

Within the committees, several commissions and offices are relevant for the protection of children, not always directly corresponding to the previously listed national commissions/departments:

- ⇒ the **Commissions on Juvenile Issues and Protection of Minors' Rights** (Commission on Minors). Established in 2002 with the intent to provide children with a higher level of protection, the commissions are composed of 2 full time employees (generally 1 lawyer and 1 administrative staff), and involve other professional figures on a case basis.

Supervised at district level by the Heads of the Executive Committee, the Commissions on Minors report directly to the Deputy Prime Minister on Humanitarian Issues, in the Cabinet of Ministers: they represent the most clear case of ‘double channel’ of reporting, which can create a lot of confusion (and lead to a situation of immobility) re the distribution of responsibilities and the decision making power.

As established by law, their mandate is «to provide an educational impact on juveniles, to protect their rights and legal interests, undertake the control over their behaviours, prevent the perpetration of unlawful actions and coordinate the efforts of the State and local self-governance bodies, enterprises, agencies and organisations in the above-mentioned affairs».

The Commissions on Minors are involved by the police in juvenile justice issues, and pronounce their determinant opinion in the identification of proper care solutions for children deprived of parental care. Despite their role of ‘controller’ (which seems to increase the efforts of public bodies to defend the community from children, rather than protecting the children from abusive manifestations of the society), they have by mandate a large potential to act as ‘social services’ units, given the absence of any other figure called to protect children’s interests within the welfare system.

However, at present they don't seem to have reached their full operational potential;³⁶ several actions around children are (officially or unofficially) taken without their involvement: for instance, despite the fact that the decision on the institutionalisation

³⁵ In a decentralisation perspective, the role of Municipalities should be revised, and referral systems should be established with the districts to facilitate the set up of community-based services; focused on the individual needs, such services are – by definition – based on one-to-one contacts, which are more likely to happen at municipality level. Furthermore, since Municipality Members are elected – on the contrary of Executive Committees – the pressure that can be exercised by citizens on them is one of the easiest ways to control the quality of services delivered

³⁶ In some districts, it seems controversial also the full-time involvement of two employees, and the corresponding salary: supposedly some cases have be ‘entitled’ as part of the Commission while covering other roles in the Executive Committee

of children should be taken with the Commission's consent, and despite the fact that the Commission is mandated to overview the living conditions of children in institutions, more often children are directly brought to institutes by parents, and abandoned there at the mercy of caregivers;³⁷

- ⇒ the district branches of the **Medical Psycho-Pedagogical Commissions**, located within the district **Education Authorities**. Composed by physicians and pedagogues (5-7 members), the commissions carry out the first observation of children with disabilities and define their education plan (home education, special schools, or institutions). The ratification of decisions at national level assumes the profile of an additional bureaucratic step, rather than a proper revision of cases (children are not observed for the second time, and the evaluation is made only on documents);
- ⇒ the Commissions on Guardianship and Adoption, composed by one Child Protection Inspector and one administrative staff in each district; here all the children abandoned or deprived of parental care are registered. The identification of tutors/guardians or adoptive families can be done at local level after pronouncement of the court. If a solution is not found within one month, children are inscribed in a national register, and the case is managed by the relevant ministry (Health or Education). In both levels, no criteria are specified for the selection and training of potential parents, or for the matching with children. Commissions on Guardianship and Adoption don't have any further monitoring rule nor towards families neither towards legal tutors within institutions;
- ⇒ the local branches of VTEK (**Medical Commission for Disabilities**), replicating at district level the bureaucratic procedures for the revision of the 'categorization' documents, to enable the access to disability allowances. Rather than improving the quality of assistance for children, their presence seems to increase the room for inefficiency (and of corruption, which doesn't seem to be a secret problem in Azerbaijan);
- ⇒ the SOBES (Russian acronym), or **local branches of the Ministry of Labour and Social Security**, execute the disbursement of allowances to all beneficiaries; the social workers employed there don't have any other contact with children at any level;
- ⇒ partially related to children are the **Departments of Dwelling Units and Public Utilities**, commonly known with the Russian acronym of JEKS. Inherited from the Soviet system, JEKS are the public services more in direct contact with citizens: they deal with all the issues related to election procedures, census and public consumptions at neighbourhood level. Among the staff of JEKS are included pedagogues, once deputed to monitor the schools attendance of pupils – and thus supposed to deal with drop-out cases and street children. However, their role doesn't seem to have been maintained during the years, or in any case their active interaction with the education environment progressively faded away.

What kind of welfare services?

The above-described system is shaped on a service-centred, rather than a needs-centred, model: the offices deliver services according to fixed referral procedures; they react only when the problem reaches their premises, most frequently upon initiative of the single citizens, and provide 'pre-formed' answers for 'pre-defined' categories of beneficiaries. Every unit has a specific part of responsibility, out of which no further assistance is provided to beneficiaries; their role is only to solve 'a bit' of the problem, and inter-sectoral cooperation doesn't seem to be activated.

In other words, case management and outreaching methodologies don't characterize the welfare system in Azerbaijan.

³⁷ For a further in-depth description of the role of the Commission on Minors see NGO "Initiative for Development", *op. cit.*, page 18 (E. v.)

The price of this rigidity is very often paid by children: tossed about between one office and the other, where nobody is bound to clearly stated responsibilities, and nobody has to respond for their acts, children cannot find the needed protection when they are in a vulnerable situation, and the risk to be exposed to various forms of abuse (including the omission of assistance) for them is very high.

1.2.7. Local Non-Governmental Organisations

In the attempt to provide concrete answers to the expressed of part of the population, several experiences have been set up upon initiative of local NGOs; they deserve particular attention for the considerable efforts made to compensate for the gaps and weaknesses of the social welfare.

Among the most promising experiences encountered during the assessment –without the intention to leave others in the shadow – the following projects of local NGOs seem to have conquered a role within the child protection system:³⁸

- 4 day care centres for children with disabilities operating in Gebele, Sheki, Sumgayit and Ismailly; started thanks to a contribution of the Soros Foundation, they propose educative and recreational activities for children not allowed to attend regular schools, thus providing a concrete daily support to families. Some efforts are made to increase the contacts of children with their community, and to facilitate their school inclusion;
- 1 drop in centre in Baku (“House of Light”) provides street children with hot meals, hot showers, and several recreational activities during the day; the center is run on a completely voluntary basis;
- 1 group home in Baku (“Place of Hope”), where street children – generally escaped from residential institutions – seek for a shelter and help from the numerous volunteers involved. Most of them start again to attend school nearby the group home;
- 1 NGO in Baku (“Clean World”) provides assistance to victims of trafficking, in form of shelter, psychological support and actions to facilitate their re-integration in the society;
- 1 NGO in Baku (Centre for Psychological Counselling) offers psychological support to children victim of violence and abuse. Children are referred to the centre either by other national/international NGOs, or by the parents themselves;
- 1 NGO in Baku (“EI”) working with young offenders in the detention centre; the NGO is active member of the council of trustees created within the Ministry of Justice for the monitoring of life conditions in the justice institutions.

Always struggling with the lack of resources and of recognition from the State, NGOs are a precious resource not only because in most of the cases they provide reliable first-hand information on the situation of children; but first and foremost because they are the most direct expression of the answer of the civil society to the needs of children. NGOs always start to implement projects reacting to a request perceived within the society; they are often the pioneers of pilot initiatives that generate good practices examples and lessons to be learned. Policy makers, when reviewing the social welfare system, should keep their experiences in high consideration.

³⁸ As indicated by the title of the chapter, international NGOs are not taken in consideration, responding to the objective to count the available Azerbaijani resources – this choice doesn't intend to underestimate the fundamental role played by international agencies in supporting the improvement of the child welfare system in the country

2. Children in Need of Protection in Azerbaijan. Data, Trends, Risks and Priorities

The previous pages roughly described the network of all the resources put in place by the State to provide welfare services, that is to say, the **answers**.

Here below we will try to identify and describe the **requests**, i.e. the needs loudly or silently expressed by children.

Once again, it has to be kept in mind that the data registration system in Azerbaijan leaves unfortunately something to be desired: almost always data from different sources don't coincide, and numbers are not disaggregated, thus not allowing a detailed analysis of phenomena.

In most of the cases relevant information come from NGOs or other unofficial sources; the qualitative analyses provided are of great importance for the comprehension of features and trends, but are often insufficient for the perception of the real dimension of problems.

While describing the situation of identified groups of children - although risking to be repetitive in reporting some information - we will try to identify the '**institutional protection paths**', that is to say the ways through which the public system concretely provides answers to specific needs of children. The aim is to enlighten where the needs are becoming **emergencies**, and where the care provision itself constitutes an emergency in terms of **violation of children's rights**. In most of the cases, the description of procedures is self-explanatory. Some paths have been translated into a visual representation (flowcharts) reported in Annex II.

The evaluations are based on the parameters defined in the Convention on the Rights of the Child. **Priorities for short and medium term intervention** will be identified from a UNICEF perspective, in consideration of the initiatives of other organisations already in place,³⁹ and of the contents of the UNICEF Country Programme Action Plan, signed in 2005 with the Government of Azerbaijan.

2.1. Children Deprived of Parental Care and Children in Institutions

Numbers and Trends: Available Information

According to official sources, children deprived of parental care in 2003⁴⁰ have been **1,060**, for a total number (including previous years) of **26,494**. The figure includes both orphans or children voluntarily abandoned by parents, and children separated from their family upon decision of the court. The total amount is slowly decreasing in the years, but the number of new cases remains stable: this is due to the 'exit' of those who reach the majority age.

More than 90% of these children are taken care of by guardians (generally relatives, since the practice of fostering is not officially recognised in Azerbaijan) or adoptive families. Those hosted in public residential facilities are reportedly **2,530**.

This number represents a small share of the total number of children living in institutions (baby homes, orphanages, special or regular boarding schools, institutes for children with disabilities): in 2003 they were **23,533**. The number has grown of the 30% since 1995.⁴¹

³⁹ Such projects are not described in the text, to avoid a further widening of the already overloaded analysis; besides, additional information should be gathered to provide a complete map of the existing interventions

⁴⁰ Data for 2004 are still not available

⁴¹ For a detailed analysis see NGO "Initiative for Development", *op. cit.*, page 11 and following (E. v.)

Problems with Numbers

The numbers reported are published in the *Statistical Yearbook 2004*. Data (also re the number of institutions) slightly differ from the ones prepared by the Ministry of Finance, on which the annual budget and the allocation of resources to institutions are based. They differ even more from numbers reported by NGOs.⁴²

In addition to this, the absence of systematic breakdown in figures doesn't allow to develop a detailed analysis of the situation of residential facilities, which should constitute the solid starting point for any further consideration and eventually for future care plan. Information such as the age groups, the gender composition, and determinant details on the status of children (e.g.: totally without parental care vs. still under the tutorship of parents; duration of the institutionalisation; frequency of contact with parents/relatives; kind and degree of disability), are in fact not available.

Although not completely (or not officially) abandoned by their families, the large majority of these children are kept all year long under the tutorship of the institutes' directors and caregivers, and can be therefore considered institutionalised at all effects.

Poverty is considered by all sources the first reason for institutionalisation: the majority of children in institutions fall under the category of the so-called 'social orphans'. However, the constant increase in the number of institutionalised children, if compared with the growth of GDP in the country, doesn't allow considering the difficult economic conditions of families as the sole reason for the recourse to public care. It has to be recognised that the national economic progress has not been reflected so far into a consistent improvement of the population's life conditions. Nevertheless several other factors, of political, cultural and social nature, have to be regarded as co-causes to explain the trends.

Institutes as 'recycle bins'?

In general, as pointed out by several sources, the profile of children doesn't correspond in the reality to the target group of the institutions: orphans are hosted in boarding schools, social orphans are hosted in orphanages, children with minor problems are categorised as disabled and therefore hosted in special schools, children with disabilities are included in other boarding schools. Other countries' experience demonstrates that this is the unavoidable result of a system based on a model of 'exclusion', rather than oriented to increase the efforts to support families in providing care to their children within their natural environments - at home, at school, in their community. Institutions always become the 'recycle bins' of the society, where any problematic case ends up, perpetuating the problem instead of finding a solution, and therefore increasing the vulnerability of children.

In any case: pre-formed answers, based on standardized parameters, oblige to separate beneficiaries into labelled categories, and are always insufficient to provide the appropriate assistance to each child, with all his/her life complexity.

Furthermore, some efforts have been done in the last years, mainly through private donations, to improve the generally destitute setting of institutes (added to - which is not irrelevant - the extremely difficult working conditions of caregivers, who are ranked in the lowest position as per salary amount). As a result, the tendency has been observed in poor family to consider more and more the possibility to send children in a residential institute as a way to provide them with better life conditions.⁴³

Institutional Protection Paths. Gaps and Risks

As reported above, children deprived of parental care are for the large majority placed under the tutorship of a guardian/trustee, or adopted in country. The procedures are followed by the Commission on Guardianship and Adoption (with the involvement of courts only for the

⁴² In particular see UAFA, *op. cit.* Unfortunately, the partiality of the survey doesn't allow a proper comparison of data

⁴³ See on the matter the articulated observations of the NGO "Initiative for Development", *op. cit.*, page 13 (English version)

legal ratification) during the first month after the abandonment, and by the Departments of Adoption within the Ministries of Health and Education afterwards. The existence of a 'double channel' doesn't facilitate the efficiency of the system, since responsibilities and professional protocols are not clearly defined. Besides, in both cases the procedures for the selection and supervision of families are not clarified; in other words no support and control is exercised over the families adopting children. As a confirmation, the law establishes that «Ministries (...) select the children for the person willing to grow them up». The expression highlights the tendency, diffused all over the system, to privilege the interests of adults on the ones of children.⁴⁴ The criteria for the matching of children with adoptive families are not otherwise specified.

The situation of residential institutions has been thoroughly analysed in a previous concept paper,⁴⁵ and has been further deepened in the study recently produced by the NGO "Initiative for Development", repeatedly quoted in these pages. Here below is reported a revised description of the institutionalisation paths: procedures are reported as they have been described by some directors.

Easy to get in, difficult to get out

Admissions in baby homes and orphanages are officially decided at district level by the Commission on Minors after the decision of the court to deprive parents – if known - of their legal tutorship. Children are brought to institutions by the police (sometimes taking autonomously the initiative). Such procedures are not strictly regulated, and frequent cases have been reported of direct interaction between parents/relatives and the institutes.

After the admission, the director of the facility becomes the legal tutor of children, but his/her responsibilities are not clearly defined (to the extent that s/he can decide about revealing or not the identity of biological parents to a child).

When not otherwise regulated by the court – which is supposed to pronounce a definitive sentence on the deprivation of parental care after 6 months - the volunteer renounce of biological parents to their authority on the child is a pre-condition for the eligibility to adoption. In other words, the right of a child to grow up a family depends on the good will of the same parents who abandoned him/her: without their signature children remain in institution till their majority age.⁴⁶

Reportedly, the possible interference of biological relatives with adoptive families is considered the main reason of the small number of in-country adoptions.

In case of eligibility to adoption, the director of the institute asks the opinion of child neurologist (this is valid for all the children), which is ratified by the City Health Department, and submitted to the Commissions on Guardianship and Adoption of the Executive Committee and to the Department for Adoptions in the Ministry of Education. In general, after the first years of life it is very difficult for an institutionalised child to find an adoptive family, unless a specific interest is manifested by the family: one source admitted that adoptions happen through direct selection of the child by the future parents.

Tribunals reportedly ratify the decision, but have no direct authority – as all the other institutional bodies involved - in monitoring the situation of children in the new family. During the whole process wide margins of discretionality are left to all the professional figures involved, since their responsibilities are not disciplined by enforcement measures.

As reported by the NGO "Initiative for Development", «Although the Commissions [on Minors] have the right "to get acquainted with the minors' conditions of maintenance and upbringing in boarding institutions, child institutions, special education institutions of open and closed type, in educational and health-educational institutions (...)" in practice it is not realized, i.e. there is no mechanism of undertaking such supervision».⁴⁷

⁴⁴ See NGO "Initiative for Development", *op. cit.*, page 16 (E. v.)

⁴⁵ See UNICEF *Support to the De-Institutionalisation Reform in the Republic of Azerbaijan*, concept paper written by Cristina Roccella during the previous mission in Azerbaijan. The document is available upon request at UNICEF Azerbaijan Country Office

⁴⁶ The authorisation is not requested to parents with mental health problems, in so doing violating their rights.

⁴⁷ See NGO "Initiative for Development", *op. cit.*, page 18 (E. v.)

In addition to this, institutions as 'closed' environments are more likely to develop a wide range of forms of violence, starting from the scarce consideration of individual needs (inevitable when dealing with large groups) to the uncontrolled abuse of power of caregivers and teachers, to the exposure of children to heavy episodes of bullying from peers, when the 'logic of the flock' inevitably prevails.

The stories of institutionalised children are often pervaded with a strong sense of injustice and mistrust towards any other form of redemption out of self-defensive violence.

Fostering is not implemented in Azerbaijan; the Law on regulation of such alternative care services is hopelessly waiting for revision of the Parliament since 2002.

The procedures of admission to boarding schools are regulated by the education system, and happen through the direct interaction between parents and the schools. The frequency of contacts of children with their family is directly proportional to the distance of the school from their town/village of provenience. It is not a facilitation the fact that most schools are located in Baku. In several cases, after a first period the contacts with the family are completely cut.

In general, it is difficult for children to get out from residential institutions because the system is constitutionally set up not to find another solution. Two factors can be highlighted:

- ⇒ the richness of bureaucratic procedures, involving several entities with no one focused on individualised plans for children;
- ⇒ the absence of professional figures outside institutions caring for the best interest of the child, and thus exercising control of the performances of the persons in direct contact with children. For the same reason, no actions are taken to strengthen the contacts of children with their families and their community, thus maintaining the burden of care entirely within the institutions. As a consequence, once out of the orphanages, without any stable link with the community, young adults are dangerously exposed to wrong choices and don't find the appropriate advice and coping support.

Children in institutions have by default less possibilities than others to fully develop their potential, since they cannot benefit from a consistent, caring, nurturing emotional and physical bond with their primary caretaker to reach their full healthy development.⁴⁸ Such care cannot be provided in highly medicalized structures, where life is regulated according to standardized rules, and caregivers need to share their time with several children.

Priorities in the UNICEF Perspective

- « 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.»
- CRC, Article 3

Every child has the right to grow in a family-like environment, ensuring the development of his/her full potential and protecting from exposure to violations.

UNICEF is strongly supporting the implementation of the programme of de-institutionalisation,⁴⁹ at present under definition by the inter-ministerial task force appointed by the Deputy Prime Minister on Humanitarian Issues. Without indulging in elsewhere discussed issues, the three main priorities for the short-term intervention of UNICEF in this sector are:

⁴⁸ See UNICEF Innocenti Research Centre, *Children and Disability in Transition*

⁴⁹ See note 45

- ⇒ the support to the creation of **social services units** at district level as the first step for the set up of community-based services and gate-keeping mechanisms, through the involvement of Commission on Minors and Commission on Guardianship and Adoption (capacity building on networking methodology and case management);
- ⇒ the support to an **accurate registration of children in institutions** (with the collection of all the relevant information), of fundamental importance to define a precise picture of the situation. This would represent the first step for a further definition of individual care plans for each child;
- ⇒ the promotion of **a national awareness raising campaign** (involving high level policy makers and the civil society) on the rights of children to grow up in a family.

2.2. Children with Disabilities and Chronic Diseases

Numbers and Trends: Available Information

The number of children with disability from 0 to 16 years officially registered in 2003 is **43,342**. They represent the 1.81% of the totality of children, i.e. a slightly higher percentage compared to other countries;⁵⁰ more than this, it provokes high concern the fact that the number of cases registered every year has more than doubled in five years (from 4,600 in 1999 to 9,500 in 2003). Data are reported from the Department of Social Support of the Ministry of Labour and Social Security, without any breakdown per type and degree of disability (including the chronic diseases for which children are as well entitled to the assistance). This is due to the fact that all the recorded children receive indistinctively the State allowance.⁵¹

Out of the total number, only the 13% (**5,894**) are reported to attend special education – and the share is not growing per year at the same pace of the total number of children with disability; are excluded from this group the **366** children hosted in institutes for severe disabilities.

According to the State Statistical Committee, «disabled children include person of corresponding age having physical and mental defects not allowing them to fully develop, study and take part in social life equally with other children». As a conclusion, it should be assumed that the other 77% is not attending regular school, but is rather excluded by the system. No further information is available to confirm or contradict the assumption.

It must be added that, among those attending special education, **1,090** children are registered as receiving home education. The datum refers only to the pupils registered in the three centres mentioned in chapter 1.2.4. From direct information received by the national Medical Psycho-Pedagogical Commission we know that the children entitled to home education in 2004 have been **8,294**. However, there is no information on the destiny of around 30,000 children.

Institutional Protection Paths. Gaps and Risks

The Azerbaijani society still bears clear signs of the social welfare model implemented during the Soviet time, set up on the idea of human beings as units of the 'productive chain': it has been

⁵⁰ Data have been compared in details only with the ones of Italy. For a more precise analysis additional information should be gathered

⁵¹ The amount of the contribution (20\$ per month), compared to the average income of families, makes it quite appreciable for poor families. This raises obviously some doubts on the trustworthiness of diagnosis presented to obtain the allowance

already underlined how services respond to parameters of 'normality' based on performing abilities, so that all those who don't fall into such category are excluded from the community life.

This is particularly true for children with disabilities and for their families, whose coping strategies are weakened by the negative pressure of the society. Disabled children don't have access to mainstream education services, starting from kindergartens, and the strongly medicalized approach towards disability doesn't facilitate their inclusion.

Is it worth adding another consideration: in official documents schools for children with disabilities are called "schools for children with limited health"; the definition reveals the fact that disabilities are considered – and treated as – particular kind of diseases, as if a child blind or with "speech defects", or even with cerebral palsy, couldn't be a healthy child. On the contrary, inclusion processes should start from the acknowledgment that disabilities are particular life conditions, that don't allow performing some functions in the same way of others. But the 'handicap' derives from the incapability of the society to adapt to such conditions, and not the opposite (e.g. the handicap of a person on wheelchairs is created by the presence of stairs, but with a ramp the same person can move without problems).

The issue of disability has been already analyzed in the cited concept paper on de-institutionalisation. Here below is reported a revised description of the institutional paths of care to children with disability.

Diagnosis and exclusion

The diagnosis pronounced by physicians, frequently at a too early stage of life (even immediately after birth), is the starting point of a process of progressive stigmatization and exclusion that frequently ends up in institutionalisation. Diagnoses are in general never revised, thus determining the destiny of children from the first days of their lives without considering their following evolution: a visit to the psycho-neurological baby home, where children are sometimes sent directly from maternity wards, gives to everybody the opportunity to understand that at least half of the children hosted there could easily have a different life elsewhere if their first diagnosis were properly revised.

The first health assistance to new-born children is provided by 'area' doctors; they send selected cases to polyclinics, where psycho-neurological dispensaries are located, for further diagnosis and cure in case of disabilities. Some cases are sent directly from maternity wards, and in other cases parents contact directly the units in the polyclinic. The distance from services is a big obstacle to proper medical assistance: reportedly children from villages are often visited for the first time at their 3rd-4th year of life.

Neurologists are in charge of the diagnosis and the definition of possible therapy, but don't follow the evolution of the disease/disability directly: after the visit of the specialist children are sent back to their area doctors. Reportedly doctors of different services are not in regular contact, and there is no cooperation for the definition of individual plans.

The entitlement to social allowances for disability is determined by the Medical Commission (VTEK) appointed to revise the diagnosis produced by psycho-neurological dispensaries; allowances are monthly distributed by the district branches of the Ministry of Labour and Social Protection (SOBES). No other social services are foreseen at local level to support families in the upbringing of children with special needs.

The rehabilitation therapies provided in Baku by the only centre survived to the collapse of the system are negatively affected by the lack of equipment and of training opportunities for the therapists.

Once reached the school age, children with disabilities or chronic diseases are examined by the Medical Psycho-pedagogical Commission.⁵² Although mandated to decide on pedagogical issues, the Commission has a pronounced medical profile, and bases its decisions exclusively on sanitary information, rather than on the evaluation of a functional profile of children (abilities, possibilities of improvement, pedagogical intervention needed).

⁵² Parents can also autonomously decide to approach special schools, upon personal evaluations often related to the refuse of mainstream schools to accept their children. See "Reliable Future" Youth Organisation, *op. cit.*, page 19 and following

The list on which the Commission's pronouncements are based raises high alarm re the respect of children's rights to education; among the diseases considered for the exclusion from mainstream schooling are listed: asthma, anaemia, hepatitis, rheumatoid arthritis, skin diseases, thalassemia, AIDS and HIV.

The most diffused solution proposed is home education. In this case, children are confined to isolation within the walls of their houses, without a set-up calendar for periodical revisions of the decision, and no monitoring strategies in place on the quality of the education received. Home education deserves to be considered one – if not the first - 'silent emergency', calling for an intervention in a child protection perspective.

The alternative solution is represented by special schools, each targeted to a specific disability (blindness, visual impairment, deafness, no better specified "speech defects", cerebral palsy, moderate learning disability, etc.). Such schools are located in few districts, some provide boarding services; children are obliged to leave families and communities to attend school, and the separation becomes definitive in some cases. In addition to this, the system is not in the condition to provide vocational training to adolescents with disabilities, hindering their inclusion in the work market.

The last care option, for children with severe disabilities is given by the two institutions under the Ministry of Labour and Social Security. Children here are institutionalized for long periods (almost always for the whole lifetime). Pedagogical and medical services are extremely limited, since the bearers of severe disabilities are officially considered "unteachable";⁵³ the lowest level of assistance is reserved to those who are in the lowest position of the social scale.

The only alternative experience so far set up in the country⁵⁴ is the small network of 4 day care centres providing a concrete support to parents in the attempt to avoid the forced separation of children from their families. Always under pressure due to the extremely reduced resources, the centres have not been yet recognised by the State.

The flow chart of the institutional paths of children with disabilities is reported in Annex II.

Priorities in the UNICEF Perspective

«3. Recognizing the special needs of a disabled child, assistance (...) shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.»
CRC, Article 23

The support to initiatives of school inclusion as part of the social re-integration of children with disabilities is an integral component of the plan of de-institutionalisation supported by UNICEF.⁵⁵ In the first phase, particular attention should be directed towards:

- ⇒ the **reform of home education**, starting from the revision of the list of diseases/disabilities on which decisions are based, and strengthening the efforts to ensure equal access to education to all children;
- ⇒ **reducing the stigmatisation** of children with disability: only starting from a different attitude towards 'diversity' local communities will be ready to accept the full integration of persons with special needs;
- ⇒ the **revision of data collection**, to enhance the accurate registration of children with disabilities and the possibility to trace their access to services; the analysis of relevant breakdowns of data is of crucial importance for the comprehension of trends and the planning of new interventions. In this case the involvement of the National Statistical Committee is of strategic importance.

⁵³ See NGO "Initiative for Development", *op. cit.*, page 22 (E. v.)

⁵⁴ Out of the interventions of international organisations

⁵⁵ For a detailed insight of the system perception of d-I and school inclusion in the country and possible inclusion options, see also "Reliable Future" Youth Organisation, *op. cit.*

2.3. Violence against Children

Numbers and Trends: Available Information

The tentative definition proposed by the ongoing United Nations Secretary-General's Study on Violence Against Children intends as violence «all forms of physical and mental violence, injury and abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse». It refers to acts perpetrated against children by criminal organisations, but also to the responsibility of care providers at any level, starting from parents and relatives, to teachers, care givers in institutions, police, and justice personnel.

In the reply to the *Questionnaire to Governments* for the mentioned UN Study, the Government of Azerbaijan declared: «There is no comprehensive policy document [concerning violence against children]. Legislation covers only definite cases of violence, but *it doesn't include facts of violence in the family, in the school, public places*. Yet, episodes of child neglect, which became more frequent, are worth serious attention».⁵⁶

The same source reports that no population-based surveys have been conducted over the past five years on violence against children; with reference to small-scale representative interview studies with parents and children: «There might be some projects, however *there is a taboo on surveys in this topics related to parents and children*. To certain extent it is also connected with lack of professional skills of those that developed questionnaires and include incorrect questions or incorrect identification of groups of respondent, and *unpreparedness of population to discuss these issues*».⁵⁷

As a conclusion, **no data** of any sort are available to measure the phenomenon. In the few attempts done to raise the issue, a strong resistance of authorities and public services to enter into the discussion has been noticed.

Neither from justice records it is possible to deduce information: out of the cases of conviction reported in 2003 for violence against persons (225 cases) and rape (46!) it is not specified whether the victims were or not children.

The only source of information for this research has been the Coordinator of the non-governmental Centre for Psychological Counselling, recently founded to provide psychological support to children exposed to episodes of violence and abuse; children are referred to the NGO by other national or international NGOs (no cases have been reported directly by public care institutions) or in few cases by the parents (on average middle-class, highly educated individuals, who seem to be the only ones equipped with the necessary cultural tools to recognise, admit and intervene on cases of abuse, especially when of sexual nature). According to data of the Centre, around half of the children coming from institutions (signalled by SOS Kinderdorff) have been exposed in the past to sexual abuse; around 10% of cases treated are victims of sexual abuse from parents or close relatives.⁵⁸

⁵⁶ See United Nations Secretary-General's Study on Violence against Children, *Questionnaire to Governments*, compiled by the Government of Azerbaijan – the Russian version is available in the UNHCHR website; an unofficial translation is available at UNICEF office – page 27 and following. All the italics have been added

⁵⁷ There is no evidence that such surveys – even though 'incorrect' as alleged – have ever been carried out. In general, several information reported in the questionnaire don't seem to correspond to the data gathered during the survey – in some cases due to evident misinterpretation of the questions

⁵⁸ In the research study of the Azerbaijan Children Union on street children, mentioned later on, the 19% of 495 children interviewed declared to have been sexually abused

Institutional Protection Paths. Gaps and Risks

In general, it is commonly recognised that violence against children is a diffused practice, and that no means are in place to contrast it.

In specific articles of the Criminal Code violent acts against minors (including physical or mental abuse, abduction, segregation, sexual abuse) are severely punished.⁵⁹ Article 12 of the Law on Child's Rights states that any violence and physical abuse against children in the family and other places is banned, as well as in article 47 of the Law on Education (1992) pupils have the right to be protected from all forms of exploitation, physical and mental abuse and illegal acts offending human dignity and honour.⁶⁰

However, no measures are in place to hold parents and caregivers responsible of the abuses perpetrated against children in domestic or education environments, in other words to ensure that the Government's obligations to protect each child from violence are met.

In particular, as far as public care is concerned:⁶¹ no standards for residential care or education facilities have been recently drawn up and disseminated; no updated (if any) provisions are in place for mandatory inspection of residential/education facilities; no nationwide minimum qualification and training is required for staff; forms of discipline and punishment are not explicitly banned (on the contrary, some are explicitly permitted); criteria and conditions are not laid down for the use of force by staff; no mandatory mechanisms or procedures are foreseen to enable a child – or a parent - to register complaints (on the contrary, children are allegedly 'discouraged' to report, also by threat); no specific procedures are foreseen to investigate allegations of violence against a child in education facilities or residential care;⁶² no measures are foreseen in favour of children who have been victims of violence; no adequate supervision is set to prevent violence and abuse among children; there is no State requirement that children in care be made fully aware of rights and responsibilities while in a residential facility or at school.

Victims at home

As far as violence in the household is concerned, it is worth quoting one paragraph of the recent report on violence against women produced by AFHRO:⁶³

«The provisions [of the Criminal Code] do not take into account the special relation and the interdependence between the victim and the perpetrators of domestic violence, and, thus, their special needs. (...) In Azerbaijan, it is not accepted "to seek solutions for family problems outside the family or household". Moreover, women/girls are not accepted and not encouraged to refer themselves to the police in the case of abuse by their husband, brother or father. The complaint to the police will be badly perceived not only by her family, by relatives, and by public opinion, but also

⁵⁹ In some cases the penalty seems to be milder than in other countries, also when considered the aggravating circumstances; however, a more in-depth comparison would be necessary before pronouncing any opinion on the matter

⁶⁰ See United Nations Secretary-General's Study on Violence against Children, *op. cit.*, page 7

⁶¹ Referral is made to the checklists prepared by UNICEF GRO and CEE/CIS/Baltics for the "Accountability Survey" on State Measures to Comply with CRC Obligation Regarding Violence against Children in Care and in Justice and Education Systems, carried out in selected countries of Europe and Central Asia in preparation of the Regional Consultation on Violence against Children to be held in Ljubljana in July 2005. All the information are reported on the base of a 'diffused' perception captured in several conversations, being aware of the fact that they should be more precisely verified

⁶² In some cases, caregivers and directors have been reportedly fired because of perpetrated episodes of violence against children, but apparently without any specific investigation procedures. The accusation could have been used to remove staff for other reasons: in other cases in fact didn't happen the same

⁶³ Azerbaijan Federation of Human Rights Organisation, OMCT, *Violence Against Women in Azerbaijan*, (report prepared for the 33rd session of the UN Committee on Economic, Social and Cultural Rights), page 13

by the representatives of authority and by policemen to whom the woman would refer herself to. (...) Wives who suffer violence from the side of husbands, may refer to the authorities, but the young girls, who suffer systematic violence from the side of fathers and brothers, almost never turn to the authorities.»

During the focus group held for this analysis in the juvenile detention centre, one young offender complained about his conviction: he has been accused of violence against his young spouse, and admitted to have hit her, but doesn't accept the punishment since reportedly "this is what all men do in Azerbaijan". The statement provoked the hilarious approval of all the others.

For further consideration, as reported by the Government of Azerbaijan in the UN questionnaire on violence, the minimum age for marriage is 18 (17 in «exceptional cases») for men and 17 (16 in «exceptional cases») for women.

In general, Police Child Inspectors seem to be more involved in issues related to juvenile justice rather than on violence against children; the same can be said about the Commissions on Minors. They should be involved in monitoring and reporting activities, but since they don't work 'on the field' through outreaching actions, the possibilities for them to identify cases of violence are reduced to zero.

Priorities in the UNICEF Perspective

«States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.»

CRC, Article 19

Violence against children is a very diffused phenomenon everywhere, and everywhere it is contained with great difficulty, since interventions should reach every intimate and 'informal' living setting of children.

In particular, it is very difficult to tackle domestic violence, especially in countries where the collective imaginary considers the relationship between parents and children as a 'private affair', leaving to the formers absolute power on the latter's.

The situation can improve only if the civil society is sensitised about the issues, and ready to react (and to exercise pressure) against episodes of diffused violence and abuse; only when some attitudes, rather than being considered part of the 'tradition' or the 'common practice', start to be perceived as unacceptable.

For this reason, consistent efforts should be made as a start to **address the public opinion**, raising awareness on the unfairness and harmfulness of abusive practices against children.

Such efforts should be accompanied by campaigns of **training for duty bearers** in public care on children rights and entitlements. This capacity building should promote the set up of **referral units**, to give children the possibility to register complaints regarding episodes of violence, and to provide them with the appropriate assistance for recovery.

All the possible support should be finally given to the revision of existing legislation, defining in particular **enforcement measures** able to ensure the application of standards and principles adopted.

2.4. Street Children

Numbers and Trends: Available Information

The most exposed to violence and abuse are 'street children';⁶⁴ their presence is one of the 'expected' results of some trends registered in the society, such as the weakening of family bonds in a context of strong emigration, the endemic poverty, and the delays in the reconstruction of the social welfare system. Are included in this category not only homeless children - who seem to be the minority in Azerbaijan - but also children spending the most of their day time on the street, generally not attending school and engaged in various forms of labour.

Also in this case, the Government hasn't promoted so far official surveys. The three main sources of information identified for this research are:

- ⇒ the Department of Prevention and Prophylaxis of Adolescents of the Ministry of Interior, reporting data from the transit centres where children caught by the police are temporarily kept. Every year 500/600 cases are registered in Baku (including multiple registrations of children restrained several times) and around 60/70 in Ganja;
- ⇒ the only drop-in centre "House of Light", where around 300 children circulate periodically;
- ⇒ the research study of the NGO "Azerbaijan Children's Union",⁶⁵ where the surveyed universe is composed of 495 children, located in several towns (Baku, Sumgayit, Ganja, Lankaran, Nakhchivan, Julfa, Sadarak).

Given the life style of the Azerbaijani society, it is reasonable to think that street children be largely diffused only in urban areas. From the information gathered, the dimension of the phenomenon can be estimated between 1,000 and 2,000 cases. Since it is not possible to compare data with previous periods, we can only register the diffused perception that the presence of children in the streets is growing in the years.

All day on the street, carrying huge weights, looking for food, fearing humiliation and having problems with the police

The challenges and risks to which street children are daily exposed can be understood reading the findings of the Azerbaijan Children's Union, here briefly reported⁶⁶ with some additional information gathered during direct conversations with some boys of the "House of Light" (Ali and the others).

Most of the children have parents (85%), who frequently push them to go and work (30%); in some other cases they are obliged to work by other relatives or neighbours (14%). More than half of them declared to decide autonomously about their life style.

3 children out of 5 work all day long (10 to 14 hours), and in any case not less than 6 hours.

They are mainly involved in loading and unloading stuff (29%), petty selling (18%) or washing cars (17%). Ali and the others are pretty well organised in this sense: they keep the washing tools in their headquarter (a derelict and dangerous building downtown) and have arrangements with regular customers, making sure that the police don't interfere. The business, when is good, profits 1 dollar each per day.

Almost 1 every 10 children interviewed is a young prostitute.

The 84% started to work during the years of compulsory schooling (7-15).

⁶⁴ The term is generically used being aware of the ongoing debate on the appropriateness of the expression, which risks sound disrespectful of the dignity of children

⁶⁵ See "Azerbaijan Children's Union", *Social Research Study on the Problems of IDPs and Refugees Children and Teenagers, Children Deprived of Parental Care, from Vulnerable Families, Working and Leaving in the Street*, (English translation done by UNICEF)

⁶⁶ As already pointed out, information refer to the answers of 495 children

Nobody likes to work on the street, mainly because of the harshness of the work (27%), low income (21%), humiliation and abuse (20%).

Half of them spend the money to buy food, 8% bring the money home to pay for the rent. The other investments are for clothes (17%), computer games (9%), and cigarettes (6%). Two kids out of 100 think about buying things for school.

Narcotics seem not to be a major problem for street children, even though the tendency to sniff glue is increasing among them, as declared by the director of the "House of Light". The knowledge on possibilities of treatment for such addictions seems to be completely inadequate (the same person declared the intention to facilitate the submission of some children to a treatment provided by the hospital, consisting in the "cleaning of blood" – a one-time dialysis – which has notoriously no effect on the inhalation of solvents such as glue).

The main problem for them is the contact with police (31%). Ali and the others talked about being kept in the KPZ (police station) and SIZO (pre-trial isolation centres) for days. They kept repeating that they could be brought away by the police for any reason, even for no reason. They don't know what an 'advocate' is.

Other daily problems for kids are fights and beatings (22%), the cold whether (11%), hunger (7%).

Institutional Protection Paths. Gaps and Risks

As we saw, the most frequent contact that street children have with the State happens through the police. Brought to the transit centres, they are generally kept there till when somebody is not coming to pick them up (parents/legal tutors traced by the police). In other words, they are detained even when not suspected of any crime. The centres are run entirely by police; interventions of other social/education organisations seldom happen. Although reportedly not having detention functions, these centres are organised in rooms barely equipped with beds and toilets, and locked with gates and padlocks.⁶⁷

The Commissions on Minors are supposedly involved in the management of cases; however, during this survey they have never been mentioned, nor by the responsible of the transit centres neither by the children; this does demonstrate that they have no direct contact with children for protection purposes.

It is worth noting that another factor contributing to the increase in the number of street children is the deficiency of State regulations regarding school truancy: although education is by law compulsory, in practice there are neither measures to oblige parents to ensure the school attendance of their children, nor initiatives to monitor and assist drop-out cases.

Those among street children who don't have a family are sent to residential institutions⁶⁸ – the places from where generally they previously escaped, thus starting to leave in the street. They are in fact the main source of information on abuses inside residential institutions.

The only alternative option in Baku is represented by the two centres born by spontaneous initiative of NGOs: the drop in centre previously mentioned, and the group home "Place of Hope", that provides a shelter for street children and helps them to be re-admitted to school: despite being at risk to become a new institution (it hosts already around 40 children), the centre deserves attention for the positive attitude of its volunteers and their openness to find alternative solutions for children, in the awareness that institutions are not the appropriate solution for them.⁶⁹

⁶⁷ As personally verified during a field visit to one of the centres in Baku, during the previous mission in Azerbaijan (November 2004)

⁶⁸ But cases have been noticed in Baku where children have been directly transferred from the transit centre to the juvenile prison – physically contiguous – without following all the due legal procedures

⁶⁹ Few informal short-term fostering experiences have been initiated in the past in the group-home, even though this form of alternative care is not recognised and supported by the State. Without undermining the highly

Priorities in the UNICEF Perspective

«A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.»
CRC, Article 20

Street children are among those more exposed to risk of violence and abuse both in the street and in their contact with the public system.

Initiatives directed towards the **increased awareness of police** and other duty bearers on the rights of children – as recommended in the previous chapter – are to be prioritized.

On the other side, efforts should be made to increase the access of children to care services that can help them, hopefully, to re-start a 'childish' life, nevertheless avoiding to impose forced behavioural changes to them: experiences in other countries have demonstrated that in most of the cases it is not possible to intervene radically on the entire life style of children or of their families, and interventions of 'damage control' are more effective than the 'redemptive' ones.

In this sense, all the possible **support** to blossoming **initiatives of day care centres and group homes** are fundamental, pointing at ensuring the sustainability of such experiences with the mainstreaming into the public care system.

2.5. Children Victim of Trafficking

Numbers and Trends: Available Information

The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, particularly Women and Children (the Palermo Protocol) define trafficking in human beings as:

«the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other form of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs».

Trafficking in human beings - in particular young women - is an increasing problem in Azerbaijan. The country is both a place of origin for women trafficked abroad (mainly Turkey and UAE), and a transition route for third country nationals trafficked elsewhere. Although apparently in smaller numbers, your girls and children are also abducted from rural regions to town (in particular Baku) to be exploited by local traffickers (either as beggars or for prostitution).

The first attempt to study trafficking in persons in Azerbaijan was made by IOM in 2002;⁷⁰ the report presents a detailed profile of the victims and the analysis of trends. Children from poor or marginalized families, street children, children in residential institutions are all mentioned as particularly vulnerable categories exposed to trafficking.

appreciable initiative, it has to be noticed that children could be entrusted to a non-related family – even though for few hours or few days – only because of the total vacuum of State responsibility

⁷⁰ See International Organisation for Migration-Azerbaijan, *Shattered Dreams. Report on Trafficking in Persons in Azerbaijan*

Furthermore, «another indicator that trafficking in persons in the country might be increasing is the number of missing persons: there were 1,079 people registered as missing in 1999, 1,183 in 2000, and 1,209 in 2001. The alarming fact is that almost every fifth missing person is a child under the age of eighteen, and approximately 60 percent of the total number of missing persons are women. Although some progress has been achieved in detecting the whereabouts of missing persons (620, 704 and 734 in 1999, 2000 and 2001 respectively), there are still hundreds of people, including women and children, who could not be traced.»⁷¹

Since then, other reports have been produced by NGOs and the issue has been raised several times by newspapers, focusing on different aspects. A clear picture of the situation is provided by the report of AHFRO:

«Unfortunately, it is extremely hard to track down the actual number of trafficking victims and activities because of the covert operations, and no complete picture of trafficking in Azerbaijan has been drawn. (...) In 2004 the Women's Crisis centre and a number of other NGOs carried out a series of special studies on this problem. According to the studies which were carried out (...) in Baku city, Ganja, Shamkir and Mingechuar (...) 110 victims of trafficking were revealed, from which 73 women from 18 to 53 years old, 7 children from 12 to 13 years old, 20 adolescents from 14 to 17 years old, and 10 men from 30 to 40 years old. (...) The victims of trafficking most frequently are women who have been subjected to rape, including the 'dishonoured' girls, victims of sexual solicitations in the workplace, and single women who provide for their whole family, including often their parents and children.»⁷²

The most updated source of information is the report of the NGO "Clean World",⁷³ which conducted a survey with 309 victims, including 11 children. Reportedly, the number of women trafficked only to Turkey is around 500-600 in cold seasons, and increases to 2,000 in spring and summer.⁷⁴

The children involved in the survey, with an age from 10 to 13 years, were involved in street begging, have been almost always sold by parents, relatives or neighbours; half of them are refugees; the large majority has been forced to use drugs, all the girls and some boys declared to have been raped.

Numbers are not particularly alarming for children; much more alarming is the cruelty of episodes and the level of violence they are submitted to.

The results of the fight against trafficking slowly start to be promising: as reported by the Government⁷⁵ the persons convicted for the involvement of a minor in committing a crime were 4 in 2003, 1 in 2002, 3 in 2001; convicted for forced prostitution of a minor: 6 in 2003, 11 in 2002, 5 in 2001; convicted for child trafficking: 6 in 2002, 1 in 2000 (other years are not reported). After the approval of the Counter Trafficking National Plan of Action, reportedly 33 episodes of trafficking have been discovered, 48 persons have been tried and 150 victims have been sent to treatment.⁷⁶

Institutions as children markets?

⁷¹ *Ibid.*, page 36

⁷² Azerbaijan Federation of Human Rights Organisation, OMCT, *op. cit.*, chapter 4.3, pages 16-18

⁷³ See NGO "Clean World", *Brief report on the Survey of Victims of Human Trafficking Conducted by the "Clean World" Social Union for Civil Rights, with Assistance of the John Hopkins Institute*

⁷⁴ The report focuses on routes, practices and profiles of victims, often reporting sensitive information on the involvement of public officials

⁷⁵ See United Nations Secretary-General's Study on Violence against Children, *op. cit.*, question 53

⁷⁶ See the briefing to the press of the Minister of Interior, reported in the newspaper "TURAN", 02.12.2004. the cited numbers don't find a confirmation in particular related to treatment

A particular place within the discussion on trafficking has been reserved to an episode that attracted the attention of media and of the public opinion: in 2004 four physicians and two caregivers working in one baby home have been charged with illegal trafficking of children for adoption purposes. Allegedly, they have been accused of 'selling' 186 children to foreign families (mainly American and Israeli) willing to adopt them, without following regular procedures and receiving conspicuous payments. As a result, international adoption has been suspended in Azerbaijan. It should be noted that in any case, not having a final purpose of exploitation, such illegal adoptions should not be considered cases of trafficking.

In February 2004, during an interview to BBC, the Minister of National Security mentioned also the ongoing investigations on the case of a gang trafficking abroad small children for internal transplants, under the coverage of adoption and the request of expatriation permissions for the treatment of alleged diseases.

In a system where the legal tutorship is not strictly regulated, with no penal implications for the inappropriate guardianship over children, it goes without saying that children in institutions are the first and most exposed to trafficking and exploitation.

Institutional Protection Paths. Gaps and Risks

The new Criminal Code condemns as felonies slavery (including sexual slavery, art. 106), sexual abuse (art. 108) violence of sexual nature (art. 150), forcible sexual activity (art. 151), sexual intercourse or activity with a minor under the age of 16 (art. 152), coercion of minors into prostitution (art. 171), trade in minors (art. 173), coercion to engage in prostitution (art. 243) and maintaining a brothel (art. 244).⁷⁷ According to IOM, «despite improvements in the national legal system where trafficking offences are concerned, additional steps are required to fill the gaps in current legislation. (...) For example, although the Criminal Code considers organized crime to be an aggravated crime, because trafficking in persons is not specified as an offence, it goes unpunished even when committed by organized criminal groups».⁷⁸

As previously reminded, after recent acknowledgment of the emerging problem, the Government of Azerbaijan approved in May 2004 a National Action Plan to Combat Trafficking in Human Beings, prepared with the support of OSCE and IOM, which led to the creation of the Counter Trafficking Unit coordinated by the Deputy Minister of Interior.⁷⁹ The unit has not produced yet an official report.

Victims are in most of the cases seized by police at the frontier. On the other hand, internally trafficked persons are usually segregated in brothels; allegedly, their location is often known, but interventions of the public security authorities seldom happen – despite the Criminal Code's provisions.

No institutional system whatsoever is in place either for protected repatriation, or for shelter in-country. The experiences of assistance to victims of trafficking come from NGOs (in particular "Clean World"), with a consistent involvement of IOM, to which the same Government authorities have recourse when an intervention is deemed required.

⁷⁷ For a more detailed description of the legal framework see IOM, *op. cit.*, page 41. Reportedly, in 2002 90 people have been punished under Article 244 and 37 under Article 243. No criminal cases have been heard under the other mentioned articles

⁷⁸ *Ibid.*

⁷⁹ See note 11

Priorities in the UNICEF Perspective

«States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.»
CRC, Article 35

The problem of internal and external trafficking of minors for various exploitation purposes, in a country where the networks of protection of minors are weak, should not be underestimated.

Given the complexity of the phenomenon, that more than others has an international dimension, and requires a strong inter-governmental cooperation; and in consideration of the role played by other international actors, at present a specific role of UNICEF in the counter-trafficking task force is not envisaged.

This doesn't obviously want to be a misjudgement of the importance of the issue, and of the need to increase the protection efforts towards vulnerable groups. Therefore, all the possible forms of **coordination** with national and international agencies, and of **advocacy** for the multiplication of all forms of assistance to young victims, are recommended as part of the UNICEF mandate.

2.6. Children in Conflict with the Law

Numbers and Trends: Available Information

According to the *Statistical Yearbook*, the share of population convicted in Azerbaijan - not necessarily coinciding with the total number of criminals - is not particularly alarming (1.4 per thousand in 2003, or a total of 11,827 cases); it rather raises some questions on the efficiency of the methods to pursue criminality.

Out of all the offenders, the ratio of minors is the 2.3 percent. If compared with other countries, this percentage seems to be higher;⁸⁰ this can be explained by the high share of youth in the composition of the population, but could be also sign of a more repressive attitude towards minors.

In absolute values, the minors condemned for a crime in 2003 were **269**, out of a total of 412 incriminated. At present, **64** boys are detained in the only juvenile detention centre operative in the country (no girls are currently detained in the women's ward attached to the juvenile prison).

Children are condemned to detention also for minor crimes such as petty thefts – as verified during the visit to the detention centre, and reported also by the NGO "EI".⁸¹ The severity of verdicts doesn't match with the relatively small number of detainees: in case of a penal condemnation, no conditional release measures are foreseen at least at the beginning; therefore, the difference between the number of minors condemned and the number of young detainees couldn't find an explanation. Although there is no clear evidence, it can be

⁸⁰ For example, in Italy in 2002 the total ratio of citizens convicted is much higher than in Azerbaijan (5.5 per thousand) but the ratio of minors among the convicted population is almost half (1.2%). The calculation is made on crude conviction statistics data; according to the UN *Seventh Annual Survey on Crime*, the crime rate for the combined total of all index crimes recorded by police in Italy is 2.9 per thousand, i.e. a medium rate compared to other industrialised countries (4.1 per thousand in the USA, 4 in Germany). Additional comparisons would be needed to further substantiate the conclusions

⁸¹ See Centre of the Programme for Development "EI", *op. cit.*, page 13. Also during the conversations held with the coordinator of the NGO, it was repeatedly underlined that in most of the cases young offenders are given the maximum of the penalty foreseen by the code

assumed that the possibility to end up in jail depends on the personal 'negotiation' capacity (since the presence of lawyers doesn't seem to be particularly relevant, as reported in chapter 1.2.2). As a confirmation, the majority of detainees is described as «young, poorly educated, socially deprived and emotionally traumatized».⁸²

Separate attention has to be given to the children detained in the "isolators" where suspected criminals are sent during investigation (SIZO). We know that 2,226 persons are at present imprisoned in the three centres, including **30** minors.

No information is available on the number of cases temporarily kept in police station (KPZ) and released after few days – treatment often reserved to street children, as frequently declared by the children themselves.

From official statistic reports we also know that, in 2003, **672** children have been registered by police as 'warned' or kept under control for preventive purposes.

Institutional Protection Paths. Gaps and Risks

The juvenile justice system and the roles covered by all the actors involved have been already described in chapter 1.2.2. Here some reflections will be added, with the intention to underline some particularly sensitive aspects.

The conditions of the juvenile detention centre are not matter of particular preoccupation – especially if compared to other institutions in the country: boys sleep in groups of around 10 in open rooms; during the day they are involved in working and educative activities; they can practice sport in the internal courtyard, and personally arranged a room for prayers.

The only disquieting exception is represented by the two isolation cells where young offenders are indistinctively kept during the first two weeks of imprisonment, described as a period of 'quarantine'; reportedly, when arriving from SIZO (i.e.: all the offenders have been previously detained in SIZO) they are infested by lice and other parasites, are often affected by scabies, and need to be medically treated before joining the others; no more details are necessary to evaluate the life conditions in such places. The quarantine is also considered a sort of 'observation' period to understand the personality and the specific problems of each child. On the contrary of all the other spaces, the two rooms are locked with double doors and with no windows facing the external.

As declared by the director, in the detention facility there is a diffused need for psychological support and legal advice: what young offenders need to cope with is not related to the conditions of treatment at present; what is instead difficult to accept is the often unfair path that brought them where they are.

Natik and the others

During the visit to the juvenile prison an informal 'focus group' was organised with 6 young offenders, with the observing participation of the director.

The boys have been asked to say their age (from 15 to 17) but nor their names neither the crime they committed. Such information was spontaneously given during the conversation.

Natik spoke first, answering to the request to describe the path that brought him to the detention: arrested by the police when he was 16 (the offended person who denounced him recognised a scarf on his hand), he has been interrogated by the police in KPZ for 5 days. He saw the lawyer provided by the State at the beginning, but didn't receive any assistance from him, also when brought to the office of the Public Prosecutor. There he was informed of the crime he was charged with, and transferred to one SIZO for 3 months. The conditions of the building were lousy and unhealthy, so he was transferred to another SIZO for 4 additional months. No lawyer assisted him during this time. He saw the lawyer again in court, where he was condemned for bag-snatching: 8 years of detention. The time spent in SIZO was deducted from the final condemnation.

⁸² *Ibid.*

The others told similar stories; in two cases they never saw a lawyer. The one with the longest punishment was involved by his father and his elder brother in a *vendetta* homicide; condemned together with the other two, he has been sentenced to 10 years because of his age.

Almost nobody sees parents: they come from remote areas of the country, and it is difficult for parents to reach them. One of them is Iranian, was arrested at the border while smuggling drugs. He would like to be extradited to Iran, and serve the penalty close to his family; but he couldn't find a lawyer assisting him in the request.

Natik speaks few words of English, would like to continue to study it and learn how to use computers; once out of jail he would like to join the army. His eyes lost already all the fear, the desperation, and the anger that he felt before; he learned at 16 years that sometimes the price to be paid for a mistake is very high, and that is better to subdue rather than being broken.

With referral to the detention in KPZ, it is worth noting that according to the new Criminal Procedural Codes:

- (i) citizens can be arrested only under the sanction of a judge;
- (ii) unsanctioned detention time is limited to 48 hours;
- (iii) minors arrested have the right to: be informed about the crime they are accused of; refuse to make a statement; be represented by a defender; benefit of the participation of parents/legal tutors to the interrogation.⁸³

It must be noted that even the new regulations don't safeguard the principle of the presumption of innocence (preventive detention measures are not restricted to particular cases, such as the risk of running away of the presumed offender or the risk of tamper with evidence); nonetheless, there is a diffused knowledge, testified by the numerous stories of children directly involved, that such prescriptions are openly and constantly disregarded.

Particularly worrying is the treatment inside SIZO: the preventive detention measures applied are once again conflicting with the principle of presumption of innocence for anyone until proven guilty. On the contrary, the pre-trial detention appears to be based on the assumption of guilt; article 434.1 of the Criminal Procedural Code states: «The application of restrictive measures of arrest to a minor *suspected* or accused shall be admissible only if he is charged with a violent, serious or grave offence»; indicating that, in practice, police, public prosecutors, and judges of preliminary inquiry are implicitly authorized to pronounce their sentence before the action in court. Furthermore, the children themselves tell us that the criteria applied for detention are much wider than these, and that the maximum terms of detention (6 months) are recurrently not respected.

Another consideration: answering to the UN Questionnaire on Violence (question 6), the Government of Azerbaijan declared: «Criminal Code of our State doesn't permit corporal punishment as a type of penal sanction». On the contrary, article 37.1 of the Criminal Procedural Code states: «Causing of harm at detention of a person (...) if all different ways of influence have not given necessary results and the order is not exceeding the necessary measures, shall not be considered a crime».⁸⁴

In general, it is evident that no specific measures are in place to ensure the State protection to children in law enforcement and juvenile justice systems: no special rules have been laid down governing police treatment of juveniles arrested by police; police custody is not used as the last resort and for the shortest period of time, neither is the pre-trial detention; although compulsory, the presence of a third party is not granted during the questioning of a juvenile by police; the presence of parents or other primary caregivers is allowed but not obligatory in the same circumstances; no special rules are set up for the questioning of

⁸³ See Republic of Azerbaijan, *Criminal Procedural Code*, article 432

⁸⁴ The excerpt is literally reported from the translated version of the Code available at the American Bar Association

juvenile; no explicit rules require the separation of children from adults during police or pre-trial custody; children detained by police are not grouped according to the severity of alleged crimes or vulnerability (gender, age, psychological state); no rules are governing the use of force against children in police custody; no mandatory mechanisms are in place to enable a child (or parents) to register complaints or concern regarding violence and abuse while in police or pre-trial custody, as well as regarding violence on the part of detention staff or co-detainees; the State doesn't require training on children rights to police officers/detention staff in general; few measure regulate the justice system for minors (the maximum condemnation is 10 years for any crime, but no specific reduction or conditional releases for minors are in place); sentences involving the deprivation of liberty of juveniles are not considered the measure of last resort; mandatory unannounced inspections of detention facilities are not made; not specific measures are in place for offenders who have been victims of violence.⁸⁵

The only entities collecting complaints on rights violations are the Office of the Ombudsperson – where three persons have to monitor at national level the respect of human rights in all settings – and the few NGOs active in the sector of juvenile justice. They can report on verified cases, but don't have the power to intervene directly on the abusive environment. As a consequence, citizens in general - and minors in particular – are *de facto* deprived of any possibility to claim for the respect of rights recognised in the national legislation.

The fault of mothers will fall on their babies

It deserves particular attention the situation of the babies of detained women. If a woman is sentenced to prison during her pregnancy, or when she has a baby, she is allowed to stay with him/her till the 3rd year of age. Mothers with babies are hosted in a dedicated room with a small kitchen attached. After the 3rd year, babies are separated from mothers and given in custody of relatives (generally not the fathers) when possible; otherwise, they are sent to residential care institutions.

The contact of children with imprisoned parents is regulated by the Punishments' Execution Code according to the gravity of the punishment: the more serious is the crime committed, the less is the time conceded for family contacts. In this way, the punishment of parents is extended also to children.

Male prisons include small apartments where spouses and children can stay with fathers for a maximum period of three days (during which they cannot exit the detention area). The same possibility is not given to women.

Priorities in the UNICEF Perspective

«(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
(i) To be presumed innocent until proven guilty according to law;
(ii) ... to have legal or other appropriate assistance in the preparation and presentation of his or her defence»
 CRC, Article 40

The administration of juvenile justice in Azerbaijan is a major cause for concern, in particular re the compatibility with articles 37, 39 and 40 of the Convention on the Rights of the Child, as well as other relevant standards such as the Beijing Rules, the Riyadh Guidelines and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

UNICEF CO in Azerbaijan already established a close cooperation with several institutional and non governmental partners sharing the responsibility of dealing with children in conflict with the law. All the partners recognised the high level of sensitivity of the on-going violation of rights of children in particularly difficult situations, and that a strong improvement needs to be achieved in

⁸⁵ See note 61

the enforcement of a human rights approach when dealing with children and adolescents, in particular by the law enforcement institutions and duty bearers.

As a medium-term goal, UNICEF intends to support the government in a major overhaul of the juvenile justice system to bring it in line with international standards. Discussions within the context of the new Ten Year Human Development Programme, due to replace the current Poverty Reduction Strategy Paper next year are underway, with the intention of including juvenile justice as an item for Government priority for action and financing.

The actions of UNICEF in the short term should be focused on:

- ⇒ propose to the Government a programme of **training for policemen, judges and care/security personnel** on rights of children in conflict with the law, with the final aim to **set up proper referral systems** to assist children (both legally and psychologically) in their contacts with the law enforcement and justice environments; the initiative should lead in the long term to the creation of units dedicated to minors (in particular in tribunals);
- ⇒ support the already existing network of NGOs working in the sector of juvenile justice, thus increasing their presence within the detention centers and their function of monitors and referral units for juveniles;
- ⇒ advocate for the consistent revision of norms regulating juvenile justice, in particular with reference to the pre-trial detention measures, with explicit attention to the principle of the presumption of innocence.

2.7. Child Labour

Numbers and Trends: Available Information

Child labour is evidently diffused in Azerbaijan, especially if we consider informal networks and black labour, despite the legal boundaries of the minimum age for work at 16 years – 14 if authorised in writing by parents (!). There are no official reports on the matter, or surveys published by the Government.

Some hints on the exposure of children to work are reported in the chapter dedicated to street children (2.4).

More in-depth, the office of UN ILO is at present conducting a survey on different forms of child labour with the support of an international consultant, in collaboration with the State Statistical Committee. Findings will be published within this year.

Interesting data have been gathered during the survey on child labour in rural areas conducted by Azeconsulting, a confederation of private entrepreneurs.⁸⁶ The research covered 8 districts, focusing on the cultivation of cotton, and involved 601 respondents (181 children, 180 parents, 180 employers and 60 teachers).

Out of the universe of children interviewed, the 49% are less than 16 years old; the large majority live with both parents, and in families of 4 to 6 members. 15% of them are completely out of school (11% with compulsory-school age): some of them started to work at 8 years. The majority works while going to school, and is involved in seasonal work (81%) - depending on the crop and not on the school calendar. Most of them (65%) have been sent to work by parents, due to the difficult economical situation of the family (mentioned in the 82% of cases, which means that the same reason motivates also large part of those who

⁸⁶ See Azeconsulting, *Qualitative Survey on Child Labour in Agriculture in Azerbaijan* – paper in original language, summary of findings available at UNICEF

decided autonomously to work). The large majority (but not all) receives a regular salary (87%); half of them give all the money to parents (52%), 11% keep the income all for themselves. 94% lamented the risk of getting sick due to the cold temperatures and the lack of gas and electricity in the work place.

As far as the entrepreneurs are concerned, even if it is commonly recognised that, especially for some harvesting activities, children are the most requested (due to their size and agility) the 52% of respondents declared that they are against child labour. The 71% are not informed about the legislation regulating child labour in Azerbaijan, and almost all would like to be more informed about it.

Parents declared in the majority of cases that the economic situation of the family stringently depends also on the work of their children (71%); the 33% think that the work will have a positive influence on children's life, and the 38% the contrary: they are in equal measure concerned about the education and the health of their kids. One parent every two doesn't know about the existing legislation.

Institutional Protection Paths. Gaps and Risks

From the information reported above, it is obvious that (i) child labour is considered a common practice, and doesn't raise high concern on adults; (ii) as previously mentioned, the total lack of power of education services in ensuring the attendance to school of children facilitates the development of child labour; (iii) no control is exercised by the State on enterprises re the infringement of the legislation on child labour.

As far as black market is concerned, the children involved have a complexity of characteristics that would require the protective intervention of the State beyond the problem of labour (street children, victims of trafficking).

However, a much deeper analysis is needed to identify in an appropriate way gaps, risks and priorities.

Priorities in the UNICEF Perspective

«1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.»

CRC, Article 32

A specific role of UNICEF in the short term to contrast the proliferation of child labour is not foreseen at the moment.

Nevertheless, it is part of UNICEF commitments the continuous **coordination** with other international agencies involved, and the **promotion of advocacy initiatives** for the protection of children's rights to fully enjoy crucial years for the development of their potential.

2.8. IDPs, Refugees and Asylum Seekers

Numbers and Trends: Available Information

Last but not least, deserves attention the situation of children obliged, together with their families, to live as IDPs, refugees and asylum seekers; a particular consideration is paid to these groups of population in Azerbaijan. According to the State Statistical Committee, currently there are 576,200 IDPs in the country; taking into account the refugees from Armenia, the figure reaches the 800,000.

As reported by AFHRO: «The majority of them have been living in miserable conditions for almost ten years. Around half of IDPs live in urban areas, most of them in Baku, and generally in dilapidated, overpopulated public buildings. As of February 2002, over 50,000 IDPs have been living in camps, 33,000 in pre-fabricated housing, 34,000 in earthen dugouts, 10,000 in train cars and the rest in dormitories without communal facilities, in public buildings, in unfinished buildings or in other intolerable and inhumane conditions. 52.3% of the people living in such conditions are women, and 34.6% children».⁸⁷

The assistance to IDPs and refugees constitutes a sector of intervention *per se* in Azerbaijan, going beyond the activities related to child protection. Relevant analyses are included in other documents linked to specific activities implemented by UNICEF in favour of IDP and refugee children. Moreover, given the complexity of needs of this part of the population, and the involvement of several organisations in providing assistance to them - starting from the Committee under the responsibility of the appointed Deputy Prime Minister, and continuing with UNHCR and the ICRC – no further analysis is included in this report.

As far as asylum seekers are concerned, it is worth mentioning the situation of the group representing the large majority (85%) in Azerbaijan: the Chechens.

By May 2004 the number of officially registered refugees from Chechnya was 8,204.⁸⁸ Dissimilarly from other nationalities seeking asylum, they are not given the official status of refugees: the only document they are provided with is a letter stating that they are within the sphere of interest of UNHCR, and thus cannot be deported from Azerbaijan.

As reported by UNHCR, the number of Chechen children recorded in the organisation's active caseload as of the 1st of January 2005 is **3,391**, out of which around 2,600 in school age.

Institutional Protection Paths. Gaps and Risks

Thanks to a recent agreement with the Government of Azerbaijan, among asylum seekers also Chechens do have access to education facilities. Other than that, given their undefined status, they cannot apply for assistance of any other kind.

In the total absence of a protection network, they are exposed to various menaces. In particular, children without parental care are unofficially kept under the tutorship of relatives or neighbours, but no authority is in the condition to verify their status and the appropriateness of the arrangement. As a result, they can easily disappear without leaving tracks, being thus exposed more than others to the risk of trafficking.

UNHCR is reportedly increasing the efforts to trace and monitor the situation of such children, while trying to make up for the existing institutional gap with the range of assistance forms.

Priorities in the UNICEF Perspective

«1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.»

CRC, Article 22

The responsibility of providing assistance to refugee and asylum seekers stays by mandate within UNHCR. UNICEF started recently to implement a project to provide mine-risk

⁸⁷ AFHRO, *op. cit.*, page 11

⁸⁸ See Human Rights Center of Azerbaijan, FIDH, *op. cit.*, page 18

education and psychosocial support to IDP and refugee children, with specific attention to landmines survivors.

With regard to the situation of Chechen asylum seekers, UNICEF should verify the possibility to strengthen the collaboration with UNHCR in assisting children deprived of parental care, in particular: (i) conducting a detailed assessment on their life conditions; (ii) providing referral services and psychological support to this specific group of children as needed; (iii) contributing to draft an advocacy paper addressed to high rank officials, to sensitise them on the risk for such children to become victims of trafficking and exploitation, and propose possible solutions that can overcome the impasse related to their particular situation (for instance the enlargement of the access to basic welfare services for all the children temporary living in the country, not depending on the regularity of their status).



3. Conclusions and Recommendations

«**We are the world's children.**

We are the victims of exploitation and abuse.

We are street children.

We are the children of war.

We are the victims and orphans of HIV/AIDS.

We are denied good-quality education and health care.

We are victims of political, economic, cultural, religious and environmental discrimination.

We are children whose voices are not being heard: it is time we are taken into account.

**We want a world fit for children,
because a world fit for us is a world fit for everyone.»⁸⁹**

Children are the most important heritage of humanity. Providing them with all the necessary support to enjoy their childhood and develop their full potential it is not only a duty to which State parties committed while ratifying the Convention on the Rights of the Child; it is the only way for each society to ensure its own progress. This is true in Azerbaijan as in every other nation of the world.

Some children need more attention than others, since their exposure to threats and abuses is higher – either because they grow up in an unstable environment, with no sufficient protection networks, or because the adults they have to deal with don't see as a priority the best interest of children.



This is particularly true in Azerbaijan for:

- ⇒ more than **26,000** children deprived of parental care, out of which **2,530** live in residential facilities;
- ⇒ more than **20,000** children spending the most of their time in public institutions, although having a family;
- ⇒ more than **43,000** children registered with a disability or an invalidating disease, of whom around **5,900** are known to attend special schools, and more that **8,000** are entitled to receive education at home; the destiny of the others is not known, especially of those with severe disability, to whom the access to any form of education is denied;
- ⇒ an **undefined number** of children – especially young girls - victims of violence at home, at school, in the neighbourhoods, in institutions, in public security facilities;
- ⇒ **1000/2000** children living and working on the street, and therefore becoming easy victims of recurrent abuses and forms of exploitation;
- ⇒ an **undefined number** of children victim of trafficking, either in country or abroad, including those that due to their fragile living condition are exposed to this risk;
- ⇒ more than **1,000** children in conflict with the law or kept under control of public authorities for disruptive behaviours, out of which around **100** at present in detention centres (before or after the trial);
- ⇒ an **undefined number** of children occasionally kept in custody of the police;

⁸⁹ From *A World Fit for Us*, children's statement at the opening of the UN General Assembly's Special Session on Children, 8 May 2002

- ⇒ an **undefined number** of children exploited for labour purposes, with or without the consensus of their parents;
- ⇒ more than **300,000** IDP and refugee children, in particular those living in miserable conditions since years; more that **3,000** children seeking asylum.



The demand of protection addressed to the State authorities is as complex as the variety of lives of all these children. Seen from a human rights perspective, they are - as all children – holders of universal, indivisible, interdependent and inalienable rights. As stated in the Convention on the Rights of the Child, they should be granted these rights according to a principle of non-discrimination.

It is not possible to establish a 'hierarchy' of rights, and identify priorities in this sense; in other words, no one child mentioned above has 'more rights' than others, or less important rights. However, if we consider the entity and trends of phenomena, we can still identify some emerging problems.

Particular concern is provoked by the situation of **children in institutions**: the number is sensitively increasing in the last years, probably due to the fact that families in difficult economic situation seek for a more 'warranted' shelter for their children. But the solution is not more warranted in terms of affective relationships and development of coping skills, and the risk of being exposed to various forms of abuse increases.

Special attention should be paid to **children with disabilities**: the number of registered is strikingly increasing - but a reason for this could be found in the entitlement to the related State allowance. More disquieting is the fact that no forms of inclusion in the mainstream education system are foreseen, no matter what kind or degree of disability is affecting the child.

Even though numbers are not known – or exactly because numbers are not known - the diffused forms of **violence against children** (either at home, at school, on the streets or in institutions) should become a matter of concern for the community and for policy makers, as well as the traditionally accepted forms of **child labour**, in particular in the rural areas.

Last but not least, we should not forget the volatile situation of a large number of **IDP and refugee children**, including the **asylum seekers**, for whom – in addition to the traumatic consequences of being exposed to conflict situations – the possibility to settle down in a stabilising environment is denied.



Several institutional bodies are involved in the protection paths set up for children. The possibility for duty-bearers to perform successfully their role is seriously hindered by three factors:

- ⇒ the **lack of reliable data**, moreover of relevant breakdowns, indispensable instrument for policy planning and provision of services;
- ⇒ the permanence of **standardized procedures, centred on pre-formed answers** (i.e. the same answer provided to all those belonging to a given category) rather than on the individual needs of beneficiaries; in this way professional staff are induced to delegate responsibilities, and effective solutions tailored on the demands of children cannot be easily found. The more their requests are disregarded, the more they will develop ill-adjusted surviving forms, and their progressive marginalisation from the society will continue;
- ⇒ in general, **no human rights approach** is adopted, despite the efforts to change the laws; in other words, no accountability system is in place, and quality monitoring doesn't exist. In particular, more measures should be undertaken to ensure the

obligations that all the signatories to a UN Convention have re human rights:⁹⁰ to **respect** (i.e. to refrain from interfering directly or indirectly with the enjoyment of rights); to **protect** (i.e. to take measures that prevent third parties from interfering with the enjoyment of the rights); to **facilitate** (i.e. to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measure towards the full realisation of the right); to **provide** (i.e. to directly provide assistance or services for the realisation of the right).



Priorities

In terms of accountability measures and respect of rights, even though it is difficult to identify 'priority' gaps, it is worth focusing on some situations that deserve particular attention:

- ⇒ The **juvenile justice system**, and the related law enforcement institutions, seem not to be set up according to the best interest of children. In particular, the interaction with children in conflict with the law is based on an 'accusatory' pattern, rather than on the presumption of innocence. The absence of tribunals and special police sections for minors underline the low attention paid to the specific needs of children. Particular consideration should be given to the network of protection of victims of trafficking and exploitation; these girls and boys don't deserve to be punished twice because of the weaknesses of the institutional system;
- ⇒ further evaluation should be made on the practice of **home education**, by which children with disability or chronic diseases are segregated from their pairs, with no control over the quality of education. Furthermore, the list of disabilities and diseases on which the entitlement to home education is based highlights a preoccupying discriminatory approach;
- ⇒ more and foremost, **a crucial figure is missing in the system: the figure of social workers**, providing support to families and children while developing their coping skills, through the empowerment of the network of resources available at community level.



Actions

Children in Azerbaijan can see a promising change in the quality of their life, if there is a commitment from all sides (policy makers, professional categories, international agencies, NGOs) to multiply the efforts towards the improvement of the protection network. In particular, the action of UNICEF in the short and medium term should be focused at:

- ⇒ **Training of social services units on case management and networking methodology.** The whole process of reform of the child protection system can't be considered sustainable without the total involvement and commitment of social operators, who will orient their intervention in the direction of community based services. Their role will be to tutor families and children in need with direct, continuous and professionally qualified case management, through a case-by-case approach. The Commissions of Minors and of Guardianship and Adoption of the Executive Committees seem to be the most appropriate units to cover this role;
- ⇒ **Training of duty-bearers in law enforcement and juvenile justice system on children rights.** The final aim is to develop critical skills in the exercise of the aid relationship, and set up proper referral systems to assist children (both legally and psychologically) during the whole institutional protection path, also with the involvement of NGOs;
- ⇒ **Promotion of awareness raising campaigns focused on the social inclusion of children with special needs.** A strong change in the collective imaginary is

⁹⁰ According to the International Human Rights Law. For further development see Jonsson, Urban, *Human Rights Approach to Development Programming*, UNICEF, 2003, page 20 and following

necessary to stop the often discriminatory attitude towards children falling out of the parameters of 'normality' (disabled children, children coming from disruptive families, street children, young victims of trafficking and exploitation for sexual purposes). An improved child protection system can take place only in a 'welcoming' environment, where individuals do care for the destiny of persons with special needs as members of the same community;

- ⇒ **Improvement in the data collection and analysis** at all levels, to enhance the planning of innovative intervention centred on expressed needs. In this sense, the consistent and valuable work already done by the several NGOs active in the sector of child protection should be given the appropriate consideration.

«We stress our commitment to create a world fit for children
in which sustainable human development,
taking into account the best interests of the child,
is founded on principles of democracy, equality, non-discrimination, peace and social justice
and the universality, indivisibility, interdependence and interrelatedness of all human rights,
including the right to development.»⁹¹

⁹¹ From *A World Fit for Children*, adopted by the UN General assembly at the twenty-seventh special session, 10th May 2002

Annex I. Sources of information

The present analysis could be possible thanks to the essential exchange of information and opinions with all the persons met during the mission, to whom goes the deepest and grateful acknowledgment.

A particular thank you goes to all the children met during the survey, who contributed with their genuine thoughts and their live energy to the development of this document, and to whom this effort is dedicated.

A warm thanks also to Ms. Dilara Babayeva, UNICEF Child Protection APO, for her constant support and the provision of precious information; to Mr. Vugar Imamaliev, Child Protection Consultant, for the legal counselling and the analysis of various information sources; to Ms. Narmin Osmanli, Child Protection Assistant, for the impeccable organisational support throughout the whole mission; and to Mr. Siraj Mahmudov, Programme and Planning APO, for the revision of the document.

Last but not least, the mission benefited from trust of Ms. Hanaa Singer, UNICEF Representative, without whom the survey and the report would not have been realised; and from the sharp supervision and counselling of Ms. Gillian Wilcox, Senior Programme Officer.

Meetings and field visits

Here below is reported the agenda of the meetings, with a brief description of the issues discussed:

02-03-2005	Ms. Indira Hajieva	Head of the Department on Children Issues, Ministry of Youth, Sport and Tourism
<i>Issues discussed:</i>	Overall review of the child protection institutional system	
02-03-2005	Ms. Maryam Haji-Ismayilova	Project Coordinator, IOM
<i>Issues discussed:</i>	Child trafficking and counter-trafficking national plan of action	
03-03-2005	Mr. Hadi Rajapli, MP	Head of the Parliamentarian Permanent Commission on Social Policies
	Mr. Rajap Nuriyev	Legal Adviser to the Commission
<i>Issues discussed:</i>	Works of the Commission; update on draft Law n. 1-472 on correctional measures for children at risk of conflict with the law	
04-03-2005	Mr. Elmari Mamishov	Deputy Chairman, Azerbaijan Young Lawyers' Union
<i>Issues discussed:</i>	Juvenile justice system and the role of the Commission on Minors	
07-03-2005	Ms. Mehriban Heydaraligizi	President, NGO "Clean World"
<i>Issues discussed:</i>	Situation analysis of human trafficking in Azerbaijan and projects in place	
03-03-2005	Ms. Gulana Huseynova	Education APO, UNICEF
	Mr. Ray Harris	Education Consultant, UNICEF
<i>Issues discussed:</i>	Home education and pilot initiatives of school inclusion of children with disability	
07-03-2005	Mr. Aydin Hasanov	Director, Company "Azeconsulting"
<i>Issues discussed:</i>	Qualitative survey on child labour	
09-03-2005	Mr. Rza Allahverdiyev and other researchers	Head of Demographics Department, National Statistic Institute
<i>Issues discussed:</i>	Analysis of statistic reports 2004 and possible improvements	
09-03-2005	Colonel Kemal Imamverdiyev	Chief of Department of Prevention and Prophylaxis for Adolescents, Directorate General of Public Security, Ministry of Interior

<i>Issues discussed:</i>	Role of the police in the child protection system and referral mechanisms. Statistics on juvenile criminality	
11-03-2005	Ms. Leyla Ismailova	Coordinator, Centre for Psychological Counselling
<i>Issues discussed:</i>	Domestic violence and referral system	
11-03-2005	Ms. Kemala Agayeva	President, Azerbaijan Children's Union
<i>Issues discussed:</i>	Survey on Street children	
12-03-2005	Mr. Roberto Gutierrez	Community Based Initiative Consultant, UNICEF
<i>Issues discussed:</i>	Role of the Municipalities in the child protection system	
14-03-2005	Ms. Ayna Mollazade Ms. Lynn Geldof	Communication APO, UNICEF Regional Communication Officer, UNICEF
<i>Issues discussed:</i>	Communication strategies in the De-institutionalisation programme	
15-03-2005	Ms. Sudaba Shiraliyeva Ali, Anar, Faiq, Ravvan	Director, Drop in centre "House of Light" Children met in the drop in centre
<i>Issues discussed:</i>	On day in the life of street children	
16-03-2005	Ms. Elmira Alakbarova	President, NGO "EI"
<i>Issues discussed:</i>	The situation of detention centres and of children in conflict with the law	
16-03-2005	Mr. Nadir Ahmedov	Director, Institute for Children with disruptive behaviours
<i>Issues discussed:</i>	Referral and education measures in the institute	
17-03-2005	Ms. Bela Ismailova Mr. Diego Rosero	Assistant Protection Officer, UNHCR Senior Protection Officer, UNHCR
<i>Issues discussed:</i>	Minors asylum seekers and protection strategies	
18-03-2005	Mr. Nabil Seyidov	President, NGO "Reliable Future"
<i>Issues discussed:</i>	De-institutionalisation and school inclusion perspectives; national report of the NGO Alliance for Children's Rights to the CRC	
18-03-2005	Mr. Philippe Bertrand Ms. Rasmiyya Aliyeva	Responsible for the European Commission Budgetary Support, EC FSP Consultant on Social Issues, EC FSP
<i>Issues discussed:</i>	Targeted social assistance reform and support to de-institutionalisation	
22-03-2005	Ms. Vafa Mutallimova	Deputy Chief of Department of Targeted Social Assistance Policy, Ministry of Labour and Social Security
<i>Issues discussed:</i>	Targeted social assistance reform and allowances for social cases, children with disabilities and foster families	
25-03-2005	Mr. Imran Gubadov Natik and the others	Director, Detention Centre for Minors Minors at present imprisoned
<i>Issues discussed:</i>	Ms. Ayda Imamalyieva	Director, Detention Centre for Women Detention conditions, and the imprisonment process (arrest, investigation, trial, sentence)

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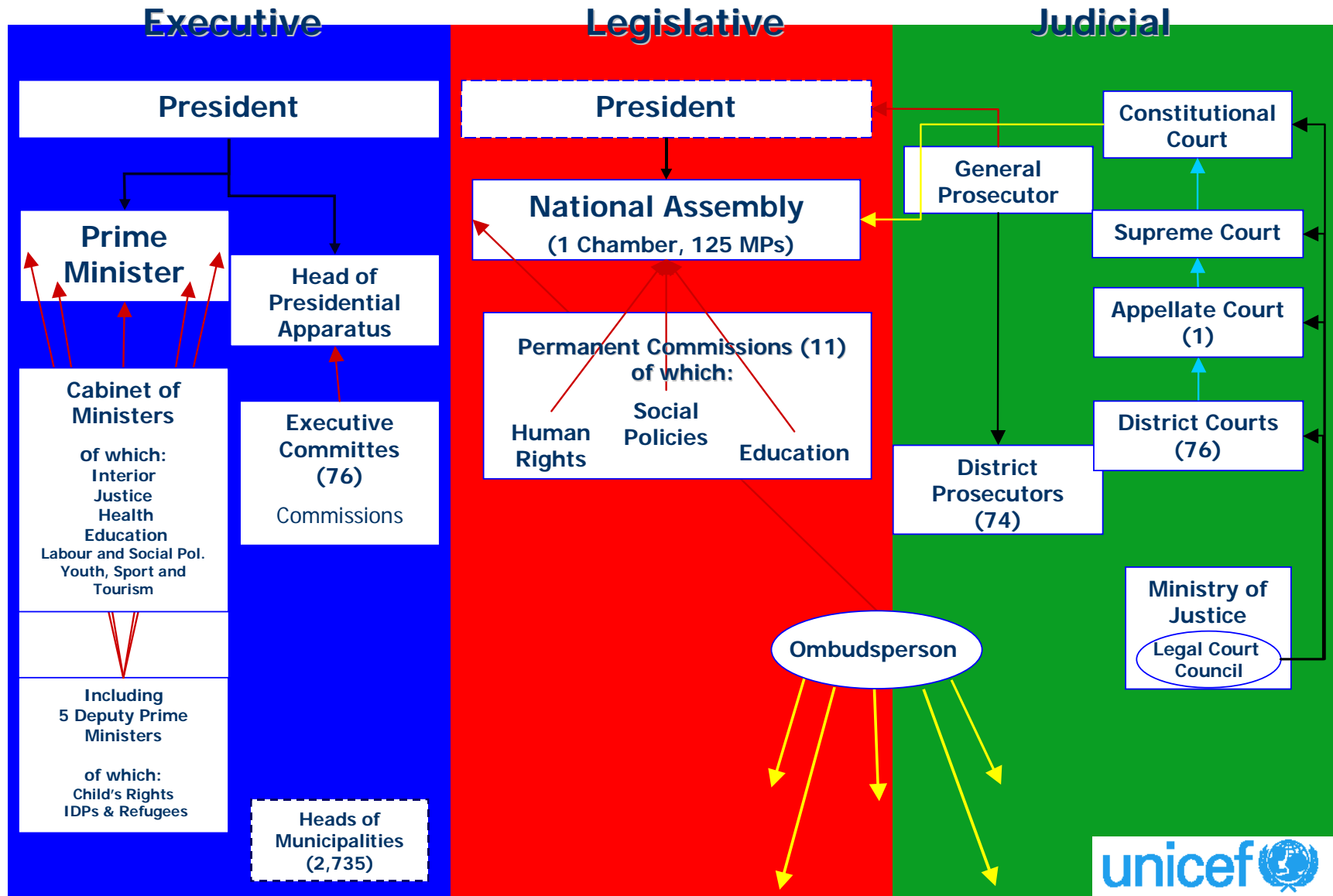
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Annex II. Maps and Flowcharts

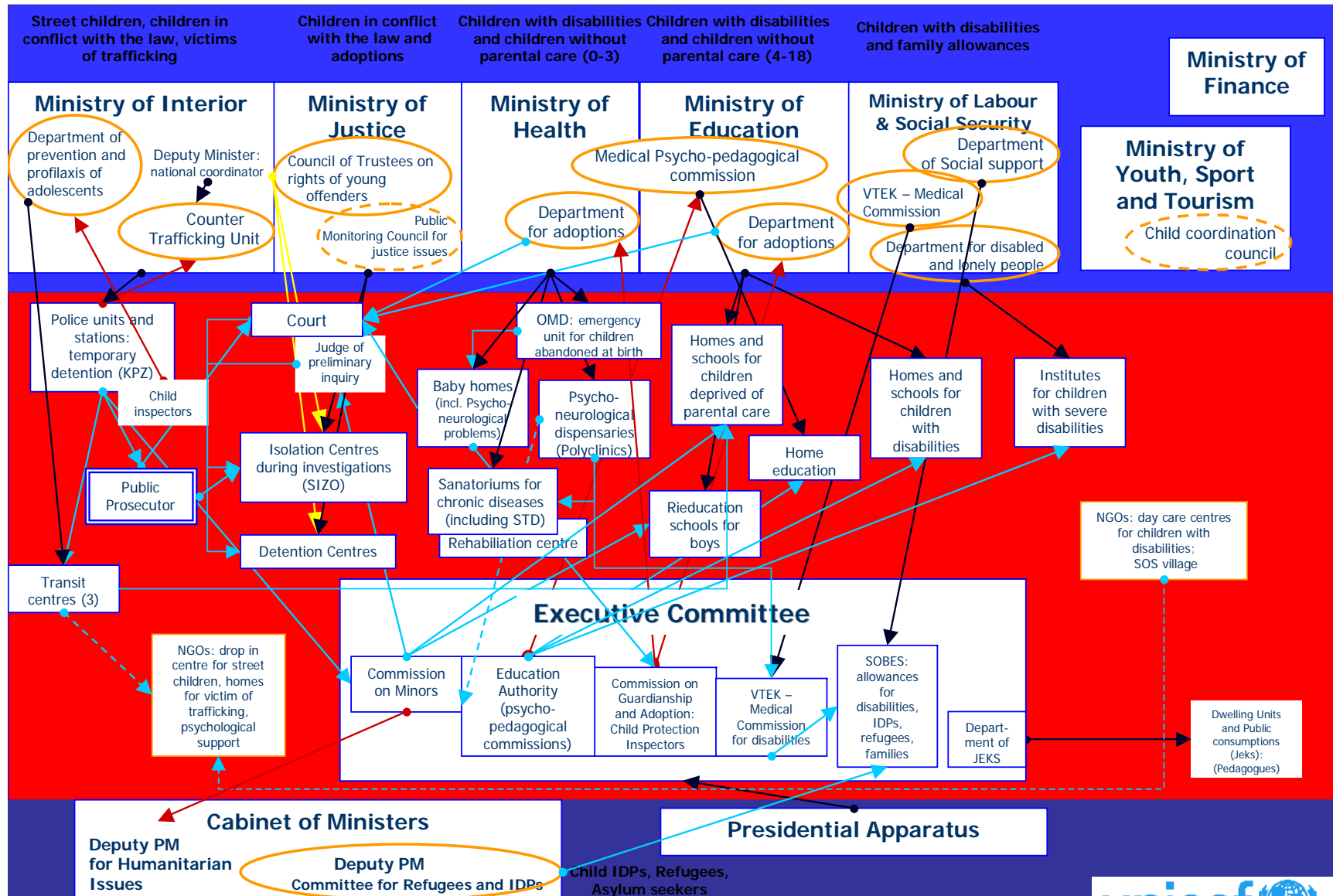
I. Republic of Azerbaijan: State Powers Relevant to Child Protection



Subordination, reporting, referral and monitoring lines



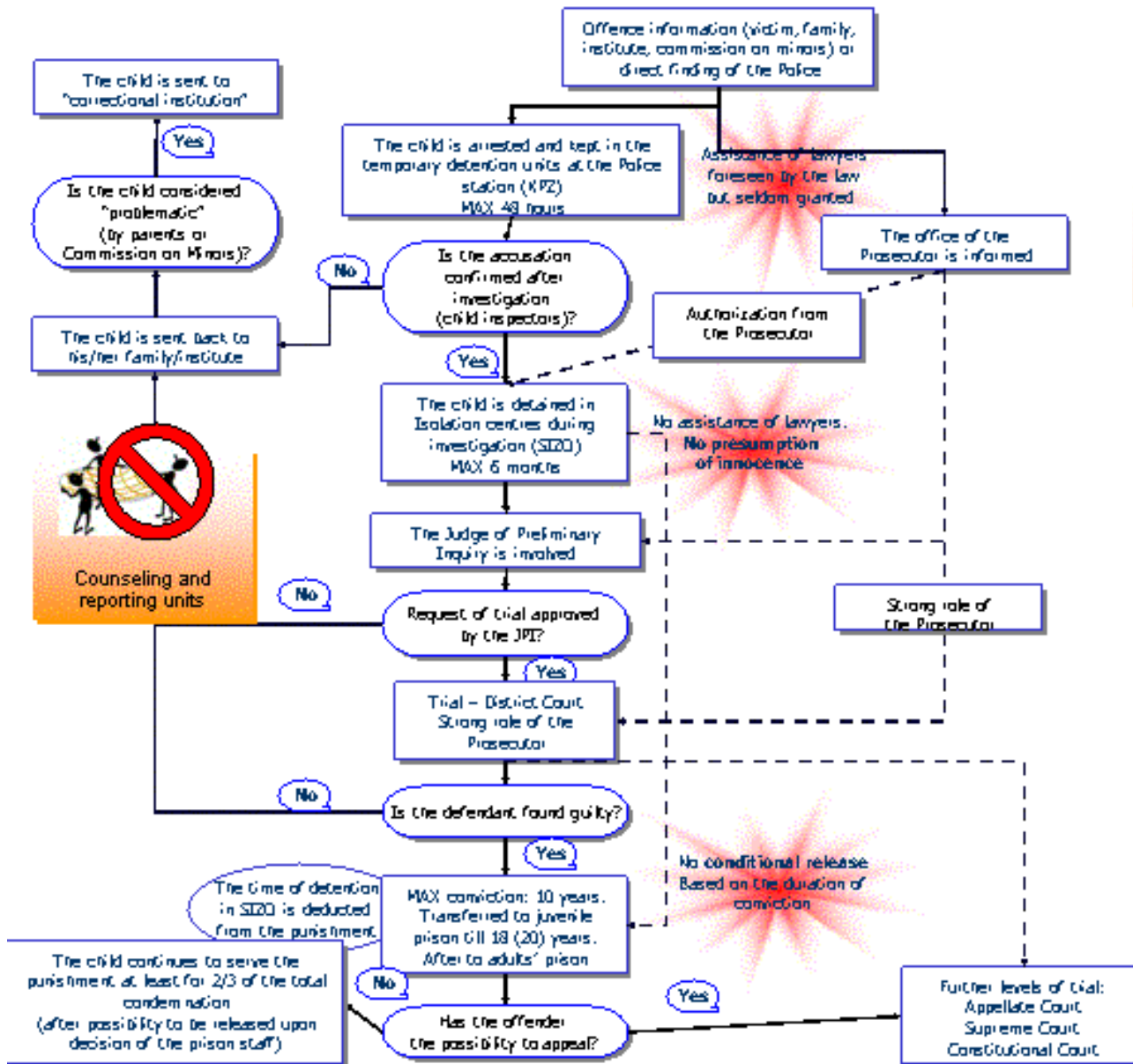
Republic of Azerbaijan: Child Protection Institutional System



National and District level. Subordination, reporting, referral and monitoring lines.



Flow chart: child in conflict with the law



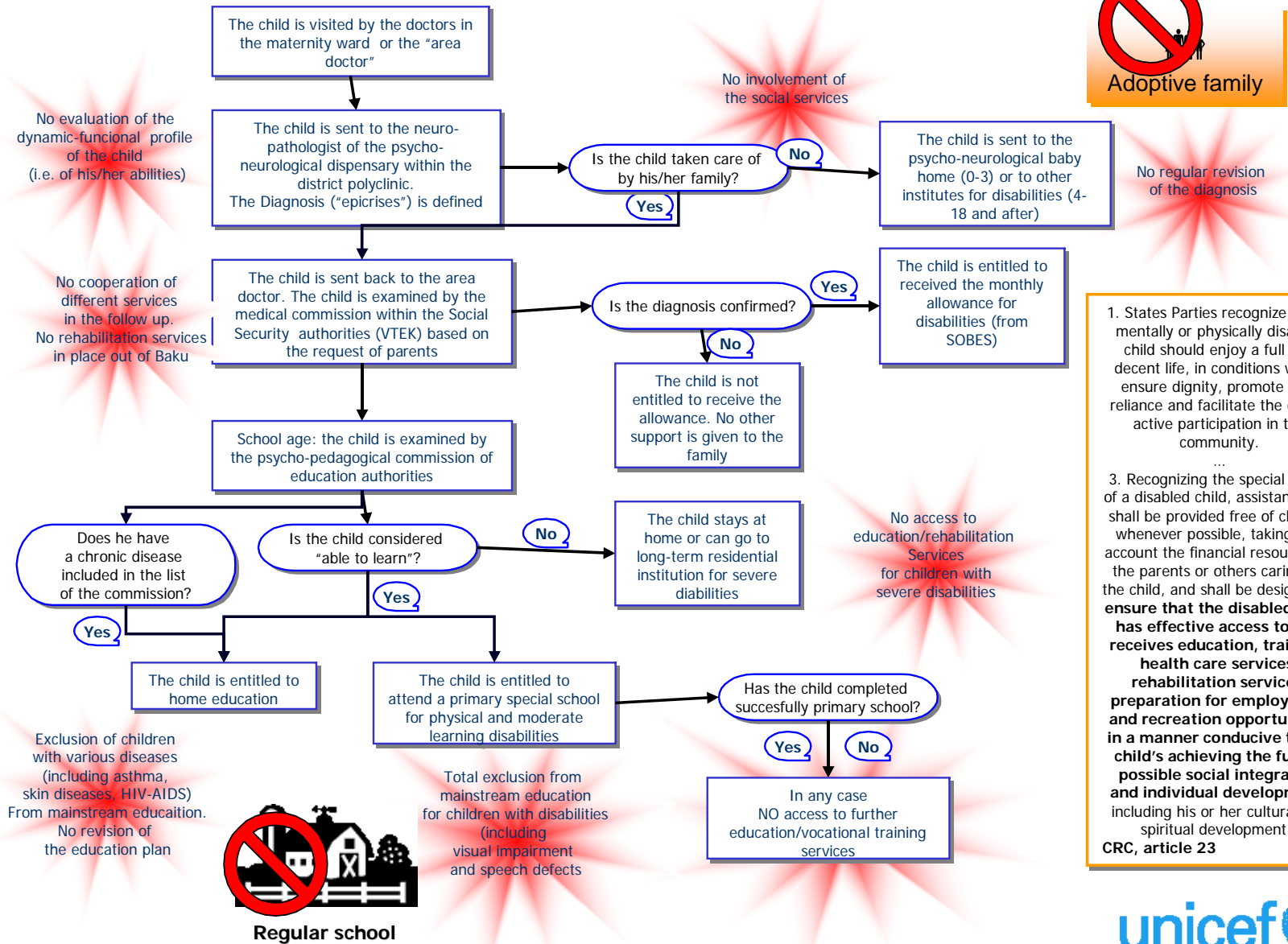
"States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

...
 (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
 (i) To be presumed innocent until proven guilty according to law;
 (ii) ... to have legal or other appropriate assistance in the preparation and presentation of his or her defence;"

CRC, Article 40



Flow chart: child with disability



1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

...

3. Recognizing the special needs of a disabled child, assistance (...) shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development."

CRC, article 23

