

# UNICEF Azerbaijan – UPR commentary

## October 2012

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### **I. Background and framework**

#### **(a) Scope of international obligations with respect to children**

Azerbaijan has signed and ratified the Convention on the Rights of the Child (1992) and the first two Optional Protocols (OPs)(2002), and has presented three reports to the UN Committee on the Right of the Child on the implementation of the Convention, as well initial reports on implementation of the Optional Protocols. Reporting quality and process has improved, and the most recent report was followed up by inter-ministerial and parliamentary meetings to discuss the Committee’s concluding observations.

Furthermore, Azerbaijan has signed and ratified the Convention on the Elimination of all forms of Discrimination Against Women (1995), and presented its 4<sup>th</sup> periodic report to the respective Committee in 2009. Azerbaijan has also signed and ratified the Convention on the Rights of Persons with Disabilities and its Optional Protocol. It submitted its first report in 2011.

#### **(b) Constitutional and legislative framework**

The entirety of Chapter III of the Constitution of the Republic of Azerbaijan is devoted to the rights and liberties of a person and citizen, provisions of which are in line with international standards and norms and also reflect many principles enshrined in the Universal Declaration on Human Rights and encompass rights belonging to both first and second generations of rights. The article of the Constitution that addresses non-discrimination (Art. 25) is the main legal basis for taking necessary actions to ban and prevent discrimination based on disability status.

Azerbaijan has a monist legal system so treaties are directly applicable and they are part of entire legislative system (Constitution of the Republic of Azerbaijan, Article 148), which means that individuals can invoke provisions of the international law, including human rights treaties such as the Convention on the Rights of the Child (CRC) before courts and administrative bodies, especially when it comes to the relevant articles that have a self-executing force.

According to the Azerbaijani Constitution (Art. 151), application of relevant international standards, particularly international treaties that are legally binding for the Azerbaijani State Party, has superior or higher hierarchy over national legislation, except the country’s Constitution and acts approved by a referendum.

Despite formal recognition of international human rights law and ratification of conventions, in practice we can observe that the State Party does fail in direct application of provisions enshrined in the Convention and enforcement of many norms.

In addition to the provisions guaranteeing rights of children to education, health, social protection, legal protection and other civil and political rights that should be equally applicable to children, there is a separate article in the Constitution emphasizing the special role of the State in protecting children:

**Article 17. Family, Children, and the State**

- I. Family as a basic element of society is under special protection of the state.
- II. Parents must take care of their children and their education. The state controls implementation of this responsibility.
- III. Children who do not have parents or guardians and are deprived of parental care are under the protection of the State.
- IV. It is prohibited to involve children in activities that may cause threat to their lives, health, and morality.
- V. Children under the age of 15 may not be employed for work.
- VI. The State controls implementation of children's rights.

**(c) Institutional and Human-Rights Infrastructure and Policy Measures**

General coordination of implementation of the Convention on the Rights of the Child and its OPs in the country is not effective due to a very fragmented system. Although there are two formally available mechanisms – the National Commission on Minors under the Deputy Prime Minister and the State Committee on Family, Women and Children's Affairs, both have limited coordinating mechanisms in practice. *Therefore it is highly advised to recommend to the government to strengthen the existing National Commission on Minors under the Cabinet of Ministers and establish its technical secretariat and sectorial working groups under the State Committee on Family, Women and Children's Affairs;*

The Human Rights Ombudsman Institution has an effective system of recording and investigating complaints on violation of children's rights as well as promotion of children's rights in general. Despite these efforts, the Institution is unable to focus and pay enough attention to implementation of the CRC. *Bearing in mind the importance of having a specialized independent monitoring mechanism for children, and in line with the recommendations of the Committee on the Rights of the Child in March 2012, it is recommended to consider establishment of such a mechanism within the existing NHRI, namely electing a Deputy Commissioner for Human Rights – a Children's Rights Ombudsman – with a broad mandate and independence (and similar immunities as provided to the Human Rights Ombudsman) as well as providing necessary human and financial resources for its effective functioning.*

## **II. Cooperation and Human Rights Mechanisms**

### **(a) Cooperation with treaty bodies**

As stated above, Azerbaijan has been regular in its reporting to treaty bodies. Submissions have been of increasing quality and follow-up has been increasingly well-managed. UNICEF has been a close and supportive partner to Government in meeting its reporting obligations as well as assisting civil society and the NHRI to share their opinion with the relevant Treaty Bodies.

### **(b) Cooperation with special procedures**

Azerbaijan has benefited from many visits of Special Rapporteurs, including on the Human Rights of Internally Displaced People (twice) and the Right to Health (in 2012). These visits have been facilitated by the Ministry of Foreign Affairs and have produced reports which although not always favourable, are considered seriously.

## **III. Implementation of International Human Rights obligations, taking into account applicable international humanitarian law**

### **(a) Equality and non-discrimination**

#### **Non-Discrimination**

There are a variety of groups of children who are subject to discrimination due to their different status – preeminent among these are children with disabilities (particularly those with mental disability), those without parental care, and those from an impoverished background and/or living in remote areas. There is even one set of legal provisions which supports discrimination – those which separate children with disability from the rest of society via policies and decisions that put them to be educated in separate educational institutions or “educated at home”.

### **(b) Right to life, liberty and security of the person**

#### **Protection from all forms of violence**

In May 2010, Parliament passed a Law on Domestic Violence addressing (*inter alia*) some elements of child abuse. Despite this important step, the law contains little concerning prevention, and also little on strategies to build capacity, develop knowledge and skills and build information systems, as well as establish referral and monitoring mechanisms to address better the issue of violence against children. In addition, it should be noted that while discussing and identifying implementation mechanisms, the Government should pay special attention to children, as they are the most vulnerable ones most affected physically and emotionally by violence in the home.

The Human Rights Ombudsman and UNICEF prepared a draft *Law against Corporal Punishment* in 2009 which has not yet been discussed in Parliament.

Some discussions on sexual violence against children have begun (largely at the impetus of the Council of Europe), but reliable data on this phenomenon are lacking. However, one can point to thousands of births to girls under the age of sexual consent as indicative of sexual violence against girls. Anecdotal evidence talks of sexual violence against male children living and working on the street.

The following recommendations are related to violence against children in different settings:

- *Prepare and implement a comprehensive multi-stakeholder action plan on preventing violence against children in all settings;*
- *Ensure that alternatives to institutionalisation cover all children in care.*
- *Mechanisms for reporting and referring violence in schools and for gaining redress should be strengthened as a matter of priority.*
- *Tools for preventing and responding to violence against children should be included into the teachers and health workers' training curricula.*
- *Ensure that school heads and teachers use non-violent teaching and learning strategies and disciplinary measures.*

### **(c) Administration of justice, including impunity, and the rule of law**

#### **Children living and/or working on the street**

More than half the children in street situations covered in a survey undertaken by UNICEF and the State Committee on Family, Women and Children Affairs had arrived in Baku from other parts of the country (or even overseas). In general, the study indicates gaps in the current system and highlights the living conditions and problems of children belonging to this group. For example, 44 per cent of the children are living with their families (while working on the street). The others explain they are living apart from family due to: poverty, unwillingness of parents to care for them; domestic violence; wanting to live alone; absence of parents. Another important finding is that the majority of children have been living or working in the streets for more than three years, which means that relevant governmental bodies to not undertake necessary measures to address their problem. Another problem which the children identified is that 50 per cent of them did not receive any education while on the street.

#### **Justice for Children**

Development of a system of justice for children and its incorporation into the overall justice system remains incomplete. UNICEF is assisting the Government in development and enforcement of laws and other regulatory normative acts on juvenile justice, as well as establishing child-friendly law-enforcement procedures and services including prevention,

diversion, probation and alternatives to imprisonment. The draft Law on Juvenile Justice has just been presented to Parliament for consideration in autumn 2012. The Government (Ministry of Internal Affairs) has shown interest in replicating the experience on “child-friendly police rooms” piloted by UNICEF with them, and is working towards taking over and funding the Diversion and Legal Aid Centres for juveniles established by UNICEF and partners on their behalf – the Government already provides the office space for these enterprises.

There are thirty police stations around the country which are authorised to detain suspects under the age of 18. They do not, however, have special rooms for children so children can end up detained in close contact with adults. Although assignment of adult detainees to juvenile cells is not a routine practice, it is sometimes used when juvenile detainees are “very difficult”. In addition, there are no programmes or services available to provide rehabilitation and recovery for child victims of torture or other cruel, inhuman and degrading treatment or punishment.

Following are major recommendations on issues that need to be taken into account by the Member State while reforming its justice system:

*To adopt a Law on Juvenile Justice and to introduce necessary mechanisms and institutional changes to ensure effective enforcement of the law, as recommended by the Committee on the Rights of the Child;*

*To ensure specialisation of judges, prosecutors and police officers to ensure proper administration of juvenile justice;*

*Diversion should be recognised and regulated by the legal acts. Diversion may also take the form of supervision, victim-offender mediation, or community service;*

*The Member State should incorporate training on child rights into the curricula of the institutions responsible for training judges, police, prosecutors and correctional officers;*

#### **(d) Right to privacy, marriage and family life**

A 2009 study of 19,711 women aged under 50 undertaken by the State Statistics Committee found that 37 per cent of currently married women had been married below the age of 18. A 2010 joint qualitative study on child marriages undertaken by UNICEF and the State Committee on Family, Women and Children’s Affairs shows an increasing trend in some regions of the country. The Family Code was changed in 2011 to increase the age at marriage to 18 for males and females, but “religious” (unregistered) marriages still occur at notably lower ages for girls. The number and proportion of births to women in unregistered marriage is rising. In 2011, there were almost 31,000 such births, 17.6% of all births. To note also that this is an increasingly rural phenomenon – ten years before, they accounted for 8.6% urban

births and 5% rural births, but in 2011 the proportions were reversed – 15.2% urban births and 19.9% rural births.

**(e) Freedom of religion or belief, expression, association and peaceful assembly, and right to participate in public and political life**

Respect for the views of children is very limited in all settings in which children are to be considered as actors. This is particularly true for the participation of children – particularly adolescents – in family life, and participation within schools and communities in general. Usually efforts of the governmental and non-governmental actors to ensure better participation of children in the life of the society result in the formal presence of children in different events/projects without meaningful interaction.

**(f) Right to work and to just and favourable conditions of work**

It is recommended that Azerbaijan implement legislative provisions ensuring access of persons with disabilities to the labour market. In particular, Azerbaijan should include provisions that prohibit discrimination on the basis of disability with regard to conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions. Also, Azerbaijan should include provisions to protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities, equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances. Moreover, Azerbaijan should include provisions for reasonable accommodation, equal opportunities and equal remuneration for work of equal value, and for protection from harassment, and the redress of grievances.

It is recommended that the official list of professions and trades “suitable for persons with disabilities” be abolished in its entirety.

**(g) Right to social security and to an adequate standard of living**

The country continues to reform its child care system through development of a legal and procedural framework for realisation of the reform and implementation of the State Programme on De-Institutionalisation and Alternative Care as well as piloting a local level child care mechanism in two districts of the capital city. However, the implementation process is very slow due to lack of coordination among key governmental bodies responsible for child care as well as inadequate social/family support mechanisms and the almost complete absence of community-based services for children without parental care or those at risk of being deprived of a family environment. In addition, there is no comprehensive child protection system at national and local levels that would help to develop necessary policies, or regulate/inspect activities of service providers. The main problem is the absence of integrated services at the local level and lack of social workers as a professional group. In

order to enhance implementation of the reform and achieve tangible results, the following recommendations might be considered:

- *To establish a dedicated unit responsible for Child Protection within the Office of the Cabinet of Ministers in order to improve implementation of the reform in all sectors;*
- *To adopt child care standards regulating implementation of the reform and the State Programme on De-Institutionalisation and Alternative Care.;*
- *To increase human, technical and financial capacities of local Commissions on Minors' Affairs and Protection of their Rights;*
- *To pay special attention to children under age 3, and all children with disabilities, within implementation of the child care reform and the State Programme.*
- *To establish network of new social services for children, enhance social protection and financial aid schemes to prevent further institutionalization of children.*

## **(h) Right to health**

### **Child mortality**

The right to life is unfortunately not assured for many children in Azerbaijan, where – according to official UN estimates, which are based on a projection of data from 2006 and before – a young child dies every two hours. Life chances are determined by whether a child is born in a rich or poor family, or urban or rural area. Using the same internationally standardised estimates, Azerbaijan's Infant Mortality is fifth highest in the Europe and Central Asia region (four Central Asian republics have higher rates), and six times higher than the EU average. These statistics are particularly disappointing when considered in relation to its quite high national income, but it should be considered that the economic growth was particularly fast recently, so one should not expect social progress to have been so rapid. Nevertheless, the resources are now in place to develop a new health system.

The health system is in need of a major overhaul. Some standards of care are developed, but no strong implementation and supportive monitoring mechanism is in place yet. There is a very high level of “informal payments” expected by health-care professionals (WHO estimates that 76% health-care costs are paid by private individuals even though in principle health-care is provided free of charge), which then provide a barrier to the poor to receive health care (a 2007-8 study showed 85% neonatal deaths occurred in families earning under 100 AZN a month, and only 5% in those earning 200 AZN or more a month). Meanwhile, a large proportion of the meagre health sector funding (only around 2% GDP is spent by

Government on health care) is spent on tertiary level care and buildings and equipment, rather than life-saving public health and primary health care services.

The difficulty of dealing with under-five and infant mortality is compounded by the fundamental disagreement between Ministry of Health and the international community over data. Administrative statistics routinely under-estimate mortality in most countries, and the use of the Soviet definition of a live birth adds to the problems. Nevertheless, the Ministry of Health does not agree that the mortality rates are as high as the international community maintains. The Ministry undertook a Demographic and Health survey in 2011, though without outside support and scrutiny, using the same questions and sampling as the 2006 survey which produced the internationally-accepted mortality estimates. The data from this survey are not yet available for scrutiny.

One of the fundamental system problems in the health system is the lack of health insurance provision, despite it being on the law-books. This means that services are commonly under-funded, and contribute further to the out-of-pocket payments providers need to charge in order to deliver services. It is strongly recommended that the Government institute health insurance as soon as possible.

## **HIV and AIDS**

Azerbaijan is fortunate in not being a country with a high level of HIV infections, but it is also part of the regional pattern of being a country where HIV is still rising. A national HIV surveillance study found a concentrated epidemic among intravenous drug users (prevalence in that group is estimated at 10% or more), 96% of whom do not practice safe sex, and 46% of whom share syringes and needles. In another study, 49% of street children (9-17 years old) had had heterosexual sexual relations and almost half of those also had also had homosexual relations. Very rarely do they practice safe sex. Conditions, in short, are ripe for a growing HIV epidemic just at a time when the world as a whole is winning the battle.

### **(i) Right to education**

#### **Quality and equity of education services**

Many of the comments on the fundamental problems of the health system can also be applied to the education system. Teachers receive low wages (around 180 Euros a month), meagre training (although UNICEF is working with the Ministry to remedy this), and there is over-staffing (a pupil-teacher ratio of around 8:1). Teachers also receive informal payments from parents of school-children. Some signs of fundamental change are underway, with teachers now considered a special category of civil servant, which means they will have to retire at age 65 (and that they will receive a decent pension upon retirement). This could reduce the teaching workforce by an estimated 7-15 per cent, which would be a step towards being able to raise teachers' salaries.

UNICEF has been working successfully with the Ministry of Education to start establishment of “Child Friendly Schools”, which use a new syllabus, new teaching methods, new management techniques, are inclusive of children with disabilities, and have a Parent-Teacher-Student Association. These schools are being progressively converted across the country.

UNICEF has also successfully piloted a new pre-school syllabus with the Ministry, which it has now adopted. That, and a new short-course school readiness programme, has improved the quality of pre-school education options available to parents, but provision (access) remains low.

## **(j) Persons with disabilities**

### **Disability**

Around 60,000 (2.5 per cent of) children are registered as having a disability. This registration brings a small income supplement, but registration probably under-estimates the real number, as registration is difficult and can require an informal payment. Also, because there is stigma against disability, those for whom the small income supplement brings little benefit may choose not to register the child.

Services for children with disabilities fall considerably short of the ideal. There are very few community-level services, and those are principally run by NGOs without Government support, or coordination. No clinical protocols/standards for early detection of disabilities are yet available within the health system. Also, the country needs to decide on the main conditions for new-born screening (which conditions should be screened-for: this is determined by what services could be offered to those screened). Another issue is that there is no proper referral system for health services.

Children with very serious disability, or those whose families do not feel able to care for them, are put into one of a series of institutions – two institutions for children with severely mental disability (run by the Ministry of Labour and Social Protection of the Population), or one of nineteen special schools of which seven are boarding schools including two for children with hearing/speech impairment, three for children with speech impediment, and two for children with visual impairment. In addition, there are three “Baby Houses” (two of which have occupants) under the Ministry of Health to accommodate children under the age of three.

These institutions are of varying states of repair and quality, but the ultimate goal is to close all large institutions, provide community services for the vast majority of those currently in institutions, and small-scale (family-like) residential care for those few who really need 24-hour care (in the short- or long-term).

The serious stigma still held against children with disability means that parents are often ashamed of them (and do not allow the children out of the home to play, let alone to attend school), and are also afraid of others' reaction to their child with a disability. This is one reason why so few children with disability have education (according to State Statistics Committee data: 7,750 being educated at home, 156 in general schools and 5925 in special schools – a total of almost 14,000 [24%] of the 57,000 children with disability). And it has to be said that the quality of education received by children with disability is quite poor, possibly because nobody believes that they will be productive members of society. It should also be noted that as Azerbaijan has ratified the UN Convention on the Rights of Persons with Disability, inclusive education should be offered to all children, and the Education Law should be changed accordingly.

#### **(k) Internally displaced persons**

Azerbaijan unfortunately has one of the highest proportions of its population internally displaced of any country in the world. The number of internally-displaced is around 650,000, of whom around ¼ live in “collective centres” (buildings previously factory or academic dormitories, part-finished hotels, parts of schools, etc.) under very crowded conditions. The Government of Azerbaijan has expended considerable resources to ensure that all those who were living in tents or other such temporary accommodation such as railway cars, were able to be given modern housing.