

# Strengthening Azerbaijan's Juvenile Justice System

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Overall, Azerbaijan's legislative framework is compliant with the legal norms and standards provided in relevant international instruments. Nevertheless, the country has still room for the further improvement of its legislation, policies, and practices governing access to justice for children in conflict with the law.

This IDD analytical policy brief contains several suggestions that would be useful to adopt as the basis for reform to eliminate inconsistencies and gaps in existing legislation in order to strengthen the rights of children and their access to justice. The application of these suggestions would ensure and develop a system of minors' rights in criminal, administrative, civil, and other fields of law.

We can begin with a basic definition. The term "juvenile justice" means *a collection of legal and social mechanisms, the purpose of which is to respond to young people who come into contact with law enforcement and are accused of breaking the law.*

In the countries that constitute the core of the Silk Road region (i.e., the eight states of the South Caucasus and Central Asia), one of the major barriers to progress in the domain is the legacy of a Soviet-era mindset towards juvenile justice, which primarily takes a punitive approach. Many organizations that focus on children rights have sought to transform this approach into one that prioritizes prevention and the rehabilitation of children in conflict with the law: they endeavor to introduce a system that avoids criminalizing youth offenders. In most cases, children in conflict with the law do not pose a danger to society because of the crime they have committed. Thus, in most cases, there is no compelling need to deprive them of their liberty.

Azerbaijan has already taken a number of steps to incorporate this approach into the country's existing legal system. For example, President Ilham Aliyev signed a decree

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titled “On Improving Work in the Penitentiary System, Humanization of the Punishment Policy, and Expansion of Alternative Punishments and Procedural Enforcement Measures Not Associated with Isolation from Society” in February 2017. This decree promotes non-custodial measures and the rehabilitation of offenders. Soon after, a new Probation Service was also decreed.

Organizations and experts working in this field in Azerbaijan and around the world continue to advocate for the reintegration of children into society without isolation. But this should not be understood to mean that a state should not react to any violation of the law. Within the framework of juvenile justice, the main goal is for the child to understand the crime he/she has committed, to understand his/her responsibility, and to understand the situation of the victims. The purpose is for the child to learn from whatever incident got him/her in trouble with the law, to get him/her out of this situation, and to ensure his/her healthy return to society. In many cases, this can be accomplished without incarceration. In this regard, many alternative practices can be positively assessed, including mediation, social work, and reaching an agreement between the victim and the child who committed the crime.

Research shows that in many countries, the widespread and effective use of alternatives to imprisonment is less expensive for the state than sending a juvenile to prison. In general, this practice is a demonstrably more effective method in terms of ensuring public safety, with recidivism being lower among children involved in such alternative punishments than those incarcerated for their crimes in accordance with the traditional system of punishment.

### *Formation of the Juvenile Justice System*

As noted above, Azerbaijan has demonstrated an interest in the reform of the justice sector and in undertaking measures to enhance the rights of the children and adolescents therein. The state is also cognizant of the need to continue to actively engage with specialists to ensure that the system of juvenile justice comes fully in line with international standards enshrined in the Convention on the Rights of the Child (CRC).

Azerbaijan became a State Party to the CRC in 1992 without any reservation and is legally bound by its provisions. Under this instrument, it is necessary to establish an effective comprehensive juvenile justice system, thus ensuring the full implementation of the principles and rights elaborated therein.

Azerbaijan has started the process of implementing juvenile justice mechanisms, but still has a long way to go before completing a clear national strategy, in accordance with international standards. Doing so requires substantial reforms. These include the need to introduce a national strategy of modernized, effective prevention services; reforms in the operational conduct of specialized police and prosecutorial units in relation to

juvenile offenders; child-friendly court procedures; the provision of pro bono legal services; alternative sentencing guidelines for children; and aftercare.

## *Positive Trends*

On the other hand, Azerbaijan has been carrying out deep reforms in the development of the juvenile justice system in recent years, despite the lack of a consolidated law or a national strategy. For example, according to the latest official statistics produced by the State Statistics Committee on punitive measures applied to prisoners aged between 14 and 17, only 25 percent of convicted children were deprived of liberty through the judicial process. Various alternative punishment measures (fines, correctional works, community service, etc.) were applied to the remaining 75 percent of juvenile convicts.

In addition, the establishment of the Probation Service in Azerbaijan—understood as the implementation of alternative measures to deprivation of liberty as well as the selection and execution of punitive measures by restricting a prisoner’s freedom without hindering his or her integration into society—further strengthened this positive trend.

A pilot Team of Specialized Judges on Juvenile Justice has been formed at the Baku Court of Grave Crimes and a child-friendly room has been built on the premise of the same institution. Judges appointed to the Court have received substantial specialized training and appear knowledgeable on what is needed to ensure a child-friendly court, appropriate sentencing measures in relation to children, and child testimony procedures. In addition, although only a partial juvenile justice system is presently in operation in the country, many of those working within this nascent system are enthusiastic about the possibility of its further reform and improvement. For instance, many of the officials have expressed a desire for specialized training, reform of legislation, and detailed regulations.

Another successful element of the current juvenile justice system is the establishment of the Specialized Social Rehabilitation Center for Juveniles and the regulation of its activities through legislation. This has achieved three things: the social rehabilitation of minors who commit a crime or an administrative offense; the prevention of negative factors that can be acquired as a convict; and the avoidance of stigmatization. According to international standards, it is more beneficial to refer children who are accused of having committed a crime or an administrative offence to community-focused rehabilitation or educational institutions rather than processing them through the formal criminal justice system. This principle is described in Article 40(3) of the CRC as follows: “States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular: [...] whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.”

## Three Main Challenges

The main challenge in terms of establishing a proper juvenile justice system is the absence of both a specific Law on Juvenile Justice and a National Juvenile Justice System Strategy. In the CRC's Concluding Observations to both the second (2006) and the combined third and fourth (2012) periodic reports regarding Azerbaijan's implementation of the Convention, it commented on the need for Azerbaijan to bring its juvenile justice system into full compliance with the CRC. In other words, this Committee has now twice noted that Azerbaijan has not yet adopted specific legislation on juvenile justice that addresses the situation of children in conflict with penal law in accordance with the provisions of the Convention.

A number of draft juvenile justice laws have been prepared over the past 15 years, but none have, as yet, been presented to the national legislature—much less adopted.

The second main gap in the current system is that it lacks laws and provisions as well as a national strategy and clear policies related to the experience and specialization of employees and staff dealing with minors' affairs (not only prevention, but also investigation).

In some cases, although relevant laws do require that persons specializing in juvenile cases deal with such affairs, this requirement is not always observed in practice. The importance and role of those with specialized experience and education is not clearly understood, as per the CRC's provisions. According to relevant international and regional conventions, standards, and norms on juvenile justice, cases involving juveniles should be handled by specialized departments or experts that have acquired relevant professional practices and skills and regularly participate in training courses to improve professional skills.

The preventive program implemented by police inspectors of the Team for Preventive Work with Juveniles of the Public Security Department under the Ministry of Interior only partially meets these and similar standards. Another reorganization should take place. Although most police inspectors dealing with such cases make enormous efforts to assist children in their areas of responsibility, many current prevention mechanisms are outdated—in some cases, they are even reminiscent of Soviet-era law-enforcement mechanisms.

In 2013, the UN Office on Drugs and Crime (UNODC) published the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. This document underscores the fact that when children come into conflict with the law, legal advice and support must be provided. Indeed, legal aid is regarded as an essential element of a fair, humane, and efficient criminal justice system that is based on the rule of law. The UNODC document presents legal aid as important not only for children who enter the formal justice system, but also as an important facilitation tool for making use of

community-based sanctions and measures. These last include non-custodial measures; the promotion of greater community involvement in the criminal justice system; the reduction of unnecessary use of detention and imprisonment; the rationalization of criminal justice policies; and the ensuring of efficient use of state resources.

Lastly, there is a need to change some aspects of Azerbaijan's current mechanisms in providing pro bono legal aid to juveniles and their families. There is also a need to provide state-funded legal assistance in civil cases—both in courts of first instance and in the appellate process. This last issue has been raised frequently by the Azerbaijani Bar Association and put up for public discussion. In general, members of the Bar Association are sensitive to at-risk defendants' appeals for assistance: they voluntarily provide pro bono legal assistance to people in need. However, lawyers also need to gain specialization in matters involving juvenile justice. Moreover, there is no legal requirement that a child's defense lawyer should be trained, skilled, or experienced in working with that age group; there is also a lack of minimum quality standards for defense lawyers working with children.

### *Legislative and Policy Recommendations*

Azerbaijan should consider the possibility of passing a Law on Juvenile Justice. This would ensure the country's full compliance with the provisions of documents like the European Convention on Human Rights (1953); the International Covenant on Civil and Political Rights (1976); the UN Standard Minimum Rules for the Administration of Juvenile Justice, also known as "the Beijing Rules" (1985); the aforementioned CRC (1990); and the UN Guidelines for the Prevention of Juvenile Delinquency, also known as "the Riyadh Guidelines" (1990).

This Law should establish a juvenile court system either as a separate unit or as a team of dedicated judges. Where neither option is immediately feasible for practical reasons, provisions should ensure that specially trained judges deal with juvenile justice cases. This Law should also require minimum quality standards for defense lawyers working with children: they should be trained or be either demonstrably skilled or experienced in working with children.

In a shorter-term perspective, a permanent working-level multi-agency coordination body should be re-established to coordinate and monitor the juvenile justice system and receive reports from court management committees and statistical data from relevant bodies. New review mechanisms should also be elaborated to provide a better opportunity to properly identify key challenges and resolve these in a more coordinated manner.

Also in a shorter-term perspective, Azerbaijan should make a change to the Criminal Code and reduce the maximum term of imprisonment for minors from 10 to 7 years.

This would constitute an important step in the further humanization of sanctions for juveniles who deserve a second chance to rebuild their lives.

Moreover, Azerbaijan should begin to provide more active and appropriate services for the prevention of law infringements and draw on the best practices of other countries in the designation of such services. For instance, preventive services should focus on addressing the root causes of law infringements (preventive services could be implemented by many actors, including non-official bodies certified by relevant state actors).

The effective coordination of the activities of all specialized units, services, and facilities should also be promoted in an ongoing manner. Given that in many countries NGOs play important roles not only in the prevention of juvenile delinquency as such, but also in the administration of juvenile justice, Azerbaijan should examine the possibility of actively involving them in the development and implementation of a comprehensive juvenile justice policy. If such a determination is made, specialized agencies should be provided with the necessary resources to ensure such involvement.

### *National Juvenile Justice System Strategy*

The final recommendation involves the adoption of a comprehensive National Juvenile Justice System Strategy. Such a document should address the following core elements: better coordination of the activities of relevant government agencies and local non-governmental organizations operating in the field of juvenile justice; prevention of juvenile delinquency; interventions in the context of judicial proceedings; application of alternatives to the deprivation of liberty; specialization of the professional teams within all juvenile justice related state bodies; and social rehabilitation and reintegration measures.

To monitor the implementation of the aforementioned Strategy, lead ministries, agencies, and bodies should submit result-based progress reports on a regular basis. These reports should be collated and reviewed at regular meetings of an inter-disciplinary Juvenile Justice Forum. This review process should also provide an opportunity to identify key challenges and to resolve these challenges in a coordinated manner.

The aforementioned Strategy should include the following activities within the framework of a five-year action plan:

- Until a juvenile justice law is adopted, ensure the training of all relevant legal, penitentiary, and law enforcement professionals on the CRC, the Beijing Rules, and Riyadh Guidelines.
- Consider establishing a specialized law enforcement service for children, particularly with regard to the provision of training on child-sensitive investigations and interrogations.

- Take all necessary measures to ensure that persons under the age of 18 are deprived of liberty only as a last resort and for the shortest appropriate period of time.
- Continue efforts to provide persons under the age of 18 deprived of liberty with a program of education.
- Train professionals in the area of recovery and social reintegration of children and establish special units within law enforcement to implement such a policy.
- Establish a research program on juvenile justice that would study the social origins, age, and education level of children in conflict with law; the effectiveness of prevention programs; explore the effectiveness of measures for the informal settlement of disputes; and examine the degrees of recidivism for different measures of punishment.
- Encourage the Azerbaijan Bar Association to provide easily accessible information on legal aid programs and advertise services specifically to children in conflict with law. A database of lawyers willing and able to provide legal aid to children should also be established and publicized.