

## **Azerbaijan Juvenile Justice System Consultation**

### **Evaluation of Rehabilitation Centre and Legal Clinic**

**JUNE 2010**

#### **EXECUTIVE SUMMARY**

##### **Background**

In 2006, the UN Committee on the Rights of the Child conducted its periodic review of the State of Azerbaijan. During its Concluding Observations on Azerbaijan, the UN Committee expressed its concern at the over-use of detention and long periods of detention to which children in conflict with the law are exposed. It also found that community-based alternatives to deprivation of liberty are not sufficiently used on children.<sup>1</sup> In order to bring the juvenile justice system in line with international standards, the Committee recommended that the government: "Take all necessary measures to ensure that persons below 18 are only deprived of liberty as a last resort and for the shortest appropriate period of time, in particular by developing and implementing alternatives to custodial sentences."<sup>2</sup> These observations were also made during the Committee's earlier periodic review of Azerbaijan in 1997.<sup>3</sup>

On 14 August 2007, the Azerbaijani Ministry of Internal Affairs, UNICEF Azerbaijan, the OSCE Office in Baku and the NGO Alliance on Children's Rights signed a Memorandum of Understanding on cooperation to improve the national juvenile justice system. The Juvenile Justice Reform Programme commenced in October 2007. As part of this process for reform, UNICEF Azerbaijan, in partnership with the NGO Alliance on Children's Rights, and with technical assistance from UK-based NGO The Children's Legal Centre, developed the Diversion Centre and Legal Clinic in Narimanov District, Baku, for children who are in conflict with the law or at risk of coming into conflict with the law.

The project provides a range of services to children and their families and the primary purpose of the project is to implement the recommendations of the UN Committee on the Rights of the Child by developing and piloting a model for effective community-based alternatives to custody to which law enforcement bodies (Police, Prosecutors and Courts) and the Commission on Minors (COM) can refer children. The purpose was to develop and refine a model that could ultimately be integrated into the national criminal justice system and replicated throughout the country.

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<sup>1</sup> UN Committee on the Rights of the Child, Consideration of Reports Submitted by the States Parties Under Article 44 of the Convention, Concluding Observations: Azerbaijan, CRC/C/AZE/CO/2, 17 March 2006, para. 67.

<sup>2</sup> UN Committee on the Rights of the Child, Consideration of Reports Submitted by the States Parties Under Article 44 of the Convention, Concluding Observations: Azerbaijan, CRC/C/AZE/CO/2, 17 March 2006, para. 68.

<sup>3</sup> The Committee stated that: "Particular attention should be paid to protecting the rights of children deprived of their liberty, especially those living in "corrective labour institutions", to the establishment of an appropriate and independent monitoring mechanism, and to the improvement of the quality and adequacy of alternative measures to imprisonment": UN Committee on the Rights of the Child, Consideration of Reports Submitted by the States Parties Under Article 44 of the Convention, Concluding Observations: Azerbaijan, CRC/C/15/Add.77, 18 June 1997, para. 49.

Another aim of the project is to respond to the needs of children who are identified as being at risk of offending. At the time that the project was being developed, there were very few options available for dealing with children who are identified by Police as being at risk of offending.

The development of the Legal Clinic was a response to a lack of specialised legal services that existed in Azerbaijan at the time the project was conceived.

**Purpose / Objective:**

The purpose of this evaluation was to assess the ability of the Project to provide an effective response to juvenile offending, and thereby lower the rates of imprisonment and institutionalisation of children in conflict with the law and children at risk of coming into conflict with the law, and reduce rates of child offending and anti-social behaviour. The evaluation also sought to consider whether, and is so, how the pilot project could be taken over by the Government of Azerbaijan, replicated nationally, and effectively integrated into the national juvenile justice system.

**Methodology:**

Research for this evaluation was carried out in April 2010. A series of semi-standardised interviews were carried out with staff from the Diversion Centre and Legal Clinic, children and parent beneficiaries of the project, and professionals from three of the referring districts. Interviews were also carried out with national juvenile justice institutions. In addition, an observation of a group therapy session was conducted on-site at the Diversion Centre, and a brief file review was also carried out.

The Researcher also collected quantitative data from the Director of the Diversion Centre, the Director of the Legal Clinic, the Ministry of Internal Affairs, the Ministry of Education and the Ministry of Justice. The purpose for collecting this data was to examine the number and types of children being referred into the Centre and Clinic, and the extent of referrals by referring institution. The data from the Ministries on the rate of institutionalisation of children and the rate of juvenile offending was used in order to, along with the qualitative data, measure the impact of the Project against the Project aims. Financial information was also collected from the Director of the Diversion Centre and from the Ministry of Education and Ministry of Justice in order to assess the efficiency of the Project against existing alternatives for responding to juvenile offending and anti-social behaviour.

**Key Findings and Conclusion:**

***Operation and Effectiveness of the Diversion Centre***

The Centre is being used for a variety of purposes:

- Prevention (for preventing children who are identified as being at risk from coming into conflict with the law, for example, those who get into fights at school). The Commission on Minors and Police appear to be referring children for this purpose.
- Diversion (dealing with children who have committed an offence outside the formal criminal justice system). Police are referring children for this purpose.
- As an alternative sentencing measure. A Judge in one of the evaluation districts is referring children as part of awarding a conditional sentence.

To date, 102 children – mostly boys – have been referred to the Diversion Centre. Most children had been referred following the commission of an offence or for dropping out of or fighting at school. It appears that the Centre has been working with targeted children – that is, children who require and would benefit from more intensive interventions than mere supervision by a juvenile justice body, in order to respond to their offending or anti-social behaviour.

Also, the Project does not strictly focus on diversion / alternative sentencing of children in conflict with the law, but also on children at risk of coming into conflict with the law, and children who cannot be prosecuted as they are under the minimum age of criminal responsibility. This model works well within the juvenile justice system in Azerbaijan. Receiving children into the project who are at risk of offending or are under the minimum age of criminal responsibility allows the project to perform an important preventive function, by providing secondary / tertiary level services to prevent children from coming into conflict with the law. .

On the whole, representatives from district level juvenile justice institutions appear to have a good knowledge of the types of services, activities and support that the Centre offers. However, this was not the case for the Prosecutors interviewed, who appeared to know very little about the Project, with the exception of the Prosecutor who attended the interview in Narimanov.

The range of services offered to children, and the individualised assessments and plan development in which children feel they are actively involved, indicates that the Centre is able to take a flexible and comprehensive approach to addressing the needs of children and the root causes of their offending behaviour in an effective manner. The level of support offered to each child was quite varied and appears to be responding well to the unique needs and situation of each child, and is flexible enough to fit into their lives.

Children and families of children who had been referred to the project reported being very pleased with the outcomes of the project. Parents / grandparents interviewed all felt that the involvement of their children / grandchildren in the project had had a positive influence on their behaviour and their lives. Children generally appeared to appreciate the ability to have someone to talk to, and they appreciated the help given to them by their social workers. Some children also reported that the

Centre's pedagogue had helped them to achieve better in school. Children also appear to appreciate the access to facilities like computers.

Several children interviewed directly attributed the Centre with preventing future criminal or anti-social behaviour. They reported that their behaviour had changed for the better following their involvement at the Centre.

On the whole, referring institutions were very positive with their feedback on the effectiveness of the Diversion Centre. In most cases, they felt that the Centre helped children to get their 'normal lives' back. The feedback demonstrates that, among some referring bodies, the Centre is a unique project that is playing an integral part within the juvenile justice system – it is filling a gap in that it is providing an effective, intensive non-institutional measure in the referring districts; a service that was not available prior to the establishment of the Centre.

### ***Operation and Effectiveness of the Legal Clinic***

To date, the Legal Clinic has received 414 case referrals, including 59 criminal cases involving juvenile offenders and 355 civil matters. Civil matters in which the Clinic provides advice and representation have included: securing alimony for separated parents / children; securing identity documents, including birth certificates; and securing accommodation for children who do not have parental care.

Lawyers at the Legal Clinic have presented assessments of children made by the psychologist to help in sentence mitigation. The Clinic staff see their role, in part, to gather evidence to be used in sentence mitigation for their child clients. In order to do this, they work with the staff of the Diversion Centre and receive recommendations from the Centre's psychologist, social workers, pedagogue and also collect information from the child's school, family and neighbours.

The Clinic's staff also present evidence before the Commission of Minors to encourage the COM, where appropriate, to refer children to the Diversion Centre.

Cases will be referred to the Clinic from a number of government institutions, including, for example, the Ministry of Education, the Ombudsman's Office, the State Committee for Family, Women, Children's Affairs, the commission on Minors, Police and Courts, and also from closed institutions, for instance, children who have been released from the Special School. The Clinic's staff will also conduct press monitoring, in order to identify cases coming before the Courts in which they may be able to provide legal advice and support. Children are also referred to the Clinic through a national child helpline that has recently been established.

In addition to providing legal advice and representation to individual children and parents, the Clinic's staff are also involved in policy work and law reform.

Staff at the Centre reported that, of 44 child criminal cases that had been completed at the time of the interview, 39 had been 'successful' – i.e. the child had not been sentenced to, or otherwise placed, in a closed institution, but had been diverted or received an alternative sentencing measure. Twenty-seven of these children have been referred to the Diversion Centre, to date. Out of the 302 civil matters that had been completed at the time of the interview, it was reported that 290 had been resolved in favour of the client.

Children, parents and representatives from national juvenile justice institutions were very supportive of the work of the Legal Clinic. It appears to be performing an important function in ensuring that children who are in conflict with the law have access to specialised legal advice and representation, and that children and families are able to access legal advice and representation in a range of civil matters.

### ***Impact of the Project***

Data obtained from the Ministry of Justice and the Ministry of Education shows a decline in the use of institutionalisation of children in conflict with the law and children at risk of coming in conflict with the law since the Project was established. It is unclear whether the establishment of the Project caused or was significant in contributing to a decrease in the number of children placed in these institutions, but it can be said that there may be a statistical correlation between the establishment of the Project and the decline in the number of children institutionalised.

The feedback from district level referring institutions indicates that the Centre may be having an impact on reducing the rates of institutionalisation of children. While, according to interviews with some representatives, many children referred to the project would not have otherwise been placed in a closed institution, it may be likely that, in dealing effectively and comprehensively with the causes of children's offending, it is likely that the Centre assists in ensuring that children do not re-offend, and therefore reduces their chances of being placed in a closed institution in the less immediate future.

The level of confidence in the Centre demonstrated by referring institutions is encouraging and means that the Centre, where properly funded, will continue to be a sustainable and integral part of the juvenile justice system within referring districts.

The evidence also suggests that the Legal Clinic is playing an important role in ensuring that children in conflict with the law are, where appropriate, diverted away from the criminal justice system and referred to the Diversion Centre, rather than going through a trial and facing the risk of being awarded a custodial sentence. It has also worked to advocate on behalf of children under the minimum age of

criminal responsibility, to encourage decision-making institutions, like the COMs, to consider alternatives to institutionalisation of children. The evidence suggests that, in some cases, the Legal Clinic has had a direct impact in ensuring that children are not institutionalised where they can be dealt with under an alternative measure, like the Diversion Centre.

Since the establishment of the Project, there has been a drop in the rate of juvenile crime in Azerbaijan. While this does not definitively establish the level of impact that the Centre has had on this drop in the level of offending, qualitative data gathered from the interviews with parents, children and staff from referring institutions certainly indicates that the Project may indeed be having an impact in reducing the rates of recidivism among Project beneficiaries, and therefore perhaps in reducing the rate of juvenile offending in Project areas. In fact, of the 102 children who have been referred to the Diversion Centre, to date, only two have re-offended.

Responding to children in conflict with the law and children at risk of coming into conflict with the law by referring them to the Diversion Centre is far more cost effective than placing them in a closed institution. The per-child cost of the Diversion Centre for 2009 was around 7% of the per-child cost of the Juvenile Colony and Special School for Boys. While not all children referred to the Diversion Centre would otherwise have been placed in an institution, the evidence indicates that a significant number of these children could have been placed in a closed detention facility.

### ***Future of the Project***

There is a good level of awareness of and support for international juvenile justice standards among national level representatives who were interviewed. With the Draft Law on Juvenile Justice having been recently developed by a member of Parliament (where it received wide support, according to an MP who was interviewed), it appears to be a good time to advocate that the Project be adopted, taken over and funded by the Government, as the Project should play an integral part in the Azerbaijan juvenile justice system, helping to ensure that the system complies with international standards.

### **Recommendations:**

#### ***Operation and improvement of the existing model***

1. The Centre should continue to focus primarily on diversion and prevention of offending. According to international standards and best practice, it is more beneficial to divert children away from the formal criminal justice system, to avoid stigmatisation and reduce the chances of them re-offending, than to process them through the formal criminal justice system. However, Judges should be encouraged to refer children to the Centre as part of the terms of a conditional sentence. While it is preferable that the majority of children are diverted away from the criminal justice system, and not appear

before a Court, where children are nevertheless processed through the Court, there should be an option available for Judges to refer these children.

2. The Centre staff should work to ensure that district Judges have a good level of understanding about the Diversion Centre, in order to encourage referrals from Courts. UNICEF should also approach the Head of the Standing Committee on State Building and Legal Policy, who is also a member of the Judicial-Legal Council, and ask him to attempt to issue a Decree to Judges that they have the power in law to refer children to the Diversion Centre as part of a conditional sentence. The Head of the Standing Committee was of the opinion that it was an erroneous interpretation of the law that Judges do not have the power to refer children, and is willing to work to correct this.
3. Staff from the Centre should establish better links with district Prosecutors and should ensure that Prosecutors receive more information about the Project.
4. The Centre's Staff should ensure that all referring institutions have a good knowledge of the referral criteria.
5. The Centre's staff should establish links with organisations that can provide vocational training and careers guidance to children – for children at the Centre who had completed their compulsory schooling, they appeared to require some support in securing employment or training and planning for the future.
6. It would be good practice to provide monthly progress reports relating to individual children to all referring institutions.
7. The Centre's staff should conduct more work with families and communities (perhaps through schools) to reduce the stigma of involvement in the Diversion Centre.
8. Staff at the Diversion Centre should establish a Youth Coordination Council, composed of children who have completed a programme at the Centre. This would be a good way to encourage the participation of the Project's beneficiaries in developing the project further: as beneficiaries, they are in a unique position to give very useful information.

### ***Future of the Project***

9. The Diversion Centre should be under the control of a national institution that has a strong social welfare, rather than law enforcement, mandate. Associating the Centre with a social welfare mandate reinforces its primary purpose of diverting children in conflict with the law or at risk of coming into conflict with the law and dealing with them outside the formal criminal justice system. However, it is essential that Police and the Inspection on Minors (IOM) have confidence in the body that will control the Centre. Police officers play a crucial role in diverting children and in responding to children at risk of offending.
10. It would be preferable to keep the Legal Clinic separate from the Diversion Centre. While the Clinic provides an important service to children who are ultimately referred to

the Diversion Centre, its services and activities are wider than this. The Legal Clinic could sit within the Ombudsman's mandate and consideration should be given to advocating for the Ombudsman to take control of the Legal Clinic.

11. When a decision is made as to which national government body/ies should take control of the Project/s, a representative from the government body/ies should work with UNICEF and the Parliament to advocate that the Finance Ministry allocate finances for the adoption and national roll out of the project. Efforts should focus on ensuring that funds are allocated to the Project in the national budget, which will be revised in July 2010.



## **1. INTRODUCTION**

This report presents the findings of an evaluation of the Diversion Centre and Legal Clinic that was established in Narimanov District, Baku, by UNICEF Azerbaijan, the Ministry of Internal Affairs, the Ombudsman, the NGO Alliance and the British Embassy, in consultation with the Children's Legal Centre in 2007. The Diversion Centre and Legal Clinic ('the Project') provide a range of services to children who are in conflict with the law to rehabilitate them and address the root causes of their offending behaviour in a community-based setting. The purpose of this evaluation was to assess the ability of the Project to provide an effective response to juvenile offending, and thereby lower the rates of imprisonment and institutionalisation of children in conflict with the law and children at risk of coming into conflict with the law, and reduce rates of child offending and anti-social behaviour. The evaluation also sought to consider whether, and is so, how the pilot project could be taken over by the Government of Azerbaijan, replicated nationally, and effectively integrated into the national juvenile justice system.

## **2. BACKGROUND AND PURPOSE OF THE PROJECT**

In 2006, the UN Committee on the Rights of the Child conducted its periodic review of the State of Azerbaijan. During its Concluding Observations on Azerbaijan, the UN Committee expressed its concern at the over-use of detention and long periods of detention to which children in conflict with the law are exposed. It also found that community-based alternatives to deprivation of liberty are not sufficiently used on children.<sup>4</sup> In order to bring the juvenile justice system in line with international standards, the Committee recommended that the government: "Take all necessary measures to ensure that persons below 18 are only deprived of liberty as a last resort and for the shortest appropriate period of time, in particular by developing and implementing alternatives to custodial sentences."<sup>5</sup> These observations were also made during the Committee's earlier periodic review of Azerbaijan in 1997.<sup>6</sup>

In 2006, a situational analysis of the juvenile justice system was completed, in order to determine the extent to which Azerbaijani legislation relating to children in conflict with the law complied with relevant international standards, including the UN Convention on the Rights of the Child and the UN Minimum Standards and Norms of Juvenile Justice. The analysis found that, while alternatives to custody are available in the Criminal Code, in practice the variety of sentences available to the Court is limited, and deprivation of liberty is the most commonly used. In addition, custodial sentences tend to be between 3 and 5 years; a long period of time by international standards, given that most

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<sup>4</sup> UN Committee on the Rights of the Child, Consideration of Reports Submitted by the States Parties Under Article 44 of the Convention, Concluding Observations: Azerbaijan, CRC/C/AZE/CO/2, 17 March 2006, para. 67.

<sup>5</sup> UN Committee on the Rights of the Child, Consideration of Reports Submitted by the States Parties Under Article 44 of the Convention, Concluding Observations: Azerbaijan, CRC/C/AZE/CO/2, 17 March 2006, para. 68.

<sup>6</sup> The Committee stated that: "Particular attention should be paid to protecting the rights of children deprived of their liberty, especially those living in "corrective labour institutions", to the establishment of an appropriate and independent monitoring mechanism, and to the improvement of the quality and adequacy of alternative measures to imprisonment": UN Committee on the Rights of the Child, Consideration of Reports Submitted by the States Parties Under Article 44 of the Convention, Concluding Observations: Azerbaijan, CRC/C/15/Add.77, 18 June 1997, para. 49.

juveniles are convicted of property offences.<sup>7</sup> Also, the report identified concerns over conditions of detention centres in Azerbaijan. The Report recommended that priority needed to be given to establishing schemes, such as diversion, victim/offender mediation, restorative justice, parenting classes, mentoring for juveniles and other, inexpensive programmes that would meet the needs of the particular community. In addition, a need was identified to develop and implement effective prevention schemes and services for children released from custody.

On 14 August 2007, the Azerbaijani Ministry of Internal Affairs, UNICEF Azerbaijan, the OSCE Office in Baku and the NGO Alliance on Children's Rights signed a Memorandum of Understanding on cooperation to improve the national juvenile justice system. The Juvenile Justice Reform Programme commenced in October 2007. As part of this process for reform, UNICEF Azerbaijan, in partnership with the NGO Alliance on Children's Rights, and with technical assistance from UK-based NGO The Children's Legal Centre, developed the Diversion Centre and Legal Clinic in Narimanov District, Baku, for children who are in conflict with the law or at risk of coming into conflict with the law.

The project provides a range of services to children and their families and the primary purpose of the project is to implement the recommendations of the UN Committee on the Rights of the Child by developing and piloting a model for effective community-based alternatives to custody to which law enforcement bodies (Police, Prosecutors and Courts) and the Commission on Minors can refer children. The purpose was to develop and refine a model that could ultimately be integrated into the national criminal justice system and replicated throughout the country.

Children in Azerbaijan can be deprived of their liberty in a number of ways. The Courts can order that children above the minimum age of criminal responsibility (which is 16 years, or 14 years for some more serious offences) be placed in the juvenile colony either as a sentence upon being convicted of having committed an offence, or that they spend time in pre-trial detention. Children who are under the age of criminal responsibility or who have committed non-serious offences, may also be deprived of their liberty in the Special School and Special Correctional Centre, by order of the Commission on Minors. These Centres are closed detention facilities and placing children who do not commit serious offences and are not a danger to the public in these institutions is a violation of the right to liberty in international law.

The Diversion Project aims to provide a pre-trial diversion option to ensure that, in accordance with international human rights law, children are dealt with outside the formal criminal justice system, wherever possible.

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<sup>7</sup> Azerbaijan NGO Alliance for Children's Rights *Juvenile Justice in Azerbaijan*, 1998-2005.

Another aim of the project is to respond to the needs of children who are identified as being at risk of offending. At the time that the project was being developed, there were very few options available for dealing with children who are identified by Police as being at risk of offending.

The development of the Legal Clinic was a response to a lack of specialised legal services that existed in Azerbaijan at the time the project was conceived. This was identified in a shadow report which was submitted to the UN Committee on the Rights of the Child by the NGO Alliance in 2006.

### **3. INTERNATIONAL LEGAL STANDARDS AND BEST PRACTICE**

International law contains a well-elaborated set of standards on the treatment of children in conflict with the law. The most important instrument for juvenile justice is the UN Convention on the Rights of the Child<sup>8</sup> (specifically articles 37, 39 and 40), to which Azerbaijan became a State Party in 1992. The Convention is supported by the UN Minimum Standards and Norms in juvenile justice. The minimum standards are made up of the UN Standard Minimum Rules for the Administration of Juvenile Justice,<sup>9</sup> UN Rules for the Protection of Juveniles Deprived of their Liberty,<sup>10</sup> the UN Guidelines for the Prevention of Juvenile Delinquency,<sup>11</sup> and the more recent Vienna Guidelines for Action on Children in the Criminal Justice System.<sup>12</sup> The UN Minimum Standards and Norms supplement, expand and support the provisions in the UN Convention on the Rights of the Child. Although the guidelines are soft law and are not directly binding on Azerbaijan, *“together they constitute a comprehensive set of universal standards and set out desirable practices to be pursued by the world community.”*<sup>13</sup>

These instruments all contain fundamental standards and norms, which Governments are obliged to incorporate into their domestic juvenile justice systems.

As a Member State of the Council of Europe since 2001, Azerbaijan has also ratified the European Convention on Human Rights and Fundamental Freedoms. In 2008, the Council of Europe adopted the European Rules for Juvenile Offenders subject to Sanctions or Measures setting out important principles to be followed by states in their treatment of juveniles, including a requirement that the imposition and implementation of sanctions or measures be based on the best interests of the child. The Council of Europe Draft Guidelines on Child-Friendly Justice set out fundamental principles on which juvenile justice systems should be based. These include: participation; best interests of the child; dignity; non-discrimination; and the rule of law.

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<sup>8</sup> Adopted by the General Assembly of the United Nations, 20 November 1989

<sup>9</sup> UN Res 40/33-Beijing Rules 1985, Annex 2

<sup>10</sup> UN Res 45/113 -JDLs 1990 Annex 4

<sup>11</sup> UN Res 45/112- Riyadh Guidelines 1990 Annex 3

<sup>12</sup> Administration of Juvenile Justice ECOSOC resolution 1997/30. The Committee on the Rights of the Child now considers this instrument to form part of the international juvenile justice standards which States are obligated to uphold.

<sup>13</sup> *The UN Manual on Juvenile Justice* at 6, Crime Prevention and Criminal Justice Division, submitted pursuant to UN GA Res 45/112. In addition ECOSOC res. 1997/30 on the Administration of Juvenile Justice lays down the most recent thinking on juvenile justice.

### 3.1 Relevant General Principles

The UN Convention on the Rights of the Child (UNCRC) makes it clear that the inherent special needs and vulnerability of children must be taken into account in the implementation and development of laws on juvenile justice. The primary goal of a juvenile justice system should not be that of punishment, but of rehabilitation and reintegration of the juvenile.<sup>14</sup> According to the UNCRC:

*“States Parties recognise the right of every child alleged as, accused of, or recognised 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 human rights and fundamental freedoms of others 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.”<sup>15</sup>*

In accordance with the obligation to ensure that, in all actions concerning children, the best interests of the child shall be a primary consideration,<sup>16</sup> Governments are required to ensure that traditional criminal justice objectives, like retribution, give way to restorative and rehabilitative aims for child offenders,<sup>17</sup> which “further the wellbeing of the juvenile and her or his family”<sup>18</sup> and “emphasise the well-being of the juvenile.”<sup>19</sup> As children differ from adults in terms of their psychological, educational and physical development and needs, the protection of the best interests of the child will require states to develop juvenile justice systems which are informed by rehabilitative and restorative, rather than repressive and retributive justice objectives.<sup>20</sup>

Ensuring that juvenile justice systems focus on the rehabilitation, rather than punishment, of children requires Governments to ensure that, wherever possible, children in conflict with law are not separated from their families and communities by being placed in detention, but rather, that they are offered the support and services they require in order to address the root causes of their offending. According to international law, Governments must only place children who come in conflict with the law in detention as a last resort and for the shortest appropriate period of time.<sup>21</sup>

### 3.2 Diversion

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<sup>14</sup> Art. 9 ICCPR states that the essential aim of the treatment of prisoners in the penitentiary system shall be their reformation and social rehabilitation. The UNCRC, Art. 40(1), provides that children be treated in a manner consistent with the desirability of promoting the child’s assuming a constructive role in society. Also see the Standard Minimum Rules for the Treatment of Prisoners (1955), Rule 58

<sup>15</sup> Article 40(1), UNCRC.

<sup>16</sup> Article 3, UNCRC; Council of Europe Draft Guidelines on Child-Friendly Justice, para. II(B)

<sup>17</sup> UN Committee on the Rights of the Child, *General Comment No. 10: Children’s Rights in Juvenile Justice*, CRC/C/GC/10, para.10.

<sup>18</sup> Rule 1(1), Beijing Rules

<sup>19</sup> Rule 5(1), Beijing Rules

<sup>20</sup> UN Committee on the Rights of the Child, *General Comment No. 10 (2007): Children’s Rights in Juvenile Justice*, CRC/C/GC/10 (9 February 2007), para. 4.

<sup>21</sup> Article 37(b) UNCRC

Only a small minority of children who come into conflict with the law should be passed through the criminal justice system. International law requires Governments, whenever appropriate and desirable, to use measures for dealing with children in conflict with the law without using judicial proceedings.<sup>22</sup> Such measures are known generally as ‘diversion.’

Diverting the child does not mean that the offending behaviour of the child is ignored. Rather, it allows steps to be taken to identify the needs of the child and tackle the root causes of the child’s behaviour in order to prevent further offending. Article 40(3) of the UNCRC requires states to promote the establishments of laws, procedures, authorities and institutions to give effect to measures of dealing with children in conflict with the law without resorting to judicial proceedings. The UN Committee on the Rights of the Child stated, in its general comment on juvenile justice that, “given the fact that the majority of child offenders commit only minor offences, a range of measures involving removal from criminal / juvenile justice processes and referral to alternative (social) services...should be a *well established practice* that can and should be used *in most cases*.”<sup>23</sup> Legislation should ensure that law enforcement bodies, like Police, prosecutors and Judges have the power, in law, to refer children who have committed an offence to these measures.

In the opinion of the UN Committee on the Rights of the Child, the obligation of State parties to promote measures for dealing with children in conflict with the law without resorting to judicial proceedings applies, but is not limited to children who commit minor offences, such as shoplifting, other property offences with limited damage and first-time child offenders, through a range of community-based family support, diversion schemes and restorative justice programmes.<sup>24</sup> The Committee points out that such measures avoid stigmatisation, have good outcomes for children and society, and are proven to be more cost-effective.<sup>25</sup> Dealing with young offenders without resorting to criminal procedures serves the important function of promoting a rehabilitative, rather than punitive, juvenile justice framework.

Research indicates that simply removing from society children who are anti-social, or who are involved in offending behaviour, has little long-term impact. In fact, some studies have shown that putting a child through the formal criminal justice system may only serve to increase their propensity for engaging in criminal behaviour, and that programmes which deal with these children in an informal setting in the community have been more successful.

### **3.3 Sentencing: Obligation to use alternatives to custody**

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<sup>22</sup> Article 40(3), UNCRC; Council of Europe Draft Guidelines on Child-Friendly Justice, para. III(B)(2).

<sup>23</sup> UN Committee on the Rights of the Child, *General Comment No. 10 (2007): Children’s Rights in Juvenile Justice*, CRC/C/GC/10 (9 February 2007), para. 11. Emphasis added.

<sup>24</sup> See General Comment No 10, op. cit., Para 25.

<sup>25</sup> *Ibid.*, Para. 25.

For children who are processed through the formal criminal justice system, international law requires States to ensure that a variety of effective, community-based measures are available and that imprisonment is used only as a last resort and for the shortest appropriate period of time.<sup>26</sup>

Article 40(4) of the UNCRC provides that State parties must ensure that “[a] variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.” As noted, the harm caused by separating children from their community by placing them in custody can impact heavily on the child’s ability to re-integrate into society and rehabilitate. Research has shown that institutionalisation offers no difference in terms of a successful outcome for rehabilitating children.<sup>27</sup> Institutionalisation can have the effect of exposing children to many adverse influences and may only serve to further stigmatise children and impair their ability to re-integrate into the community.

Non-institutionalisation measures can also prove to be more cost-effective. Not only are the per child costs of institutionalisation generally higher than that for community-based measures, but dealing with the root causes of offending and anti-social behaviour of children can reduce the chances of them offending or re-offending in adulthood, thus reducing the strain on the criminal justice system, and the costs to society of criminal acts.

### **3.4 Prevention of juvenile crime**

The Riyadh Guidelines,<sup>28</sup> which form part of the UN Minimum Standards and Norms on Juvenile Justice, require that States develop and implement delinquency prevention programmes at every level of government. These should cover both those who have committed offences and those at risk of offending. According to the UN Committee on the Rights of the Child, prevention programmes should focus, inter alia, on support for particularly vulnerable families, and should extend special care and attention to young persons at risk of offending. The Committee further provides that Governments should also develop “community-based services and programmes that respond to the special needs, problems, concerns and interests of children” and that provide support, including counselling and guidance, to families.<sup>29</sup>

## **3. METHODOLOGY**

Research for this evaluation was carried out in April 2010. A series of semi-standardised interviews were carried out with staff from the Diversion Centre and Legal Clinic, children and parent beneficiaries of the project, and professionals from three of the referring districts. The interviews with

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<sup>26</sup> Articles 40 and 37 UNCRC; Rule 17 Beijing Rules

<sup>27</sup> Commentary to Rule 19.1, Beijing Rules.

<sup>28</sup> Adopted and proclaimed by General Assembly Resolution 45/112 of 14<sup>th</sup> December 1990

<sup>29</sup> UN Committee on the Rights of the Child, *General Comment No. 10 (2007): Children’s Rights in Juvenile Justice*, CRC/C/GC/10 (9 February 2007), para. 18.

professionals from referring districts were mostly conducted with Department Heads and were not necessary carried out with professionals who were directly responsible for referring children to the project or of being part of the Project's Coordination Councils. Interviews were also carried out with national juvenile justice institutions. In addition, an observation of a group therapy session was conducted on-site at the Diversion Centre, and a brief file review was also carried out.

Interviews were held with the following persons:

Project Staff	<p><i>Diversion Centre</i></p> <ul style="list-style-type: none"> <li>• Head of Diversion Centre</li> <li>• Social Worker</li> <li>• Psychologist</li> </ul> <p><i>Legal Clinic</i></p> <ul style="list-style-type: none"> <li>• One meeting was carried out with the Head of the Legal Clinic, along with two lawyers from the Legal Clinic</li> </ul>
Project Beneficiaries	<ul style="list-style-type: none"> <li>• 12 children (9 boys and 3 girls)</li> <li>• 3 parents and 1 grandparent</li> </ul>
District level juvenile justice professionals	<p><i>Narimanov district</i></p> <ul style="list-style-type: none"> <li>• Head of Department on Science, Culture, Health, Local Authority (Commission on Minors representative)</li> <li>• Head of District Police Department</li> <li>• Chief Prosecutor of District Prosecutor's Office</li> <li>• Head Judge of District Court</li> </ul> <p><i>Nizami district</i></p> <ul style="list-style-type: none"> <li>• Deputy Head of Local Authorities and Commission of Child Rights and Minors' Issues, Local Authority (Commission on Minors representatives)</li> <li>• Deputy Head of Juvenile Issues, District Police Department</li> <li>• Deputy Prosecutor of District Prosecutor's Office</li> <li>• Head Judge of District Court</li> </ul> <p><i>Khatai district</i></p>

	<ul style="list-style-type: none"> <li>• Deputy Head of Local Authorities and Head of Commission of Child Rights and Minors' Issues, Local Authority (Commission on Minors representatives)</li> <li>• Head of Juvenile Issues Section, District Police Department</li> <li>• Deputy Prosecutor of District Prosecutor's Office</li> <li>• Head Judge of District Court</li> </ul>
National level juvenile justice institutions	<ul style="list-style-type: none"> <li>• Head of the Division on De-Institutionalisation and Child Protection, Ministry of Education</li> <li>• Head of Department on Human Rights and Public Relations, Ministry of Justice</li> <li>• Head of Chief Division on Public Security, Ministry of Internal Affairs</li> <li>• Chief of International Relations Section, Ombudsman's Office</li> <li>• Head of Standing Committee on State Building and Legal Policy, Parliament</li> <li>• Deputy Head of the Department of Science, Culture, Health and Social Affairs of the Cabinet of Ministers</li> <li>• Head of Social Services Department, Ministry of Labour and Social Protection of Population</li> <li>• Deputy Chair, State Committee for Family, Women and Children's Affairs</li> </ul>

The interviews aimed at collecting qualitative data on the operation and effectiveness of the Diversion Centre and Legal Clinic. The interviews carried out at national level juvenile justice institutions were also aimed at assessing the sustainability of the project, to ascertain the future steps to be taken to ensure that the project is taken over by national government, and to investigate the possibilities for country-wide replication of the project.

The Researcher also collected quantitative data from the Director of the Diversion Centre, the Director of the Legal Clinic, the Ministry of Internal Affairs, the Ministry of Education and the Ministry of Justice. The purpose for collecting this data was to examine the number and types of children being referred into the Centre and Clinic, and the extent of referrals by referring institution. The data from the Ministries on the rate of institutionalisation of children and the rate of juvenile offending was



used in order to, along with the qualitative data, measure the impact of the Project against the Project aims. Financial information was also collected from the Director of the Diversion Centre and from the Ministry of Education and Ministry of Justice in order to assess the efficiency of the Project against existing alternatives for responding to juvenile offending and anti-social behaviour.

#### **4. THE DIVERSION CENTRE**

The Diversion Centre officially commenced on 15th September 2007, however, the Project Team moved into its current premises on 15th October 2007. The project staff were recruited and provided with training, and the centre received its first five children in December 2007. Currently, the Project uses rented premises in a four-room apartment in Narimanov district, Baku. Initially, children were referred into the Centre from three districts in Baku – Narimanov, Nizami and Khatai. The Centre has since commenced receiving referrals from five additional districts in Baku: Sabunchu, Binagadi, Sabayil, Surakhani and Khazar.

##### **4.1 Children Referred into the Centre**

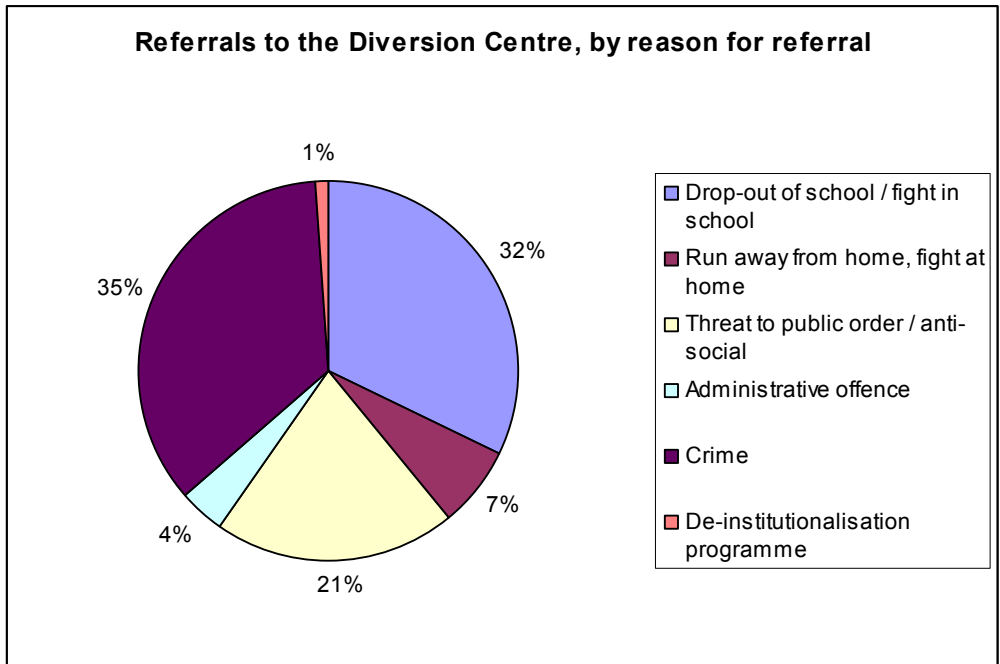
According to data supplied by the Director of the Diversion Centre, there have been a total of 102 children referred to the Diversion Centre since it opened. The majority of children referred so far are male: only 10 girls have been referred. This could reflect the much lower rates of criminal behaviour among girls, as compared to boys, in Azerbaijan.<sup>30</sup> At the time of the visit, there were 20 children 'enrolled' at the Centre. The maximum capacity was reported to be 25 children.

Data supplied from the Director of the Diversion Centre can be used to give an indication of the most common reasons for which children may be referred to the Centre.

#### **Table 1**

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<sup>30</sup> According to the Eleventh United Nations Survey of Crime Trends and Operations of Criminal Justice Systems (Eleventh UN-CTS, 2007-2008), in 2006, girls made up just 5% of total child criminal suspects (Azerbaijan, p. 8), available at <http://www.unodc.org/documents/data-and-analysis/Azerbaijan.pdf>



The data indicates that the majority of children have been referred following the commission of a crime (35%) or for dropping out of or fighting at school (32%).

For children who have been referred to the Centre following the commission of an offence, data is also available on which crimes they had committed (Table 2).

**Table 2**

The data indicates that the majority of children have been referred for theft (49%) – a relatively minor offence. However, a significant number of children have been referred for offences that may be considered to be more serious, including offences against the person, such as battery and grievous

bodily harm. According to international standards, as set out above, diversion should not be solely used for children who commit very minor offences. It is encouraging that children who have committed a variety of offences have been referred to the Centre, suggesting that there are no significant barriers to the referral of children who have committed offences other than very minor offences.

The criteria for referral, according to Centre staff, are as follows:

- The Project 'officially' accepts children between the ages of 10 and 18 years; however, two boys were recently referred at the ages of 7 and 8 years;
- Children and parent/s must give consent. This requirement accords with international standards;<sup>31</sup>
- The child must live in one of the referring districts; and
- The Centre is unable to accept children who do not have parental care, or children who use drugs or alcohol.

The Centre will provide financial support to children who cannot afford the transport costs associated with attending the Centre.

According to interviews carried out with the staff of the Centre, children referred to the Centre have a variety of needs and issues that need to be addressed. Many had been having problems at school, or had experienced a breakdown in communications or had been fighting with family members. Many had been affected by poor parenting, many had come from a poor background, and some had previously run away from home.

From the information available, it appears that the Centre has been working with targeted children – that is, children who require and would benefit from more intensive interventions than mere supervision by a juvenile justice body, in order to respond to their offending or anti-social behaviour.

## **4.2 Referral Processes**

### How are children referred into the project?

Currently, children are referred to the Diversion Centre by district Commission on Minors, Police officers (from the Inspection on Minors), or, to a lesser extent, by Courts.

Schools cannot currently refer children directly to the Centre, but schools can refer children through the Commission of Minors. The Director at the Centre would like schools to be able to refer children directly.

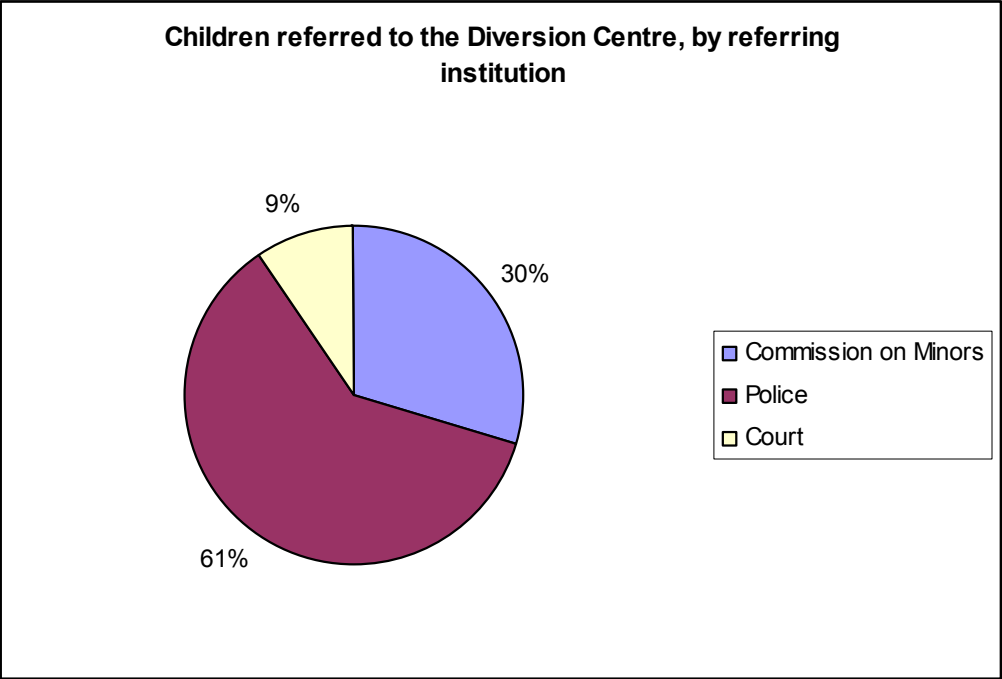
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<sup>31</sup> Beijing Rules, Rule 11.3 and Commentary.

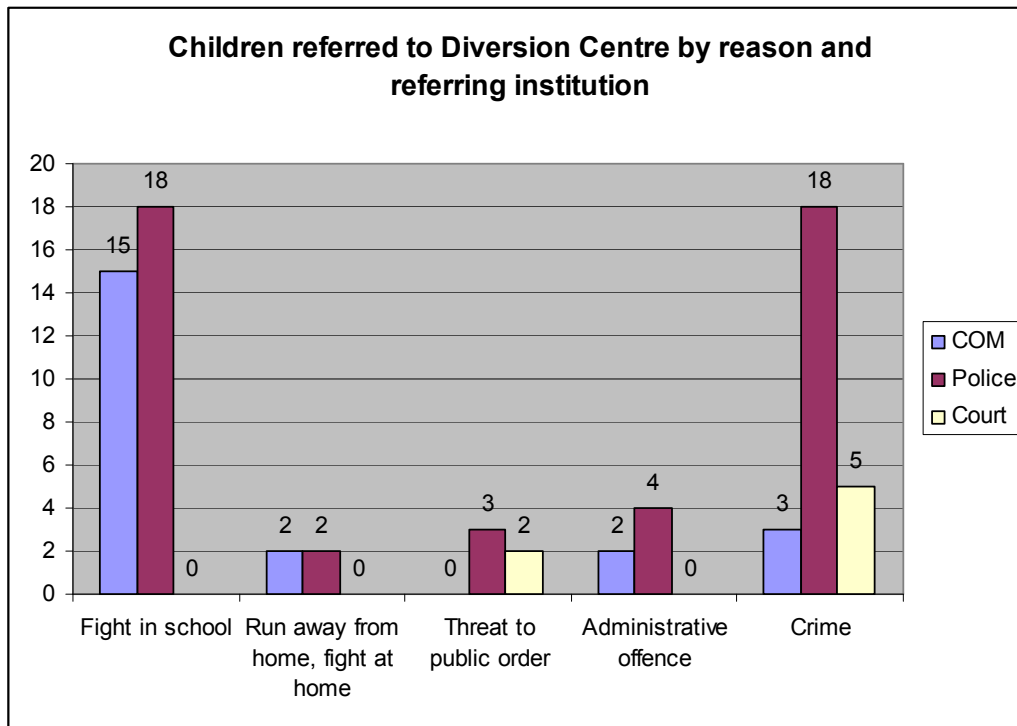
Prosecutors do not currently refer children. According to the Director of the Centre, Prosecutors only deal with serious cases (cases in which children have committed serious offences) and referring these children to the Centre would be inappropriate.

Data supplied by the Director of the Diversion Centre can be used to give an indication on which institutions most commonly refer children to the Centre.

**Table 3**



**Table 4**



Tables 3 and 4 show that the Centre is being used for a variety of purposes:

- Prevention (for preventing children who are identified as being at risk from coming into conflict with the law, for example, those who get into fights at school). The Commission on Minors and Police appear to be referring children for this purpose.
- Diversion (dealing with children who have committed an offence outside the formal criminal justice system). Eighteen children who have committed crimes have been referred by the Police to the Centre.
- Alternative sentencing measure. The table indicates that five children who have committed offences have been referred by the Courts. According to the interview with one of the Judges, he is able to refer children to the Centre as part of a conditional sentence.

### 4.3 Referring institutions

Each referring institution has reportedly appointed a member of staff to be the focal point and liaison between the referring institution and the centre. This is good practice, as it allows for one staff member to build up a good knowledge of the Centre and referral process, which can be communicated back to colleagues. However, the Centre's staff should always ensure that where this person leaves their post, another person is promptly appointed and trained / provided with information about the Centre. Also, **the Centre's staff should work to ensure that the referral procedure does not rely too heavily on personal relationships with district juvenile justice professionals, but rather on systematic procedures. This would ensure that, where a professional who has been nominated as a focal point leaves their position, the referral system or procedure would**

**continue.** Of course, well-trained specialised staff within juvenile justice institutions (e.g specialist Juvenile Judges and Prosecutors) would be a very useful and important reform, which could also serve to improve the district level support for the Diversion Centre.

### Commission on Minors

The Commission of Minors is made up of around 11 persons from different state bodies. Only two members, the secretary and an advisor/psychologist or secretary, are full-time, paid appointees. The work of the Commission of Minors is governed by the Regulations 'About Commissions (collegial organ) on Minors' Affairs and Protection of their Rights.' The main objectives of the Commissions are to provide educational and pedagogical measures to children in order to protect their rights, control their behaviour, prevent them from committing illegal acts and to act as the co-ordinating state body in this field. The Commission of Minors deals both with children who have committed illegal acts, including children below the minimum age of criminal responsibility, and children who are in need of protection. The former type of cases can be referred to the Commission by the relevant executive power or the Prosecutor's Office.

On referral, the Secretary of the Commission reviews the case and information relating to the minor. The Secretary will present the case at the Commission meeting for decision on any action to be taken. The Regulations provide that the Commission is required to ensure the attendance of the child and his or her parents or legal representative at the meeting. In addition, those who attend the Commission session are entitled to be heard,<sup>32</sup> and a parent (but not the child) may appeal against the decision of the Commission. In practice the Commission does not hold a 'hearing' and no evidence is taken.

Where a child has committed an illegal act the Commission, having considered the nature and reasons for the illegal act, the child's circumstances, the level of involvement in the illegal act and the child's behaviour at home and at school, can impose a range of non-custodial sanctions, including a warning notice; an official reprimand;<sup>33</sup> a requirement that the child apologise to the victim or pay compensation for damage caused (provided that the child is in employment); placement of the child under the control of a parent, their legal representative or a public trainer or a recommendation that the right of the child to dispose of any income or grants be restricted. The Commissioners may also place children under the age of 14 who have committed minor offences in the Special School at Mardakan. 'Difficult' children, including those who are difficult at home or at school and children who do not attend school, may also be placed at the Special School with the consent of their parents or legal guardians. Finally the Commission may, according to the Regulations, petition the Court in the case of a child under the age of criminal responsibility, seeking to place him in the Special Correctional Institution at Guba.

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<sup>32</sup> Regulation 14 Regulations 'About Commissions (collegial organ) on Minors' Affairs and Protection of their Rights'

<sup>33</sup> A warning or reprimand remains in force for a year. If the child has committed no further illegal acts during this period he or she will be released.

Representatives from the COM reported that they will refer children to the Diversion Centre where children require more intensive intervention than supervision or a warning or reprimand. The COM representatives reported that they do not use institutionalisation except where this is absolutely necessary.

In Khatai, no children have been referred as yet, but this appeared to be because no child has yet been identified as requiring the higher level of intervention provided at the Centre. The representative interviewed, however, reported that the COM would refer children to the Centre in the future, should this be in the interests of the child. Also, the COM representative appeared to have a good level of knowledge of and confidence in the Centre, and this was gained through weekly meetings at the Centre and attendance at various events hosted by the Centre.

### Inspection on Minors

The Inspection of Minors is a branch of the Police Force under the control of the Ministry of Interior. Children may be placed on the Inspection of Minors register in two ways: either because they are at risk of offending, or because they are children who:

- Have been released from a custodial sentence or closed institution
- Whose cases have been considered by the Commission of Minors (but who have not been placed away from home)
- Who are addicted to drugs
- Who are involved in anti-social behaviour
- Who persistently fail to attend school

Children remain on the register for one year, but the period can be extended for a further two periods of 6 months. Once a child is registered, the IOM will open an individual case file for this child. When a child is registered, other bodies, such as the school, the Commission of Minors, the child's doctor and the Ministry of Youth, Sport and Tourism are informed. Following the placing of a child's name on the register, an inspector will visit the child and the family. At the first meeting with the parents the Inspector will ascertain whether the child is beyond control. Following this, the Inspector will meet the child. The role of the Inspector is generally limited to telling the child of the likely consequences of any failure to attend school or to keep out of trouble. Recently, there has been an attempt to improve the service offered by the Inspection of Minors, who in some areas now liaise with the child's school, in order to conduct outreach work and identify children who have difficult behaviour. However, it was reported during the interviews that the services that the IOM are able to offer are quite limited.

The IOM representatives reported that their role is very much focused on preventing crime among juvenile offenders, and they will try, wherever possible, to deal with minor offences 'informally' and not refer the cases up to Prosecutors.

According to the IOM representative in Narimanov, the IOM refer children to the Centre where it is identified that children have 'problems' with their families, either caused by poor parenting, or by the child being susceptible to negative influences. It appears that the Diversion Centre will be considered appropriate where children who are at risk of offending or who have committed a minor offence will require a higher level of intervention to address the root causes of their offending, other than that which could otherwise be offered by the IOM. The representative from the IOM in Nizami also reported that, out of all children who are identified as being at risk, he will refer 'many' to the Diversion Centre. Where children identified as being 'at risk' are able to be dealt with without any intensive intervention, however, they will not be referred to the Centre.

When children are considered appropriate for referral (i.e. where the causes of their offending cannot be addressed by less intensive interventions), the Police Officer will meet with the Director of the Diversion Centre, and staff of the Centre will then assess the child and a 'joint decision' will be made. In Khatai, it was reported by the IOM representative that he will meet with the Centre's Director and share information with him about every child on the at risk register, and a joint decision will be made as to whether the child will be referred to the Centre.

Police officers appear to be quite engaged with the work of the Centre, and Police officers reported that they regularly pay visits to the Centre to assess the work being done.

The representative from Khatai stated that the IOM do not have the resources to carry out more in-depth, comprehensive preventive work with individual children, and the Centre performs an important role in carrying out this work and ensuring that these children get the support they need so that their behaviour improves and they are less likely to offend. If the Diversion Centre did not exist and the Police could not 'manage' a child, it was reported that it is likely that the child would be referred to a closed institution, like Guba.

### Prosecutors

Prosecutors currently do not refer children directly to the Diversion Centre, but, according to the Prosecutor in Narimanov, they may recommend this as part of a conditional sentence where a child has been convicted, or they can refer the case back to the Police or COM, where appropriate, and the Police / COM may refer the case to the Diversion Centre. Prosecutors from other districts in which interviews were carried out did not demonstrate a good level of knowledge of the Diversion Centre, and did not know whether they could make referrals, or how referrals were made by other juvenile justice institutions.

### Courts



The Judge interviewed in Narimanov district reported that, as part of imposing a conditional sentence on a child offender, the Judge who hears most juvenile cases is able to refer children to the Diversion Centre.<sup>34</sup> In order for a conditional sentence to be imposed, it is necessary to appoint a responsible body or person to supervise the child (e.g. the COM, parents etc.). The Judge reported that it is possible to appoint the Centre as the responsible supervising body. Conditional sentences, he stated, are imposed on children who commit more minor offences, for example, minor theft. He reported that, of all juvenile cases for which conditional sentences were awarded in the past 12 months (five cases in total), all children have been referred to the Centre.

According to the Judges interviewed in the other districts, Judges do not have the legal power to refer children to the Diversion Centre. The interviewee from the Nizami district reported that, while, in principle, it may be possible to refer children to the Centre as part of the terms of a conditional sentence, this is not prescribed in legislation and he was not clear whether this would be possible. He also did not appear to have a very good level of knowledge of the Centre. The Judge interviewed in Khatai also had very little knowledge of the Centre and felt that he was unable to refer children to the Centre as the power to do this is not provided for in law.

#### **4.4 Securing consent**

When children are referred to the Centre, the Director of the Centre will receive relevant documents, and will invite the child and their parent/s to attend an interview at the Centre. The Director / Social Workers will encourage the child and his or her parent/s to give permission to attend the Centre, and will ask children and parent/s to sign a consent form. This initial interview will be carried out within one week of the referral. According to the Director of the Centre, around 40% of parents refuse to give consent, mainly due to the perceived stigma of having children who need to attend a facility for rehabilitation. **It would be a good idea the Centre's staff to conduct work more with families and communities (perhaps through schools) to reduce stigma of involvement in the project.**

Occasionally, children will be refused admission by the project staff following an assessment, as staff will identify that children have a higher level of need than can be addressed at the Centre (e.g. children with more serious mental health issues may have to be referred to a centre for more intensive treatment).

#### **4.5 Effectiveness of the referral model**

The Centre was originally envisaged as a diversion project and an alternative sentencing measure for children who come into conflict with the law. The project does not strictly focus on diversion / alternative sentencing of children in conflict with the law, but also on children at risk of coming into conflict with the law, and children who cannot be prosecuted as they are under the minimum age of

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<sup>34</sup> The interview was the Head Judge, as the Judge who primarily hears juvenile cases was in Court and unavailable for interview.

criminal responsibility. This model works well within the juvenile justice system in Azerbaijan. Receiving children into the project who are at risk of offending or are under the minimum age of criminal responsibility allows the project to perform an important preventive function, by providing secondary / tertiary level services to prevent children from coming into conflict with the law. Also, children in Azerbaijan can be placed in closed detention facilities even where they have not been charged or convicted with having committed an offence. The Commissions on Minors can make a decision to place children who are behaving in an anti-social manner or are 'out of control' into closed detention facilities, where their parent/s agree. Also, where children under the minimum age of criminal responsibility commit a serious offence, the COM may request the Court to place the child in a closed vocational school. As the Project focuses, in part, on preventing children from being placed in detention, it should continue to accept referrals from COMs and Police, including children who are identified as being 'at risk' of offending and those under the minimum age of criminal responsibility.

**The Centre should, therefore, continue to focus primarily on diversion and prevention of offending. According to international standards and best practice, it is more beneficial to divert children away from the formal criminal justice system, to avoid stigmatisation and reduce the chances of them re-offending, than to process them through the formal criminal justice system. However, Judges should be encouraged to refer children to the Centre as part of the terms of a conditional sentence. While it is preferable that the majority of children are diverted away from the criminal justice system, and do not appear before a Court, where children are nevertheless processed through the Courts, there should be an option available for Judges to refer these children.**

On the whole, representatives from district level juvenile justice institutions appear to have a good knowledge of the types of services, activities and support that the Centre offers. However, this was not the case for the Prosecutors interviewed, who appeared to know very little about the Project, with the exception of the Prosecutor who attended the interview in Narimanov. While referrals are currently not received from Prosecutors, they still play an important role in the juvenile justice system. Where Prosecutors are convinced of the benefits of referring children to the Centre, they may be less likely to recommend an institutional sentence where child offenders appear in Court. Also, the Draft Law on Juvenile Justice envisages Prosecutors are being the decision-maker in the application of diversion measures. **Therefore, staff from the Diversion Centre should establish better links with district Prosecutors and should ensure that Prosecutors receive more information about the Project.**

Also, Judges in Nizami and Khatai districts were not sure whether they were able to refer children to the Centre. **The Centre's staff should work to ensure that these Judges have a good level of understanding about the Centre, in order to encourage referrals from Courts in these districts. UNICEF should also approach the Head of Standing Committee on State Building and Legal**

**Policy, who is also a member of the Judicial-Legal Council, and ask him to attempt to issue a Decree to Judges that they have the power in law to refer children to the Diversion Centre as part of a conditional sentence. The Head of the Standing Committee was of the opinion that it was an erroneous interpretation of the law that Judges do not have the power to refer children, and is willing to work to correct this.**

Some representatives did not have a good understanding of the referral criteria for children who may be referred to the Centre. While it is good practice for the Centre's staff to determine which children should be accepted onto the Project, it is also good practice for referring institutions to be aware of the relevant criteria, to help to ensure that the appropriate children are referred to the Centre. **The Centre's staff should ensure all referring institutions have a good knowledge of the referral criteria.**

#### **4.6 Operation of the Diversion Centre**

The Centre operates out of a flat in an apartment building in Narimov district in Baku. The flat has four rooms, which are currently used to carry out the range of activities and serviced provided by the Centre's staff (see below for more details on this). The flat is quite small and restricts the number of children who are able to attend, and also the types of activities that may be offered to children. **If the Project continues, and expands to include other districts in Baku, it may be necessary to secure larger premises.**

#### Staff

There are seven members of staff at the Diversion Centre, including:

- The Head of Centre (who has been in post for two and a half years);
- Three Social Workers;
- One Psychologist;
- One Pedagogue / Educator; and
- One part time Sports Therapist

The Centre's staff were all recruited following an open recruitment process. The Staff have undergone four training sessions, of between 4 – 12 days each, delivered by international experts.

#### Assessment of children

When children are referred to the Diversion Centre, the project psychologist will conduct an initial assessment of the child's circumstances and needs, in order to develop an appropriate and effective individual programme for each child.

The project social workers and /or psychologist will conduct an interview with the child and the child's family member/s, and will visit the child's home and school in order to assess his or her living conditions and behaviour and performance at school. Based on these assessments, a weekly and monthly plan will be developed for each child. This will be carried out within one week of the child's and the child's parent/s initial interview with the Director / Social Worker.

According to the interviews carried out with children at the Centre, children generally feel involved in the process and will be able to give their opinions and participate in the development of weekly and monthly plans. This is good practice – responding to the needs and opinions of children will allow their individual needs to be better identified and will encourage children to accept and 'buy in' to the plans.

#### Activities and services offered

The Centre provides a wide range of services, activities and inputs for children, including:

- Psychological counselling for children and their parents / extended family members;
- Social work with families. This may include conducting family visits;
- Sports therapy / rehabilitation;
- Psychotherapy (individual and group session) for parents / extended families and children;
- Game therapy;
- Education support, including assistance with school education, and the provision of English language classes and computer literacy classes;
- Art therapy;
- Life skills workshops; and
- Excursions, and cultural and sporting activities.

Work with families is very important, as improved family stability, the building of better familial relationships and improved parenting will lower the chances of a child re-offending. The Diversion Centre staff also refer clients to the Legal Clinic, where children or parents need legal advice or representation, in relation to criminal or civil matters (see below for more detail).

The group counselling session observed by the researcher indicated that the Centre's psychologist and social workers had developed a very good rapport with the children in attendance, and the children appeared engaged with the session.

One child reported that he had been referred by the Centre to a hairdressing apprenticeship and spoke favourably of this. This practice should be extended. Several older children who were interviewed seemed unsure about their future goals and did not appear to have received a good level of assistance in securing further education, vocational training or employment; although these children did speak favourably of the Centre generally. **It would be a good idea for the Centre's**

**staff to establish links with organisations that can provide vocational training and careers guidance – for children on the project who had completed their compulsory schooling, they appeared to require some support in securing employment or training and planning for the future.**

Children will visit the Centre in two shifts: morning and afternoon. The activities and support work will be scheduled around the school day, to ensure that the education of children is not interrupted.

The range of services offered to children, and the individualised assessments and plan development in which children feel they are actively involved, indicates that the Centre is able to take a flexible and comprehensive approach to addressing the needs of children and the root causes of their offending behaviour in an effective manner. The interviews conducted with parents and children who had been referred to the project confirmed the flexible approach of the Centre. The level of support offered to each child was quite varied and appears to be responding well to the unique needs and situation of each child, and is flexible enough to fit into their lives. For example, one boy reported that he had been very interested in sport, but due to financial problems, could not continue. The Centre's staff helped to find him sporting lessons and he took part in sports therapy, which, according to his mother, has helped to improve his behaviour. He also attends the Centre one a week, but does not appear to more need intensive help. Other children, who require more intensive support, will visit the Centre three or four times a week, and will be involved in one-to-one counselling session, and a range of other activities. Some children reported that the psychologist and social workers could make themselves available should they require an ad hoc counselling session.

#### Completion of Programmes, Monitoring and Follow up

Data supplied by the Director of the Diversion Centre indicates that, of children who had completed their programme, most had completed it within either 4 months or 6 months. When a child has completed his or her programme at the Centre, the child's case worker (Social Worker) will submit a final report to the Director of the Centre, who will refer this report on to the referring institution. The Researcher was unable to assess follow up work by the Centre, as the children interviewed were all currently attending the project; however some referring institutions mentioned that they received a report once the child completed the programme.

However, referring bodies received no written reports on the child's progress until completion. For the IOM, monthly monitoring is a legal requirement, and they will contact the Centre every month to check on the progress of children who have been referred. In addition, it was reported that meetings are held every month with the staff at the Centre and the IOM representatives from each referring district, in which they will receive updates on the progress of each child. **It would be good practice to provide monthly reports on child's progress to all referring institutions. Some interviewees said they would like to see this happen.**

### Coordination Councils

Coordination Councils, consisting of representatives of the Diversion Centre and referring institutions, meet every month to discuss individual cases, along with issues relating to the general functioning of the Centre.

The Coordination Council also appears to be encouraging a coordinated multi-agency response to juvenile crime. The Prosecutor in Narimanov reported that the Coordination Council meets once a month and will discuss individual cases of children who have been referred to the project. The sharing of expertise and knowledge about juvenile justice issues among different professionals is very beneficial to her.

Children should also be engaged in monitoring and evaluating the functioning of the Centre. **Staff of the Centre should establish a Youth Coordination Council, composed of children who have completed a programme at the Centre. This would be a good way to encourage the participation of the project's beneficiaries in developing the project further: as beneficiaries, they are in a unique position to give very useful information.**

## **4.7 Assessing the Effectiveness and Impact of the Diversion Centre**

### Outcomes for Children and Families

Children and families of children who had been referred to the project reported being very pleased with the outcomes of the project. Parents / grandparents interviewed all felt that the involvement of their children / grandchildren in the project had had a positive influence on their behaviour and their lives. One parent remarked that her son was having a lot of difficulty at school prior to being referred to the Centre, and now he was able to read and write and is keeping up at school. After referral to the Centre, her son better understood his behaviour and the ramifications of his criminal actions. Another parent reported that her son had been susceptible to bad influences and had 'fallen into the wrong crowd'. Following his referral to the project, her son's behaviour has improved and he no longer has a desire to hang around with the people who were having a bad influence on him. This suggests that the Centre is having a positive impact in reducing the chances of these children re-offending.

Parents also gave positive feedback about the effects of counselling sessions with social workers and the psychologist. Children, after referral, were better able to understand appropriate behaviour and how to communicate properly and improve familial relationships. One parent's son, after being involved in a programme at the Centre, became more engaged and active, and his behaviour at home and at school has greatly improved.

Parents, too, reported that they had directly benefited from the support offered to them by the Centre. One mother reported that she had no identity documents, and therefore no ability to claim particular benefits. She was referred by the staff at the Centre to the Legal Clinic, who helped her obtain these documents. A child also reported that the Legal Clinic had helped him to obtain identity documents. One parent reported that the Centre staff had helped her to find a job. One mother reported that the parenting advice that the Centre's staff gave her was invaluable in helping her to improve her son's behaviour, and her relationship with her son.

Children generally appeared to appreciate the ability to have someone to talk to, and they appreciated the help given to them by their social workers. One boy reported that having one-to-one counselling sessions helped to release stress and relax him. He had been referred to the Centre following his involvement in a fight at school. A 17 year old girl reported that talking to the psychologist comforted her and helped to relieve her stress. The girl had come from a chaotic background: her father had died at the age of two, and her mother was very economically disadvantaged. The girl had never attended school and worked informally at the market. It was suspected that she was vulnerable to being sold by her mother and trafficked out of the country. She was referred to the Centre following the commission of a minor theft, and through the intervention of the Legal Clinic staff, who encouraged the Court to refer her to the Centre, instead of to a closed institution. She claims that her involvement at the Centre has been a very positive experience for her: it has allowed her to learn how to read and write and "understand things much better."

Some children also reported that the Centre's pedagogue had helped them to achieve better in school. One child reported that, after being referred to the Centre and getting help with his school work, he now enjoys going to school. Two children, a brother and sister, were referred to the Project after they stopped attending school, and were subsequently excluded from school following non-attendance. Their mother had passed away and their father suffered from alcoholism (they are currently being cared for by their grandfather). The children reported that the Centre's staff helped them to get back to school, by meeting with the school's Director and teachers, and advocating on their behalf. The staff also helped the children with their school work, and to form better relationships with teachers and school mates. The children also received one-to-one and group counselling sessions and enjoyed attending cultural events and taking part in sporting activities, and reported that the Centre felt like a family environment. Another girl reported that she found the atmosphere of the Centre to be 'like a family'. She is 17 and the staff at the Centre are also assisting her in setting goals for the future and finding employment.

Children also appear to appreciate the access to facilities like computers – it is likely that this is particularly important for children from poorer backgrounds who may not otherwise have easy access to a computer. Some children reported that an excursion to the juvenile colony had helped them to understand the consequences of any future criminal activity.

Several children interviewed directly attributed the Centre with preventing future criminal or anti-social behaviour. They reported that their behaviour had changed for the better following their involvement at the Centre. One child reported that he no longer felt like getting into fights with other children – something that he had done prior to being referred to the Centre. One child reported being more in control of his own actions and better able to exert control and stop bad behaviour, like fighting with his parents. Some children reported that the family visits of social workers had helped them to have a better relationship with their families. One girl reported that she no longer felt like running away from home.

#### Feedback from referring bodies

On the whole, referring institutions were very positive with their feedback on the effectiveness of the Diversion Centre. The COM representative from Narimanov stated that the Centre was very effective and that there is no other project that offers such a comprehensive response to children who are in conflict with the law or at risk of coming into conflict with the law. In most cases, she felt that the Centre helped children to get their 'normal lives' back. The Judge in Narimanov also reported that, for some children (e.g. those who need intensive support to help with school work), the Centre is the only appropriate place to which children can be referred.

The Police Officer from Narimanov reported that he was very satisfied with the outcomes that he has witnessed, reporting cases in which children were not interested in school before their referral to the Centre, and following referral, were very interested and engaged in their education.

Some representatives from referring institutions reported that one of the key criteria for effectiveness of the Centre is that it offers a range of activities to children so that their leisure time can be directed to more constructive activities. Representatives also mentioned the commitment and level of skills and knowledge of the staff at the Centre, which they viewed as contributing to the positive outcomes for children referred to the Centre.

Some representatives also felt that the Project contributed to lowering the rates of crime in their districts.

This feedback demonstrates that, among some referring bodies, the Centre is a unique project that is playing an integral part within the juvenile justice system – it is filling a gap in that it is providing an effective, intensive non-institutional measure in the referring districts; a service that was not available prior to the establishment of the Centre

## **5. THE LEGAL CLINIC**

The Legal Clinic operates out of offices in the Narimanov district, a short distance from the Diversion Centre. It was established in 2008, following a shadow report submitted to the Committee on the



Rights of the Child by the NGO Alliance for Children's Rights, which identified a lack of specialised legal services for children in Azerbaijan, with the result that children in criminal and civil cases were often unrepresented, or only provided with legal representation at a late stage (e.g. after spending one or two months in pre-trial detention, in criminal cases). The juvenile justice analysis carried out in 2006 also found that children in conflict with the law often did not have access to legal representation.<sup>35</sup>

Access to legal advice and representation for children in conflict with the law is a fundamental right, and article 37(d) of the UNCRC provides that children who are deprived of their liberty have the right to prompt access to legal and other appropriate assistance.<sup>36</sup> Article 40(2)(iii) of the UNCRC states that children must be provided with legal and other appropriate assistance in preparing and presenting their defence to criminal charges. In the intimidating arena of an adult court, it is vital that children are adequately represented to ensure that their case is properly considered, and that sentencing measures that are in the child's best interests are applied.

## **5.1 Staff**

The Centre is staffed by three full-time lawyers. The Clinic's staff have also set up a volunteer scheme, whereby 30 students from universities in Baku have received special training and also work at the Clinic as part of a university programme, as supervisors. Another 85 students have also worked at the Legal Clinic since it was established. Students were recruited from: Baku State University, Tafakkur University, Azerbaijan University, and Baku Business School. This appears to be a good practice – involving students helps the Clinic to deal with a higher number of cases at little extra cost, and thereby improve its efficiency. Also, it is effectively training up law students, who will develop skills in working with children and on child law issues.

## **5.2 How are children referred to the Clinic?**

Cases will be referred to the Clinic from a number of government institutions, including, for example, the Ministry of Education, the Ombudsman's Office, the State Committee on Family, Women and Children's Affairs, the Commission on Minors, Police and Courts, and also from closed institutions, for instance, children who have been released from the Special School. Data supplied by the Director of the Legal Clinic indicates that, to date, the Ministry of Education have referred the most cases (35), while the Ombudsman have referred 5 cases. The Clinic's staff will also conduct press monitoring, in order to identify cases coming before the Courts in which they may be able to provide legal advice and support.

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<sup>35</sup> The analysis found that, "Although defence counsel should be appointed for children free of charge, it would seem that in many instances children were not informed of this right nor offered the opportunity to have legal representation. The reasons for this are not clear, but in discussions with relevant stakeholders during the writing of this report, it would appear that little thought had been given to the mechanics of how lawyers could be made available to children facing criminal proceedings. Discussion with children showed that where a child is lucky enough to secure the assistance of a lawyer, this is often late in the day, once the investigation is over, intermittent and with too little preparation before the trial."

<sup>36</sup> See also Beijing Rule 15 on the right of juveniles to legal assistance and representation.

Children are also referred to the Clinic through a national child helpline that has recently been established.

### **5.3 Type of work carried out by the Clinic**

To date, the Legal Clinic has received 414 case referrals, including 59 criminal cases involving juvenile offenders and 355 civil matters. Civil matters in which the Clinic provides advice and representation have included: securing alimony for separated parents / children; securing identity documents, including birth certificates; and securing accommodation for children who do not have parental care.

Lawyers at the Legal Clinic have presented assessments of children made by the psychologist to help in sentence mitigation. The Clinic staff see their role, in part, to gather evidence to be used in sentence mitigation for their child clients. In order to do this, they work with the staff of the Diversion Centre and receive recommendations from the Centre's psychologist, social workers, pedagogue and also collect information from the child's school, family and neighbours.

The Clinic's staff also present evidence before the Commission of Minors to encourage the COM, where appropriate, to refer children to the Diversion Centre.

In addition to providing legal advice and representation to individual children and parents, the Clinic's staff are also involved in policy work and law reform. It was reported by the Clinic's Director that the staff will identify gaps in law and practice in Azerbaijan, when measured against international standards, and will develop recommendations and proposals for reform. This is a very important initiative – the Clinic's staff is in a unique position to identify the need for reform of laws, policies and practices concerning children, using its case work to inform this work.

### **5.4 Outcomes for children and families**

Staff at the Centre reported that, of 44 criminal cases that had been completed at the time of the interview, 39 had been 'successful' – i.e. the child had not been sentenced to, or otherwise placed, in a closed institution, but had been diverted or received an alternative sentencing measure. Twenty-seven of these children have been referred to the Diversion Centre, to date. Out of the 302 civil matters that had been completed at the time of the interview, it was reported that 290 had been resolved in favour of the client.

In addition to helping with sentencing mitigation and ensuring that the 17 year old girl mentioned above was referred to the Diversion Centre rather than a closed institution, the Legal Centre's staff also assisted the girl in obtaining identity documents, which will help ensure that she has access to benefits and is less vulnerable to being trafficked.

According to the IOM representative from the Nizami district, the role of the Legal Clinic is crucial in reducing the number of children being placed in closed institutions. The Clinic’s staff, in providing recommendations during sentencing proceedings, ensure that many children who would otherwise be placed in a closed institution are referred to alternatives, including the Diversion Centre.

Representatives from national juvenile justice institutions were very supportive of the work of the Legal Clinic. The representative from the Ministry of Education, for instance, reported that the Clinic is performing a crucial function, and referred to its work in obtaining identity documents for children in closed institutions.

**6. ASSESSING IMPACT: IS THE PROJECT ACHIEVING ITS PURPOSE?**

**6.1 Reduction in the use of institutionalisation**

As set out above, one of the purposes of the Project was to reduce the rate at which children are placed in custody and other institutions in Azerbaijan, in order to ensure that the juvenile justice system operates in accordance with international and European laws and standards. Data obtained from the Ministry of Justice and the Ministry of Education shows a decline in the use of institutionalisation of children in conflict with the law and children at risk of coming in conflict with the law since the Project was established.

The number of children being placed in the juvenile colony has declined, as indicated in the following table.

**Table 5**

<b>Children placed in the juvenile colony, 2000 - 2009</b>	
<b>Year</b>	<b>Number of children</b>
2000	64
2001	66
2002	59
2003	57
2004	49
2005	45
2006	46
2007	34
2008	33
2009	34

Data supplied by the Ministry of Justice, June 2010.

Highlighted figures are used to indicate the number of children in custody since the Project commenced.

This data shows a steady drop in the placement of children in the juvenile colony since 2000, which is clearly a positive development. Interestingly, there is a marked drop in the number of children placed in the juvenile colony from 2006 to 2007 (when the Diversion Centre was established) and the

number has stayed fairly low (at 34 / 33) since that time. However, this data can only indicate a statistical correlation between the establishment of the Project and the drop in the number of children placed in the juvenile colony. It cannot be found definitively, based on this data alone, that the Project is a significant factor causing this drop in institutionalisation. Also, the Diversion Centre did not commence receiving children until the end of 2007, so it is unclear whether this data demonstrates a correlation between the Project and the drop in institutionalisation.<sup>37</sup>

Data supplied by the Ministry of Interior on the number of children placed in other institutions, including in provisional custody-distribution units, temporary detention centres and closed educational institutions (run by the Ministry of Education) also shows a drop in the number of children placed in these institutions.

**Table 6**

<b>Children placed in other detention facilities, 2005 - 2009</b>	
<b>Year</b>	<b>Number of children</b>
2005	224
2006	11
2007	33
2008	15
2009	9

Data supplied by the Ministry of Internal Affairs, June 2010

'Other detention facilities' include: custody-distribution units, temporary detention centres and open and closed educational institutions run by the Ministry of Education.

Highlighted figures are used to indicate the number of children in custody since the Project commenced.

This data shows a significant drop in the number of children referred to these institutions from 2007 to 2008, and a further drop in the number of children referred in 2009, to nine children. According to the data supplied by the Ministry of Internal Affairs, in the first three months of 2010, no children were placed in these institutions. Again, it is unclear whether the establishment of the Project caused or was significant in contributing to a decrease in the number of children placed in these institutions, but it can be said that there may be a statistical correlation between the establishment of the Project and the decline in the number of children institutionalised.

The qualitative data gathered from the interviews can be used to help determine whether the Project had any impact on reducing the extent to which children were placed in juvenile justice and other institutions. The feedback from district level referring institutions indicates that the Centre may be having an impact on reducing the rates of institutionalisation of children. While, according to interviews with some representatives, many children referred to the project would not have otherwise been placed in a closed institution, it may be likely that, in dealing effectively and comprehensively

<sup>37</sup> It would be useful to collect data on the number of children placed in the juvenile colony by district, to determine whether there has been a significant drop in the rates of institutionalisation of children in the Project districts compared with other districts. However, this data was not available at the time of writing.

with the causes of children's offending, it is likely that the Centre assists in ensuring that children do not re-offend, and therefore reduces their chances of being placed in a closed institution in the less immediate future. Some interviewees, for example, the Police Officer in Narimanov, stated that the Diversion centre was a direct alternative to placing children at risk of offending in Guba Special Vocational School; indicating that the existence of the Diversion Centre may be contributing to a decline in the number of children being placed in closed institutions.

Significantly, most of the representatives from district level referring institutions, particularly the representatives from the COMs and Police, indicated that they have a lot of confidence in the effectiveness of the Diversion Centre.

This is particularly important: without 'buy in' by these district level institutions, the Project would fail to achieve its purpose, particularly in reducing the number of children being referred to closed institutions. The lack of available alternatives to institutionalisation means that the Centre is relied on by district level institutions to give necessary support to children and respond to the root causes of their offending, thereby reducing the perceived need to place them in a closed institution.

The level of confidence in the Centre demonstrated by referring institutions is encouraging and means that the Centre, where properly funded, will continue to be a sustainable and integral part of the juvenile justice system within referring districts.

The evidence also suggests that the Legal Clinic is playing an important role in ensuring that children in conflict with the law are, where appropriate, diverted away from the criminal justice system and referred to the Diversion Centre, rather than going through a trial and facing the risk of being awarded a custodial sentence. It has also worked to advocate on behalf of children under the minimum age of criminal responsibility, to encourage decision-making institutions, like the COMs, to consider alternatives to institutionalisation of children. The evidence suggests that, in some cases, the Legal Clinic has had a direct impact in ensuring that children are not institutionalised where they can be dealt with under an alternative measure, like the Diversion Centre.

#### CASE STUDY OF 8 YEAR OLD BOY REFERRED AFTER MAKING BOMB THREAT

A, an 8 year old boy, was referred to the Centre after he had made a bomb threat by phone to a hospital in Baku. His mother reported that his neighbour had convinced him to make the call. He was 'caught' by the district Police and referred to the District Prosecutor, who proposed referring him to a closed institution. The staff of the Legal Clinic became involved and urged the Ombudsman to get involved, and the Ombudsman's office wrote a letter to the Prosecutor urging him not to detain the child. A was instead referred to the Centre. During an interview, his mother expressed her gratitude to the staff at the Centre. She reported that, since attending the Centre, her son can now read and write and he has 'opened his eyes to the world'.

## 6.2 Reduction in the rate of criminal and anti-social behaviour

Since the establishment of the Project, there has been a drop in the rate of juvenile crime in Azerbaijan, as demonstrated by the following data, supplied by the Ministry of Interior. The data records the number of children suspected of having committed an offence from 2005 – 2009.

**Table 7**

Juvenile offenders registered by police, 2005 - 2009	
Year	Number of children
2005	554
2006	487
2007	485
2008	489
2009	453

It is difficult to determine, from this data alone, whether the Project has had an impact on reducing the extent of juvenile offending in Azerbaijan. The rate of offending has clearly dropped since the Project was established (from 487 suspected offenders in 2006 to 453 in 2009). However, this statistical correlation does not definitively establish the level of impact that the Centre has had on this drop in the level of offending.<sup>38</sup>

However, the qualitative data gathered from the interviews with parents, children and staff from referring institutions (set out in the previous section) certainly indicates that the Project may indeed be having an impact in reducing the rates of recidivism among Project beneficiaries, and therefore perhaps in reducing the rate of juvenile offending in Project areas. To date, only two of the 102 children referred to the Diversion Centre have re-offended.

## 6.3 Efficiency considerations

Figures of actual expenditure of the Diversion Centre can be used to indicate the efficiency of this model in responding to juvenile crime and anti-social behaviour. The per-child cost of the Diversion Centre in 2009 was 824 AZN.<sup>39</sup>

Data supplied by the Ministry of Justice and the Ministry of Education indicate the per-child costs of dealing with children who are in conflict with the law and those identified as being at risk by placing them in a closed detention facility.

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<sup>38</sup> It would be useful to examine the extent of offending by rayon, to determine whether there has been a more significant drop in the rate of offending in Project rayons, as compared to other rayons. However, this data was not available at the time of writing.

<sup>39</sup> This figure was calculated by dividing the actual cost of the Diversion Centre in 2009 (USD 54,600: converted from US dollars into Azeri Manets in June 2010) by the number of children accepted into the Centre during 2009 (53). The per child cost is likely to be less than this, as there were a number of children who commenced programmes at the Diversion Centre in 2008 who were completing these programmes in 2009.

**Table 7**

<b>Per-child costs of detention facilities, 2009<sup>40</sup></b>		
<b>Detention facility</b>	<b>Responsible Authority</b>	<b>Cost per child</b>
Juvenile colony	Ministry of Justice	12,104 AZN
Special School for Boys	Ministry of Education	12,735 AZN
Guba Special Vocational Boarding School	Ministry of Education	7,548 AZN

As demonstrated by these figures, responding to children in conflict with the law and children at risk of coming into conflict with the law by referring them to the Diversion Centre is far more cost effective than placing them in a closed institution. For instance, the per-child cost of the Diversion Centre for 2009 was around 7% of the per-child cost of the Juvenile Colony and Special School for Boys. While not all children referred to the Diversion Centre would otherwise have been placed in an institution, the evidence, as set out above, indicates that a significant number of these children could have been placed in a closed detention facility.

Also, as noted above, working to respond to the root causes of a child's offending behaviour in the community is demonstrably more effective than placing a child in a detention facility. It could therefore be argued that placing a child in a detention facility may increase their risk of offending in adulthood, with all of the costs associated with this re-offending.

## **7. SUSTAINABILITY AND THE FUTURE OF THE PROJECT**

There is a good level of awareness of and support for international juvenile justice standards among national level representatives who were interviewed. **With the Draft Law on Juvenile Justice having been recently developed by a member of Parliament (where it received wide support, according to an MP who was interviewed), it appears to be a good time to advocate that the Project be adopted, taken over and funded by the Government, as the Project should play an integral part in the Azerbaijan juvenile justice system, helping to ensure that the system complies with international standards.** As set out above, the Project helps to ensure that the juvenile justice system complies with international standards in the following ways:

- Diverting children who are in conflict with the law, where appropriate, away from the formal criminal justice system. The juvenile justice institutions which have the power to divert children – Police and COMs – have a lot of confidence in the Diversion Centre, and appear to be using it as an alternative to putting children through the criminal justice system. The Centre is particularly useful for children who require a more intensive level of support in order to address their needs and reduce the likelihood of them re-offending. The Legal Clinic plays an important role in advocating that individual children should not be put through the criminal

<sup>40</sup> Per child cost was provided by the Ministry of Justice. The Ministry of Education per child costs were calculated by dividing the number of children detained in 2009 by the actual total cost (in the case of the Special School for Boys) and projected total costs (in the case of the Guba Special Vocational Boarding School) of the institutions in 2009.

justice system, and can make recommendations that children are instead referred to the Centre. It also provides support to children referred to the Centre and parents who need legal assistance.

- Use imprisonment as a last resort and for the shortest appropriate period of time, and ensure that a range of alternative measures are available in practice. The Centre provides an effective alternative to custody for children who are being sentenced, and Judges have the power to refer children to the Diversion Centre as part of a conditional sentence. Also, for children under the minimum age of criminal responsibility, the Diversion Centre offers an effective alternative to being placed in a closed educational institution. The Legal Clinic also plays an essential role in ensuring that children who have been convicted have access to legal advice and representation, and can assist in sentence mitigation.
- Provide services to children at risk of offending in order to ensure that they do not come into conflict with the law. The Diversion Centre provides an important tertiary level prevention service for children and families who require comprehensive support to respond to their bad behaviour and help to ensure that they do not commit criminal acts.

The Project also provides an efficient response to juvenile crime and children at risk of offending. As set out in the previous section, the per-child cost of the Diversion Centre is a great deal less than the costs of placing a child in a closed institution.

### **7.1 National Governance of the Project**

Juvenile justice is clearly a multi-agency system and should involve a number of Government institutions. However, it is desirable for one national body (or two where the Diversion Centre and Legal Clinic are kept separate) to take responsibility for the governance of the Project at a national level. The next step is to consider which national institution should take ownership of the existing Project and of the process for rolling it out and integrating it into the juvenile justice system nationally.

Consideration should also be given to whether to separate the Legal Clinic from the Diversion Centre, or to place the Clinic within the Centre. **It would be preferable to separate the Legal Clinic from the Diversion Centre. While the Centre provides an important service for children who are ultimately referred to the Centre, its services and activities are wider than this.**

#### ***Social welfare institutions***

**The Diversion Centre should be taken over by the national institution that has a strong social welfare, rather than law enforcement, mandate. In Azerbaijani context there four options – welfare institutions that would be appropriate for taking such responsibility. These bodies are the Ministry of Education (Department of De-Institutionalisation and Child Protection), the**



**National Commission of Minors, the Ministry of Labour and Social Protection of Population and the State Committee on Family, Women and Children's Affairs.**

***Law enforcement institutions***

Ministry of Interior (MIA)

The MIA has been quite heavily involved in developing the Diversion Centre and Legal Clinic from the time that the project began. The interest of the MIA in the project can be attributed, to some extent, to a series of training sessions, conferences and seminars carried out with the support of UNICEF Azerbaijan. The MIA's mandate appears to include a strong focus on crime prevention, and in particular, the early detection of children who are at risk of offending and the prevention of juvenile offending. In carrying out prevention work, it was reported that the MIA coordinate with other institutions, such as local authority representatives, COMs and educational institutions.

The MIA's strong mandate in crime prevention and multi-agency working in this field at the district level would place the MIA in a good position to take control of the project. The Project focuses heavily on the prevention of offending (either through working with at risk children or working to prevent further offending from children who have already committed a criminal act).

**If the Project is not able to be adopted by a social welfare institution, the MIA would be a good alternative. As noted, Police from the IOM at the district level play a key role in identifying at risk children and diverting children away from the formal criminal justice system. Their support is essential in ensuring that the Project functions effectively.**

Ministry of Justice

The Ministry of Justice control the penitentiary system and the Courts (there is also a legislation department and human rights and public relations department within the Ministry). The representative from the Ministry of Justice reported that the prevention of juvenile delinquency has a key place in the Ministry's strategy and future goals. Also, as the Ministry of Justice controls the juvenile colony, it has a vested interest in ensuring that the incarceration rates of children are lowered, and that costs associated with placing children in detention are lowered. The representative from the Ministry reported that the Ministry is very supportive of diverting child offenders – where appropriate – away from the formal criminal justice system.

***Ombudsman***

The Ombudsman is a national human rights monitoring mechanism, which has been working on juvenile justice issues for the past four years. This year, the Ombudsman will produce its first

specialised children's rights report to Parliament. The Ombudsman has been working on promoting the adoption of a separate, specialised juvenile justice system in Azerbaijan. It also monitors police stations and detention facilities (every two months, monitoring visits will be carried out). The Ombudsman also receives individual complaints concerning human rights violations. Complaints are largely received through two Helplines that are operated by the Ombudsman. One of these Helplines is specifically for children and for complaints concerning children's human rights violations.

The Ombudsman currently works closely with the Legal Clinic, whose staff will often contact the Ombudsman for support in relation to individual case work. The Ombudsman may send letters to relevant Government Ministries in order to help secure results in relation to individual cases.

**Therefore, consideration should be given to advocating for the Ombudsman to take control of the Legal Clinic, should the Clinic remain a separate entity to the Diversion Centre.**

## **7.2 Securing Funding for the Project**

While the Project enjoys quite wide Ministerial-level support, securing Government funding for the current project, and extra funding to ensure that the project is expanded and replicated across the country, may prove difficult.

Once a decision has been made for a government institution/s to take control of the Project and roll it out nationally, this institution could then advocate for the Finance Ministry to include the Project within the central government budget. UNICEF could assist with this. Efforts should focus on ensuring that funds are allocated to the Project in the national budget, which will be revised in July 2010.

## **8. CONCLUSION AND RECOMMENDATIONS**

The Diversion Centre and Legal Clinic are performing an important role within the juvenile justice system in Azerbaijan. The Diversion Centre, by providing an effective alternative to institutionalisation which comprehensively addresses the needs of children who are offend or are at risk of offending, appears to be encouraging the use of diversion in dealing with children who are in conflict with the law. It also appears to be performing an essential tertiary-level intervention to prevent children who are at risk of offending from coming into conflict with the law. The Legal Clinic helps to ensure that all children who are in conflict with the law have access to quality legal representation and advice, as required in international and European law. It also carries out an important function in providing legal support for families and children to secure their rights; address their needs; and help address the root causes of their offending behaviour.

While it is difficult to conclude, at this relatively early stage, that the Project is having a significant impact on reducing the institutionalisation of children and the rates of juvenile offending, it is likely, based on quantitative data and qualitative data gathered in the interviews with professionals, children

and parents, that the Project is helping to reduce the rate at which children are being placed in the juvenile colony and the special schools (run by the Ministry of Education). It may also be having an impact on reducing the likelihood of children re-offending, which may in turn, see a drop in the rate of juvenile crime.

It is also a much more cost-effective way to respond to juvenile crime and anti-social behaviour than placing children in closed institutions.

**Recommendations were made throughout this report and include:**

***Operation and improvement of the existing model***

1. The Centre should continue to focus primarily on diversion and prevention of offending. According to international standards and best practice, it is more beneficial to divert children away from the formal criminal justice system, to avoid stigmatisation and reduce the chances of them re-offending, than to process them through the formal criminal justice system. However, Judges should be encouraged to refer children to the Centre as part of the terms of a conditional sentence. While it is preferable that the majority of children are diverted away from the criminal justice system, and not appear before a Court, where children are nevertheless processed through the Court, there should be an option available for Judges to refer these children.
2. The Centre staff should work to ensure that district Judges have a good level of understanding about the Diversion Centre, in order to encourage referrals from Courts. UNICEF should also approach the Head of the Standing Committee on State Building and Legal Policy, who is also a member of the Judicial-Legal Council, and ask him to attempt to issue a Decree to Judges that they have the power in law to refer children to the Diversion Centre as part of a conditional sentence. The Head of the Standing Committee was of the opinion that it was an erroneous interpretation of the law that Judges do not have the power to refer children, and is willing to work to correct this.
3. Staff from the Centre should establish better links with district Prosecutors and should ensure that Prosecutors receive more information about the Project.
4. The Centre's Staff should ensure that all referring institutions have a good knowledge of the referral criteria.
5. The Centre's staff should establish links with organisations that can provide vocational training and careers guidance to children – for children at the Centre who had completed their compulsory schooling, they appeared to require some support in securing employment or training and planning for the future.
6. It would be good practice to provide monthly progress reports relating to individual children to all referring institutions.

7. The Centre's staff should conduct more work with families and communities (perhaps through schools) to reduce the stigma of involvement in the Diversion Centre.
8. Staff at the Diversion Centre should establish a Youth Coordination Council, composed of children who have completed a programme at the Centre. This would be a good way to encourage the participation of the Project's beneficiaries in developing the project further: as beneficiaries, they are in a unique position to give very useful information.

### ***Future of the Project***

9. The Diversion Centre should be under the control of a national institution that has a strong social welfare, rather than law enforcement, mandate. Associating the Centre with a social welfare mandate reinforces its primary purpose of diverting children in conflict with the law or at risk of coming into conflict with the law and dealing with them outside the formal criminal justice system. However, it is essential that Police and the IOM have confidence in the body that will control the Centre. Police officers play a crucial role in diverting children and in responding to children at risk of offending.
10. It would be preferable to keep the Legal Clinic separate from the Diversion Centre. While the Clinic provides an important service to children who are ultimately referred to the Diversion Centre, its services and activities are wider than this. The Legal Clinic could sit within the Ombudsman's mandate and consideration should be given to advocating for the Ombudsman to take control of the Legal Clinic.
11. When a decision is made as to which national government body/ies should take control of the Project/s, a representative from the government body/ies should work with UNICEF and the Parliament to advocate that the Finance Ministry allocate finances for the adoption and national roll out of the project. Efforts should focus on ensuring that funds are allocated to the Project in the national budget, which will be revised in July 2010.

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