THE DEVELOPMENT OF JUVENILE JUSTICE SYSTEMS IN EASTERN EUROPE AND CENTRAL ASIA

LESSONS FROM ALBANIA, AZERBAIJAN, KAZAKHSTAN, TURKEY AND UKRAINE
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Mr. O’Donnell has been collaborating with UNICEF in the drafting of various studies and evaluations in the field of juvenile justice over the last three years.
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UNICEF Regional Office for Central and Eastern Europe/Commonwealth of Independent States

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**Acronyms**

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tr>
<td>CEE/CIS</td>
<td>Central and Eastern Europe and the Commonwealth of Independent States</td>
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<tr>
<td>ECRI</td>
<td>European Commission Against Racism and Intolerance</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
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<tr>
<td>GNI</td>
<td>gross national income</td>
</tr>
<tr>
<td>NGO</td>
<td>non-governmental organization</td>
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<tr>
<td>OHCHR</td>
<td>Office of the United Nations High Commissioner for Human Rights</td>
</tr>
<tr>
<td>OSCE</td>
<td>Organization for Security and Co-operation in Europe</td>
</tr>
<tr>
<td>OSI</td>
<td>Open Society Institute</td>
</tr>
<tr>
<td>TURKSTAT</td>
<td>Turkish Statistical Institute</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNICEF</td>
<td>United Nations Children’s Fund</td>
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<tr>
<td>UNODC</td>
<td>United Nations Office on Drugs and Crime</td>
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<tr>
<td>USSR</td>
<td>Union of Soviet Socialist Republics</td>
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<tr>
<td>VOM</td>
<td>victim-offender mediation</td>
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Foreword

The response to juvenile crime is a matter for heated debate all over Europe. There are those who argue for ‘tougher methods’ and indeed more and more young offenders have been locked up, at an increasingly young age. However, there are also those who propose a different approach – in the spirit of the United Nations Convention on the Rights of the Child.

This approach means that criminalization should be avoided and that family-based or other social alternatives to detention should be sought. The surveys undertaken by UNICEF in Eastern Europe and Central Asia support such child-friendly methods.

The country-based surveys in this publication indicate that there have indeed been important advances in the spirit of the UN Convention. The police forces have been reorganized and trained to cope more adequately with young offenders. Specialized juvenile courts or special youth sections of criminal courts have been established and judges have been educated in handling juvenile cases. The number of juvenile prisoners has decreased.

However, serious problems remain and some of them appear to reflect the misunderstandings about the effectiveness of ‘tougher methods’. Other problems may be due to lack of political priority or resource allocations.

There is still widespread use of detention of young persons, children, accused of an offence. Some of them are kept detained for long periods waiting for decision on their case. The conditions in these detention centres differ and are in some cases very bad. The rehabilitation programmes are insufficient as are generally the community-based preventive interventions.

These problems require another look at the standards set by the UN Convention. This treaty asks not only for separate procedures for juveniles who are brought to court, it requires also that these should be child friendly. The purpose should be rehabilitation and reintegration rather than to punish for the sake of retribution. For this to work, there is a need for everyone involved, including judges and prosecutors, to be educated not only about the law but also about the special needs of children.

Arrest, detention and imprisonment are in principle possible for minors above the minimum age of criminal responsibility, but should be used “only as a measure of last resort and for the shortest appropriate period of time,” as the UN Convention states.

This provision is based on the experience that depriving children of their liberty tends to increase the rate of re-offending. The only reason for locking up children may be that there are no other alternative ways to deal with the immediate risks to others.

Such detentions should take place in specific and child-friendly establishments, where young offenders are separated from adult prisoners and, in particular, from hard-core criminals. Contact with the family should be encouraged and facilitated, if that is in the best interests of the child. In general, the conditions should be humane and take into account the special needs of an individual of that age.

Full-time education is particularly essential. Each young offender should be given an individual programme of rehabilitation, a plan that should continue after the detention period with the support of guardians, teachers and social workers. If relations with the parents are impossible, foster parenting might be an alternative. In all this, the child him- or herself should have a say. This is not only a right but also a more effective solution.
Though the message of the UN Convention is that criminalization of children should be avoided, this does not mean that young offenders should be treated as if they had no responsibility. On the contrary, it is important that young offenders are held responsible for their actions and, for instance, take part in repairing the damage they have caused.

It is in the sanction process that we find the difference to an ordinary criminal procedure. In juvenile justice there should be no retribution. The intention is to establish responsibility and, at the same time, to promote reintegration. This requires innovative and effective community sanctions.

In principle, the offender’s parents or a legal guardian should be involved, unless this is deemed counterproductive for the rehabilitation of the child. Whatever the process, there should be a possibility for the child to challenge the accusations and even to make an appeal. One aspect should be further stressed: the importance of a prompt response to the wrongdoing. Delayed procedures – which are problematic in several European countries today – are particularly unfortunate in the case of young offenders, whose bad actions should be seen as a cry for immediate help.

A child in that situation is sometimes more a victim than an offender. The social background is often tragic. This points to the immense importance of early detection and preventive measures. The judicial body is the last link of the chain; we should try to do everything we can to prevent cases coming that far.

Support to families at risk, decisive reaction on signs of domestic violence, social workers with outreach capacity, neighbourhood networks and a school, which not only teaches but also cares for every individual child, these are key components of a preventive strategy.

The young persons themselves should of course be involved in these efforts and not be considered as mere objects of socialization and control. The Europe we want to build for and with children should include those children who have had a difficult start in life.

Thomas Hammarberg
Council of Europe Commissioner for Human Rights
Executive Summary

Why this assessment?

When the UN Convention on the Rights of the Child was adopted 20 years ago this year, few, if any, countries had juvenile justice systems that were fully compatible with the relevant provisions of the UN Convention. When States parties to the Convention began to present their reports on implementation to the Committee on the Rights of the Child, the Committee invariably made recommendations concerning the need to transform laws, policies and practices regarding the treatment of juvenile offenders, regardless of whether the country was rich or poor, democratic or totalitarian, from Africa, Asia, Europe or the Americas.

UNICEF first began supporting juvenile justice reform in Latin America, during the 1990s. In the CEE/CIS region, the organization began supporting the development of juvenile justice systems at the beginning of the new millennium. To some extent, involvement in juvenile justice reform grew out of UNICEF’s work on deinstitutionalization during the 1990s. In part, it originated from support to the participation of civil society in the process of monitoring the implementation of the UN Convention. Child rights organizations in the region were deeply concerned by the injustice and inhumanity that characterized the way children involved in petty crime were treated, during a period marked by severe economic crisis and the dismantlement of repressive institutions inherited from the past. Finally, the extensive reforms of legislation, law enforcement, the administration of justice and corrections undertaken that began with the historic transformations that coincided with the adoption of the Convention on the Rights of the Child, created unprecedented opportunities to advance the child rights agenda in this area. UNICEF’s experience with deinstitutionalization and growing expertise in child rights enabled it to make a special contribution to broader reforms in the area of justice and law enforcement supported by other international and European actors.

UNICEF’s contributions to the development of juvenile justice were guided by the Convention on the Rights of the Child and other relevant standards, principally the 1985 ‘Beijing Rules’ for the Administration of Juvenile Justice and the 1990 ‘Havana Rules’ for the Protection of Juveniles Deprived of their Liberty. There was – and still is – no definite UNICEF strategy on how to approach this work.

One of UNICEF’s strengths is its commitment to objective evaluation of the impact of its interventions. Learning how to evaluate work in new areas, which have proliferated with UNICEF’s commitment to supporting the implementation of the Convention on the Rights of the Child, poses challenges.

In 2007, the UNICEF CEE/CIS Regional Office decided to look at the experience of some countries within the region, to analyse ‘what works’ (and what does not) and see what lessons could be learned. The present study continues the effort to document the changes that have been made in juvenile justice throughout the region during the last two decades, to identify good practices and resources within the region that can be used regionally, and to draw lessons that will inform ongoing efforts to bring juvenile justice into greater conformity with the rights of children. Further assessments are being undertaken in 2009.

The immediate aim is to encourage greater sharing of experiences between UNICEF country offices, and their governmental and civil society partners, in this region. Two regional meetings have taken place and are contributing to the creation of a ‘critical mass’ committed to the development of juvenile justice systems that are both efficient and respectful of the rights of children. Two guidance notes have been produced as part of that process, and there was a fruitful dialogue with the Council of Europe’s Commissioner for Human Rights, who developed regional guidelines during this time.

The experiences documented and lessons summarized in this report no doubt will also be relevant to the strategies and approaches adopted in other regions, and by other international actors.

### Scope and methodology

The scope and methodology of the study was defined in advance of the assessment missions, and shared with the child protection officers (or equivalent) from the five countries in which the 2008 assessments took place. Lessons culled from the 2007 study were taken into account, in terms of both the aims and scope of the assessments and the methodology.

The scope of the study covers three main areas: the process of juvenile justice reform, the juvenile justice system, and UNICEF’s support to juvenile justice reform. The first area covers activities that affect all components of juvenile justice systems, such as police development, law reform, administrative reform and restructuring, training, coordination, allocation of resources and accountability mechanisms. The second assesses the progress made in the various components of juvenile justice: prevention, law enforcement, diversion, pretrial detention, the adjudication and sentencing of juvenile offenders, legal assistance, corrections, probation and other alternative sentences. The third assesses the strategies used by UNICEF and its partners in approaching juvenile justice reform, and issues such as planning, management and evaluation.

A fourth area was included in the assessment guidelines, namely, data collection and analysis. This area was included for two reasons. First, to assess whether national authorities have access to the data needed to develop policies and monitor the functioning of the various components of juvenile justice systems and, if so, to what extent the data are used appropriately. Secondly, to analyse the relevance and utility of regional and international indicators. Since work began, it was decided to include the information and analysis on data as an annex to the assessment reports, rather than as an integral part.

Recognizing the importance of the experience and opinions of children whose lives have been marked, for better or worse, by contacts with juvenile justice authorities, the CEE/CIS Regional Office also decided to support surveys of the experience of such children in the countries covered by the assessments. Logistical and methodological reasons led to the decision to carry out these surveys in parallel to the assessments proper.

Each of the assessment missions included two weeks in the country. An international consultant contracted by the Regional Office developed the methodology, participated in all five missions and drafted the five reports as well as this synthesis. In each country, the international consultant and a

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local consultant formed the assessment team. The local consultant participated fully in all aspects of the mission, advised the international consultant on national law and other relevant matters, and participated in the revision and finalization of the respective assessment report.¹

During the missions, the assessment team interviewed UNICEF staff and representatives of all ministries, agencies and institutions concerned with juvenile justice – typically the Ministry of Justice, the Ministry of Internal affairs, the National Police, the Prison Department, the Probation Department or equivalent, the judiciary, the Office of the Prosecutor, in some cases the Child Welfare Department or a representative of the Ministry of Education, and a representative of the national juvenile justice coordinating council or committee, where one exists. Parliamentarians, ombudspersons, representatives of institutions responsible for training the police, judges and prosecutors and national statistical agencies were also interviewed, whenever possible. Representatives of national and international non-governmental organizations (NGOs) interested in juvenile justice were interviewed, as were representatives of other United Nations, European or bilateral agencies and organizations active in areas such as child rights and support to law reform, strengthening the administration of justice, prison reform and similar areas. Visits were made to courts, pretrial detention facilities, juvenile correctional facilities, women’s prisons (where convicted adolescent girls serve their sentences), reform schools for offenders too young to be prosecuted as juveniles, and projects offering prevention services, diversion, mediation or placement for alternative sentences. A list of persons interviewed, as well as a list of documents consulted, is appended to each assessment.

Main findings

Efforts to develop juvenile justice systems in Albania, Azerbaijan, Kazakhstan, Turkey and Ukraine since their ratification of the Convention on the Rights of the Child, and especially during the last decade, have shown positive results.

Four of these countries now have specialized juvenile courts, special sections of criminal courts, or specially trained judges designated to handle cases involving juveniles accused of an offence.

All have special children’s police units, and the mandate of most of these units has expanded beyond their traditional role of prevention of offending.

The number or percentage of convicted juvenile offenders given custodial sentences has fallen; the number of juvenile prisoners serving sentences has decreased, sometimes by as much as 50 per cent; and conditions in correctional facilities for juveniles have improved. In one country, all correctional facilities for juvenile offenders are open facilities.

Important changes have been introduced into the law: children may no longer be interrogated without the presence of a lawyer and, sometimes, a psychologist; in some countries, custodial sentences may no longer be imposed on juveniles convicted of minor offences; in all countries, the minimum age for prosecution as a juvenile offender is at least 12 years of age, and the age of majority for purposes of the criminal law is 18 years; and in all, save one, the maximum sentence that can be imposed on a juvenile is 10 years.

In most of the five countries, diversion is slowly being introduced, probation services established where they did not exist, and legal aid services developed. In some of them, competence to

¹ The national consultants were Prof. Migena Leskoviku, Albania; Dr. Nabil Seyidov, Azerbaijan; Prof. Gulnara Suleimenova, Kazakhstan and Atty. Seda Acko, Turkey. (In the Ukraine, the national consultant did not participate fully in the mission or drafting of the report, due to other commitments.)
place in special schools younger children involved in criminal activity has been transferred from administrative bodies to the courts.

***

In each of the five countries covered by the assessment, considerable progress has been achieved in some areas, but challenges remain. The detention of juveniles accused of an offence is perhaps the sector where progress has been slowest. In the majority of countries, some accused juveniles are detained for unacceptably long periods while awaiting a final decision in their case, and conditions of detention do not meet international standards. In some, a high percentage of juveniles deprived of liberty are in pretrial detention.

Community-based programmes for the prevention of offending targeting high-risk children and their families are practically non-existent. There are almost no programmes to help children leaving correctional facilities reintegrate into their families and communities, return to school or find employment. The educational, vocational, cultural and psychosocial programmes available in facilities for convicted juveniles have improved, but few, if any, prepare individual plans to assist prisoners, and most lack a clearly defined approach to rehabilitation.

Even though all five countries recognize diversion, discretion to divert cases is often too limited and most diversion programmes are pilots whose value has not yet been assessed. In all countries, save one, victim-offender mediation is underutilized, if not unknown. Non-custodial sentences are widely used, but the extent to which they are applied appropriately – in other words, the extent to which the ‘last resort’ principle is respected in sentencing – is difficult to evaluate on the basis of the data available. Moreover, the programmes designed to assist offenders given alternative sentences to avoid re-offending are generally weak. Community-based programmes aiming to prevent re-offending are being piloted in some countries, but have not yet proven their worth.

Data collection is inadequate, although some progress has been made with regard to certain indicators. The following are amongst the data most needed and often missing: the number of children under the minimum age for prosecution involved in criminal activity; the number of cases diverted; the duration of pretrial detention; the length of sentences served and the use of early release; the factors that correlate with sentences imposed; and the impact of different interventions, including prevention, diversion, and custodial and alternative sentences.

In all five countries, the process of developing comprehensive juvenile justice systems that respect the rights of children is underway. Lessons can nevertheless be drawn from the progress achieved and the gaps remaining, even if some should be considered as tentative.

The experience of the five countries covered by the assessment suggests three lessons regarding underage offenders. First, establishing clear legal criteria for placement in facilities for underage offenders and giving courts exclusive jurisdiction over placement greatly reduce the number of children confined in detention facilities. Second, simply abolishing residential facilities for underage offenders without establishing alternative programmes to assist them can contribute to an increase in offending. Third, both open residential schools and non-residential after-school programmes appear to help underage offenders, but their effectiveness needs to be better monitored and evaluated to determine the most appropriate solutions for different children and the best combination of solutions for each society.

The process of creating a juvenile justice system compliant with international standards by amending legislation designed primarily for adults (criminal code and code of criminal procedure) is slow and difficult. Those interested in juvenile justice and children’s rights are given a hearing, but the special
needs and characteristics of children are not at the centre of the process. Sentences for children are reduced, for example, but the discussion is about how much they should be reduced as compared to the sentences imposed on adults, not about what kind of sentences will help children avoid re-offending. The ‘last resort’ and ‘shortest appropriate period of time’ principles are introduced into the law, but the maximum length of detention before trial is the same for juveniles and adults.

Consideration should be given to adopting legislation specifically on juvenile justice. Such legislation does not replace the criminal code, the code of criminal procedure and similar laws, it complements them and appears to be the most expeditious and effective way of creating a coherent framework for a comprehensive juvenile justice system, from prevention to post-release. 9

Training – of police officers, correctional officers, judges and prosecutors – has contributed to reduce violence against juvenile suspects and prisoners, increase sensitivity towards children in legal proceedings, diminish the number of juveniles in correctional facilities, and create a more wholesome atmosphere in correctional facilities for juveniles.

These conclusions are based on anecdotal evidence, as tools to evaluate the effectiveness of training are rarely, if ever, used. This is one challenge. Another is to develop standards, based on the evaluation of training, as to the kind and amount of training the various professionals working in juvenile justice should receive. Furthermore, courses on juvenile justice should be incorporated more widely into the curriculum of universities and training institutes. And research on offending by juveniles and on juvenile justice should be encouraged and supported.

Training must be reinforced by mechanisms that hold civil servants accountable when they violate children’s rights, or otherwise fail to meet the relevant professional standards. Internal mechanisms are essential to investigate abuse of power by law enforcement officers. Ordinary procedures for investigating criminal offences also have a role to play. But independent authorities mandated to monitor human rights can make an important contribution as well, because they operate with transparency and do not depend on the willingness of victims – who are easy to intimidate – to make complaints.

In most of the countries covered by the assessment, corruption emerged as one of the main threats to the rights of children taken into custody or charged with an offence. Police, for example, ask for bribes in exchange for releasing a child from custody. Combating corruption where it is deeply rooted is a difficult task that requires a high-level political commitment. The payment of adequate salaries and active opposition to corruption by the legal profession and civil society also are helpful.

Legal aid programmes, especially programmes that specialize in providing children with services and psychosocial and legal assistance, can play a vital role in improving the quality of justice dispensed to juveniles accused of an offence and to juveniles in detention or serving sentences.

In general, the lack of resources does not appear to be a major obstacle to the development of juvenile justice systems in the countries assessed. It is an impediment in a few countries, in specific areas. In some instances, these are programmes (e.g., mediation, legal assistance) that benefit both children and adults. Budgeting for the development of juvenile justice is necessary for two reasons: to ensure the balanced development of its various components (e.g., prevention, courts, detention facilities) and to delink the funding of urgently needed investments in juvenile justice from the funding of expensive programmes benefiting offenders in general.

Civil society can make important contributions to juvenile justice. The investigation and documentation of the system’s deficiencies by NGOs and the media are one of the main driving forces behind reform. Academics and professional groups can also take part in training and law reform. Churches, sports clubs, cultural groups and other community organizations help rehabilitate offenders. Businesses and non-profit associations provide placements for offenders given community-service sentences, support the renovation or equipment of facilities, participate in vocational training and offer employment to released offenders. Authorities’ receptiveness to civil society’s contribution can accelerate and consolidate the development of juvenile justice systems respectful of children’s rights.

Data on offending, on offenders and on the functioning of the various components of the juvenile justice system are essential to planning, to monitoring the adequate functioning of the system, and to evaluating the impact of the changes operated. For some of the components good data are available, but for others they are disappointing in all countries. Furthermore, in most countries, there are significant discrepancies between information related to different aspects of the system. One common gap concerns the involvement in crime of children who are too young to be charged with an offence, which is key for prevention. Another important gap concerns the situation of offenders released from correctional facilities, which is useful to evaluate the impact of custodial sentences and the value of the programmes offered in correctional facilities. Data showing more convictions than reported offences, or more custodial sentences than prisoners, are examples of common discrepancies. In the absence of more reliable data, it is difficult to improve the system and to measure with a reasonable degree of certainty the impact of the reforms.

While much of the data needed to inform decisions to be taken in developing and reforming juvenile justice systems can be collected from official sources, information and opinions provided by children and their parents are also required. Surveys of the experiences and views of children in custodial facilities and their parents conducted in some countries have shed useful light on issues like corruption, the prevalence of violence, the relationship between children and staff and the impact of correctional facilities on children’s behaviour after release. There is no substitute for information of this kind.

Most of the countries assessed began to develop juvenile justice systems without a strategy, but realized the need for it at some point. Changes in one component of the system have consequences for other components of the system or require changes in other parts of the system. It is not possible to provide convicted offenders with the assistance they need, for example, if correctional facilities are overcrowded, nor is it possible for judges to give offenders sentences that will help reduce offending if appropriate programmes for offenders do not exist. The construction of new, modern correctional facilities may be a bad investment if the impact of probation programmes, diversion or changes in legislation on sentences is not taken into account.

A good strategy or plan must be holistic and consider relevant institutions and programmes. It must identify goals and aims in a way that is sufficiently clear and concrete, yet realistic. The activities expected to help attain the goals must be identified, and appropriate linkages between them established. Should training take place before law reform, or after? Do pilot projects require a change in legislation, or can they be implemented to show the desirability of changes in the law? The ministries, agencies and other bodies whose participation is necessary must be identified, and an appropriate mechanism for coordination developed. The involvement of practitioners, those who best understand the children whose lives are affected for better or for worse by the system, is helpful, as is the participation of representatives of civil society, the legislature and independent institutions, such as the judiciary and ombudsperson.
The development of good juvenile justice systems is closely linked to other social, legal and institutional reforms, mainly eliminating corruption; strengthening case management systems in law enforcement and the administration of justice; promoting the training capacity of institutions like the police or the judiciary; enhancing the expertise and independence of statutory human rights bodies; developing standards recognizing the qualifications of social workers; implementing programmes to combat substance abuse or to prevent school drop-out, to name but a few.

UNICEF is increasingly seen as the main international partner of governments in the development of juvenile justice. Progress achieved thus far in the countries covered by the assessments evidences the value that UNICEF brings to the table, but its efforts have been most effective when they have been coordinated with or designed to complement those of other international actors, whether bilateral donors, international foundations such as the Open Society Institute (OSI), other UN agencies such as the Office of the United Nations High Commissioner for Human Rights (OHCHR) and regional actors such as the European Union (EU), the Council of Europe, or the Organization for Security and Co-operation in Europe (OSCE).

Finally, UNICEF’s growing experience and expertise in juvenile justice is leading towards new opportunities to work with governmental, civil society and international partners on other issues concerning justice for children.

**Box 1: Windows of opportunity**

**Albania**

The Government of Albania has in principle decided to develop a law on juvenile justice or a comprehensive law on children, containing a chapter on juvenile justice.

**Azerbaijan**

A decision has been taken to develop and adopt a law on juvenile justice. The recent establishment of an interministerial, intersectoral Juvenile Justice Task Force should allow the development of a comprehensive system including positive developments (institutionalizing the training of the police; expanding or reorienting diversion work based on the forthcoming evaluation of the UNICEF pilot project; and closing or converting to other purposes closed/semi-closed facilities run by the Ministry of Education in view of the small number of ‘at-risk’ children.

**Kazakhstan**

In 2008, a Presidential Decree called for the development of a juvenile justice system during the period 2009 – 2011. The relevant ministries and agencies are keen to cooperate with UNICEF in the implementation of this decision.

**Turkey**

Interest in membership in the European Union has created a strong interest in bringing national law and practice into conformity with international standards, including in areas concerning juvenile justice. The European Union supports projects in the judicial, law enforcement and correctional sectors, and has a good working relationship with UNICEF.

**Ukraine**

In 2008, the President signed a decree calling for the creation of a juvenile justice system. The government is eager to receive advice and information regarding the experience of other countries through UNICEF.
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Context

Albania, Azerbaijan, Kazakhstan, Turkey and Ukraine are part of Eastern Europe and Central Asia. Azerbaijan, Kazakhstan and Ukraine became independent in 1991. With the exception of Kazakhstan, all belong to the Council of Europe. All are developing links with the European Union\(^{10}\) and all are members of the OSCE.

This selection of five countries displays a great variety of economic and demographic situations:

<table>
<thead>
<tr>
<th></th>
<th>GNI per capita</th>
<th>Total population</th>
<th>Under-18 population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania</td>
<td>US$ 3,290</td>
<td>3.19 million</td>
<td>31%</td>
</tr>
<tr>
<td>Azerbaijan</td>
<td>US$ 2,550</td>
<td>8.46 million</td>
<td>30%</td>
</tr>
<tr>
<td>Kazakhstan</td>
<td>US$ 5,060</td>
<td>15.42 million</td>
<td>29%</td>
</tr>
<tr>
<td>Turkey</td>
<td>US$ 8,020</td>
<td>74.87 million</td>
<td>33%</td>
</tr>
<tr>
<td>Ukraine</td>
<td>US$ 2,550</td>
<td>46.2 million</td>
<td>18%</td>
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</table>


None of these countries had a juvenile justice system when the Convention on the Rights of the Child was adopted in 1989. Only Turkey had one juvenile court established in 1988. In most of the countries, the minimum age for prosecution as a juvenile and as an adult met international standards, although in Turkey the minimum age for prosecution was 11 years and the age of penal majority 15 years. Juveniles accused of an offence were tried under special provisions of the Criminal Code and the Code of Criminal Procedure, and respect for due process was weak. The right to legal representation was recognized by law, but the quality of legal representation was poor. There were no diversion programmes, and victim-offender mediation was unknown. Younger children involved in criminal and other ‘antisocial’ behaviour could be confined in closed educational institutions following summary administrative proceedings.

Separate correctional facilities for convicted juvenile offenders existed,\(^{11}\) but accused juveniles awaiting trial or appeal were usually detained in special sections of facilities for adults. The ‘last resort’ principle was not respected in practice, and detention before trial was often lengthy. Azerbaijan, Kazakhstan and Ukraine had specialized children’s police units, but their mandate was restricted to the prevention of offending and control of ‘antisocial behaviour’. Prevention programmes were limited to police supervision or confinement in special schools.

Data on offending by juveniles – which must be treated with caution – show conflicting trends. Offending by juveniles has increased by 20 per cent in recent years (with the greatest increment in children under age 14) in Albania and by 50 per cent in Turkey during the last decade.\(^{12}\) In contrast, offending seems to be decreasing in Azerbaijan and Kazakhstan, and reportedly has fallen by 50 per cent in Ukraine.

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\(^{10}\) Albania has signed a Stabilization and Association Agreement, and Azerbaijan and Ukraine have entered Partnership and Cooperation Agreements and participate in the ‘Eastern Partnership’.

\(^{11}\) Strictly speaking, such facilities are not exclusively for juveniles, because some prisoners sentenced as juveniles are allowed to remain after reaching age 18, but this does not alter their essential purpose or nature.

\(^{12}\) From 1997 to 2006, the most recent years for which data are available.
The challenges faced by these countries in developing juvenile justice systems vary greatly. All are democracies, but in some the transition to democracy has been slow, while in others it has been tumultuous. All of them, except Turkey, suffered from severe economic dislocation during the 1990s, but recovered. Some are now greatly exposed to the present global economic crisis. In most of them, in particular Azerbaijan, Kazakhstan and Turkey, the size of the country and regional imbalances pose challenges to the implementation of juvenile justice programmes and institutions throughout the national territory. In addition, most of these countries have large ethnic or linguistic minorities.

Each country has met at least once with the Committee on the Rights of the Child to discuss its reports on the implementation of the Convention on the Rights of the Child, and in each case the Committee recommended that steps be taken to bring law and practice into full compliance with the Convention on the Rights of the Child and other international standards on juvenile justice. Other factors also contributed to a commitment to juvenile justice: in Albania, the impetus came largely from civil society, which became quite active in investigating prison conditions early in the transition to democracy; in Kazakhstan, a UNICEF-supported situation analysis and a three-year pilot project undertaken by the Open Society Institute were vital; in Ukraine, too, a UNICEF-sponsored situation analysis was crucial; and, in Turkey, reforms in the justice system required for accession to the European Union have been key.

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13 It is interesting to note that, although poverty is often considered one of the main causes of offending by juveniles, data do not show a correlation between the economic crises of the 1990s and offending. Moreover, the level of reported offending is relatively low, compared to Western Europe.

14 In Azerbaijan, some 11 per cent of the population are minorities; in Ukraine, 17 per cent of the population is of Russian origin (2001 Census of Ukraine); in Kazakhstan, some 58 per cent of the population is Kazakh and 26 per cent is of Russian origin; there are over one hundred smaller ethnic minorities (Committee on the Rights of the Child, Consideration of reports submitted by States parties under Article 44 of the Convention, Second and third periodic reports of States parties: Kazakhstan, CRC/C/KAZ/3, 2006, para. 12). In Turkey, according to estimates, there are between 12 and 15 million Kurds (see Council of Europe: European Commission Against Racism and Intolerance (ECRI), Third Report on Turkey, Adopted on 25 June 2004, 15 February 2005, CRI(2005)5, available at: http://www.unhcr.org/refworld/docid/46efa2efd.html, accessed 31 July 2009).

15 The Albanian Government recognizes only three national minorities: Greeks, Macedonians and Montenegrins (United Nations, International Human Rights Instruments, Core document forming part of the reports of States parties: Albania, HRI/CORE/1/Add.124, 18 July 2003, para. 4). There are no official data on the number of Roma and ‘Egyptians’ (sometimes considered a Roma subgroup, Egyptians maintain that they are a separate population whose origins are in Egypt; some claim that they are the descendents of slaves brought to the Balkans during the Ottoman Empire). Estimates from other sources vary greatly and suggest that the combined size of these minorities may be 100,000 – 320,000 (Roma and Egyptians in Albania: From Social Exclusion to Social Inclusion: Summary of the World Bank Needs Assessment Study on Roma and Egyptians in Albania, available at http://www.errc.org/cikk.php?cikk=2285, accessed 31 July 2009).

Reform Achievements

In each of the countries covered by the assessment, significant progress has been achieved in the development of juvenile justice systems that meet relevant United Nations and European standards. It is not possible to generalize as to which country or countries have made more progress; in all of them, improvements have been greater in some areas than others and, in each, much remains to be done. The following is an overview of the achievements in different areas of juvenile justice. The boxes identify some of the most positive experiences – including some that could serve as models for other European countries.

The specialization of judges and courts

The appointment of specialized judges or the establishment of specialized courts has been a significant advance in most countries. In Albania, the creation of specialized sections of district courts was envisaged by the Code of Criminal Procedure adopted in 1998, but it was not until 2007 that they were established in six districts. The appointment of specialized judges has improved the quality of juvenile justice, and many expect that specialized sections will be established throughout the country.

Neither juvenile courts nor specialized judges exist in Azerbaijan.¹⁷

In Kazakhstan, two specialized juvenile courts have been created: one in Almaty and one in Astana. A decree has been adopted recently, calling for the creation of specialized courts throughout the country.

In Turkey, the first children’s court was established in 1988, but it was not until recently that a network of children’s courts was expanded significantly.¹⁸ There are now 83 juvenile courts in 25 provinces.¹⁹ They handle cases involving children in need of protection and juveniles accused of an offence. The staff of children’s courts includes special workers and psychologists. Specialized prosecutors handle cases assigned to children’s courts. These courts have improved the quality of justice, although their heavy caseload has led to excessive delays in the resolution of cases concerning accused juveniles. There are still more than 50 provinces without children’s courts, however, and many prosecutors and judges assigned to children’s courts have not yet received special training. There are also some important gaps in the competence of children’s courts (for example, to determine whether an accused juvenile will be detained prior to trial).

In 2003, the Supreme Court of Ukraine ordered all trial courts to appoint a judge for cases involving juveniles. No special training is required and these judges continue to handle other kinds of cases. Consequently, while some designated judges show sensitivity to the special characteristics of juvenile cases and an understanding of the internationally recognized rights and principles, others do not.

The experience of these four countries reveals the complexity of the issue. On one hand, specialized courts or judges devoted exclusively to cases involving juveniles sometimes develop a better understanding of the relevant principles and appropriate methodologies. The extent to which they do so is affected by many variables, including the law they apply, their motivation, recruitment policies, and the time available for the cases.

¹⁷ The law only mentions that juvenile cases should be dealt with by ‘experienced judges’.
¹⁸ As recently as 2004, there were only 10 juvenile courts.
¹⁹ The country has 81 provinces.
the quality of training, specialization of prosecutors and defence attorneys and the non-judicial staff employed by the courts. Yet some designated judges also develop a good understanding of the relevant principles and appropriate methodologies. In most countries, the number of cases adjudicated does not justify establishing special juvenile courts throughout the entire country, yet giving specialized courts jurisdiction over large territories can cause difficulties for the prosecution and the defence alike. Experience does suggest that specialized juvenile courts are the best solution for most countries, in the cities where the greatest number of cases arise. More generally, one can conclude that the decision as to the establishment of such courts and their location should be based on reliable, disaggregated data on offending, and calculations as to the number of cases that could be handled without trial through diversion mechanisms. No single solution is appropriate for all countries, but it is important for each country facing this issue to learn from the experiences of others.

**Specialized police units**

All five countries covered by the assessment have police units specialized in cases involving children. The extent of their mandate varies considerably: in some countries, for example Azerbaijan, it is largely limited to preventive activities, while in others it includes children who are suspects or victims of crime.

In Albania, special units of the police were established in 12 prefectures in 2007. They are responsible for cases of domestic violence as well as offending by juveniles.

In Kazakhstan, the mandate of the juvenile police has expanded to include the investigation of offending by juveniles. They continue to play a central role in prevention, and their approach to prevention has evolved to include a police presence in schools.

In Turkey, a special unit of the national police responsible for child victims was established in 1997. In 2001, its mandate was expanded to include offending by juveniles. The Children’s Police have 3,500 officers and staff, and is present throughout the country. They have a record of good treatment of children, and are gradually helping to change the culture of the police force as a whole towards greater respect for the rights of children, whether victims or suspects. This, too, can be considered a model for other countries.

In Ukraine, the juvenile police now have responsibility for children victims of crime as well as juvenile offenders. They also operate ‘reception/distribution’ centres, which have a broad range of functions, including temporary detention or shelter for runaways, juveniles suspected of offending and illegal migrants under age 18. One such centre visited by the assessment team can be considered a model.

The creation of special police forces for children and adolescents helps prevent violations of children’s rights by law enforcement officials, and protects children who are victims of crimes. The broader their role is, in particular in investigating offences, the more value they bring to a juvenile justice system, but the creation of such specialized units does not obviate the need for effective monitoring of the interaction of other police units with children and adolescents. Their effectiveness in preventing offending by children is unclear, but it is obvious that they should not have primary responsibility for prevention and, especially, they should not be given a dominant role in administrative decisions that may deprive children of their liberty.

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20 The country has 21 prefectures.
21 These centres are similar to the ‘centres for temporary isolation, adaptation and rehabilitation’ of Kazakhstan, which are operated by the Ministry of Internal Affairs, but not the police as such.
The decrease in custodial sentences

In all countries covered by the assessment there has been a decrease in the number or percentage of convicted juveniles given custodial sentences and in the number of juvenile prisoners. In Azerbaijan, the percentage of convicted offenders receiving ‘conditional’ or suspended sentences increased substantially in 2001, from below 30 per cent to around 50 per cent. In Kazakhstan, data on sentencing indicate that the percentage of convicted juveniles given ‘suspended’ sentences rose from 11 per cent in 1996 to 65 per cent in 2000. In Turkey, the number of juveniles sentenced to juvenile correctional facilities fell sharply from 706 in 1998 to 78 in 2006. (This has been unfortunately tarnished by the high number of children recently sentenced under the antiterrorist laws.) In Ukraine, the total population of correctional facilities has fallen by roughly one half during the last decade.

The decrease in the use of custodial sentences documented in most of these countries, which appears to be the main reason for the decline in the number of juvenile prisoners, may be attributed in part to changes in the applicable legislation, and in part to a drop in offending. The main reason appears to be the training of judges and, to a lesser extent, of prosecutors. The reduced use of custodial sentences is an indicator of greater respect for the internationally recognized principle that deprivation of liberty shall be the ‘last resort’.

While the use of custodial sentences is declining, resorting to detention during investigation and trial remains a serious problem. In Albania, for example, 40 per cent of all accused juveniles are detained prior to trial and, at the time of the assessment mission, 82 per cent of all juveniles deprived of liberty were in detention facilities. In Turkey, 90 per cent of all juveniles deprived of liberty are in pretrial detention centres, not correctional facilities for convicted juveniles.

Improved conditions in juvenile correctional facilities

Conditions in correctional facilities for convicted juvenile offenders have improved in all five countries covered by the assessment. Overcrowding was not detected in any of the facilities visited; indeed, the population of most is well under capacity.

In most countries there have been no major improvements in the physical infrastructure of prisons and detention facilities, although the construction of new facilities for juvenile offenders is planned in Albania and Azerbaijan. The improvements concern the kind of programmes, activities and services provided, staff’s attitudes towards prisoners as well as visitation policies and discipline methods.

Evaluating conditions in correctional facilities is, of course, difficult. The assessment team did not interview prisoners and, with one exception, available studies or reports including interviews with


23 Other reasons include shorter sentences and greater use of early release.

24 It should be noted, though, that of the 82 per cent who were in detention facilities some had been convicted and were awaiting the outcome of an appeal.

25 In Azerbaijan, for example, the juvenile facility visited had a capacity of 150 and a population of 47. In Kazakhstan, one facility visited had a capacity of 350 and a population of 83, and the other a capacity of 300 and a population of 139. In Ukraine, the total population of the 10 correctional facilities for juveniles was almost one third below capacity. In Turkey, the combined population of all facilities for convicted juveniles is half their capacity.

26 Construction of facility in Albania completed as of June 2009.

27 In Turkey, a new, state-of-the-art pretrial detention facility exclusively for juveniles has been built since the completion of this assessment.
juvenile prisoners were not recent enough to ascertain whether the description of current conditions was reliable. Consequently, the following conclusions are based mainly on interviews with facilities’ staff and independent sources knowledgeable about conditions.

One advance observed in all five countries is the addition of psychologists and social workers to the staff. Although this is a very positive development, in some countries there are problems that remain to be solved, such as the difficulty in recruiting experienced and qualified psychologists due to unattractive salaries, frequent absenteeism, and non-recognition of the confidentiality of the relationship between prisoners and psychologists by the staff of the correctional facilities.

Other achievements include access to standard and remedial education; clean living areas with amenities such as windows, refrigerators and cabinets for personal effects; adequate food, clothing, bedding and medical care; generous access to recreational activities, especially sports; efforts to encourage and facilitate contact between prisoners and their families; respect for religious practices (e.g., prayer rooms, special meals during fasting) and access to religious counsellors; participation in cultural activities, such as art, music, theatre, literature and chess. Vocational training is provided in order to enable prisoners find employment after release. Forced labour was not detected in any of the correctional facilities visited.

Box 3: Examples of progress in juvenile correctional facilities

In Azerbaijan, a project is helping juvenile prisoners prepare for the entrance examination to technical college. Steps have also been taken to enhance contacts between the facility and the community. There is a Parents’ Committee, an annual open house as well as a Council of Trustees on the Rights of Young Offenders, which supervises conditions and helps organize special activities.

In Kazakhstan, one of the facilities has a special apartment where visiting families can stay with their son for a few days. The living areas are decorated with paintings done by prisoners, and the open areas have gardens and a small zoo. The vocational training programme includes carpentry, cabinet-making, computers and plumbing. A survey found that 65 per cent of former prisoners believe that the facility “helps to rehabilitate.”

In Turkey, all facilities for convicted juvenile offenders are open facilities.

In Ukraine, juvenile prisoners can join ‘interest groups’ offering opportunities to participate in different kinds of sports and cultural and recreational activities, including in the community. They receive psychosocial counselling and life skills education. Six months before their release, prisoners enter a special programme preparing them to reintegrate the community. ‘Caring councils’, incorporating representatives of the local government and NGOs, monitor detention conditions and provide juveniles with assistance after release. Guidelines on cooperation between the State Department of Penal Implementation and State Social Services for Family, Children and Youth, regarding assistance from the local social services centre after returning to the community, were developed with inputs from juvenile offenders.

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28 The exception is Ukraine, where a recent report by the Centre of Social Expertise of the National Academy of Sciences incorporates interviews with a small sample of juvenile detainees and prisoners. A report incorporating interviews with a larger number of juvenile prisoners and former prisoners was being carried out in Azerbaijan at the time of the assessment mission.
The facilities visited take a preventive approach to disciplinary problems and strive to resolve regulation infractions through warnings or counselling, when possible. The use of corporal punishment is banished, although there is conflicting information on how well this prohibition is enforced in some of the facilities visited. Regulations permitting sanctions that are not allowed by international standards, such as confinement in isolation cells or suspension of the right to receive or make family visits, are still in force in most of the countries visited. 29

Some limited but positive elements of law reform

The process of developing legislation on juvenile justice in harmony with international standards is still underway. There are plans to adopt new legislation in Albania, Azerbaijan, Kazakhstan and Ukraine, and further reforms are needed in Turkey. Yet in all of these countries, some important changes in the law have already been made: children may not be interrogated without the presence of a lawyer and/or psychologist; and the right of accused juveniles to legal assistance is recognized.

In Albania, legislation adopted during the 1990s recognizes the right of juveniles not to be detained with adults.

In Kazakhstan, legislation adopted in 1997 requires pre-sentence reports and recognizes alternative sentences. If a juvenile suspect is detained, charges must be filed within 72 hours. Juvenile suspects may not be interrogated for more than two hours at a time, nor at night.

In Turkey, recent legislation raised the minimum age for the prosecution of juvenile offenders to age 12, and an amendment to older legislation gave juvenile courts competence over offenders aged 15–18 years. The use of handcuffs on juveniles is prohibited; children under age 15 may not be detained prior to trial unless charged with a serious offence; and juveniles in detention have the right to be accompanied by a relative.

In Ukraine, juvenile suspects may not be interrogated alone or for more than two hours at a time and they may not be detained before trial unless accused of a serious offence; the maximum sentence that may be imposed on convicted juveniles was reduced to 10 years.

The duration of proceedings is an area where the need to amend legislation is urgent. Legislation adopted in recent years invariably recognizes the right of accused juveniles to be tried ‘without delay’, but in most countries specific time limits do not adequately protect this principle and are often the same for juveniles and adults.

The Committee on the Rights of the Child recommends that children deprived of their liberty should be presented to a judge within 24 hours. Police may detain juvenile suspects for 48 hours without a court order in Albania; for 24 or 48 hours, depending on the circumstances, in Azerbaijan; for up to 72 hours in Kazakhstan; and, in Turkey, a juvenile suspected of committing offences jointly with another person may be detained for up to four days.

The Committee on the Rights of the Child recommends that children should not be detained for purposes of investigation without charges for more than 30 days. In Azerbaijan, the time limit for completing the entire investigation is, in principle, two to four months, and pretrial detention may last 12 months. 30

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29 Solitary confinement in Albania and Azerbaijan; restriction of visits in Kazakhstan.

30 In exceptional circumstances, the investigation period may be extended to 14 months, and pretrial detention may last 12 months.
The Committee on the Rights of the Child recommends that, once charges have been placed, the trial should be concluded within six months. In Albania, the maximum duration of detention prior to trial is three years, for juveniles and adults alike. The law fixes no time limits on the duration of investigation and trial if the suspect/accused is not deprived of liberty. In Kazakhstan, the time limit for trials of juveniles is one year. In Turkey, it normally is one year if the accused is detained, but may be up to three years for some offences. In Ukraine, the law does not set a time limit to the duration of detention prior to and during trial.

There is clearly a need for the process of law reform to continue in all five countries.\(^{31}\)

The timid emergence of diversion

Diversion may take the form of a simple warning, but it often takes the form of mediation, compensation of the victim or voluntary participation in some kind of prevention/rehabilitation programme.\(^{32}\) Diversion is a relatively recent development in civil law countries. Some progress has been achieved concerning its recognition in the countries covered by this assessment, and some pilot projects include programmes for offenders whose cases are diverted. In general, where the law recognizes diversion it does so only in narrow circumstances, and some pilot diversion projects operate with a tenuous legal basis.

In Albania, an interesting pilot project is operating in four districts. Cases involving minor injuries or insults can be referred for mediation, and if the victim is compensated the case is closed.

In Azerbaijan, the investigation of a crime may be discontinued, the prosecutor may decide not to proceed to trial, or the court may decide to discontinue proceedings in the following circumstances: the accused is a first offender; he/she shows remorse; he/she has pled guilty; he/she has reconciled with and compensated the victim; and he/she no longer represents a serious danger to society.

A pilot diversion project for juveniles was established in the capital in 2007. It does not rely on the procedure described above, but rather on the referral of cases to the Commission on Minors, an administrative body having broad competence over cases involving antisocial behaviour and minor offences. Most of the cases referred to this project involve antisocial behaviour, not offending. The cases that do involve offending are referred by a local court as ‘alternative sentencing’. It is not clear whether the project actually provides diversion. It could be considered secondary prevention. It includes remedial education, life skills training, counselling and other forms of assistance. The project’s impact on beneficiaries and on offending has not yet been evaluated.

In Kazakhstan, cases involving offences of minor or average seriousness may be closed without proceeding to trial if the victim and the offender have reconciled and the victim has been compensated. A pilot project implemented in Astana facilitated mediation for this purpose. Although the police still practise this form of diversion, it has not been promoted on the national level.

In Turkey, prosecutors have discretion not to prosecute if the accused is a first offender and the crime is not a serious one. Other conditions are: compensation of the victim, if appropriate and possible; a finding that the offender is unlikely to commit another offence; and a finding that deferral of proceedings is in the interest of society. If these conditions are met, the judge may decide to postpone trial for five years and, if no offence is committed during this period, the case is closed.

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\(^{31}\) See below the section ‘Lessons on juvenile justice systems and reforms’.

Trial also may be avoided if a juvenile offender compensates the victim through a procedure known as ‘negotiating and settling’. This form of diversion is available only for minor crimes, but there is no requirement that the juvenile be a first offender. When first recognized, trained mediators participated in the procedure, but after a short period their role was eliminated, because authorities attribute more importance to compensation than to reconciliation.

In Ukraine, a prosecutor can recommend that the court impose ‘compulsory measures of an educational nature’ in certain circumstances, if both the accused child and his/her parents agree. The measures include warnings, restrictions on behaviour and supervision or placement in a special educational and correctional institution. Such a recommendation can be made only if the prosecutor concludes that a juvenile first offender who has committed a minor offence or a crime of moderate severity can be rehabilitated without criminal sanction, or if he/she concludes that the juvenile did not fully understand the nature or consequences of his/her behaviour. A pilot project involving victim-offender mediation (VOM) began in 2007 in two regions. The Ministry of Justice has prepared a draft law on VOM.

The fact that some form of diversion now exists in each of the five countries is an accomplishment, although much remains to be done in terms of adopting legislation, broadening the range of cases in which diversion is available, and taking to scale VOM and other community-based programmes that provide appropriate prevention/rehabilitation services on a voluntary basis as a means of avoiding unnecessary legal proceedings.

**Alternative sentences**

The term ‘alternative sentences’ is usually used as a synonym for sentences that do not involve deprivation of liberty, such as warnings; fines; compensation of the victim; probation and other forms of supervision; orders concerning behaviour; mandatory participation in counselling or other programmes designed to prevent re-offending; and community service. The term is sometimes used more broadly to include sentences where the offender is deprived of liberty on a part-time basis (e.g., on weekends or at night). Sentences to an open correctional facility are not considered as alternative sentences, however. Alternative sentences are important as a means of compliance with the principle that no child shall be deprived of liberty except as a ‘last resort’, as required by Article 37(b) of the Convention on the Rights of the Child.

All legal systems have some non-custodial sentences. Warnings and supervision were widely used under the Soviet legal system. Supervision was done by the police. Confinement in psychiatric hospitals and substance abuse centres were used as well. In some countries, other non-custodial sentences were recognized by law, but the programmes or services needed to put them into practice did not exist.

The kind of alternative sentences available has expanded in most of the countries covered by the assessment. Some of them are implementing pilot projects offering new programmes and services. In Albania, sentences to community service have been recognized by law since 1995, but there were no programmes to supervise such orders until UNICEF took the initiative of supporting a pilot project in 2007. Similarly, the law recognized probation, but no probation service existed. A law authorizing the establishment of probation was adopted in 2008.

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33 This may be considered diversion because it is voluntary, and avoids a trial.

34 The Beijing Rules, Rule 18. In the legislation of many countries, measures of this kind are called ‘educational measures’, although the term also includes placement in special residential schools that are not part of the correctional system.
In Azerbaijan, the alternative sentence most commonly imposed on juveniles is the ‘conditional’ sentence, which is similar to probation. The number of conditional sentences, fines and community service sentences imposed on juveniles has increased dramatically. There are, however, no community-based programmes designed to assist juveniles given non-custodial sentences.\textsuperscript{35}

In Kazakhstan, judges may impose warning, release in the custody of parents, reparation of the damage, restrictions or requirements regarding the offender’s conduct if they conclude that confinement in a correctional facility is not necessary for the rehabilitation of a juvenile convicted of a minor offence or a first offender aged 16–18 years convicted of offences of average gravity. Judges also have broader discretion to impose a conditional sentence if they conclude that confinement in a correctional facility is not necessary to prevent re-offending. More than half of all sentences imposed on juvenile offenders are conditional, and the number of non-custodial sentences has increased substantially, which seems to indicate growing judicial sensitivity to the ‘best interests of the child’ and the ‘last resort’ principles.

In Turkey, sentences of less than one year must be converted into non-custodial sentences, which include fines, community service, restrictions on activities and freedom of movement, and enrolment in an educational institution. Judges have discretion to suspend sentences of three years or less for a first offender, if he/she has expressed remorse and the judge concludes that he/she is unlikely to re-offend. If the offender is under age 15, this discretion extends to sentences of up to five years. Sentencing may be avoided through reconciliation between the victim and the offender.\textsuperscript{36}

In Ukraine, first offenders may not be given a custodial sentence for a minor offence, and judges have discretion to impose an alternative sentence if they conclude that confinement in a correctional facility is not needed to prevent re-offending. Judges also have discretion to simply dismiss charges related to a minor or medium-gravity offence if the offender has demonstrated repentance and irreproachable conduct – a good example of legislation that facilitates compliance with the ‘last resort’ principle. Juvenile offenders sentenced to a term of five years or less may benefit from probation. An agency is responsible for supervising offenders given this sentence.

While considerable progress has been made in introducing alternative sentences, in particular those that involve the provision of assistance to avoid re-offending, this process remains in an early stage. It is important to evaluate the impact of pilot projects and new legislation, especially on re-offending and, in most countries, to gradually expand the programmes available for offenders given non-custodial sentences. Research also is needed on the risk of re-offending for different kinds of crimes and the circumstances in which they are committed, with a view to re-evaluating the basis for restrictions on the discretion of judges to apply alternative sentences.

\textsuperscript{35} A small number of juveniles have been admitted to the pilot diversion project, as indicated above.

\textsuperscript{36} If the offence is punishable by a sentence of two years or less, or three years if the offender is under age 15.
Areas of Concern

The excessive use of police custody and pretrial detention

The legislation of most of the countries covered by this assessment differentiates between two or three kinds of deprivation of liberty of suspects and accused persons:

- detention during the investigation of an offence;
- detention of juveniles charged with an offence before trial, during trial and while the conviction is being appealed;
- temporary custody for reasons other than the investigation of an offence, such as confirming identity, locating the family or protecting a juvenile who has run away from home.

The Committee on the Rights of the Child has indicated that no child should be detained by the police for more than 24 hours without a judicial order. Most of the countries covered by the assessment do not meet this standard. In Albania, juvenile suspects may be held for 48 hours without a judicial order. In Azerbaijan, they may be held for 48 hours in certain circumstances. In Kazakhstan, they may be detained for 72 hours without a court order. In Turkey, the normal limit is 24 hours, but four days for offences committed by three or more persons jointly. The exception is Ukraine, where children caught in the commission of an offence may be held for eight hours only.

The international norm applicable to detention prior to trial is the norm applicable to any deprivation of liberty, namely, the ‘last resort’ principle contained in Article 37(b) of the Convention on the Rights of the Child. The Committee on the Rights of the Child has recalled that in many countries allowing children to “languish in pre-trial detention for months or even years... constitutes a grave violation of Article 37(b) of the Convention on the Rights of the Child.” To prevent this, the Committee urges that the court “makes a final decision on the charges not later than six months after they have been presented.”

The legislation of most of the countries visited contains language similar to that of Article 37(b) of the Convention, but operative provisions of the law often allow the detention of juveniles for lengthy periods beyond the six months recommended by the Committee. Many judges and prosecutors neither understand nor apply the ‘last resort’ principle, and there are no supervisory mechanisms to reduce arbitrary or lengthy detention. Excessive use of detention prior to and during trial of accused juveniles is an issue in all the countries covered by the assessment, and one of the most serious problems identified.

In Albania, the law allows juveniles to be detained for up to three years. Studies carried out a few years ago found that 40 per cent of all accused juveniles are detained before trial and most trials are completed in less than six months. Yet detention for six months to one year for non-violent crimes still occurs. In Azerbaijan, the time limit for completing the entire criminal investigation is the same for juveniles and adults, in principle, two to four months, depending on the gravity of the case, with possible extensions of up to 14 additional months in complex cases. In Kazakhstan, the situation is better: only 23 per cent of accused juveniles are detained before trial, and the average length of

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28 Ibid., para. 80.
29 Ibid., para. 83.
30 Code of Criminal Procedure, Article 218.4 and 218.6–218.8.
detention is less than three months. Still, the assessment discovered that one juvenile had been in detention awaiting trial for nearly two years. In Ukraine, for example, detention for six months to one year is common. In Ukraine, too, the case of a juvenile detained for two years was mentioned.

Hence, in Albania, for example, 80 per cent of all juveniles deprived of liberty were awaiting trial or appeal. In Turkey, more than 90 per cent of all juveniles deprived of liberty were awaiting trial or appeal. The head of the Prison Department estimated that 45 per cent of all juveniles arrested prior to trial are not found guilty.

Some progress has been made by new legislation that bars detention in certain circumstances. In Albania and Ukraine, detention prior to trial is no longer allowed for minor offences. Turkish law also disallows detention for offences not classified as ‘serious’, but only for juveniles under age 15.

In general, conditions of pretrial detention are improving, but remain problematic. The nature of the problems varies from one country to another. In Albania, physical conditions and services had been greatly improved in the juvenile unit of a detention facility located in the capital, and older pretrial detention facilities elsewhere are being gradually replaced. In Azerbaijan, all detained juveniles are confined in a special building within the pretrial detention facility near the capital, which has its own grounds.41 In Kazakhstan, some juveniles awaiting trial are detained in adult facilities, while others are confined in facilities for younger children. In both, separation from the rest of the population means very limited opportunities to leave one’s cell and to participate in recreational and cultural activities. In Turkey, a model detention facility dedicated exclusively to juveniles and young adults has been built, but some of the policies applied do not comply with international standards. In Ukraine, where there is little contact between juvenile detainees and adults, the recreational and educational programmes available have been improved. Yet the staff themselves are concerned that conditions for six-month detention, or more, were inappropriate.

The preceding observations apply to boys. In all five countries, adolescent girls are detained with women as their number is too small to warrant a separate facility.

Insufficient or ineffective mechanisms to protect the rights of juvenile offenders

To ensure the protection of juvenile suspects, accused juveniles and juvenile detainees and prisoners, their treatment must be monitored and relevant standards enforced. Appropriate recruitment practices, training and regulations can help prevent rights’ violations, but without effective measures to detect violations and impose sanctions on those responsible, violations will occur. The victim’s feeling of helplessness aggravates the harm resulting from the underlying violation and has adverse consequences on efforts to help the child become a constructive, law-abiding member of society.

While NGOs and international bodies play an important role in identifying problems, the responsibility for enforcing the law and ensuring accountability lies with the competent national authorities. Various mechanisms exist for the purpose of detecting violations of children’s rights and holding accountable those responsible. The disciplinary mechanisms in place within police forces and correctional systems are one sort. In countries like Azerbaijan, Kazakhstan and Ukraine, whose legal systems reflect Soviet influence, the functions of the Office of the General Procurator include the inspection of detention and correctional facilities and the initiation of proceedings in the event of non-compliance with the relevant standards.

41 Little is known about conditions in the facility, since the assessment team was unable to visit it.
In Albania, Azerbaijan, Kazakhstan and Ukraine, national ombudspersons have competence to investigate human rights violations, including children’s rights violations. None of the countries covered by this assessment have a children’s ombudsperson, a dedicated deputy ombudsperson or a unit specialized in child rights. The ombudspersons of Albania and Azerbaijan meet international standards for independence; the ombudsperson of Ukraine does not; whereas the ombudsperson of Kazakhstan has not solicited recognition.

In some countries, the court system has a mechanism for monitoring compliance with time limits applicable to legal proceedings. None of the countries covered by the assessment appear to have such a system, or if they do, they do not specifically monitor time limits applicable to cases involving accused juveniles.

In Azerbaijan, independent sources confirmed that the ombudsperson’s staff visited the juvenile prison regularly and, in Kazakhstan, the directors of the correctional facilities visited by the assessment team indicated that prosecutors inspected their facilities frequently. In general, though, very little information was obtained on the effectiveness of existing accountability mechanisms in identifying violations of the rights of juveniles and in taking appropriate measures to prevent reoccurrence. In most countries, some information suggests that measures are not sufficiently effective. In one country, for example, where a detained juvenile was tortured by other detainees, authorities responded by transferring the victim to another cell, but took no action against the staff whose negligence contributed to this serious violation. In another, the juvenile police confirmed that the ordinary police continue to use violence against juvenile suspects. In a third country, a survey of juvenile offenders’ parents suggests that, in pretrial detention centres, police corruption (demanding bribes) is common and ill-treatment is widespread.

The lack of non-residential prevention programmes

All the countries visited, except Albania, have residential facilities for children at risk of offending. Some such facilities are exclusively for children at risk and children below the ‘minimum age for prosecution as a juvenile’ who have been involved in criminal activities; some also house other kinds of children in need, children diverted from the juvenile justice system or juveniles sentenced for minor offences. In Azerbaijan and Ukraine, the population of such facilities has declined greatly in recent years. In Kazakhstan, conditions are quite good in many respects, and at least one residential facility has been converted into a semi-open one.

Regardless of how good physical conditions, treatment, programmes and services are, the question remains as to whether placement is justified. Unless children enter facilities with consent or the facilities are open, placement is a deprivation of liberty. If this is so, placement may not be imposed except “as a measure of last resort and for the shortest appropriate period of time,” according to a transparent and fair procedure. Fortunately, in most of the countries covered by the assessment, placement in residential schools for underage offenders now requires a court order.

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42 In Azerbaijan, a Child Rights Unit was created, but never officially recognised as part of the structure of the Office of the Ombudsperson.


44 “The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.” Havana Rules for the Protection of Juveniles Deprived of their Liberty, Rule 11(b) [emphasis added].

45 Convention on the Rights of the Child, Article 37(b).
The ‘last resort’ principle means that children should not be removed from their homes and confined in closed facilities unless separation from their family and deprivation of liberty are necessary. Consequently, services similar to those offered in closed facilities must be accessible in the community. Deprivation of liberty should not be the only way to access effective programmes for the prevention of offending. Yet, apart from ‘registration’, community-based secondary prevention programmes are very rare in these five countries.

In Albania, one community-based programme provides vocational training and life skills to adolescent boys and girls involved in risky behaviour. Referral is made by the police, local government or NGOs; participation is voluntary and lasts four months. Most participants live at home, although dormitories are available for those who cannot. The programme is offered by a not-for-profit vocational school operated by a religious order, and financed by UNICEF and contributions from the private sector. Although impact on offending has not been evaluated, 70–80 per cent of participants find employment after completing the programme.
Lessons on Juvenile Justice Systems and Reforms

Policy

Most of the countries covered by the assessment have not adopted a national policy on juvenile justice. Kazakhstan adopted a ‘Juvenile Justice System Development Concept’ in 2008, which took the form of a Presidential Decree. It calls for the development of a national juvenile justice system over three years. In Ukraine, a draft ‘Concept of Juvenile Justice’ was prepared in 2004, but was not adopted. It nevertheless was tacitly accepted as a framework for the development of juvenile justice.

The ‘Concept’ adopted in Kazakhstan, which has many positive aspects, was developed largely on the experience of a pilot project that ended in 2006. Some data on offending, detention and juveniles serving sentences in correctional facilities are cited. Although information on other relevant issues (e.g., length of sentences, prevalence and duration of pretrial detention) is missing, the use of available data in this plan is positive. The Concept also recognizes that confinement in correctional facilities creates negative behaviour that hinders rehabilitation and re-socialization, as well as the objective of reducing the number of offenders in penal institutions. The Concept is comprehensive. It calls for the development of prevention programmes, specialized juvenile courts, specialized prosecutors and specialized police; the creation of specialized legal and socio-psychological aid programmes; and the incorporation of social workers and psychologists into the juvenile justice system.

It is difficult to draw lessons from these experiences, at this time. The Kazakh ‘Concept’ has not yet been implemented. Albania, Azerbaijan, Turkey and Ukraine show that important progress in the development of juvenile justice can be achieved without the adoption of a comprehensive national policy, although in most of these countries development has been fragmentary, focusing on some sectors and issues but not on others. This suggests that a comprehensive juvenile justice policy could result in a more holistic approach to the development of juvenile justice systems. There is, however, a risk in adopting policies prematurely, when there is still ignorance or resistance in some sectors to principles and practices compatible with child rights. The conclusion seems to be that comprehensive policies are desirable, but should be adopted at the right moment, once national experts and decision makers have acquired sufficient understanding of the relevant principles.

Law reform

None of the countries covered by this assessment have adopted a comprehensive law on juvenile justice, like the law enacted in Serbia in 2005. Most have adopted new penal codes, codes of criminal procedure and laws on the enforcement of sentences, and have in the process made some effort to bring the sections concerning juvenile offenders into compliance with international standards. Most have adopted new legislation on ‘child protection’ that covers underage offenders, children ‘at risk’, and children involved in truancy and other ‘antisocial’ behaviour.

Most such legislation was drafted by small groups of legal experts selected by the Ministry of Justice. In some countries, such as Albania and Turkey, UNICEF’s views were given considerable weight. Foreign or international experts have not played a significant role in the drafting of the relevant legislation.47


47 Legislation on probation, which affects both juveniles and adults, is an exception. In Albania, Turkey and Ukraine, such legislation was prepared with the assistance of international organizations, mainly the Organization for Security and Co-operation in Europe (OSCE) and the European Commission.
Amending or adopting new legislation that applies to both juveniles and adults has resulted in some important improvements for juveniles, but has not brought the law applicable to juveniles into full conformity with international standards. Often, principles set forth in the Convention on the Rights of the Child or the Beijing Rules have been incorporated into such laws, whereas other provisions of the legislation that apply to both juveniles and adults are incompatible with such principles. For example, while the law may recognize the principle that detention before trial shall be the ‘last resort’ and for the ‘shortest appropriate period of time’, other provisions of the same law may allow that juveniles, and adults, be detained for lengthy periods.

Azerbaijan and Ukraine have decided to adopt juvenile justice laws, which hopefully will not only recognize the basic principles concerning the rights of juvenile offenders but also establish procedures, criteria and substantive provisions based on those principles.

Laws on juvenile justice should not be expected to regulate juvenile justice systems without reference to other legislation. The offences defined in the criminal code, for example, need not be reproduced in the juvenile justice code. But experience shows that amending the provisions of the ordinary criminal legislation that applies to juveniles rarely, if ever, creates a juvenile justice system fully compatible with child rights. This is no doubt because children’s rights are not the primary concern of those responsible, who are first and foremost experts in criminal law, criminal procedure or correctional law. The drafting of a law on juvenile justice that will be the primary framework for dealing with juvenile offenders, supplemented by ordinary criminal law and procedure where appropriate, appears to be the approach best calculated to achieve this goal. The Serbian law supports this conclusion, and it is to be hoped that the juvenile justice laws of Azerbaijan and Ukraine will confirm it.

The experience of these countries also indicates that the creation of a complete, balanced juvenile justice system requires the adoption of legislation that authorizes, establishes or regulates services or programmes that benefit both juveniles and adults, such as probation services, victim-offender mediation or legal assistance.

Finally, the laws on child protection and prevention of delinquency adopted by Azerbaijan, Kazakhstan and Turkey incorporate principles derived from the Convention on the Rights of the Child and related instruments, but also perpetuate practices that are not in harmony with child rights. Such laws often allow children to be separated from their parents and confined in residential facilities on the grounds of involvement in antisocial behaviour without due process and without regard for the ‘last resort’ and the ‘shortest appropriate period of time’ principles contained in Article 37(b) of the Convention.

Lessons concerning law reform that can be drawn from the experience of these countries include the following:

1. Amending the provisions of the criminal code and the code of criminal procedure applicable to adults and juveniles alike can make substantial improvements in juvenile justice, but is not the best approach because it rarely, if ever, brings all the provisions of the law into conformity with the rights of children.

2. When laws concerning child protection and delinquency prevention are being developed, care must be taken to ensure that they give priority to community-based programmes and support to families in crisis; avoid punitive approaches to social problems like truancy or vagrancy; and respect children’s right to due process, including the right to be heard by an independent and impartial authority and to legal and other appropriate assistance, and the principle that confinement in a closed facility of any kind shall be a ‘last resort’ and for the ‘shortest appropriate period of time’.
3. Governments are usually receptive to UNICEF’s participation in the process of law reform, especially when the Country Office has cultivated a good working relationship with the relevant authorities (often the Ministry of Justice).

4. Even where main responsibility for law reform lies with the executive branch, advocacy directed to legislators should be undertaken to ensure that the legislature does not become an obstacle to law reform.

5. Facilitating the participation of suitable representatives of civil society in the process of law reform or relying on their expertise to inform UNICEF’s advocacy in this area have produced positive results.

6. Cooperation with other international organizations (e.g., the European Commission or OSCE) interested in juvenile justice, or in areas that overlap with juvenile justice such as probation, has also been effective in some countries.

Prevention

The countries covered by the assessment have few programmes for secondary prevention, i.e., those designed to benefit children at a higher risk of offending than their peers.

In most of these countries, the only non-residential form of secondary prevention is ‘registration’, i.e., putting children on a list maintained by the police of persons considered to be at risk of offending. ‘Registered’ children are visited periodically by the juvenile police, for purposes of what has been described as “checks on [their] lifestyle.”48 There are no known studies on the effectiveness of ‘registration’ or police supervision. It is no doubt useful to some extent, but the question remains as to whether ‘registration’ is cost-effective, compared to community-based programmes designed to provide assistance to children at risk and their families.

It is not possible to draw clear lessons at this time because none of such programmes have been evaluated to determine their impact on offending. The following general lessons can nevertheless be drawn:

1. It is important to evaluate the impact of the various forms of prevention programmes to determine their effectiveness and to identify the programmes (supervision/assistance; closed/open/non-residential; voluntary/involuntary) best suited to different kinds of children having different needs.

2. In general, there are gaps between non-residential programmes based on supervision (‘registration’) and residential programmes. Greater attention should be devoted to the development of community-based programmes that provide the kind of assistance available in good residential facilities without removing children who could benefit from such assistance from their families or communities.

3. When prevention programmes are offered by residential facilities, the aim should be to return the child to his/her community and, if possible, to his/her family, as soon as possible. Assistance should, in principle, be provided to the family, and not just the child. Admission should be voluntary, whenever possible, after having provided the child and his/her parents with the information, independent advice and opportunity needed to make a free and informed decision. If admission is not voluntary, placement must be made by an independent and impartial body,

48 Committee on the Rights of the Child, Consideration of reports submitted by States parties under Article 44 of the Convention, Second periodic report: Ukraine, CRC/C/70/Add.11, 1999, para. 760. In some countries, there are two classes of ‘registered’ children: one, which is subject to this form of supervision and one, which is not subject to this form of supervision.
the right of the child and his/her parents to be heard must be respected, and fairness and strict compliance with the ‘last resort’ and ‘shortest appropriate period of time’ principles must be guaranteed. Facilities should be open or semi-open, unless residents represent a substantial threat to the community or to themselves.

**Police**

Police units specialized in matters concerning children exist in all the countries covered by the assessment. As a rule, they have three functions: investigating crimes against children, preventing offending by children, and handling cases of juveniles suspected of an offence.

In all five countries, there is wide recognition that the establishment or reorganization of such units has improved the treatment of children by the police. It is also clear, however, that the establishment of specialized children’s units has not eliminated the use of violence and other abuse of children’s rights by other police units. This is particularly so when the specialized children’s police lack responsibility for investigating crimes committed by juveniles, including the interrogation of suspects.

In some countries, including Azerbaijan and Kazakhstan, the children’s police focus largely on the prevention of offending. This can pose problems in certain circumstances, such as, for example, when the children’s police are entrusted with responsibilities that call for psychosocial skills that they do not have or when, for historical reasons, the police force has a reputation of repression and does not enjoy the trust of relevant sectors of the population. In some cases, the preventive role of the police deteriorates into a bureaucratic exercise of no real value (e.g., superficial periodic checks on the situation of children at risk) or excessive interference on privacy (e.g., regular, routine testing for drug use). One particular problem concerning the preventive role of the police is the influence they sometimes exercise in administrative bodies (Commissions on Minors) that can place children involved in antisocial behaviour in closed residential facilities for preventive or ‘protective’ purposes.

Lessons that can be drawn from the experience of these countries include the following:

1. The establishment of specialized children’s police forces makes a significant contribution to the protection of children’s rights. Specialized police forces should exist throughout the country and should have broad responsibility, in particular with regard to the investigation of offences allegedly committed by juveniles.

2. While police can play a useful role in the prevention of offending, care should be taken to ensure that their role in this area is not at the expense of other community-based programmes offering a wider range of services.

3. Similarly, care should be taken to ensure that activities by the police intended to prevent offending are designed and implemented so as to assist children, not intimidate or control them, and take the views, wishes and rights of children into account. In the words of the Riyadh Guidelines, “... a child-centred orientation should be pursued. Young persons ... should not be considered as mere objects of socialization or control.”

**Diversion**

Diversion – the disposal of offences without adjudication – is encouraged by the Beijing Rules and the Convention on the Rights of the Child. It can take many forms, including warnings, victim-offender mediation (VOM), supervision and voluntary participation in community-based programmes.

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50 The Beijing Rules, Rule 11 and Convention on the Rights of the Child, Article 40.3(ii).
Diversion does not play a large part in the juvenile justice systems of the countries covered by this assessment, but it exists in some form in all of them. In Albania, a pilot project allows cases to be referred to VOM. This is unusual, in that most cases involve personal injury rather than property crimes. It also is unusual in that all cases referred are resolved. This project rests on a weak legislative basis, however. In Azerbaijan, the law allows the prosecution of offences to be discontinued, in certain circumstances. A pilot diversion project was established recently, but most of the cases referred thus far do not involve offences by children old enough to be prosecuted, and those that do are referred after sentencing. In Kazakhstan, too, the law allows cases to be closed before trial in certain circumstances, but this was rarely done in the past. A pilot project allowing police to refer cases to VOM has proved successful, and a decision has been taken to implement diversion nationally. In Turkey, legislation allowing diversion to VOM programmes was approved, but promptly amended because the public perceived it as encouraging impunity for petty thieves. In certain cases, prosecution can be discontinued if the offender compensates the victim, but trained mediators are no longer involved. In Ukraine, legislation allows diversion of juveniles charged with an offence, in certain circumstances. Diversion is voluntary, and may involve supervision, restrictions on behaviour, compensation of the victim and placement in a residential facility. A pilot project involving VOM has been implemented in two regions of the country.

Lessons that can be drawn from the experience of these countries include the following:

1. Legislation often places unnecessary restrictions on diversion. If, for example, the authorities conclude that a child could be ‘rehabilitated’ without trial and sentencing or that a child does not represent a danger to society and the risk of re-offending is minimal, diversion should be possible regardless of the nature of the offence and whether it is the first offence or not.

2. The results of diversion programmes should be documented to help authorities determine whether diversion is being used appropriately and to demonstrate its impact to the public.

3. Pilot projects that focus on one form of diversion are a useful way of changing the attitudes of authorities, especially in countries where discretion in deciding whether to prosecute an offence is alien to the legal culture. In the longer run, though, various forms of diversion should be recognized.

Detention during the investigation of crimes and legal proceedings

Excessive use of detention prior to and during the trial of accused juveniles is an issue in all of the countries covered by the assessment, and one of the most serious problems identified.

The Committee on the Rights of the Child has pointed out that the use of pretrial detention as punishment violates the presumption of innocence, and there are reasons to suspect that, in some countries, pretrial detention is actually used as punishment. At least, indifference regarding the presumption of innocence leads to situations where lengthy detention without a sentence is tolerated and even seen as normal. Confirmation of the idea that pretrial detention is in effect used to punish detainees because they are presumed guilty would require careful analysis of more information than is currently available, but some data lend credibility to this hypothesis.

Lessons that can be drawn from the experience of these countries include the following:

1. Incorporating principles such as the ‘last resort’ and the ‘shortest appropriate period of time’ principles into the national law is a positive first step, but its impact is modest unless time limits and specific concrete rules are also adopted.
2. Failure to adopt time limits and standards regarding detention that apply specifically to juveniles (i.e., applying the same standards and time limits to juveniles and adults) does not adequately protect the rights of juveniles.

3. Rules disallowing the detention of juveniles in specific circumstances (e.g., those accused of minor offences) are useful and should be adopted as part of the norms governing detention before trial.

4. Consideration should be given to granting juveniles sentenced to custody whose cases are being appealed the option of transferring to a juvenile correctional facility during the appeal.

5. It is indeed possible, as the example of Ukraine shows, to limit the duration of detention without a court order to 24 hours or less. Other countries should amend their legislation to meet this recommendation of the Committee on the Rights of the Child.

6. There should be mechanisms, within the court systems, for permanently monitoring the detention of juveniles in order to ensure that time limits and criteria regarding the necessity of detention are being applied correctly.

7. Since neglect by defence lawyers also contributes to delays in the trial of juveniles, including those detained, courts or bar associations should take appropriate measures to warn and, if necessary, discipline those whose unprofessional conduct causes accused juveniles to remain in detention for longer than necessary.

Legal and other appropriate assistance

Legal assistance is essential to protect the rights of juvenile suspects and juvenile defendants, detainees and prisoners. It is important not only during adjudication and preparation for trial, but also during interrogation and other preliminary stages of the procedure. For example, juveniles should have legal assistance in making arguments as to whether pretrial detention is necessary, and whether diversion might be appropriate. All of the countries covered by the assessment recognize the right of juveniles to legal assistance as from the early stages of proceedings. In most of them, recent legislation acknowledges, in particular, the right to legal assistance during interrogation. The presence of a legal advisor during interrogation has long been accepted as an important safeguard against the use of violence and psychological abuse, as well as the right not to be forced to incriminate oneself. Access to legal assistance also helps deter ill-treatment during detention.

In all five countries covered by the assessment, some measures have been adopted to help ensure that juveniles have effective access to legal assistance. Different approaches have been used. In Albania, a project providing child victims and juvenile offenders with both legal and psychosocial assistance has been expanded to several cities. In Azerbaijan, a recent pilot project offers legal services specifically to accused juveniles and underage offenders. In Kazakhstan, the government has recently decided to replicate throughout the country a pilot project that provides legal services to accused juveniles. In Ukraine, pilot legal Public Defenders’ offices assist accused persons of all ages in two of the largest cities. In Turkey, the Bar Association must appoint a lawyer to defend accused juveniles. The compensation that appointed attorneys receive from the government is modest.

It would be premature to draw lessons from the experiences that are still in the pilot stage and have not been evaluated. Some lessons can be drawn, however. They include the following:

1. Providing both legal and psychosocial assistance in a holistic fashion is the best approach, for two reasons. First, because the information obtained by psychologists is useful to attorneys in addressing a variety of issues that are particularly relevant in defending accused juveniles.
Second, because accused juveniles greatly need psychosocial assistance, and there are advantages to providing it through specialists who, as part of a team that includes the child’s legal representative, have a good understanding of the child’s legal situation.

2. Although programmes specialized in providing assistance to juveniles are an advantage, Public Defenders’ offices for both adult and juvenile defendants can provide good quality services to juveniles.

3. While the appointment of attorneys to represent accused juveniles constitutes a step forward, it does not effectively ensure access to adequate legal services. The attorneys assigned usually have little experience and lack training in juvenile law; they are also poorly motivated because the level of compensation is very low. Measures to overcome these problems have been suggested, but have not yet been adopted and, consequently, their effectiveness is unknown.

Specialized prosecutors

Prosecutors specialized in matters concerning juveniles existed in the former USSR. Their functions were not limited to handling legal proceedings involving accused juveniles, they also included monitoring compliance with laws and regulations governing institutions for children, mainly those for juvenile and underage offenders.

In Albania, specialized prosecutors were appointed several years ago. In Azerbaijan and Ukraine, specialized juvenile prosecutors were eliminated after independence. In Kazakhstan, a specialized group of prosecutors participated in the pilot juvenile justice project. The government recently decided to appoint specialized prosecutors to the juvenile courts that will be established throughout the country. In Turkey, legislation provides that specialized prosecutors should be assigned to each juvenile court. Although prosecutors have been appointed, practice concerning their selection and training does not comply with legislation.

Lessons that can be drawn from the experience of these countries include the following:

1. The influence of prosecutors over the treatment of juvenile suspects and accused juveniles – regarding the protection of their rights or otherwise – is equal to that of judges and, in the early stages of proceedings, even greater. It is therefore important that prosecutors be specialized, not only because they have participated in training activities, but also because they have been selected on the basis of their motivation and affinity with this position.

2. The appointment of juvenile prosecutors who have not been adequately selected will have limited benefits for the children under their authority.

3. Efforts should endeavour to increasingly recognize the importance of juvenile justice, to create appropriate incentives, to enhance the status of prosecutors (and judges) assigned to the juvenile justice system, and to attract and retain experienced and committed professionals.

Juvenile judges and courts

There is a strong trend towards the creation of juvenile courts in the countries covered by the assessment. In Albania, specialized juvenile courts have been established throughout the country, but their geographical jurisdiction is larger than that of other trial courts. In Azerbaijan, there are no specialized juvenile courts at present. Their creation is foreseen, but their number, whether there will be more than one, and their location have not yet been decided. In Kazakhstan, specialized

51 In Ukraine, a small specialized unit has been re-established in the central offices of the General Prosecutor, but there are no specialized prosecutors at the local level.
juvenile courts have been established in the two largest cities. They will be expanded throughout the country, but their number and location have not yet been decided. In Turkey, where the first juvenile court was established before the adoption of the Convention on the Rights of the Child, the number of specialized juvenile courts has expanded greatly during the past decade. There are two kinds of juvenile courts in Turkey, one for minor offences and non-criminal matters, including cases of underage offenders, and one for juveniles accused of more serious crimes. In Ukraine, the Supreme Court has ordered each criminal trial court to appoint at least one judge to handle cases involving juveniles.

Lessons that can be drawn from the experience of these countries include the following:

1. The establishment of specialized juvenile courts has been associated with very significant improvements in the implementation of the rights of accused and convicted juvenile offenders, in particular with regard to sentencing. Because the creation of juvenile courts is invariably accompanied by changes in the applicable law and by other reforms, it is not possible to conclude that they are the sole reason for the progress achieved, although they are clearly a major contributing factor to improved treatment of juvenile offenders.

2. The establishment of specialized juvenile courts is an essential part of the development of a juvenile justice system that protects the rights of children, but it does not guarantee full respect for the rights of accused juveniles. In one country, for example, juvenile judges have discretion in deciding whether or not they accept to hear the accused in person, and usually they do not.

3. The designation of ordinary judges to handle juvenile cases, while they continue handling cases involving adults, has uneven results. While some designated judges develop sensitivity to the rights and needs of accused juveniles, others do not.

4. Juvenile courts should have competence over pretrial matters involving juveniles, as well as trial and sentencing, in particular the decision as to whether detention is necessary.

5. Specialization at the level of trial courts without specialization at the appellate level is an advance, but the absence of specialized judges in courts of appeal fails to ensure that cases involving juveniles’ appeals are given priority and fails to promote proper and consistent application of the law by trial courts.

6. The decision as to how many juvenile courts are needed and where they should be located is important, and often complicated. Concentrating juvenile cases in specialized courts covering large jurisdictions may contribute to delays in the investigation and adjudication of cases. Creating specialized courts that do not have sufficient staff can also bring unacceptable delays in adjudication.

7. Although Ukraine has specialized judges rather than specialized courts, its experience suggests that giving courts (instead of administrative authorities) jurisdiction over cases of underage offenders can increase respect for the presumption of innocence and for the legality and ‘last resort’ principles.

**Sentencing**

The ‘last resort’ and ‘shortest appropriate period of time’ principles are, as indicated above, the most relevant binding international standard concerning the sentences that may be imposed on juveniles.\(^{52}\) These sentences depend to a large extent on two factors: the law and the attitudes of judges. Other factors that influence sentencing include the training and attitudes of prosecutors, the consideration

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\(^{52}\) International law also prohibits the imposition of capital punishment, corporal punishment and sentences to life imprisonment without the possibility of early release, but only a few countries allow such sentences to be imposed on persons under age 18.
and quality of pre-sentencing reports, the quality of legal services provided to juveniles and the existence of non-custodial programmes for the prevention of re-offending.

The legislation of all five countries covered by the assessment now contains language inspired by the ‘last resort’ clause of the Convention on the Rights of the Child. The legislation of three of these countries also bars custodial sentences for minor offences. Kazakh legislation provides that no juvenile may be sentenced to a custodial facility for a minor offence, and those under age 16 may not be given custodial sentences for ‘medium-gravity’ offences. Turkish law provides that custodial sentences may not be imposed for minor offences, and Ukrainian legislation provides that juveniles convicted of a minor offence may not be given a custodial sentence if they are first offenders.

The maximum sentence that may be imposed on convicted juveniles has been reduced in most of the countries covered by the assessment. In Albania, twelve years and six months is the maximum sentence that may be imposed on a convicted juvenile. In Azerbaijan and Ukraine, it is 10 years. In Kazakhstan, it is 10 years for most offences, although sentences of 12 years may be imposed for aggravated murder. In Turkey, the maximum sentence that may be imposed on offenders under age 15 is 15 years for a single offence and the maximum sentence for offenders aged 15–18 years is 24 years for a single offence. Sentences for different or repeat offences cannot be served simultaneously, so repeat offenders can serve much longer periods in prison for offences committed as juveniles.

There is growing recognition in some of the countries assessed that shorter custodial sentences are more beneficial. In Albania, a recent study found that the duration of most custodial sentences for crimes against property was 6–12 months. In Kazakhstan, the recently adopted ‘Concept’ refers to the negative consequence of sentences of one year or more, and many juvenile prisoners reportedly are released after serving one third of their sentence. In Ukraine, most custodial sentences are for periods of three to five years.

Non-custodial sentences have long been recognized by the legislation of most countries, including those covered by this assessment. The most commonly used non-custodial sentences are warnings, suspension of proceedings and probation. Fines, community service and participation in community-based, non-residential programmes are used, but much less frequently. Another relatively common ‘alternative’ sentence is placement in a special residential school for offenders, instead of a correctional facility for juveniles.

In most of the countries covered by the assessment, available data do not clearly indicate the percentage of convicted juveniles given non-custodial or alternative sentences, and it is difficult to conclude whether non-custodial or alternative sentences are being imposed more often than in the past. In Azerbaijan, the percentage of convicted juveniles given suspended sentences has increased substantially at the beginning of the decade.

In general, the most commonly used non-custodial sentences – warnings, suspended sentences – provide little or no assistance to the offender. In some countries, efforts are being made to establish new, community-based programmes for the prevention of re-offending. In Albania, a group of offices and institutions prepared to offer placement to juvenile offenders sentenced to community service was identified, and the courts began imposing non-custodial sentences. A law establishing a probation service was adopted in 2008. In Azerbaijan, a pilot project offering comprehensive community-based assistance is operational, but few convicted juveniles have been referred to it. In Turkey, a new kind of small, open residential facility that is not part of the correctional system has been established.

Available data are insufficient to support firm conclusions about the implementation of the ‘last resort’ and the ‘shortest appropriate period of time’ principles in practice, and the extent to
which compliance with the principles is due to the law, the attitudes of judges or other factors. Some lessons can be drawn from the information available, however. They include:

1. The incorporation of the ‘last resort’ and the ‘shortest appropriate period of time’ principles into the national law is a positive step, but it is also necessary to review specific legal norms regarding sentences applicable to juveniles to bring them into conformity with these principles.

2. Legislation providing that sentences to correctional facilities may not be imposed for minor offences is one of the surest ways to ensure partial compliance with the ‘last resort’ principle.

3. Legislation that restricts the discretion of judges to impose non-custodial sentences when the offence is a serious one is an obstacle to the application of the ‘last resort’ principle, because it sometimes requires the imposition of a custodial sentence even though the offender does not represent a danger to society and the risk of re-offending is minimal. (The typical example, seen in several of the countries studied, is the adolescent who kills a parent or step-parent in extraordinary circumstances.) The risk of re-offending and the kind of response required to reduce this risk, not the nature of the offence, should be the main criteria for determining whether a custodial sentence is necessary.

4. Although there is no consensus as to the length of sentences that comply with the ‘shortest appropriate period of time’ principle, the latter should be interpreted to mean that, as a rule, sentences should not be longer than the time needed to complete programmes designed to prevent re-offending. There is a welcome tendency in some countries to recognize that sentences of more than one year may be counterproductive and that sentences of less than one year, or frequent use of early release, are appropriate in many cases. The impact of different kinds of custodial (and non-custodial) sentences on offenders should be documented and analysed to allow the lessons learned from this trend to be clearly identified and broadly applied.

5. Greater efforts should be made to experiment with community-based programmes for the prevention of re-offending.

6. Within the gamut of responses to offending, residential facilities (often called ‘special schools’) for offenders who need intensive assistance and/or whose family is unable or unwilling to provide a suitable home environment have a useful role to play, especially when they are open, small and decentralized, when placement is for a limited period of time and when residents include both boys and girls.

**Correctional facilities for juveniles**

Significant improvements have taken place in the treatment provided to offenders in correctional facilities for juveniles. One of the most surprising findings of the assessment was that, in Turkey, all facilities for convicted juveniles are semi-open facilities.

Educational and vocational training programmes have long been central to the efforts of correctional facilities for juveniles to prevent re-offending. No major improvements in that area were noted. In a women’s facility, in Turkey, where some adolescents serve sentences, a particularly strong vocational training programme is in place, in cooperation with the national employment agency. No similar programmes were seen in any of the facilities for adolescent boys visited, and in some the vocational training programme seemed narrow.

Physical conditions were generally adequate, health care good and, in some countries, significant improvements in nutrition are reported.

Some of the most visible improvements concern access to cultural and recreational activities, and religious services. Greater openness to visitors is another notable difference between current
and past policies. A third major advance is the addition of psychologists and social workers to the staff of juvenile facilities. Yet another important advance observed in most countries is greater efforts to encourage contacts between offenders and their families, including in some cases allowing offenders to visit their families. In Kazakhstan, one of the facilities visited had an apartment where parents can stay for a few days while visiting their children.

There were significant differences between facilities in terms of what could be called, for lack of a better term, the friendliness of the physical environment. For example, some have gardens and murals painted by residents; some are decorated with paintings prepared by residents or displays celebrating their accomplishments in academics or sports. In others, residents have shaved heads.

In all five countries covered by the assessment, prison staff has received training in child rights, which has improved the treatment of juveniles. In most countries, however, regulations still allow disciplinary measures incompatible with international standards, in particular confinement in isolation cells. Allegations concerning the use of violence by correctional staff were heard in some of the countries visited. It is not possible to investigate such allegations in the framework of a study such as this. But what can be said is that, in general, there was little evidence of effective mechanisms for investigating complaints of mistreatment.

Efforts to measure the impact of custodial sentences on juvenile offenders or to assess the views of offenders deprived of liberty are rare. One interesting exception is a small survey of offenders and their parents carried out by the Ukrainian Centre of Social Expertise. None of the sample of offenders interviewed complained about detention conditions, and many stated that living conditions were better than in their homes. In general, they valued their relationship with counsellors as more positive than with teachers. Cultural activities, which allowed self-expression, were also particularly appreciated. Most of the offenders believed that their stay in a correctional facility would help them avoid re-offending. Another example from Ukraine: the views of offenders were taken into account in designing a programme for their post-release assistance.

Lessons that can be drawn from the information obtained through visits to correctional facilities for juveniles in the five countries covered by the assessment include the following:

1. The training of correctional staff has led to significant improvements in the policies applied and in the relationship between staff and offenders.
2. The addition of psychologists and social workers to the staff of correctional facilities is an advance although, in general, more qualified and experienced psychologists should be recruited.
3. The enhancement of the cultural, recreational and religious activities available to interested offenders contributes to their personal development.
4. The inexpensive improvement of physical environment and décor (e.g., gardens, art work by offenders) helps make life in correctional facilities a more positive experience for offenders.
5. Facilities where family members can stay while visiting offenders is a positive experience that should be implemented in all countries.
6. Regulations should be reviewed to ensure that disciplinary measures are compatible with international standards.
7. Surveys of offenders and their families by independent institutions can provide valuable feedback regarding the impact on offenders of policies, programmes and living conditions.
8. Mechanisms for encouraging contact between the facility and the community have a positive impact on living conditions and on the population, and should be developed.
9. Mechanisms for investigating conditions and treatment of offenders should be made more transparent and effective.

10. The lack of information about released offenders is an obstacle to evaluating the effectiveness of custodial sentences and the success of policies and programmes implemented in correctional facilities for juvenile offenders. More needs to be done to evaluate the impact of custodial sentences on offenders and to monitor their reintegration into the community.

Accountability mechanisms

Monitoring is required to ensure that juvenile suspects, accused juveniles and juvenile detainees and prisoners are adequately treated and that relevant standards are enforced. Appropriate recruitment practices, training and regulations can help prevent violations of rights, but without sustained efforts to detect abuse and impose appropriate sanctions on those responsible, violations will continue. The victim’s feeling of helplessness aggravates the harm resulting from the underlying violation and has adverse consequences on the endeavour to help the child become a constructive, law-abiding member of society.

Various mechanisms exist for the purpose of detecting violations of children’s rights and holding accountable those responsible. In general, very little information was obtained on the effectiveness of existing accountability mechanisms and on the appropriateness of measures adopted to prevent the reoccurrence of violations.

Lessons that can be drawn from the experience of these countries include the following:

1. In most countries, the level of violence against juvenile offenders appears to have decreased, but remains unacceptably high. Existing accountability mechanisms need to become more transparent and efficient.

2. Ombudspersons should meet international criteria for independence, and consideration should be given to appointing deputy ombudspersons or to establishing units specialized in child rights.

3. Mechanisms should be established, within the court system, to monitor compliance with national standards regarding the duration of legal proceedings and the use of pretrial detention.

Underage offenders

There is a grey zone between juvenile justice and child protection systems: children below the ‘minimum age of prosecution as a juvenile offender’ by definition do not enter into the juvenile justice system as such, but they do become involved in criminal activity. In three of the countries covered by the assessment, courts dealing with juvenile offenders also have competence over younger children involved in criminal activity; in the other two, competence lies with administrative authorities traditionally called ‘Commissions on Minors’.

The line separating underage offenders from juvenile offenders is not clear. In most of the countries assessed, the age at which a child may be prosecuted as a juvenile offender depends on the offence. In Turkey, it depends in part on an evaluation of the offender’s maturity. Moreover, in certain circumstances, juvenile offenders can be sentenced to facilities for underage offenders instead of correctional facilities.

In most countries, there are specific institutions and procedures for children under the minimum age for prosecution as juvenile offenders (which the Committee on the Rights of the Child refers to as the ‘minimum age of criminal responsibility’) who have become involved in criminal behaviour. In many
of the countries studied, there is a specific age limit for admission to these facilities, below which these procedures are inapplicable. These institutions and procedures are taken into account in this study, even though strictly speaking they do not form part of the juvenile justice system.

In Albania, the law provides that children who are too young to be prosecuted – all children under age 14 involved in criminal activity and those aged 14 or 15 years involved in minor offences – may be placed in a school for rehabilitation. However, all such schools were closed some 15 years ago, and there are no community-based programmes designed to provide these children with assistance. This situation may be related to the 20 per cent increase in offending reported in recent years – an increase, which is highest in offending by children under age 14.

In Azerbaijan, the Commission on Minors may send children under age 14 involved in any offence and those aged 14 or 15 years involved in minor offences to an open ‘special school’, with parental consent. Children under age 14 who commit serious offences may be sent to a closed vocational school, but in this case the Commission must seek a court order authorizing the placement.

In Kazakhstan, children aged 11–16 years may be sent to special schools (juveniles aged 14–15 years may be prosecuted for serious offences but not for minor offences). Children younger than 11 years involved in crime may be sent to another kind of facility intended mainly as a temporary shelter for children in need of protection. 53

In Turkey, children under age 12 who become involved in criminal activity, and those aged 12–15 years who are found not to be criminally liable, may be placed in the custody of the Social Services and Child Protection Agency. Placement requires a court order, made by a juvenile court order where one exists. Courts can make such an order on the grounds of a social report, without hearing the child. Recently the Social Services and Child Protection Agency has established special residential facilities for this group of children, on a trial basis. The centres are open and residents attend school in the community. Most come from violent environments and are under treatment for substance abuse, which suggests compliance with the ‘last resort’ principle. The main reason is to avoid placement in facilities for children in need of care for other reasons, where they might pose a risk to others, but the existence of these small specialized facilities with a very good staff-resident ratio also allows for more specialized attention. This is an interesting initiative, which deserves to be followed closely.

In Ukraine, underage offenders aged 11–14 years may be confined in closed residential schools. Recent legislation has transferred competence to place children in such schools from the Commissions on Minors to the courts, and requires a finding that the child’s conduct would be an offence if he/she were old enough to be prosecuted. As a result, the schools for social rehabilitation are now at 20 per cent of their capacity, and the Ministry of Education is considering the possibility of converting them from closed facilities to some other function.

Lessons that can be drawn from the experience of these countries include the following:

1. Respect for the ‘last resort’ principle requires the existence of community-based programmes that provide appropriate assistance to underage children involved in criminal activity and their families. Residential facilities for such children should not be closed without ensuring access to such programmes.

2. Placement in residential facilities of children too young to be prosecuted because they have been involved in activities that are criminal in nature constitutes a deprivation of liberty. Consequently,

53 ‘Centres for temporary isolation, adaptation and rehabilitation of juveniles’. In both cases, placement may be done by an administrative body known as the Commission on Minors.
the ‘last resort’ and the ‘shortest appropriate period of time’ principles must be respected. This means that children should not be institutionalized unless deprivation of liberty for some time is necessary to provide them with the kind of assistance they need; and if institutionalization is necessary, it should not last longer than the time required to provide the assistance needed. This implies periodic review of the progress made in overcoming the circumstances that led to placement. In many, if not most, cases when the child’s involvement in criminal behaviour is serious enough to require institutional placement, the causes of his/her behaviour lie within the family, so that assistance should be provided to the family as well as the child.

3. The fact that a child is too young to be prosecuted does not mean that placement may be done arbitrarily. The body competent to take this decision must be independent and impartial, and proceedings must respect basic standards of fairness, including adequate investigation of the facts and circumstances of the child’s conduct as well as respect for the right to be heard. This implies offering the child competent advice about the proceeding and any necessary assistance in making his/her views heard and assisting the authority to determine what outcome is in the best interests of the child. Placement by administrative bodies often does not meet these requirements. Giving competence over this matter to courts instead of administrative bodies usually ensures better protection of rights and principles, provided the law has been brought into harmony with children’s rights.

4. Even if parents request or agree to the placement because of the child’s involvement in criminal conduct, the Convention on the Rights of the Child requires that the child’s right to be heard be respected and that the competent authority carefully consider the facts and available options in order to determine which decision is in the best interests of the child.54

5. It is possible to operate semi-open residential schools for underage offenders allowing some contact between children and the community, and to place both boys and girls in separate sections of the same facility.

Box 4: Selected positive practices and accomplishments

Albania

- The transfer of responsibility for correctional and pretrial detention facilities from the Ministry of Interior to the Ministry of Justice, a programme of replacement of old juvenile detention and correctional facilities and the addition of psychologists and social workers to the staff of such facilities is helping improve respect for the rights of juveniles deprived of liberty.

- An innovative community service pilot programme – a type of alternative that has not been applied in other countries – has been established.

- A Centre of Integrated Legal Services and Practices provides legal psychological services for accused offenders and juvenile detainees and prisoners.

- Specialized juvenile judges and prosecutors have been appointed in Tirana, resulting in a significant decrease in the number of juveniles given custodial sentences.

- Sustained, high-quality research and advocacy by child rights and human rights NGOs have helped drive the reform process.

- A law establishing a probation service has recently been approved, creating new opportunities for alternative sentences, diversion and post-release support.

54 Convention on the Rights of the Child, Articles 3.1, 12.2 and 9.1.
Albania

• The transfer of responsibility for correctional and pretrial detention facilities from the Ministry of Interior to the Ministry of Justice, a programme of replacement of old juvenile detention and correctional facilities and the addition of psychologists and social workers to the staff of such facilities is helping improve respect for the rights of juveniles deprived of liberty.
• An innovative community service pilot programme – a type of alternative that has not been applied in other countries – has been established.
• A Centre of Integrated Legal Services and Practices provides legal psychological services for accused offenders and juvenile detainees and prisoners.
• Specialized juvenile judges and prosecutors have been appointed in Tirana, resulting in a significant decrease in the number of juveniles given custodial sentences.
• Sustained, high-quality research and advocacy by child rights and human rights NGOs have helped drive the reform process.
• A law establishing a probation service has recently been approved, creating new opportunities for alternative sentences, diversion and post-release support.

Azerbaijan

• The number of convicted offenders given custodial sentences has decreased by two thirds since the adoption in 2000 of the new Criminal Code and Code of Criminal Procedure.
• Evaluation of police training revealed shortcomings that are being taken into account in the development of a permanent training programme.
• Publication of up-to-date statistics on juvenile justice by the State Statistical Committee and research by the NGO Alliance for Children’s Rights and UNICEF on the experiences and views of juveniles in detention and juvenile offenders have provided valuable information for advocacy and policy development.

Kazakhstan

• The number of juvenile offenders convicted and the number given custodial sentences have both declined by more than half since the year 2000.
• Conditions in correctional facilities for convicted juveniles have improved significantly.
• The Commission on Minors can no longer place children ‘at risk’ in closed facilities operated by the Ministry of Education. Only courts have this competence, and some such facilities have been transformed into open/semi-open residential schools. In contrast to some other countries, these schools receive both boys and girls.

Turkey

• The number of juveniles given custodial sentences has fallen dramatically during the last decade.
• The Children’s Police Division has been consolidated throughout the country and is having a substantial impact on the treatment of juvenile suspects and victims by the police.
• A highly qualified pool of national experts in law, psychology and forensics from civil society participates in the training of police, judges and prosecutors.
• The competence of juvenile courts was extended to include accused offenders aged 15–18 years who used to be judged only by adult courts, and the network of juvenile courts has been expanded. More than half of all accused juveniles are tried by juvenile courts.
• Open correctional facilities for convicted juvenile offenders, as well as open educational facilities for underage offenders, have been established.

• TURKSTAT, the Turkish Statistical Institute, publishes annually a large amount of useful data on juvenile justice.

**Ukraine**

• Commissions on Minors can no longer place underage offenders in special schools – only courts have this competence.

• Thanks to the new legislation, first offenders convicted of minor offences can no longer be given custodial sentences.

• Conditions in ‘colonies’ for convicted juvenile offenders have been improved in areas such as cultural and sports programmes, facilitation of religious practice, facilities for overnight family visits, greater use of early release, and others.

• Pilot Public Defenders’ offices supported by the Open Society Institute are playing a valuable role in defending the rights of accused juveniles in some courts.
Lessons on UNICEF and Partners’ Support to Juvenile Justice Reform and Development

Advocacy

Three main kinds of advocacy were seen in the countries covered by the assessment: advocacy by UNICEF, advocacy by UNICEF in coordination with other representatives of the international community, and advocacy by civil society. Each of these approaches has produced good results, and there are no grounds to suggest that better results might have been achieved in any of these countries by using a different approach. Yet the results obtained in two countries are particularly striking. In Albania, investigations of juvenile justice carried out by NGOs with UNICEF’s support have provided information that has been invaluable in advocacy efforts. This information, produced mainly by two different NGOs, concerns not only conditions of detention and the treatment of juveniles deprived of liberty but also the administration of justice. A unique form of advocacy used in Albania is the informal outreach to judges and prosecutors based on a social marketing model, which emphasizes personal contact aimed to change behaviour through activities such as luncheons and dinners.

Investigative reports prepared by NGOs with UNICEF’s support also informed advocacy in Azerbaijan. It appears likely that this too will produce good results, although to date findings are limited because the process has been underway for less time and funding has been modest.

In Turkey, close cooperation with the European Commission has magnified the impact of UNICEF’s advocacy, due to the strong interest in bringing national law and practice into compliance with European standards.

Civil society is relatively weak in most of the countries covered by the assessment, with the exception of Albania and, to a lesser extent, Ukraine. UNICEF Country Offices do not make a practice of coordinating advocacy on juvenile justice with NGOs, except in Azerbaijan, where cooperation with the NGO Alliance for Children’s Rights has been constructive. However, it would be difficult to conclude from this experience that closer cooperation with NGOs in advocacy would have similar results in other countries of the region.

In Turkey, UNICEF has also cooperated closely with national experts who can be considered representatives of civil society, although most of them collaborate in their personal capacity. Their knowledge has helped ensure that advocacy targets the most relevant issues and proposes appropriate solutions. In the other four countries, advocacy was, at least initially, influenced by situation analyses prepared by international experts. These analyses also helped shape advocacy efforts and, in most cases, the planning of pilot projects and other initiatives. While such situation analyses have played a valuable role and some governments appear to be more receptive to the views of foreign experts than national ones, the little time that such experts remain in the country as well as other constraints limit the usefulness of situation analyses as bases for advocacy, especially over the longer term. 55

In most of the countries covered by the assessment, advocacy has been closely linked to reporting on the implementation of the Convention on the Rights of the Child and to the ensuing dialogue of national authorities with the Committee on the Rights of the Child. 56 In some countries, events were

55 Most situation analyses are prepared by individual foreign experts, who are more familiar with some aspects of juvenile justice than others (e.g., law, social work, corrections, prevention). They also may be unfamiliar with the legal culture and they often do not speak the national language.

56 Turkey is an exception.
organized to reinforce the impact of the Committee’s recommendations and to establish the foundation for cooperation in responding constructively to its observations. Inviting members of the Committee to visit the country and make presentations on juvenile justice has also been a valuable form of advocacy, especially since the recommendations of the Committee invariably are general in nature. Experience indicates that the dialogue with the Committee can make the responsible authorities very receptive to advocacy and to offers of assistance from UNICEF, at least in this part of the world.

In all five countries, UNICEF carries out advocacy vis-à-vis the national legislature as well as the relevant ministries or other representatives of the executive branch. In some countries, this is achieved through contacts with individual legislators; in others, through a legislative committee or a parliamentary institute. The impact of these efforts appears to vary from one country to another. In most of the Newly Independent States the legislature is relatively weak and the executive is the driving force behind the development of juvenile justice systems. Contacts with legislators who are influential in the party in power can be quite useful, however. Moreover, advocacy with legislators is needed even when they do not play an active role in the development of juvenile justice systems. In Turkey, the legislature repealed some of the positive features of the new legislation shortly after it came into force. In Ukraine, the indifference of the legislature has slowed efforts to develop juvenile justice.

In short, five lessons can be identified:

1. Supporting investigative research by NGOs can produce information that strengthens advocacy.
2. Cooperation in advocacy with other regional or international organizations can magnify the impact of advocacy.
3. Cooperation with civil society (national experts) can help ensure that advocacy targets the most relevant issues and proposes appropriate solutions.
4. While advocacy with the executive branch should be given priority, advocacy with the legislature also is useful.
5. The recommendations of the Committee on the Rights of the Child provide a strong basis for advocacy, and they should be given full consideration.

Training

Considerable support was provided to training in child rights and juvenile justice in all five countries covered by the assessment.

Most training activities have been ad hoc and directed to specific sectors or professions (e.g., judges and prosecutors, police or correctional personnel). There are exceptions. A special course for Albanian decision makers in various sectors was organized by the International Institute for the Rights of the Child in Sion (Switzerland). In Azerbaijan, international experts, including members of the Committee on the Rights of the Child, have played a valuable role in a similar training activity carried out in the capital. Both of these activities were considered very successful. However, in Azerbaijan and Turkey, the participation of foreign experts in routine training activities was not as effective because of trainees’ reservations about the relevance of other countries’ experiences.

There are also examples of the incorporation of training in juvenile justice into training on subjects relevant to both adults and juveniles, such as mediation.

In most of the countries covered by this assessment, NGOs often participate in training activities. Training manuals have been prepared or are in the process of being developed in most of
the countries, often with the assistance of national NGOs. In Albania, for example, NGOs have prepared training manuals on mediation, on correctional work with juveniles (and women), on legal defence of accused juveniles and on the role of psychologists and social workers in juvenile justice. In Azerbaijan, two manuals are being prepared by the NGO Alliance for Children’s Rights, one for law students and one for practitioners. In Ukraine, a training manual developed by Penal Reform International with UNICEF’s support is being translated into Ukrainian.

The impact of most training activities has not been evaluated. One exception was the training of police in Azerbaijan, where shortcomings identified by the evaluation were taken into account in preparing a training manual for use in the regular curriculum of the Police Academy. Efforts to assess the training of judges were unsuccessful because of their reluctance to be evaluated.

In most countries, juvenile justice has not yet been incorporated into the basic entry-level curricula of the relevant training institutions. In Turkey, where extensive training has taken place and training materials have been developed, a law adopted in 2005 requires juvenile judges and prosecutors to be trained. Difficulties have been encountered in institutionalizing training, however. Regulations have not been adopted concerning the amount of training required to comply with the law, and the training academy for judges and prosecutors relies on members of those professions to teach courses. Since juvenile courts have large backlogs, reliance on judges and prosecutors to train their peers makes it difficult to organize the number of courses needed.

Lessons that can be drawn from the experience of these countries include the following:

1. Training activities must be evaluated in order to ensure that they achieve the desired results.
2. Much remains to be done to successfully incorporate training in juvenile justice into the curricula of relevant professional training institutions, especially entry-level courses.
3. Preparing training materials and designing courses will not suffice unless clear requirements are adopted as to the kind of training required for different positions in the juvenile justice system.
4. National NGOs and independent experts from civil society can make a valuable contribution to training activities and to the development of appropriate materials. Foreign experts can provide expertise to high-level training seminars held at the beginning of a process aiming to develop a juvenile justice system or to implement specific programmes, but they should not be relied upon to carry out routine training.

**Planning and coordination**

In Albania, planning and coordination mechanisms are weak. No permanent national mechanism for coordination between the various components of the juvenile justice system existed. For the most part, planning and coordination took the form of periodic meetings between donors and the ministries involved in internationally supported programmes.

The National Strategy for Children adopted in 2005 contains some important elements of a policy on juvenile justice, including the creation of specialized sections of trial courts, the nomination of specialized prosecutors and the introduction of “modern psychosocial counselling programmes throughout the system.”57 The aims of the juvenile justice development project failed to address some important issues, such as the number of accused juveniles detained before and during trial, and prevention programmes for underage offenders.

57 Decision No. 368 of the Council of Ministers of Albania, dated 31 May 2005.
In Azerbaijan, there was no mechanism for planning and coordinating juvenile justice activities at the time of the assessment mission. A Task Force on Juvenile Justice has been established, made up of the Ministry of Justice, the Ministry of Internal Affairs, the Ministry of Education, the Ministry of Labour and Social Protection, the State Committee on Family, Women and Children’s Affairs, the Office of the Prosecutor General, the Commissioner for Human Rights (Ombudsperson), the NGO Alliance for Children’s Rights and international agencies including the Office of the United Nations High Commissioner for Human Rights (OHCHR), OSCE and UNICEF. The university is not represented. The Task Force will meet quarterly, or more often if necessary.

In Kazakhstan, a high-level coordination mechanism made up of all the relevant sectors that functioned during the 2003–2006 pilot project on juvenile justice was dissolved when the project ended. A recommendation that a similar body be established on a permanent basis has not been implemented. Most of the other recommendations of the now extinct project coordination body have been incorporated into the ‘Juvenile Justice System Development Concept’ approved by Presidential Decree in 2008, which sets forth the general outlines of a national juvenile justice system to be developed during 2009–2011. The Ministry of Justice is preparing a plan to implement the ‘Concept’.

In Turkey, a Central Coordination Council on Juvenile Justice was established in 2007. It is composed of the relevant ministries and other bodies that form part of the executive branch. The judiciary, the legislature and civil society are not represented. It has not played a dynamic role in the development of juvenile justice, to date, and lack of coordination is a significant problem.

In Ukraine, a Consultative Council on Juvenile Justice was established in 2006, under the Parliament’s Institute of Legislation. Participants include the relevant ministries and agencies, the Supreme Court, the police, UNICEF and NGOs. It is a useful forum for the exchange of information and ideas, but does not seem to have played a leading role in the development of juvenile justice thus far.

The lessons learned from the experience of these countries are limited, as comprehensive plans for the development of juvenile justice have been rare and most coordination mechanisms are new. The only lessons that can be drawn at present would be the following:

1. The coordination bodies that have been established in three of the countries do not play an active role in leading the development of juvenile justice. The reasons for this are not clear. As the coordination bodies are relatively new, it may be that they will become more effective in the future.

2. None of these countries, with the possible exception of Albania, have prepared and implemented a comprehensive master plan for the development of juvenile justice. In Albania, the plan underlying the project supported by the European Commission has been executed to a considerable extent, and has brought important improvements in juvenile justice. The plan had some significant gaps that have limited its impact, but the progress achieved has generated understanding of the issues, strengthened commitment and helped create momentum that makes it likely that gaps will be addressed in the near future.

3. The experience of Kazakhstan, where a pilot project, after a delay of two years, led to a high-level decision to create a national juvenile justice system based on the lessons learned through the project, demonstrates the value of well-planned and well-executed pilot projects. It also demonstrates the need for persistence, patience and flexibility in promoting the development of systems that require the cooperation of so many different sectors, involve profound changes in institutional culture and may touch upon sensitive issues.
Data management and research

In Albania, the only data on juvenile justice published regularly by official sources are the number of juveniles convicted of an offence. Other data are not confidential, however, and NGOs frequently publish studies containing information obtained from the relevant authorities. UNICEF is supporting efforts by the National Institute of Statistics’ Social Research Centre to improve the reliability of data on juvenile justice and coordinate the pooling of information from the police, the courts and the Prison Department.

In Azerbaijan, the State Statistical Committee publishes an annual bilingual compilation of data from the Ministry of Internal Affairs, the Ministry of Justice and the Office of the Prosecutor General, which contains a wealth of information. The data on juveniles are disaggregated by useful criteria, but data on recidivism do not distinguish between adults and juveniles. The NGO Alliance for Children’s Rights has published a valuable study on juvenile justice, but little or no academic research on offending by juveniles has been carried out since independence.

In Kazakhstan, the Committee on Legal Statistics and Special Accounts of the General Prosecutor’s Office publishes an annual report on crime, which contains useful data on offending by juveniles. It does not contain information on some issues such as pretrial detention or sentencing, however. The Ministry of Internal Affairs publishes data covering other aspects of juvenile justice. Although the Agency of the Republic of Kazakhstan on Statistics does not publish data on juvenile justice on a regular basis, it has provided UNICEF with additional information on important issues, such as sentencing. Only one significant study on juvenile justice has been published during the last decade.

In Turkey, a considerable amount of data on offending by juveniles and the treatment of juvenile offenders are collected and published annually. Valuable information on the prosecution, trial and sentencing of juvenile offenders and on juvenile detainees and prisoners is collected by the Ministry of Justice, and published by TÜRKSTAT, the Turkish Statistical Institute. Unfortunately, the data on prisoners are incomplete, as they refer only to those confined in juvenile facilities. Data on juveniles ‘received’ at police stations are also published; until recently they covered only 27 provinces, but they are being expanded to cover the whole country. Information on some other important issues, such as pretrial detention, is available for detainees in general, but not for juvenile detainees. Data are not disaggregated by ethnicity. The Prison Department has recently decided to sponsor a five-year longitudinal study on persons released from correctional facilities after serving sentences for crimes committed as juveniles.

In Ukraine, the State Statistics Committee publishes a report on juvenile justice every three years. UNICEF is presently supporting efforts to improve data collection. A research institute recently carried out an important survey of juvenile offenders and their parents.

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58 Ministria e Drejtësisë, Vjetari Statistikor 2007, Tiranë, 2008, p. 84 (these data are disaggregated by the length of the sentence imposed).
59 The Institute is known as ‘TÜİK’ in Turkish.
60 Turkish Statistical Institute, Prison Statistics 2006, TURKSTAT, Ankara, 2008, Tables 4.1–4.10, especially 4.3, identifying the six juvenile prisons and reformatories to which the data refer.
61 Ibid., Table 2.13, p. 65; Table 2.7, p. 45; graph 3.5, p. 72, respectively. Data on the number of prisoners released conditionally, disaggregated by age at the time of release, are found in Judicial Statistics 2005, TURKSTAT, Ankara, 2007, Table 4.3.10.
Lessons that can be drawn include the following:

1. It is possible to produce annual reports on juvenile justice that contain a great deal of valuable information for decision makers and society in general.

2. Data from different official sources often contain inconsistencies or apparent contradictions; interagency cooperation is needed to ensure that indicators are compatible.

3. Insufficient efforts have been made to modify existing data management systems and ensure that they produce the information needed to evaluate compliance with international commitments regarding issues such as pretrial detention and the duration of sentences.

4. Studies that include information obtained from juvenile offenders and their families should be prepared periodically, because they provide qualitative information on important aspects of the juvenile justice system that cannot be reliably obtained from any other source.

**Box 5: Key UNICEF strategies**

**Albania**

- **Flexibility and long-term involvement:** UNICEF reacted with the appropriate flexibility when developments beyond its control slowed implementation during the first half of the programme period. UNICEF will seek adequate funding to carry out sustained and coherent support to juvenile justice reform for an additional period exceeding three years.

- **Partnership with civil society:** UNICEF’s reliance on civil society was a good strategic decision, which contributed to sound programme development, effective advocacy and the establishment of some innovative pilot projects (see above).

**Azerbaijan**

- **Kick-starting the reform:** Despite limited funds and the absence of a pre-defined strategy for juvenile justice reform, UNICEF had made a key contribution to the process of creating a juvenile justice system through a situation analysis (2006), advocacy, training and some well-chosen pilot projects.

- **Close cooperation with national NGOs:** Reliance mainly on the national NGO Alliance for Children’s Rights was a good strategic decision, which has helped ensure that UNICEF’s aims and strategies are appropriate, while also building capacity and encouraging government-civil society cooperation.

**Kazakhstan**

- **Taking over when needed:** UNICEF’s intent to take a leading role in supporting juvenile justice reform, after the conclusion of a successful three-year pilot programme supported by the Open Society Institute, is a sound decision. (The Open Society Institute programme, it should be noted, followed a situation analysis sponsored by UNICEF.)

- **Linking juvenile justice with childcare reform:** UNICEF’s decision to support juvenile justice reform is also seen as related to previous work on deinstitutionalization, which helps facilitate and smoothen its entry into this area.
Turkey

- **Mainstreaming juvenile justice standards**: Close cooperation with the European Union has not only facilitated the financing of important projects, but has also helped ensure that UNICEF’s concerns regarding juvenile justice are seen as part of the government’s broader aim of bringing law and institutions into conformity with European standards.

- **Partnership with civil society**: Close cooperation with civil society has enabled UNICEF to have permanent access to first-class technical advice and orientation, which has helped not only in the implementation of activities but also in the definition of strategic goals.

Ukraine

- **Building upon the recommendations of the Committee on the Rights of the Child**: The situation analysis prepared by UNICEF and UNICEF’s advocacy, designed to reinforce the Concluding Observations of the Committee on the Rights of the Child, put the issue of juvenile justice on the national agenda.

- **Keeping the momentum**: UNICEF’s persistence and flexibility has maintained momentum even though several important goals have not been attained.

- **Cooperation with other human rights agencies**: UNICEF cooperated effectively with the Office of the United Nations High Commissioner for Human Rights (OHCHR).
Conclusions

The strategies for the development of juvenile justice followed in the five countries covered by the assessment have been described and analysed above. They invariably focus on the role of the police, courts and correctional facilities, and invariably have a component regarding community-based alternatives. Prevention and post-release programmes are often overlooked, and pretrial detention seldom receives the priority it deserves. Ideally, juvenile justice programmes should be as holistic as possible, which means that all these components or issues should be addressed and given the priority they deserve. Their importance should be determined by the extent to which existing policies and practices are in harmony with children’s rights.

There are many kinds of community-based alternatives. Strategies often focus on one kind, either some form of diversion or some form of alternative sentences. In some cases, the decision as to what form of ‘community-based alternative’ to incorporate into a juvenile justice strategy is not based on a clear understanding of the differences between diversion, prevention and alternative sentences, and of what impact it is realistic to expect from any single ‘alternative’.

There is sometimes uncertainty about whether the issue of underage offenders should be addressed by juvenile justice programmes. It is true that children who become involved in behaviour that is criminal in nature while they are too young to be prosecuted do not come within the juvenile justice system, as such. Some of them, depending on the nature and the circumstances of the offence, can and should be dealt with by the child protection system. However, the prevention of offending and re-offending (secondary and tertiary prevention) should be an integral component of juvenile justice programmes, and it is essential that such prevention programmes address the needs of underage offenders. In this sense, a juvenile justice strategy should address the issue of underage offenders.

The objectives identified in juvenile justice strategies are often described in vague terms that lend themselves to subjective evaluation, and frequently cover only a limited part of the goals to be attained in order to achieve reasonably complete compliance with the relevant international standards.

Strategies are frequently based on the presumption that a juvenile justice system can be reform or developed in three to four years. This is not possible. A realistic goal would be to achieve certain priority objectives within the time frame of a programme and, in so doing, create commitments, mechanisms and momentum that will enable the process to continue for as long as necessary.
Annex 1: Benchmarks of Progress in Juvenile Justice Reform

The following tables are intended to provide a rough overview of the progress achieved by the end of 2008 in developing juvenile justice systems in the five countries covered by the assessment. Generally speaking, the first stage indicates that much remains to be done; the second, that important steps have been taken; and the third, that substantial progress has been made. The criteria used to determine which state of development best describes the present situation in different sectors are the following:

<table>
<thead>
<tr>
<th>Sector</th>
<th>1</th>
<th>2</th>
<th>3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secondary prevention</td>
<td></td>
<td>Open residential or community-based pilot programmes designed specifically for children at high risk of offending exist throughout the country</td>
<td>Open residential or community-based pilot programmes designed specifically for children at high risk of offending exist in some areas, with limited functions</td>
</tr>
<tr>
<td>Juvenile police</td>
<td></td>
<td>Juvenile police units exist in some areas, with limited functions</td>
<td>A specialized juvenile police unit operates in some areas, with limited functions</td>
</tr>
<tr>
<td>Specialized judges or courts</td>
<td></td>
<td>Specialized judges or courts exist in some areas, with limited functions</td>
<td>Specialized judges or courts exist in some areas, with limited functions</td>
</tr>
<tr>
<td>Specialized prosecutors</td>
<td></td>
<td>Specialized prosecutors have jurisdiction over cases of accused juveniles</td>
<td>Specialized prosecutors have jurisdiction over cases of accused juveniles</td>
</tr>
<tr>
<td>Separated pretrial detention</td>
<td></td>
<td>Most juveniles detained before trial are held in facilities</td>
<td>All or nearly all male juveniles detained before trial are held in centres specifically for juveniles</td>
</tr>
<tr>
<td>Separated correctional facilities</td>
<td></td>
<td>All male juvenile offenders serving sentences are held in juvenile facilities or separate buildings</td>
<td>All male juvenile offenders serving sentences are held in juvenile facilities or separate buildings</td>
</tr>
<tr>
<td>Diversion</td>
<td></td>
<td>Diversion is recognized by law but rarely used, or pilot restorative justice programmes exist</td>
<td>Restorative justice and/ or programmes designed to prevent reoffending have been institutionalized nationally</td>
</tr>
<tr>
<td>Alternative sentences</td>
<td></td>
<td>Pilot programmes involving restorative justice and/or supervision exist</td>
<td>Programmes involving restorative justice, probation or other forms of assistance and supervision are available nationally</td>
</tr>
<tr>
<td>Legal assistance</td>
<td></td>
<td>Pilot projects providing legal assistance to accused juveniles exist in some areas</td>
<td>Specialized legal assistance is available to accused juveniles throughout the country</td>
</tr>
</tbody>
</table>

ALBANIA

<table>
<thead>
<tr>
<th>Sector</th>
<th>1</th>
<th>2</th>
<th>3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secondary prevention</td>
<td></td>
<td>Community-based pilot programmes designed specifically for children at high risk of offending exist throughout the country</td>
<td>Community-based pilot programmes designed specifically for children at high risk of offending exist in some areas</td>
</tr>
<tr>
<td>Juvenile police</td>
<td></td>
<td>Juvenile police units exist in some areas</td>
<td>Juvenile police units exist in some areas</td>
</tr>
<tr>
<td>Specialized judges or courts</td>
<td></td>
<td>Specialized judges exist in some areas</td>
<td>Specialized judges exist in some areas</td>
</tr>
<tr>
<td>Country</td>
<td>1</td>
<td>2</td>
<td>3</td>
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<td>-------------</td>
<td>------------------------------------------------------------------</td>
<td>------------------------------------------------------------------</td>
<td>------------------------------------------------------------------</td>
</tr>
<tr>
<td>ALBANIA</td>
<td>Specialized prosecutors</td>
<td>In some courts specialized prosecutors have jurisdiction over cases of accused juveniles</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Separate pretrial detention</td>
<td>Many or most juveniles detained before trial are held in facilities for adults</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Separate correctional facilities</td>
<td>Juvenile offenders serve custodial sentences in a separate unit of an adult prison</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Diversion</td>
<td>Pilot restorative justice and other community-based programmes exist</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Alternative sentences</td>
<td>Pilot programmes involving restorative justice and other forms of assistance exist</td>
<td>A law establishing a probation service has been adopted and will be implemented soon</td>
</tr>
<tr>
<td></td>
<td>Legal assistance</td>
<td>One project providing legal and psychosocial assistance to accused juveniles operates in many courts</td>
<td>A law on legal services has been adopted recently</td>
</tr>
<tr>
<td>AZERBAIJAN</td>
<td>Secondary prevention</td>
<td>One community-based pilot programme for children at high risk of offending exists</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Juvenile police</td>
<td>Juvenile police units operate throughout the country but are not responsible for interrogating accused juveniles</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Specialized judges or courts</td>
<td>Cases of accused juveniles are tried in criminal courts by judges who are not specialized</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Specialized prosecutors</td>
<td>Accused juveniles are prosecuted by prosecutors with little or no special training</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Separate pretrial detention</td>
<td>Most juveniles detained before trial are held in buildings used exclusively for juveniles</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Separate correctional facilities</td>
<td>All male juvenile offenders serving custodial sentences are held in a correctional facility designed specifically for juveniles</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Diversion</td>
<td>One pilot community-based programme exists</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Alternative sentences</td>
<td>The only alternative sentences recognized are warnings, fines and others that do not provide any assistance to the offender</td>
<td>A small number of convicted juveniles have been referred to a pilot ‘diversion’ project</td>
</tr>
<tr>
<td></td>
<td>Legal assistance</td>
<td>A pilot project provides legal assistance to accused juveniles and juvenile prisoners in some areas</td>
<td></td>
</tr>
</tbody>
</table>
### Kazakhstan

<table>
<thead>
<tr>
<th>Area</th>
<th>Country</th>
<th>1</th>
<th>2</th>
<th>3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secondary prevention</td>
<td></td>
<td>One open residential facility and some community-based programmes to prevent offending by children at high risk exist but require revision of standards and strengthening of the social work component</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Juvenile police</td>
<td></td>
<td>Juvenile police units operate throughout the country with the main function of prevention, but specialization with a broader mandate for prevention, investigation and referral has been introduced only in two cities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Specialized judges or courts</td>
<td></td>
<td>Specialized courts operate in the two main cities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Specialized prosecutors</td>
<td></td>
<td>Specialized prosecutors have jurisdiction over cases of accused juveniles in the two main cities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Separate pretrial detention</td>
<td></td>
<td>many or most juveniles detained before trial are held in facilities for adults in separate cells or floors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Separate correctional facilities</td>
<td></td>
<td>All male juvenile offenders serving custodial sentences are held in correctional facilities specifically for juveniles</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Diversion</td>
<td></td>
<td>Diversion is recognized by law but rarely used as it was not institutionalized</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alternative sentences</td>
<td></td>
<td>Pilot programmes involving restorative justice and/or assistance and supervision exist</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legal assistance</td>
<td></td>
<td>One pilot project providing legal assistance to accused juveniles exists</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Turkey

<table>
<thead>
<tr>
<th>Area</th>
<th>Country</th>
<th>1</th>
<th>2</th>
<th>3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secondary prevention</td>
<td></td>
<td>No prevention programmes specifically for children at high risk of offending exist</td>
<td></td>
<td>A specialized juvenile police force operates throughout the country and its functions include the investigation of crimes by juveniles</td>
</tr>
<tr>
<td>Juvenile police</td>
<td></td>
<td>A specialized juvenile police force operates throughout the country and its functions include the investigation of crimes by juveniles</td>
<td></td>
<td>A specialized juvenile police force operates throughout the country and its functions include the investigation of crimes by juveniles</td>
</tr>
<tr>
<td>Specialized judges or courts</td>
<td></td>
<td>Specialized courts exist in many areas</td>
<td></td>
<td>A specialized juvenile police force operates throughout the country and its functions include the investigation of crimes by juveniles</td>
</tr>
<tr>
<td>Specialized prosecutors</td>
<td></td>
<td>Specialized prosecutors are responsible for cases tried in juvenile courts</td>
<td></td>
<td>A specialized juvenile police force operates throughout the country and its functions include the investigation of crimes by juveniles</td>
</tr>
<tr>
<td>TURKEY</td>
<td>1</td>
<td>2</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>--------</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td></td>
</tr>
<tr>
<td>Separate pretrial detention</td>
<td>Many or most juveniles detained before trial are held in separate units of facilities for adults</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Separate correctional facilities</td>
<td>All male and most female juvenile offenders serving sentences are held in open juvenile facilities</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Diversion</td>
<td>Diversion is recognized by law and compensation of the victim is widely used</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alternative sentences</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Legal assistance</td>
<td>The only form of legal assistance available is paid or assigned counsel</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>UKRAINE</th>
<th>1</th>
<th>2</th>
<th>3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secondary prevention</td>
<td>Community-based pilot programmes designed for children at high risk of offending exist</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Juvenile police</td>
<td></td>
<td>A specialized juvenile police force operates throughout the country and its functions include the investigation of crimes by juveniles</td>
<td></td>
</tr>
<tr>
<td>Specialized judges or courts</td>
<td></td>
<td>Designated judges have been assigned in all courts</td>
<td></td>
</tr>
<tr>
<td>Specialized prosecutors</td>
<td>Most accused juveniles are prosecuted by prosecutors with little or no special training</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Separate pretrial detention</td>
<td>Most juveniles detained before trial are held in buildings used exclusively for juveniles</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Separate correctional facilities</td>
<td>All male juvenile offenders serving custodial sentences are held in correctional facilities designed specifically for juveniles</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Diversion</td>
<td>Diversion is not recognized or the only forms of diversion recognized are warnings and police supervision</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alternative sentences</td>
<td></td>
<td>Probation is available nationally</td>
<td></td>
</tr>
<tr>
<td>Legal assistance</td>
<td>Pilot projects providing legal assistance to accused juveniles exist in some areas</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Annex 2: Trends in Different Forms of Detention

Police custody

The following table shows the maximum number of hours a person under age 18 may be held by the police without a court order. The Committee on the Rights of the Child considers that “every child arrested and deprived of his/her liberty should be brought before a competent authority [i.e., judge or prosecutor] to examine the legality of (the continuation of) this deprivation of liberty within 24 hours.”62

<table>
<thead>
<tr>
<th>Country</th>
<th>Time limit to establish identity, contact parents and similar</th>
<th>Normal time limit for juvenile suspects</th>
<th>Time limit for juvenile suspects in exceptional circumstances</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania</td>
<td>12 hours</td>
<td>48 hours</td>
<td>------</td>
</tr>
<tr>
<td>Azerbaijan</td>
<td>3 hours</td>
<td>24 hours</td>
<td>48 hours²</td>
</tr>
<tr>
<td>Kazakhstan</td>
<td>72 hours</td>
<td>------</td>
<td></td>
</tr>
<tr>
<td>Turkey</td>
<td>24 hours</td>
<td>96 hours³</td>
<td></td>
</tr>
<tr>
<td>Ukraine</td>
<td>3 hours</td>
<td>8 hours⁴</td>
<td>------</td>
</tr>
</tbody>
</table>

‘Pretrial’ detention

The following table shows the maximum period an accused juvenile may be detained prior to and during trial, when the law establishes such a limit. The Committee on the Rights of the Child recommends that national law should “ensure that the court/juvenile judge or other competent body makes a final decision on the charges not later than six months after they have been presented.”63

<table>
<thead>
<tr>
<th>Country</th>
<th>Normal time limit</th>
<th>Time limit in exceptional circumstances</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania</td>
<td>3 years</td>
<td>------</td>
</tr>
<tr>
<td>Azerbaijan²</td>
<td>3 months</td>
<td>12 months</td>
</tr>
<tr>
<td>Kazakhstan⁴</td>
<td>6 months</td>
<td>------</td>
</tr>
<tr>
<td>Turkey⁷</td>
<td>1 year</td>
<td>3 years</td>
</tr>
<tr>
<td>Ukraine</td>
<td>No limit</td>
<td>------</td>
</tr>
</tbody>
</table>

Maximum custodial sentence

<table>
<thead>
<tr>
<th>Country</th>
<th>Younger offenders</th>
<th>All/older offenders</th>
<th>Exceptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Albania</td>
<td>------</td>
<td>12.5 years</td>
<td>------</td>
</tr>
<tr>
<td>Azerbaijan</td>
<td>------</td>
<td>10 years</td>
<td>------</td>
</tr>
<tr>
<td>Kazakhstan</td>
<td>------</td>
<td>10 years</td>
<td>------</td>
</tr>
<tr>
<td>Turkey</td>
<td>12–15 years⁵</td>
<td>18–24 years</td>
<td>Sentences for separate offences must be served one after the other</td>
</tr>
<tr>
<td>Ukraine</td>
<td>------</td>
<td>10 years</td>
<td>------</td>
</tr>
</tbody>
</table>

62 Committee on the Rights of the Child, Children’s rights in juvenile justice, General Comment No. 10, CRC/C/GC/10, 2007, para. 84.

63 General Comment No. 10, CRC/C/GC/10, para. 84.