Thematic Evaluation of UNICEF’S Contribution to Juvenile Justice System Reform in Montenegro, Romania, Serbia and Tajikistan

2007
UNICEF
Regional Office for CEE/CIS

THEMATIC EVALUATION OF
UNICEF’S CONTRIBUTION
TO JUVENILE JUSTICE SYSTEM
REFORM IN FOUR COUNTRIES:

- Montenegro
- Romania
- Serbia
- Tajikistan

EVALUATION REPORT

FINAL VERSION

April 2007
Thematic Evaluation of UNICEF’s Contribution to Juvenile Justice System Reform in Four Countries:

- Montenegro
- Romania
- Serbia
- Tajikistan

This report was prepared by an evaluation team formed by Daniel O’Donnell (team leader), Sinisa Bjekovic (local researcher for Montenegro), Ioana Bianca Van Nieuwkerk (local researcher for Romania), Biljana Simeunović-Patić (local researcher for Serbia), Kanoat Khamidova (local researcher for Tajikistan), with the support and supervision of Elena Buonomini (Development Researchers’ Network).

The team would like to thank UNICEF Country Offices for providing technical advice as well as assistance in organising field visits. Particularly, we would like to thank: N. Krsnic (Project Assistant, Country Office Montenegro); A. L. Svensson (Area Representative, Croatia, Serbia and Montenegro); B. Kovacevic, (Head of Office Montenegro); V. Pop (Child Protection Officer Romania); E. Crai (Project Officer Education Romania); P. Poupard (Country Representative, Romania); D. Vujacic-Richer (Juvenile Justice Project Officer, Serbia); J. Hrncic (Juvenile Justice consultant, Serbia); F. Lutfulloev (Child Protection Programme Officer, Tajikistan).

The evaluation team and UNICEF Regional and Country Offices would also like to acknowledge the financial contribution of: i) the Swedish International Cooperation Agency (SIDA), whose funds enabled UNICEF to co-finance the Children’s Chance for Change project in Montenegro and Serbia; ii) the Government of the Netherlands and the UNICEF UK National Committee that financed UNICEF’s work on juvenile justice in Romania; and iii) the Children’s Legal Centre, UK, for contributing to the success of UNICEF’s activities in Tajikistan.

The evaluation was financed by UNICEF and managed and supervised by Juditá Reichenberg (Regional Advisor on Child Protection) and Anna Nordenmark (Child Protection officer), UNICEF, Regional Office for CEE/CIS.

The views expressed in this report are those of the authors and do not necessarily reflect the opinion of UNICEF or of the authorities of the concerned countries.

Final Report
April 2007
TABLE OF CONTENTS

LIST OF ACRONYMS ........................................................................................................ V

EXECUTIVE SUMMARY ................................................................................................. VI

INTRODUCTION ................................................................................................................ 1

1 SCOPE AND OBJECTIVES OF THE EVALUATION .................................................... 1

2 THE RESEARCH TOOLS AND STAKEHOLDERS’ PARTICIPATION IN THE EVALUATION 2

3 THE EVALUATION WORKPLAN ..................................................................................... 4

4 THE EVALUATION TEAM .............................................................................................. 6

SECTION I: COMPARISON OF THE EXPERIENCES OF MONTENEGRO, ROMANIA, SERBIA AND TAJIKISTAN, AND LESSONS FOR UNICEF SUPPORT FOR JUVENILE JUSTICE REFORM ELSEWHERE ................................................................. 8

5 GENERAL FINDINGS .................................................................................................... 8
  5.1 RELEVANCE ............................................................................................................... 8
  5.2 RESULTS BASED MANAGEMENT ............................................................................ 11
    5.2.1 Strategies ........................................................................................................... 12
    5.2.2 Objectives and indicators ................................................................................ 13
    5.2.3 Data collection, monitoring and supervision ....................................................... 13
    5.2.4 Evaluation of juvenile justice activities and projects ....................................... 16
  5.3 EFFICIENCY AND EFFECTIVENESS ..................................................................... 17
    5.3.1 UNICEF expenditures on juvenile justice reform ............................................. 17
    5.3.2 Human resources used by UNICEF ................................................................. 18
    5.3.3 The extent to which planned outputs and outcomes were met ....................... 19
    5.3.4 The justifiability of the investments made in specific activities ...................... 20
    5.3.5 Complementarity with the activities supported by other international actors .... 23
  5.4 HUMAN RIGHTS BASED APPROACH .................................................................... 23
  5.5 SUSTAINABILITY ...................................................................................................... 24
  5.6 IMPACT ..................................................................................................................... 26
    5.6.1 Impact on juvenile justice and law enforcement professionals .......................... 26
    5.6.2 Impact on the plans and capacity of the governments ....................................... 28
    5.6.3 Impact on children and communities ............................................................... 29
    5.6.4 Overall impact .................................................................................................. 29
    5.6.5 Factors that have influenced the overall impact of UNICEF support for JJ-reform.. 30

6 POSITIVE LESSONS LEARNED ............................................................................... 31
  6.1 STRENGTHS AND “FACTORS OF SUCCESS” ....................................................... 31
    6.1.1 External strengths ............................................................................................ 31
    6.1.2 Internal strengths ............................................................................................. 33
  6.2 OPPORTUNITIES ..................................................................................................... 33
    6.2.1 External opportunities .................................................................................... 33
    6.2.2 Internal opportunities ..................................................................................... 35
  6.3 “BEST INVESTMENTS” ........................................................................................... 36

7 THREATS OR… POTENTIAL OPPORTUNITIES? ......................................................... 37

8 OVERALL RECOMMENDATIONS .............................................................................. 39

9 SWOT MATRIX .......................................................................................................... 41

SECTION II: MONTENEGRO ......................................................................................... 42
10 BACKGROUND AND CHARACTERISTICS OF THE JUVENILE JUSTICE SYSTEM............ 42
  10.1 ACCOMPLISHMENTS AND MAIN GAPS IN THE CURRENT JJ-SYSTEM............................... 44
11 OTHER ACTORS INVOLVED IN JJ-REFORM.................................................................. 45
12 OVERVIEW OF UNICEF SUPPORT............................................................................. 46
  12.1 SPECIFIC PROGRAMME COMPONENTS ..................................................................... 48
13 EVALUATION OF UNICEF’S SUPPORT TO JJ-REFORM ............................................. 53
  13.1 UNICEF’S STRATEGY FOR JJ-REFORM .................................................................. 53
  13.2 GENERAL OBSERVATIONS ON RELEVANCE, EFFECTIVENESS, EFFICIENCY, SUSTAINABILITY AND THE USE OF RESULTS-BASED MANAGEMENT AND THE HUMAN RIGHTS BASED APPROACH........................................................................... 54
  13.3 SPECIFIC FINDINGS................................................................................................. 57
    13.3.1 Reforming policy, legal framework and Government programmes on juvenile justice............................................................. 57
    13.3.2 Development of professional capacity relevant for juvenile justice (law enforcement, administrators of justice, social workers) .................................................................................................................. 58
    13.3.3 Development of community based services and coordination between sectors ................................................................. 60
    13.3.4 Improving monitoring, data collection systems and supervision of juvenile justice system and situation .................................................................................................................. 61
    13.3.5 Creating an environment for change (public) ..................................................... 63
14 CONCLUSIONS AND LESSONS LEARNED.................................................................. 63
  14.1 IMPACT ..................................................................................................................... 63
  14.2 LESSONS LEARNED AND OPPORTUNITIES............................................................ 64
    14.2.1 Plan of Action 2004-2010..................................................................................... 64
    14.2.2 The law reform process....................................................................................... 65
    14.2.3 Community-based alternatives ........................................................................... 66
    14.2.4 Custodial facilities for the rehabilitation of juvenile offenders ........................ 66
15 RECOMMENDATIONS FOR FUTURE STEPS............................................................... 67

SECTION III: ROMANIA.................................................................................................... 69
16 BACKGROUND............................................................................................................. 69
17 CHARACTERISTICS OF THE JUVENILE JUSTICE SYSTEM..................................... 69
  17.1 ACCOMPLISHMENTS AND MAIN GAPS IN THE CURRENT JJ-SYSTEM....................... 71
18 OTHER ACTORS INVOLVED IN JJ-REFORM................................................................ 72
19 OVERVIEW OF UNICEF’S SUPPORT....................................................................... 72
  19.1 SPECIFIC PROGRAMME COMPONENTS .................................................................. 74
20 EVALUATION OF UNICEF’S SUPPORT TO JJ-REFORM ........................................... 79
  20.1 UNICEF’S STRATEGY FOR SUPPORTING JUVENILE JUSTICE REFORM...................... 79
  20.2 GENERAL OBSERVATIONS ON RELEVANCE, EFFECTIVENESS, EFFICIENCY, SUSTAINABILITY AND THE USE OF RESULTS BASED MANAGEMENT PRINCIPLES AND HUMAN RIGHTS BASED APPROACH ......................................................................................... 79
  20.3 SPECIFIC FINDINGS................................................................................................. 82
    20.3.1 Reforming policy, legal framework and Government programmes on juvenile justice............................................................. 82
    20.3.2 Development of professional capacity relevant for juvenile justice (law enforcement, administrators of justice, social workers) .................................................................................................................. 83
    20.3.3 Development of community based services and coordination between sectors ................................................................. 85
    20.3.4 Improving monitoring, data collection systems and supervision of juvenile justice system and situation .................................................................................................................. 86
    20.3.5 Creating an environment for change (public) ..................................................... 87
21 CONCLUSIONS AND LESSONS LEARNED................................................................. 88
  21.1 IMPACT ..................................................................................................................... 88
  21.2 LESSONS LEARNED AND OPPORTUNITIES........................................................... 89
22 RECOMMENDATIONS FOR FUTURE STEPS............................................................... 90
SECTION IV: SERBIA .................................................................................................................. 92
23 BACKGROUND ................................................................................................................ 92
23.1 CHARACTERISTICS OF THE JUVENILE JUSTICE SYSTEM ........................................ 92
23.2 ACCOMPLISHMENTS AND MAIN GAPS IN THE CURRENT JJ-SYSTEM ..................... 93
24 OTHER ACTORS INVOLVED IN JJ-REFORM ............................................................... 94
25 OVERVIEW OF UNICEF'S SUPPORT ............................................................................ 95
25.1 SPECIFIC PROGRAMME COMPONENTS ........................................................................ 96
26 EVALUATION OF UNICEF'S SUPPORT TO JJ-REFORM ........................................... 102
26.1 UNICEF'S STRATEGY FOR SUPPORTING JUVENILE JUSTICE REFORM ................. 102
26.2 GENERAL OBSERVATIONS ON RELEVANCE, EFFECTIVENESS, EFFICIENCY, SUSTAINABILITY AND THE USE OF RESULTS BASED MANAGEMENT PRINCIPLES AND HUMAN RIGHTS BASED APPROACH .................. 103
26.3 SPECIFIC FINDINGS .................................................................................................... 106
  26.3.1 Reforming policy, legal framework and Government programmes on juvenile justice ........................................ 106
  26.3.2 Development of professional capacity relevant for juvenile justice (law enforcement, administrators of justice, social workers) .......................................................... 108
  26.3.3 Development of community based services and coordination between sectors ..................................................... 110
  26.3.4 Improving monitoring, data collection systems and supervision of juvenile justice system and situation ................. 111
  26.3.5 Creating an environment for change (public) .............................................................. 113
27 CONCLUSIONS AND LESSONS LEARNED ............................................................... 113
27.1 IMPACT ...................................................................................................................... 113
27.2 LESSONS LEARNED AND OPPORTUNITIES .............................................................. 114
28 RECOMMENDATIONS FOR FUTURE STEPS ............................................................. 116
SECTION V: TAJIKISTAN ....................................................................................................... 118
29 BACKGROUND AND CHARACTERISTICS OF THE JUVENILE JUSTICE SYSTEM ..... 118
29.1 ACCOMPLISHMENTS AND MAIN GAPS IN THE CURRENT JJ-SYSTEM ................... 121
30 OTHER ACTORS INVOLVED IN JJ-REFORM ............................................................... 122
31 OVERVIEW OF UNICEF'S SUPPORT............................................................................ 122
31.1 SPECIFIC PROGRAMME COMPONENTS ........................................................................ 124
32 EVALUATION OF UNICEF'S SUPPORT TO JJ-REFORM ........................................... 130
32.1 UNICEF’S STRATEGY FOR SUPPORTING JUVENILE JUSTICE REFORM ................. 130
32.2 GENERAL OBSERVATIONS ON RELEVANCE, EFFECTIVENESS, EFFICIENCY, SUSTAINABILITY AND THE USE OF RESULTS BASED MANAGEMENT PRINCIPLES AND HUMAN RIGHTS BASED APPROACH .................. 131
32.3 SPECIFIC FINDINGS .................................................................................................... 134
  32.3.1 Reforming policy, legal framework and Government programmes on juvenile justice ........................................ 134
  32.3.2 Development of professional capacity relevant for juvenile justice (law enforcement, administrators of justice, social workers) .......................................................... 135
  32.3.3 Development of community based services and coordination between sectors ..................................................... 136
  32.3.4 Improving monitoring, data collection systems and supervision of juvenile justice system and situation ................. 137
  32.3.5 Creating an environment for change (public) .............................................................. 139
33 CONCLUSIONS AND LESSONS LEARNED .................................................................. 139
33.1 IMPACT ...................................................................................................................... 139
33.2 LESSONS LEARNED AND OPPORTUNITIES .............................................................. 141
34 RECOMMENDATIONS FOR FUTURE STEPS ............................................................. 142
ANNEXES ............................................................................................................................ 146
MONTENEGRO ..................................................................................................................... 146
LIST OF PERSONS INTERVIEWED ........................................................................................................... 146
LIST OF DOCUMENTS CONSULTED .................................................................................................... 148

ROMANIA ............................................................................................................................................. 150
LIST OF PERSONS INTERVIEWED ........................................................................................................... 150
LIST OF DOCUMENTS CONSULTED .................................................................................................... 152
LAW 272 of 2004 .................................................................................................................................... 154
MEMO ON STANDARDS OF CARE (SECONDARY LEGISLATION) ......................................................... 182
QUESTIONNAIRES USED TO EVALUATE IMPACT OF TRAINING AND MEMO ON RESPONSES TO THE
QUESTIONNAIRES ................................................................................................................................. 187

SERBIA .................................................................................................................................................. 196
LIST OF PERSONS INTERVIEWED ........................................................................................................... 196
LIST OF DOCUMENTS CONSULTED .................................................................................................... 199
LAW ON JUVENILE CRIMINAL OFFENDERS AND THE CRIMINAL PROTECTION OF JUVENILES, 2005 ....... 201
HOUSE RULES OF THE REFORMATORY FOR JUVENILES IN KRUSEVAC (SECONDARY LEGISLATION) ........ 245

TAJIKISTAN ............................................................................................................................................ 271
LIST OF PERSONS INTERVIEWED ........................................................................................................... 271
LIST OF DOCUMENTS CONSULTED .................................................................................................... 272
MEMO ON THE COMPETENCE OF THE COMMISSIONS ON MINORS ..................................................... 273

OTHER DOCUMENTS CONSULTED ........................................................................................................ 276
**LIST OF ACRONYMS**

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>CCC</td>
<td>Children’s Chance for Change</td>
</tr>
<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of all Forms of Discrimination Against Women</td>
</tr>
<tr>
<td>CEE</td>
<td>Central and Eastern Europe</td>
</tr>
<tr>
<td>CEELI</td>
<td>Central European and Eurasian Law Initiative</td>
</tr>
<tr>
<td>CIS</td>
<td>Commonwealth of Independent States</td>
</tr>
<tr>
<td>CO(s)</td>
<td>Country Office(s)</td>
</tr>
<tr>
<td>CoE</td>
<td>Council of Europe</td>
</tr>
<tr>
<td>CRC</td>
<td>Convention on the Rights of the Child</td>
</tr>
<tr>
<td>CRED</td>
<td>Romanian Centre for Education and Human Development</td>
</tr>
<tr>
<td>CSW</td>
<td>Centre for Social Work</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>FR Yugoslavia</td>
<td>Federal Republic of Yugoslavia</td>
</tr>
<tr>
<td>GNI</td>
<td>Gross National Income</td>
</tr>
<tr>
<td>HR</td>
<td>Human Rights</td>
</tr>
<tr>
<td>IFC</td>
<td>International Finance Corporation</td>
</tr>
<tr>
<td>INGOs</td>
<td>International NGOs</td>
</tr>
<tr>
<td>JCIK</td>
<td>Juvenile Correctional Institution at Krusevac</td>
</tr>
<tr>
<td>JJ</td>
<td>Juvenile Justice</td>
</tr>
<tr>
<td>M&amp;E</td>
<td>Monitoring &amp; Evaluation</td>
</tr>
<tr>
<td>MoJ</td>
<td>Ministry of Justice</td>
</tr>
<tr>
<td>MoLESP</td>
<td>Minister of Labour, Employment and Social Policy in Serbia</td>
</tr>
<tr>
<td>MONSTAT</td>
<td>Statistical Office of the Republic of Montenegro</td>
</tr>
<tr>
<td>MoU</td>
<td>Memorandum of Understanding</td>
</tr>
<tr>
<td>NCCR</td>
<td>National Commission on Child Rights (Tajikistan)</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-Governmental Organisation</td>
</tr>
<tr>
<td>NIM</td>
<td>National Institute for Magistracy (Romania)</td>
</tr>
<tr>
<td>NPA</td>
<td>National Plan of Action for the Rights of Children (Montenegro)</td>
</tr>
<tr>
<td>OHCHR</td>
<td>High Commissioner for Human Rights</td>
</tr>
<tr>
<td>OSCE</td>
<td>Organisation for Security and Co-operation in Europe</td>
</tr>
<tr>
<td>OSI</td>
<td>Open Society Institute</td>
</tr>
<tr>
<td>RBM</td>
<td>Results-based Management</td>
</tr>
<tr>
<td>RO</td>
<td>Regional Office</td>
</tr>
<tr>
<td>SCF</td>
<td>Save the Children Foundation</td>
</tr>
<tr>
<td>SFR Yugoslavia</td>
<td>Socialist Federal Republic of Yugoslavia</td>
</tr>
<tr>
<td>SIDA</td>
<td>Swedish International Development Co-operation Agency</td>
</tr>
<tr>
<td>SWAP(s)</td>
<td>Sector Wide Approach(es)</td>
</tr>
<tr>
<td>SWOT</td>
<td>Strengths, Weaknesses, Opportunities, Threats</td>
</tr>
<tr>
<td>TOR</td>
<td>Terms of Reference</td>
</tr>
<tr>
<td>UN</td>
<td>United Nations</td>
</tr>
<tr>
<td>UNDAF</td>
<td>United Nations Development Assistance Framework</td>
</tr>
<tr>
<td>US</td>
<td>United States of America</td>
</tr>
<tr>
<td>USD/ US$</td>
<td>United States Dollars</td>
</tr>
<tr>
<td>VOM</td>
<td>Victim-offender mediation</td>
</tr>
</tbody>
</table>
EXECUTIVE SUMMARY

THE EVALUATION

This report evaluates UNICEF’s work in support of juvenile justice reform in four countries: Montenegro, Romania, Serbia and Tajikistan. The evaluation began in September 2006, and was finalized in March 2007. The evaluation team was composed of an international consultant, four local consultants (one per country) and a project manager. Some 75 interviews and 14 focus group discussions were used to gather information from governmental counterparts, civil society counterparts, beneficiaries, donors, international organizations and international NGOs. In each of the countries visited, the evaluation made one or more trips outside the capital to visit projects. The study focuses mainly on the period 2004–2006, the period of greatest activity in three of the four countries covered. The preparatory period during which the groundwork for juvenile justice reform was done (e.g. the preparation of situation analyses and fundraising) also is considered to some extent.

COMPARISON OF THE EXPERIENCES OF THE FOUR COUNTRIES

General findings

By using a definition of relevance that incorporates the need for reform and opportunity to pursue reform, juvenile justice was clearly sufficiently relevant to justify the commitment made by UNICEF, in three of the four countries. In Romania, Serbia and Tajikistan, the number of children involved with the juvenile justice system was relatively large, there were serious gaps between national law and practice and international standards in at least some areas, leading to serious violations of the rights of children. In all three of these countries the government recognized the need for juvenile justice reform. In Romania and Serbia, civil society organizations were also demonstrating a growing interest in the area, by taking important initiatives prior to UNICEF’s decision to develop a programme to support juvenile justice reform. The situation in Montenegro, in contrast, was unique in several ways. It is a small country, and the number of children involved with the juvenile justice system was relatively small. And, while all violations of the rights of children are important, the type of violations reported was not of the same order of gravity as those reported in other countries. The government was disinterested, and juvenile justice reform was not on the agenda of civil society. Despite there was no compelling reason, thus, to conclude that juvenile justice reform was a priority in Montenegro, it is to UNICEF’s credit that it managed to create a commitment to juvenile justice reform on the part of the government.

The choice of the activities in all countries has been evaluated as sufficiently adequate. An attempt to keep an holistic view of juvenile justice has been made by all UNICEF Country Offices (COs) with varying degrees of success, in each country efforts being more focused on an area or another. More attention could have been addressed to the important role that can be played by advocacy also in 'low profile' situations and to the establishment and maintenance of data collection and monitoring systems, as well as to evaluating the impact of individual activities. On the whole, UNICEF has demonstrated to be able not to duplicate the efforts made by other international actors involved (directly or indirectly) in juvenile justice reform, by guaranteeing a satisfactory level of complementarity. However, it is recognised that UNICEF should make greater efforts – of different degree in each country, though – in order to further enhance its cooperation with the other international actors and, where possible, to more effectively leverage on what done by others.

UNICEF’s culture of accountability is one of its strengths, but juvenile justice reform is a relatively new area for the organization and limited in-house experience and expertise have had a negative impact on strategic planning, the development of indicators, the monitoring and evaluation of implementation. In general terms, results-based management needs to be strengthened. Specifically: in none of these countries was a real longer term strategy for juvenile justice reform adopted expressly; work on juvenile justice is

1 Montenegro, Serbia and Tajikistan; in Romania the period of greatest activity was 2004–2005.
rarely integrated into work on other areas to the extent it could be; the objectives of juvenile justice reform are often defined in rather vague terms, while indicators, when identified, are mainly non-quantifiable and of limited use in measuring progress towards the pertinent objective; data collection, monitoring and supervision have not been given the necessary attention, despite some efforts have been made; and generally evaluation has not been fully adequate to measure progress in a systematic way. Despite the above, what planned has by and large been reached at a varied degree in the four countries.

The financial resources available to the COs were sufficient to support the strategy and activities pursued in all countries, except in Romania (although the evaluation team believes that advocacy could have continued despite the shortage of funding). The same can be said for the human resources available to the COs in Romania, Serbia and Tajikistan, where access to external professional expertise worked well.

Despite the complexity and long term nature of the process precludes a simplistic comparison of the investments made with the results obtained, especially while the process is still ongoing, it can be affirmed that, on balance, the results are positive and there is reason to believe that these processes will continue moving forward. Therefore, with the exception of Romania (where, however, things could still change), the investments made so far can be considered justifiable. More difficult is, in contrast, to express a general opinion on sustainability, each activity in each country having a different degree of sustainability, which depends on the government’s actual commitments, plans and actions. More details on sustainability are given in both the comparative and the country sections.

Basic human rights principles should be taken into account in the developing of strategies for juvenile justice reform. The most relevant principles are those related to the need to take into account gender, ethnicity and the views of children. However, attention paid by UNICEF to gender, ethnicity and the participation of children has been limited both during planning and implementation, in all four countries.

As far as impact is concerned, one common trend is that the projects in all four countries have had beneficial impacts on the judiciary, as well as on other groups of juvenile justice professionals. Moreover, the evaluation team believes that the impact on governments’ capacities has been on the whole positive and quite even among the various countries. In contrast, the impact on governments’ plans and future commitments is less strong. The ultimate test of any programme on the rights of the child is how it impacts the lives of children and there is some evidence that interventions that have taken place in Romania, Serbia and Tajikistan have had a positive impact on the lives of hundreds of children. Even in Montenegro, where very few changes in law and policy have reached the point where they are being implemented, there is evidence that the involvement of juvenile justice and law enforcement professionals in the process of reform has had a positive effect on the way they deal with children.

On the whole, activities supported by UNICEF have been having a satisfactory degree of influence on the overall reform and the development of system in most of the countries, with the exception of Romania, where this remains still possible, though.

Positive lessons learned
On the basis of the results of the analysis undertaken, it is possible to identify a few activities, among those funded by UNICEF in the four countries, that can be considered as ‘best investments’, i.e. activities that have turned out as being especially important to the overall process of juvenile justice reform:

- A good situation analysis. The situation analysis not only can be, through its dissemination and presentation to government’s bodies, an effective instrument of sensitization on the social importance of juvenile justice reform, but can also, more specifically, contribute to a keen appreciation on the part of governmental counterparts of the value of data collection, evidence based planning, and monitoring.

- Advocacy and support for the establishment of inter-ministerial, inter-sectoral bodies, which have been established in Serbia, Montenegro and Tajikistan and provide UNICEF with opportunities for a dialogue with all its partners in juvenile justice reform. If a similar body had existed in Romania, it is possible that UNICEF would not have suspended active support for juvenile justice reform and would have become aware of new opportunities in a more timely fashion.
- Creation of inter-sectoral teams at the community level. All four countries have promoted the creation of teams involving actors such as the police, judges, prosecutors, NGOs, local government and social work departments in communities in which diversion/alternative sentencing projects are implemented. The experience of all four demonstrates very convincingly that such inter-sectoral teamwork is key to the effective implementation of such projects, and perhaps even more important than inter-ministerial coordination at the national level.

- Valuable capacity building of the actors involved in juvenile justice reform, in the form of training and constant exchange of information and ideas that can be seen as a sort of informal mentoring. The latter has been an important dimension of the permanent relationship between UNICEF staff and experts and the inter-ministerial, inter-sectoral coordinating bodies established in Montenegro, Serbia and Tajikistan.

- Last but not least, one of the main strengths of UNICEF’s programmes in support of juvenile justice reform is represented by the important focus given to the creation of community based alternatives. These initiatives vary from country to country, but all of them have an important element of innovation and are not only having a positive effect on the lives of children, but also by the force of example strengthening support for reform amongst professionals and decision makers.

Two other types of activity stand out as being particularly valuable, although the experiences are basically limited to one country each. One is strengthening of the role of ombudsmen. The other is reform of the policies and programmes within correctional facilities for juvenile offenders.

The above positive elements of UNICEF's programmes are accompanied by some strengths that are directly related to the organisation itself and its ways of operating: the ability to guarantee a good match between available financial resources and activities pursued; the strong credibility gained by UNICEF with governmental counterparts, despite the organisation cannot count on a real specific internal expertise in juvenile justice yet; the capacity to identify and rely on local expertise, which has a twofold advantage, i.e. inform UNICEF’s work with country-specific knowledge and therefore reinforce the responsiveness of UNICEF’s intervention to the particular needs of the country and, secondly, act as a capacity development process.

The above elements gathered together represent the advantage that UNICEF can hold, while working in juvenile justice reform, compared to other international actors.

**Opportunities**

The comparison of the experiences in the four countries has led to the identification of a number of factors that UNICEF should take into account when designing juvenile justice programmes in other countries. These factors can indeed represent concrete opportunities that UNICEF should expressly look for and try to take advantage of and build upon:

- The presence of civil society organizations interested in juvenile justice reform and the possibility of developing their capacities;
- The crucial importance of law reform and the adoption of a single comprehensive law on juvenile justice;
- The critical potential of advocacy, above all when addressed to juvenile justice professionals rather than governmental counterparts, and when pilot projects are directly used as advocacy means;
- The scope of juvenile justice: shall UNICEF work for guaranteeing that also ‘too young children’ (i.e. children below the age for prosecution) are involved in the system? This area could indeed represent an additional 'specialisation' for UNICEF and, therefore, increase its comparative advantage in juvenile justice reform;
- The potential great value of ombudsman child rights unit. Strengthening the role of the ombudsman can indeed have significant effect on the whole system of juvenile justice, as demonstrated by the experience in Montenegro.
In addition to the above, the evaluation team has identified a few positive elements within UNICEF’s organisational and operational modalities that, so far, have been only occasionally exploited, while they should definitely receive more attention:

- The organisation’s ability to support the production of high quality methodological inputs, an important example being provided by the manual on juvenile justice prepared in Romania by national experts, which is being widely used in professional training and education.
- The ability to deliver aid more quickly than other actors and to work in a more flexible and agile way. This is one of UNICEF’s internal strengths that the organisation should further develop and build upon.
- The same can be said for UNICEF’s recognised ability to raise sufficient funds to cover planned activities. The positive experience of the Serbia Country Office should be further examined and shared with other Country Offices.
- Last but not least, UNICEF’s ability to effectively foster the relationships and exchanges between governments and civil society, acting as a bridge and facilitator between the different actors.

Two major threats to UNICEF’s work in juvenile justice have been identified. Such threats, though, could and should be considered as and turned into potential opportunities:

- The importance of political, historic and institutional context while designing and then implementing juvenile justice programmes should not be overlooked, as changes in such context can have important, sometimes negative and restrictive, effects on the reform of juvenile justice systems. It follows that it is of primary importance that UNICEF’s strategies are designed not only contextually, taking into due account the specific reality of the country concerned, but also guaranteeing a high degree of flexibility and adaptability to possible developments, over the whole duration of the programme. As demonstrated by the experience in Tajikistan, indeed, keeping a high level of flexibility and ability to adapt to single events can permit the achievement of important results despite the conditions are not optimal.
- The same can be said with specific regard to the influence of European institutions or the possible direct involvement of the European Union (EU) in juvenile justice reform. The experience of Romania (see details in the relevant country section) could be read as a demonstration that the ‘entrance’ of the EU in this area can represent a concrete threat to UNICEF's operations. More specifically, in Romania, UNICEF’s main contribution to juvenile justice reform was a situation analysis, which it commissioned with the understanding that it would help influence a two million Euro juvenile justice project financed by the EU. However, the EU project was based on one model of juvenile justice and the situation analysis endorsed another model. Hence, UNICEF’s contribution did not have the expected impact and shortly thereafter UNICEF decided to stop supporting juvenile justice reform. UNICEF did all it could have been expected to do to influence the process. However, what UNICEF probably should have done was to take a lower profile, waiting that the EU project ran its course, but at the same time keeping in touch with developments. In such a way, UNICEF would have been prepared to step in when the EU project ended. Consequently, the potential ‘threat’ would have been turned into a new opportunity.²

² This is what has happened by some means in Montenegro, where UNICEF tried unsuccessfully to influence the new Criminal Code. It failed because the government was focused on integration into Europe, and did not perceive juvenile justice reform as part of the reforms necessary for that purpose. The UNICEF office has since made a determined effort to work in cooperation with European agencies, and has received funding from the EAR for a new, two year project.

Overall recommendations
The following are the main challenges that UNICEF should face in order to make its current and future programmes in support of juvenile justice reform more effective and successful.

- **Reinforcement of results-based management** within the UNICEF Country Offices, with greater efforts to be deployed in order to develop: *well-defined long term strategies; more precise and concrete objectives; relevant and quantifiable indicators; tools for data collection and monitoring* systems. More emphasis should then be given to the *evaluation of impact* or outcomes, rather than outputs. Last but not least, greater synergy and *links between UNICEF’s work on juvenile justice and its work on other areas* should be created.

- Establishment of mechanisms for the *systematic sharing of experiences, exchange of information, and mutual learning processes* between the various Country Offices of the region, to be coordinated by the Regional Office.

- Specific attention given to the *technical expertise available in Country Offices* and their capacity to rely on valuable external expertise, both national and international.

- Greater emphasis to be given to the *powerful tool of advocacy*, above all when addressed to juvenile justice professionals and civil society organisations.

- Enhancement of the *cooperation with the other international actors* directly involved in juvenile justice or whose activities can have an impact on juvenile justice systems, aiming not only to improve coordination and complementarity, but also to make UNICEF more able to ‘sell’ its specific expertise and to leverage on what the others are doing.

- Stronger attention should be paid by UNICEF Country Offices, while planning and implementing activities in juvenile justice, to *gender issues and different treatment of girl offenders*. Models for enhancing *children’s participation* in the design and implementation of projects should be developed and tested, while the issue of whether *ethnicity* should be taken into account in designing and implementing juvenile justice reform projects should be further analysed.

The above issues are analysed in details in the comparative section of the report, while the following paragraphs summarise the four country sections and relevant findings and recommendations. The country experiences are presented in alphabetical order.
MONTENEGRO

The situation analysis on Montenegro was published at the same time as the situation analysis on Serbia, but had less impact. The three year programme funded by SIDA covered the same period: 2004 to 2006. The amount of resources allocated to Montenegro was some US$390,000. In contrast to Serbia, little work on juvenile justice was done until late 2003, when UNICEF lobbied to have provisions regarding diversion and non-custodial sentences included in new criminal legislation then being drafted. This effort did not succeed, due mainly to the priority given to bringing legislation into conformity with European standards and the perception, on the part of the government, that juvenile justice reform was unrelated to that aim. UNICEF renewed its efforts and adopted a new strategy, and the newly adopted legislation was amended in 2005. Much of 2006 was spent developing the necessary regulations, so implementation of the most important amendments (and the pilot project designed to that end) had not yet begun when the three year project came to an end.

The most important accomplishments during the period under review were the amendment of the relevant legislation, and the creation of an inter-ministerial, inter-sectoral mechanism that is now leading the process of juvenile justice reform. The incorporation of some objectives concerning juvenile justice into the National Plan of Action is another significant achievement, as is the progress made in preparing a community-based pilot project expected to become operational early in 2007. Efforts to support reform of the custodial facilities for juvenile offenders during the period under review did not meet with success, although shortly after the evaluation UNICEF reported that new commitments had been made by the relevant ministry and an international NGO. UNICEF also reported, shortly after the evaluation mission, that a European agency had agreed to support UNICEF’s work in this area for two years. The main reasons for the limited success of UNICEF’s efforts during 2004-2005 were the government’s lack of interest and the weakness of civil society.

Main recommendations formulated by the evaluation team include:

- UNICEF should encourage the government to consider expanding the membership in the inter-ministerial, inter-sectoral Commission to include representatives of relevant civil society bodies. Consideration also should be given to giving the Commission the function of evaluating annually progress made, and eventually adopting additional, complementary recommendations or objectives.

- UNICEF should continue on the positive path of cooperation and complementarity established with OSCE, the GoE and the European Union, with whom has started adopting an effective strategy of leverage. Coordination with other bilateral donors as well as international NGOs should be further enhanced, though.

- UNICEF should make an effort to convince the relevant authorities to adopt new interpretations of some of the parts of the National Plan of Action for the Rights of Children (NPA) concerning juvenile justice.

- The weakness of civil society in Montenegro is a significant obstacle to the implementation of juvenile justice reform, in particular community-based alternatives. UNICEF should be alert to opportunities to help develop the capacity of independent civil society organizations having a commitment to children. Both awareness and capacity building activities would be helpful in this direction.

- UNICEF should support the establishment of the programmes and structures needed to implement the whole range of diversion measures and non-custodial sentences authorized by the legislation now in force. Helping ensure that cases involving adolescent offenders that are prosecuted be adjudicated without delay, also should be a priority for future activities supported by UNICEF.

- UNICEF should advocate the development of a standardised, comprehensive, evidence-based plan for the rehabilitation of offenders, including custodial and non-custodial programmes.

- A training needs assessment covering all relevant sectors (judges, police, prosecutors, correctional staff and CSW staff responsible for supervision sentences and orders), should be funded by UNICEF, and a training strategy should be developed in consultation with the National Commission on Juvenile Justice Reform and the relevant authorities.
The good cooperation established with the relevant university departments should be further enhanced. UNICEF is currently negotiating with the Faculty of Political Sciences of Montenegro the inclusion of a Juvenile Justice related subject in the Faculty’s curriculum.

UNICEF should actively support the drafting and adoption of a comprehensive law on juvenile justice. Furthermore, it should begin encouraging and supporting public discussion of what norms concerning the rights of the child should be incorporated into the future constitution of independent Montenegro.

It would be useful to continue developing the part of DevInfo (monitoring system) concerning juvenile justice.

ROMANIA

UNICEF’s work on juvenile justice began in 2004. The main counterpart was the Ministry of Justice. UNICEF prepared a situation analysis that was expected to influence the implementation of a 2 million Euro juvenile justice reform project, funded by the EU. This did not happen, for reasons beyond UNICEF’s control. In 2005 UNICEF made an effort to raise funds to continue working on juvenile justice; when this did not succeed, UNICEF turned its attention to other issues and for all practical purposes stopped working on juvenile justice. New opportunities developed that UNICEF was unaware of; NGO partners were disappointed by the lack of follow up and donors that had supported UNICEF’s work in this area expressed surprise at this turn of events.

The amount invested was approximately US$204,000. In addition to the situation analysis, activities included support for the reform of custodial facilities for juvenile offenders, support for a project for the prevention of offending, support for a pre-existing community based alternative project and training. Most of these activities were successful: training for judges has been institutionalized, the community-based prevention programme has expanded, the community-based alternative project was expanded to a few other municipalities and is widely seen as a model, a book based on that model is widely known and the situation analysis, after the end of the EU project, has even more influence that at the time it was published. The contribution made by UNICEF is widely seen as valuable, and the main complaint is the lack of follow-up. Reform of the juvenile justice system is still ongoing, and it is impossible to foresee at present what the impact of UNICEF’s activities on this process will be. The main reason for the degree of influence it has had thus far is its decision to rely on national expertise ability, and its ability to identify and help develop the skills and capacity of national professionals. The main reasons for uncertainty about the eventual impact of its work on the juvenile justice system, in the opinion of the evaluation team, were a strategy that was not sufficiently flexible and the strategic mistake of ceasing support for juvenile justice reform instead of scaling back its efforts, focusing on advocacy, and waiting for new opportunities to develop.

Main recommendations formulated by the evaluation team include:

- Although UNICEF did not manage to raise funds for a multi-year project on juvenile justice reform based on the situation analysis and its investments in this area were only a fraction of those made by the EU, UNICEF made a valuable contribution to juvenile justice reform that is greatly appreciated by many in government and civil society. It is therefore recommended that UNICEF resumes its support in this area. UNICEF has begun the process of phasing out, because Romania has entered the EU, which means that it will probably not possible to invest large amounts. While it is true that support for juvenile justice reform is labour intensive and requires a considerable investment of staff time, it is believed that UNICEF can play a role in advocacy with minimum investment of other resources.

3 For logistical reasons and change of personnel in the prisons department, the evaluation team was unable to form a firm opinion on the support provided to programmes for correctional facilities for juvenile offenders.
– Should UNICEF decide to renew its support to juvenile justice reform in Romania, greater efforts should be made on the following crucial aspects, i.e.:
  o the development of indicators and tools for data collection in this area;
  o the promotion of strong and constant cooperation with other international agencies/donors, above all given the credibility UNICEF has been able to acquire as provider of quality technical assistance and as facilitator of civil society’s participation in the whole process.
  o A specific area where support would have a visible and almost immediate impact regards the implementation of structured non-residential programmes, which is still lacking in Romania and is perceived as one of the main obstacles to reducing the rate of detention and imprisonment of juvenile suspects and offenders.
  o UNICEF could also give a specific concrete contribution to the government’s intention of replicating, all over the country, the pilot residential facility for children who commit offences but are too young to be prosecuted as juvenile offenders. No plans for first evaluating this project has indeed been made. UNICEF could actually sponsor the ad hoc evaluation of the project.
  o Another valuable attempt to facilitate efforts would consist in supporting linkages between the database being developed by the National Authority for the Protection of Children’s Rights and other databases being developed by judicial and law enforcement authorities.

SERBIA

In Serbia the situation analysis was published early in 2002. A three year juvenile justice project called ‘Children’s Chance for Change’ was funded by the Swedish International Agency for Development (SIDA) and implementation began in 2004. Considerable activities also were carried out during the intervening period, 2002-2003. Serbia and Montenegro were then federated, and the project covered both. The total amount was between 2.1 and 2.5 million USD, of which between 1.8 to 2 million USD was allocated to Serbia.

The main emphasis of the programme was on law reform, community-based alternatives, the reform of correctional institutions for juvenile offenders, training and inter-ministerial, inter-sectoral coordination. Significant progress was made in all these areas. A comprehensive law on juvenile justice was enacted in 2005 and came into force in January 2006. Most of the regulations required by the law also have been adopted. A pilot centre for victim-offender mediation became operational around the same time. A pilot project offering other kinds of non-custodial treatment of juvenile offenders, as well as prevention for children at risk of offending and support for juvenile offenders released from custody is operation in some 10% of the municipalities in Serbia. The programmes and policies of the main correctional centre for offenders have been modified significantly. Training on child rights has been institutionalized for judges, prosecutors, social workers who work in juvenile justice and police officers.

The main reasons for the success obtained thus far are the strength of civil society, the receptivity of the government and success in fundraising. A good situation analysis and the quality of the contributions made by expert trainers and consultants used also were important contributing factors.

The evaluation coincided with fundraising for a second three year period. The main challenges/recommendations include:
– Evaluate the pilot projects more carefully in order to take them to scale and ensure their sustainability.
– Support a clearer definition of the role of the Ministry of Labour, Employment and Social Policy in prevention and rehabilitation, as well as of the role of the Centres for Social Work.
– Foster a more concrete and effective coordination between all the relevant ministries and public institutions involved in juvenile justice, as well as between the government and civil society.
Further develop the existing M&E instruments, in order to supervise the all aspects of juvenile justice, including the performance of juvenile justice professionals.

Enhance the synergy already attained with other aspects of UNICEF’s child protection programme. In particular, the establishment of substance abuse programmes for adolescents, which is related to both delinquency prevention and rehabilitation of offenders, is felt as an priority step to be taken.

While training of social workers on child rights, juvenile justice and restorative justice has been introduced in the University of Belgrade and the Judiciary Training Centre and Police Training Academy have introduced training courses on child rights and juvenile justice, support should be given to introducing the subject of child rights in the law faculty, in regional universities and in the training facility for correctional officers.

TAJIKISTAN

In Tajikistan, UNICEF’s interest in juvenile justice reform dates to 2000, the year Tajikistan’s first report to the Committee on the Rights of the Child was examined. During three years the framework for pursuing reforms on child rights was prepared: a National Conference on Child Rights was held; a National Commission on Child Rights was established; the National Commission adopted a National Plan of Action containing a paragraph on juvenile justice and established an Expert Group on Juvenile Justice, which in turn prepared a situation analysis.

The activities supported since the publication of the situation analysis in 2004 include law reform; the creation of community based alternative pilot projects; the training of judges, staff of facilities for juvenile offenders and police officials responsible for children and the development of proposals for redefining the functions of certain institutions that form part of the system, in particular the residential facilities for juvenile offenders and the municipal commissions that have considerable authority over young children who commit offences and adolescents who commit minor offences. Approximately US$200,000 were invested in juvenile justice reform during 2004-2006. The main accomplishments during this period under review have been the success of the community based alternative pilot projects and the adoption of legislation recognizing non-custodial alternative sentences; other important accomplishments include the strengthening of the capacity of the Expert Group on Juvenile Justice; the institutionalization of training of judges; the establishment of a programme for training social workers and reforms of the detention centre for children in the capitol. Shortly after the evaluation mission, the annual National Roundtable on Juvenile Justice adopted a number of important recommendations that appear to indicate that the pace of reform may increase. Negotiations for a large contribution from a bilateral donor (SIDA), nearing completion when the evaluation was carried out, also suggest that the reform can be expected to continue. Factors responsible for the successes achieved thus far include the patient and flexible strategy pursued by the UNICEF office, the government’s commitment to respecting its obligations under the CRC and support of the office of the Prime Minister. Factors that have limited the pace of reform include the persistence in some sectors of authorities from the soviet period who see little need for reform and the lack of expertise among relevant professional sectors.

Main recommendations formulated by the evaluation team include:

One priority area concerns law reform, where much still needs to be attained. In the short term, for instance, efforts should be made to ensure that the new Criminal Procedure Code now being drafted fully incorporates relevant international standards. In the longer term, consideration should be given to promoting the replacement of the existing laws with a comprehensive law covering all aspects of juvenile justice. UNICEF should not only strongly advocate for increasing commitment towards such developments, but also provide the necessary technical assistance.

Another attainment towards which UNICEF could address its advocacy efforts might concern the establishment of an ombudsman for children. In so far as facilities for juvenile offenders are concerned, the existence of an ombudsman would help compensate the lack of a central administrative structure. More generally, an ombudsman could contribute to law reform, help
provide children with a voice and promote the growth of the new and fragile culture of respect for child rights.

- An area where UNICEF concrete support and technical assistance would have great positive effects relates to the systems of data collection, and monitoring and evaluation in the juvenile justice system. The institutions that collect data on juvenile justice should be assisted in jointly reviewing the indicators used to ensure that the data collected is compatible and adapted to evaluating the extent to which their activities are compatible with the Convention on the Rights of the Child.

- A challenge to be further addressed through the support of UNICEF concerns the need for greater coordination. UNICEF itself does not coordinate its support for juvenile justice reform with other international agencies and donors. Moreover, despite the existence of the Experts Group is generally appreciated, the belief is widespread that such institution should be transformed into a stronger coordination mechanism.

- It is perceived as necessary that UNICEF makes a greater effort to increase the synergy of its work in juvenile justice with its work in other areas.

- As far as specific activities are concerned, the following are potential areas to be considered:
  o Continued support to the provision of free legal assistance to children accused of offences or deprived of liberty.
  o Increased attention to gender and the situation of girls. Some unacceptable situations (e.g. facilities hosting both boys and girls; exams on girls to understand whether they are virgins, etc) should be brought to an end. Consequently, it is recommended that UNICEF sponsors the preparation of a situation analysis of girls and juvenile justice.
  o UNICEF has begun to train social workers and hopes that this function will be shifted to the child rights departments of local governments. The creation of a national network of child rights departments of local government staffed in part by social workers would be an important step in creating a juvenile justice system.
  o UNICEF should continue to promote the adoption of new regulations for the Special School and Special Vocational School, and support an evaluation in order to assess the need for changes in the regulations of the colonies. In addition, a mechanism for coordinating the policies and work of residential facilities for juveniles should be created.
  o The Council of Justice is reportedly considering the adoption of a new regulation designed to ensure that cases involving children are handled only by judges who have received specialized training. It is thus recommended that UNICEF supports the process of evaluating the compatibility of regulations with the CRC and other relevant international standards.
  o Community based alternatives should be gradually established in other districts where the number and nature of offences committed by juveniles indicate that there is a need for them. In addition, consideration should be given to amending the law to allow diversion and/or alternative sentences for juveniles convicted of ‘serious’ offences, in appropriate cases. UNICEF advocacy on both points would be necessary.
  o Greater attention should be paid to the prevention of offending, to be recognized as one of the aims of community based programmes, which should strengthen assistance provided to children at risk of offending as well as those diverted or given non-custodial sentences. It would be useful to carry out a mapping exercise to identify stakeholders in the community, local institutions and national levels.
  o In-service training of teachers, community workers and local officials is highly valuable and should be continued for the foreseeable future. The same should be said for the specialised training delivered to judges, who would also benefit from visits to specialized juvenile courts in other countries. Specialized training of prosecutors would not only benefit juvenile justice reform, but a wide range of child protection issues, e.g. child prostitution, child abuse, trafficking of children.
INTRODUCTION

This introduction provides an overview of the scope and objectives of the evaluation as well as of the methodology followed and the activities undertaken by the evaluation team. The following section will provide a comparison of countries' experiences and an overview of lessons for UNICEF's support for juvenile justice reform elsewhere. Four separate country sections, i.e. one for each visited country4, will then close the report.

1 SCOPE AND OBJECTIVES OF THE EVALUATION

As specified by the Terms of Reference of the present evaluation, UNICEF decided to evaluate its specific contribution to the reform of the juvenile justice system in the selected countries (i.e. Montenegro, Romania, Serbia, and Tajikistan) in order to:

- Assess soundness and impact of current support and to fine-tune UNICEF’s strategic support to the juvenile justice system reform. The initiative is connected to the Medium Term Review in 2007 (in UNICEF 5-years long programme cycle this is the opportunity for making changes and corrections to the country programme strategy). Main users are UNICEF country- and regional offices;
- To extract good practices and lessons learned as an input to strategic approach in other countries across CEE/CIS. Main users are UNICEF country- and regional offices;
- Provide input to the UNICEF Executive Board evaluation review in 2007.
- Provide current donors to with information on impact of their specific support to UNICE and use lessons learned for further fundraising in the same field.

The specific objectives of the evaluation is two fold:

1. To provide feedback to UNICEF country offices on the soundness (defined as relevance, effectiveness, efficiency, sustainability) and impact of their approach in the area of juvenile justice in order to:
   o Reveal gaps in their approaches
   o Reveal good practices in their approaches

2. Based on the experience in the four countries, to extract general lessons learned and trends in performance of UNICEF in the CEE/CIS region related to the enhancement of juvenile justice system reform.

The scope of evaluation has differed in each country following the elements of strategic approach and the objectives of their projects.

4 Country sections are presented in alphabetical order, i.e. Montenegro, Romania, Serbia, Tajikistan.
2 THE RESEARCH TOOLS AND STAKEHOLDERS' PARTICIPATION IN THE EVALUATION

As sources of primary data, the evaluation, given the nature and scope of the exercise, gave preference to the use of qualitative methods. Field instruments included semi-structured interviews with key project stakeholders and several focus groups: in Romania a focus group was held with NGO partners or former partners who had participated in different components of the project; in Serbia two focus group discussions were held, one with counterparts in the law and policy reform component and one with counterparts in the community-based alternatives component, in Montenegro a focus group discussion was held with the Committee for Juvenile Justice Reform and in Tajikistan a focus group discussion was held with the Experts Group on Juvenile Justice. Focus group discussions were also held during field visits in all four countries (see below). The number of individual interviews with main counterparts was 8 in Romania, 9 in Serbia, 6 in Montenegro and 10 in Tajikistan (see annex).

Semi-structured interviews were also used with key informants who are not counterparts, in particular other UN agencies or programmes, regional organizations, and international NGOs. Interviews of this kind were conducted in all four of the countries: with the EU and American Bar Association CEELI programme in Romania, with the Council of Europe, OSCE and International Finance Corporation in Serbia, with the OSCE, Council of Europe and Save the Children UK in Montenegro, and with the OSCE and Save the Children Fund in Tajikistan. In addition, meetings were held with representatives of the British and Dutch embassies in Romania, with SIDA and the French embassy in Serbia and with the Swiss development cooperation in Tajikistan.

Field visits and visits to projects or former projects in the respective capital also took place. In Romania, a field visit to Iasi was organized in order to conduct a field visit with the intersectoral team that is involved in the community-based alternative to detention project, some of whom also was involved in the preparation of the situation analysis. In addition, a visit was made to the offices of the department of child welfare, which is responsible for a pilot project for residential treatment of younger children who have committed offences. In Bucharest, a visit was made to one of the secondary schools involved in the delinquency prevention programme formerly supported by UNICEF, in order to meet with students and teachers who participate in it.

In Tajikistan, a visit was made to the city of Khujand, to visit an NGO that is a potential partner in a diversion/alternative sentencing project, and to visit the Commission on Minors of the local government. Both diversion/alternative sentencing pilot projects in the capital, Dushanbe, were visited, as were two of the centres for juvenile offenders that have received assistance through the UNICEF programme, the Ministry of the Interior's 'Temporary Isolation Centre' and the Ministry of Labour and Social Protection's 'Special Vocational School.' In Serbia, the main closed facility for adolescent offenders, located in the city of Krusevac was visited, as was as the victim-offender mediation project in Nis and mobile child protection teams in three municipalities.

UNICEF staff were interviewed in all four offices. In Romania, Serbia and Montenegro debriefings were given at the close of the mission to the child protection staff and the Representative; in Tajikistan neither the Representative not the Senior Programme coordinator was in the country, so the child protection programme officer was debriefed. In Romania, a debriefing also was given to governmental and NGO counterparts, as the request of UNICEF.

---

5 It was not possible to visit the city itself, which was located at some distance from Iasi.
6 And other children – see Section on Tajikistan.
To sum up, qualitative field methods included:

<table>
<thead>
<tr>
<th>Country</th>
<th># Interviews</th>
<th># Focus groups</th>
</tr>
</thead>
<tbody>
<tr>
<td>Montenegro</td>
<td>18</td>
<td>2</td>
</tr>
<tr>
<td>Romania</td>
<td>17</td>
<td>2</td>
</tr>
<tr>
<td>Serbia</td>
<td>19</td>
<td>8</td>
</tr>
<tr>
<td>Tajikistan</td>
<td>21</td>
<td>2</td>
</tr>
</tbody>
</table>

An attempt to use quantitative methods, in the form of questionnaires, was done by the team in Romania, where two questionnaires were delivered. The first one was delivered to a group of judges that followed a training carried out by NIM and funded by UNICEF. The second questionnaire was delivered to 18 staff members of a pilot project for children under the minimum age for adjudication who have committed criminal acts. Such questionnaires aimed at assessing the effectiveness of activities of capacity building. The templates of the questionnaires and the analysis of the results can be found in annex. Such an experience was not replicated in the other three countries for several reasons, including the tight timeframe and the small numbers of capacity building beneficiaries. In the same way, it was deemed unfeasible to prepare and apply questionnaires to measure the impact of services provided to the adolescent beneficiaries of community-based programmes, as such an activity would have needed specific expertise (e.g. sociologist, psychologist) that was not included in the team. Furthermore, it is the team’s belief that such aspect is so complex that would require an ad hoc evaluation exercise.

The work in the countries had been preceded and supported by a comprehensive analysis of available information (desk review), which had included country situational analyses on juvenile justice related issues, country-specific work programmes, including project proposals, progress reports, etc. A complete list of sources of secondary data can be found in annex.
3 THE EVALUATION WORKPLAN

The following chart describes the sequence of the evaluation activities in relation to Romania, Serbia and Tajikistan. The mission to Romania actually began on 9 October and ended on 17 October; the mission to Serbia began on 18 October and ended on 28 October; the mission to Tajikistan began on 2 November and ended on 16 November. The chart in the next page shows the development of the evaluation in relation to Montenegro.

<table>
<thead>
<tr>
<th>Week starting on</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
<th>8</th>
<th>9</th>
<th>10</th>
<th>11</th>
<th>12</th>
<th>13</th>
<th>14</th>
<th>15</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proposed starting date 450008</td>
<td>4-10-00</td>
<td>11-17-00</td>
<td>18-24-00</td>
<td>25-31-00</td>
<td>2-8-01</td>
<td>9-15-01</td>
<td>16-22-01</td>
<td>23-29-01</td>
<td>30-6-01</td>
<td>6-12-01</td>
<td>13-19-01</td>
<td>20-26-01</td>
<td>27-3-02</td>
<td>4-10-02</td>
<td>11-17-02</td>
</tr>
</tbody>
</table>

**Inception Phase**

- Draft code analysis of documentation
- Briefing at UNICEF regional office for CEE/CIS (27-06)
- Fine tuning and adjustment of proposed methodology and tools, elaboration of evaluation matrix, preparation for field visits
- Submission of inception report
- Seeking for feedback and preparation of country visits

**In-country and field research phase**

<table>
<thead>
<tr>
<th>In-country work - Romania</th>
<th>In-country work - Serbia</th>
<th>In-country work - Tajikistan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stakeholder consultations</td>
<td>Stakeholder consultations</td>
<td>Stakeholder consultations</td>
</tr>
<tr>
<td>Sampling plan and framing of guidelines and questionnaires</td>
<td>Fieldwork (interviews, focus groups, observation, questionnaires)</td>
<td>Sampling plan and framing of guidelines and questionnaires</td>
</tr>
<tr>
<td>Fieldwork (interviews, focus groups, observation, questionnaires)</td>
<td>Fieldwork (interviews, focus groups, observation, questionnaires)</td>
<td>Fieldwork (interviews, focus groups, observation, questionnaires)</td>
</tr>
</tbody>
</table>

Discussion of findings and recommendations (team work), structure and inputs to final report

**Synthesis phase**

- Draft report writing
- Waiting for comments
- Peer review
- Finalization of report
- Submission of 2nd draft report
- On-line input at UNICEF regional office for CEE/CIS
- Final report writing

**Submission**

- Inception report
- 1st draft report - November 24th
- 2nd draft report - December 8th
- Final report December by 15th

N.B. The field work in Tajikistan has been extended due to international travel availability. The team leader will thus start working on the drafting of the reports while in Dushanbe.
### Inception Phase

- Desk review - analysis of documentation
- Fine-tuning and adjustment of proposed tools, preparation for field visit
- Waiting for feedback and preparation of country visit

### In-country and field research phase

- **In-country work - Montenegro**
  - stakeholder consultations
  - fieldwork (interviews, focus groups, observation, questionnaires)

### Synthesis phase

- Draft report writing
- Submission draft report
- Waiting for comments
- Final report writing
- Submission final report

<table>
<thead>
<tr>
<th>Proposed starting date: 08/01/07</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
</tr>
</thead>
<tbody>
<tr>
<td>Week starting on</td>
<td></td>
<td>8 - 14</td>
<td>15 - 21/01</td>
<td>22-28/01</td>
<td>29/01-4/02</td>
<td>5 - 11/02</td>
<td>12 - 18/02</td>
</tr>
</tbody>
</table>

**Notes:**

- Green: Planned activities
- Red: Completed activities
- Gray: Re-scheduled or postponed activities
4 THE EVALUATION TEAM

The evaluation team is composed by one senior child protection specialist and four local lawyers / social scientists in the four considered countries. The technical input of a second international expert (social development expert, permanent staff of DRN) has been concentrated in the inception phase and in the final reporting phase. The following tables provide a summary of the experts’ main qualifications.

<table>
<thead>
<tr>
<th>Name of the expert</th>
<th>Daniel O’ DONNELL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nationality</td>
<td>American/Irish</td>
</tr>
<tr>
<td>Role in the project</td>
<td>Team Leader</td>
</tr>
<tr>
<td>Brief professional description</td>
<td>Over twenty-five years of experience in human rights, of which twelve years living and working in Latin America, five years in Asia and ten years based in Geneva, Switzerland. Mr O’Donnell has very good writing skills, enjoys working in a team and is committed to an interdisciplinary approach. Capable of establishing excellent working relations with both NGOs and government officials including judges, the military and police officials. Since 1992 Mr O’Donnell has worked as a consultant for NGOs and UN agencies, including UNICEF, UNHCR, the UNDP and the Office of the High Commissioner for Human Rights (OHCHR). Since 2004, Mr O’Donnell has been participating in a study of implementation of the Convention on the Rights of the Child being carried out by UNICEF’s Innocenti Research Centre.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name of the expert</th>
<th>Sinisa BJEKOVIC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nationality</td>
<td>Montenegrin</td>
</tr>
<tr>
<td>Role in the project</td>
<td>Local researcher for Montenegro</td>
</tr>
<tr>
<td>Brief professional description</td>
<td>Law expert with specialised in human and children rights. Main areas of research and advisory assistance include: international HR standards, poverty reduction strategy improvement, education in the field of HR, institutional reform of HR protection, regional network in HR improvement, safety at work and social rights, training of judges and public administration, civic education and citizen empowerment, organization of educational events: round tables, panel discussions, definition of HR curricula at all levels of education.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name of the expert</th>
<th>Ioana Bianca VAN NIEUWKERK</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nationality</td>
<td>Romanian</td>
</tr>
<tr>
<td>Role in the project</td>
<td>Local researcher for Romania</td>
</tr>
<tr>
<td>Brief professional description</td>
<td>Social psychologist, sociologist and policy analyst with over 20 years of experience in the supervision, scientific coordination and conduction of social research programmes, assessments and reviews in the fields of poverty and social exclusion, civil society, inter-ethnic relations and conflict resolution, gender, healthcare, and education.</td>
</tr>
<tr>
<td>Name of the expert</td>
<td>Biljana SIMEUNOVIC-PATIC</td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>Nationality</td>
<td>Serbian</td>
</tr>
<tr>
<td>Role in the project</td>
<td>Local researcher for Serbia</td>
</tr>
<tr>
<td>Brief professional description</td>
<td>Researcher, sociologist and policy analyst with more than 12 years of experience in the coordination and undertaking of social research programmes, assessments and reviews in the fields of social exclusion, juvenile delinquency and rehabilitation, crime prevention, human trafficking, crimes against humanity, women protection. Specific expertise in “victimology” and criminal justice, included juvenile justice.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name of the expert</th>
<th>Kanoat KHAMIDOVA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nationality</td>
<td>Tajikistan</td>
</tr>
<tr>
<td>Role in the project</td>
<td>Local researcher for Tajikistan</td>
</tr>
<tr>
<td>Brief professional description</td>
<td>7 years of working experience in the NGO sector (rights protection of women and children, policy advocacy, lobbying of national laws on home based violence, cancellation of death penalty, bring national law into compliance to international standards in the area of juvenile justice, involvement of defence lawyers during pre trial, and arrest, elimination of tortures against prisoners) - and 26 years of experience in governmental structures to provide advisory support on human rights, legal consulting, training of judges.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name of the expert</th>
<th>Elena BUONOMINI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nationality</td>
<td>Italian</td>
</tr>
<tr>
<td>Role in the project</td>
<td>Backstopping, quality control, project management</td>
</tr>
<tr>
<td>Brief professional description</td>
<td>Social development expert specialised in community-driven development, communication for development, institutional capacity development, good governance. Elena has significant field experience in the application of participatory tools and instruments; stakeholders’ mutual learning processes; workshop facilitation and organisation of training sessions. Key qualifications include solid management skills and specific abilities in preparing and managing complex studies and projects, team coordination, multidisciplinary report writing, preparation and delivery of questionnaires and in-depth interviews, documentary reviews.</td>
</tr>
</tbody>
</table>
**SECTION I: COMPARISON OF THE EXPERIENCES OF MONTENEGRO, ROMANIA, SERBIA AND TAJIKISTAN, AND LESSONS FOR UNICEF SUPPORT FOR JUVENILE JUSTICE REFORM ELSEWHERE**

The present section of the report is intended to make a comparative analysis of the experiences of the four countries covered by this evaluation, i.e. Montenegro, Romania, Serbia and Tajikistan. General findings according to the common evaluation criteria and the human rights based and results based management approaches are first described and mainly focus on the weaknesses that have been identified in UNICEF’s support to juvenile justice reform in the four countries. A chapter on the positive lessons learned by those experiences follows, including an overview of the strengths of UNICEF’s programmes as well as its modus operandi and internal capacities. Opportunities that should be better exploited in order to become ‘factors of success’ are then analysed, while a few ‘best investments’ (i.e. the activities that have had the best effects and impact) are identified for future interventions. The section continues by discussing two potential threats to UNICEF’s work, which could, in contrast, be turned into opportunities to take advantage of. The final chapter identifies the main overall recommendations and is followed by a SWOT matrix that summarizes the analysis made in the present section.

5 GENERAL FINDINGS

5.1 RELEVANCE

In the vast majority of countries around the world, juvenile justice systems need to be reformed, if not created. This perhaps surprising fact is confirmed by the Concluding Observations of the Committee on the Rights of the Child on the reports of states parties to the Convention. In a sense, juvenile justice reform is ‘relevant’ whenever there are provisions of the law or practice that are not compatible with the international obligations of a state or, to put it more bluntly, violate the rights of children. Every state has an obligation to bring its law and practice into complete conformity with international standards. The question for an organization like UNICEF is, therefore, not whether juvenile justice reform is relevant, but ‘how relevant’ it is.

The evaluation team has used a definition of relevance that incorporates the need for reform and opportunities to pursue reform. Five main criteria were used to evaluate the relevance of juvenile justice reform in these four countries. These criteria were applied flexibly and pragmatically; there is no formula for quantifying how relevant juvenile justice reform is:

- the nature and extent of the discrepancies between international standards and best practices concerning juvenile justice, on one hand, and national law and practice, on the other;
- the number of children affected by juvenile justice (e.g. the number of offences committed by children, number of children detained by the police, number of children given custodial sentences);
- the government’s recognition of the need for juvenile justice reform;
- the interest of civil society in juvenile justice reform;
- the observations and recommendations of the Committee on the Rights of the Child regarding the need for juvenile justice reform.
Material conditions of detention that are substandard are common, but some are truly inhuman. The number of children sentenced to closed facilities for minor offences or victimless offences; the detention of child prostitutes; the number of children sentenced without having had a genuine opportunity to present their case; the prevalence of gratuitous physical or psychological violence by police, jailers or other prisoners; the lack of non-custodial rehabilitation programmes, are all factors – among others - that indicate reform should be considered a high priority, if not urgent. In so far as the number of children affected is concerned, the point is not to compare the number of children involved in juvenile justice with the number who are victims of other practices, such as sexual exploitation, abandonment or child labour. The point is whether the number of children concerned is sufficiently large to make the problem an important one, taking into account the special characteristics of juvenile justice.

In three of the four countries, juvenile justice was clearly sufficiently relevant to justify the commitment made by UNICEF. In Romania, Serbia and Tajikistan, the number of children coming into contact with the authorities because of the commission of offences or for similar reasons was relatively large, and there were serious gaps between national law and practice and international standards in at least some areas, leading to serious violations of the rights of children. In all three of these countries the government recognized the need for juvenile justice reform. In Romania and Serbia, civil society organizations were taking important initiatives in this area prior to UNICEF’s decision to develop a programme to support juvenile justice reform. The conclusions and recommendations of the Committee on the Rights of the Child on the reports of Romania and Tajikistan put considerable emphasis on the need for juvenile justice reform7. Its concluding observations on the initial report of the Federal Republic of Yugoslavia, as it then was (Serbia and Montenegro) also mentioned the need for reform in this area. If observations adopted by the Committee in 1996 put less emphasis on the need for reform, that was no doubt because the consequences of the conflicts in the region for children in Serbia and Montenegro overshadowed other issues during the 1990s, and no reports have been submitted since. In so far as Tajikistan is concerned, it is worth mentioning that the government recognized the need for reform mainly because of the observations of the Committee on the Rights of the Child, and advocacy by UNICEF based largely on its recommendations. Similarly, growing support for and participation in juvenile justice reform by national and local NGOs is due in very large part to UNICEF’s advocacy and mobilization efforts8. It is worth noting that the Committee’s recommendations were particularly strong regarding Tajikistan and explicitly called upon UNICEF to support juvenile justice reform in the country.

The situation in Montenegro was unique in several ways. It is a small country, and the number of children involved with the juvenile justice system was relatively small. And, while all violations of the rights of children are important, the type of violations reported was not of the same order of gravity as those reported in other countries. The government was disinterested, and juvenile justice reform was not on the agenda of civil society. The reforms now underway or being considered are important ones, but at the time UNICEF made a commitment to juvenile justice there was no compelling reason to conclude that it was a priority in Montenegro, and it is possible that this commitment might not have been made, had Montenegro been independent at the time. It is to UNICEF’s credit that it managed to create a commitment to juvenile justice reform on the part of the government, despite considerable resistance. It did this largely by reaching out to juvenile justice professionals, who were aware of the need for reform, and empowering them through the creation of the National Commission for Juvenile Justice Reform.

This points to a lesson that has broader implications. Juvenile justice reform will rarely, if ever, be identified as a priority by all the relevant governmental counterparts before support for juvenile justice reform has begun. The percentage of offences committed by persons under the age of 18 is usually relatively small, and the treatment of juvenile offenders is often seen as a priority only by those who are directly involved. Indeed, the neglect of facilities for juvenile offenders and the neglect or absence of

---

7 CRC/C/15/Add.199, 2003, para.63 (Romania); CRC/C/15/Add.136, 2000, para.52-53
8 UNICEF was supported by a foreign NGO and an international NGO, the Children’s Legal Centre UK and Save the Children UK.
specialized units of the police, probation departments, office of the prosecutor and public defender or legal aid programmes is one of the main reasons that reform is needed. While recognition on the part of at least some relevant governmental counterparts is a positive factor, the complacency or disinterest of some of the relevant counterparts should not lead UNICEF to conclude that juvenile justice reform should not be a priority. Within the relevant Ministries and other sectors, there are often departments or groups of professionals that do believe that juvenile justice needs to be recognized as a priority. Working with them can lead higher authorities to recognize this and make a commitment to juvenile justice reform. Another example of this can be found in Serbia, where corrections department of the Ministry of Justice and the Ministry itself initially had little interest in juvenile justice reform. However, UNICEF began working with the head of the most important facility for juvenile offenders, who became a strong ally and eventually was appointed to chair the inter-ministerial and inter-sectoral committee responsible for coordinating juvenile justice reform. Similarly, through training activities on the rights of the child, UNICEF found allies in the police force, who eventually influenced the Ministry of the Interior to become more committed to this project. In general, the experience of these four countries suggests that active interest in juvenile justice reform on the part of all the relevant governmental counterparts should not be considered a prerequisite for initiating work in this area, but can be one of the objectives of the first stage of work.

From the paragraphs above, it follows that UNICEF support to juvenile justice reform can be considered ‘timely’, meant as a mix of need and opportunity, surely in three out of four countries. As regards Montenegro and as already outlined above, UNICEF’s activities had anyway the value of helping the law reach greater conformity with international standards and best practices. As better explained in the relevant country section, more efforts could have been made to promote awareness of the need for juvenile justice reform during the time between the publication of the situation analysis early in 2002 and UNICEF’s advocacy regarding the new Codes late in 2003.

As far as the choice of activities is concerned, in all four countries, the UNICEF office supported some activities regarding law, policy, the development of professional capacity, the development of community based services and coordination between sectors. Only in Serbia and in Montenegro did UNICEF support efforts to establish or improve data collection systems concerning juvenile justice (more details are given in the country sections). In Tajikistan, there appears to have been valid reasons for non-inclusion of a monitoring and data collection component during the first phase of UNICEF’s support for juvenile justice reform. The Ministry of the Interior, the counterpart that heretofore has played the central role in data collection regarding juvenile justice, does not see the need to change the indicators used and still considers the data collected to be confidential. The decision to advance on other fronts to build confidence and gradually create more awareness of the utility of and need for reforming procedures and practices in this area can not be faulted. This area should be addressed in the next stage of UNICEF’s work on juvenile justice in Tajikistan, however. In Romania, UNICEF had supported the development of a data collection system in the National Authority for the Protection of the Rights of the Child, which is responsible for children under the minimum age for adjudication, but the system was not designed as part of a system to collect data on juvenile justice but rather as part of a system to collect data on children in care.

In none of the countries did UNICEF support efforts to develop a system specifically for monitoring the functioning of the juvenile justice system as such, even though the project covering Serbia and Montenegro did include a component calling for strengthening the capacity of ombudsmen to monitoring the situation of the rights of children, including children in conflict with the law. None of the programmes included a component aimed at “changing public attitudes towards children in conflict with the law and juvenile justice system reform.”

Non-inclusion of similar activities has not had any negative impact on

---

9 In December 2006, the National Roundtable on Juvenile Justice adopted a recommendation that this function be transferred to another ministry. If adopted, this will create an opportunity to incorporate data collection and perhaps monitoring into the strategy for juvenile justice reform.

10 The Serbian programme did include activities designed to win the support of the local population for a pilot project on VOM, but the scope of such efforts is too limited to conclude that they provide sufficient basis for a
the progress of juvenile justice reform in any of the countries covered by the evaluation. This being so, one can conclude that non-inclusion cannot be considered an error. In all of the countries concerned, there is some anecdotal evidence of negative attitudes on the part of public opinion regarding juvenile offenders, but no evidence such views are or have been at any relevant time a significant obstacle to reform.

As far as coordination with other actors is concerned, in Romania UNICEF’s efforts to coordinate with the EU, the main international actor supporting juvenile justice reform, unfortunately bore little fruit, but the evaluation team concluded that UNICEF is not responsible for that. UNICEF also did not coordinate sufficiently with other international actors interested in supporting juvenile justice reform or supporting activities closely related to juvenile justice reform11, and lost contact with NGOs counterparts after the situation analysis was completed. This was due to UNICEF’s decision to cease working on juvenile justice, but the failure to maintain contact with relevant national and international actors caused UNICEF to lose contact with the evolution of the situation and to be unaware of new opportunities.

In Tajikistan, juvenile justice reform has been incorporated into the UNDAF, but actual cooperation with other UN agencies is limited. Investments by other international donors in areas related to juvenile justice reform are less significant in Tajikistan than in the European countries covered by the evaluation. Nevertheless, UNICEF has been successful in establishing linkages between governmental counterparts and international donors who have provided modest contributions to cover investments that complement those made by UNICEF, in particular renovating and equipping custodial facilities for juveniles. It was reported to the evaluation team that the cooperation between one of UNICEF’s main governmental counterparts and a large private international donor (the Open Society) has to some extent adversely affected cooperation between UNICEF and that ministry.12

Also in Serbia, juvenile justice reform has been incorporated into the UNDAF, but actual cooperation with other UN agencies on juvenile justice reform is very limited. Cooperation with other international actors working on related issues, such as the EU and OSCE, exists, but is sporadic. In Montenegro, the main international actor actively supporting reforms in areas closely related to UNICEF’s juvenile justice project was and is the OSCE. An OSCE representative confirmed that UNICEF has cooperated closely and effectively with the OSCE on an ad hoc basis, since 2003. The other main actor supporting juvenile justice reform is Save the Children Foundation (SCF), an international NGO whose staff in Montenegro is local. A mechanism for coordination incorporating the OSCE, SCF and other international actors was established, but was short-lived. Both UNICEF and SCF recognize that their cooperation needs to be improved.

The extent to which the activities supported by UNICEF can be considered ‘sufficient’ to influence the overall reform of juvenile justice systems is analysed under the part related to impact.

5.2 RESULTS BASED MANAGEMENT

UNICEF’s culture of accountability is one of its strengths, but juvenile justice reform is a relatively new area for the organization and limited in-house experience and expertise have had a negative impact on strategic planning, the development of indicators, the monitoring and evaluation of implementation.

positive answer to this question. An anthology film produced in 2005 with the support of UNICEF includes a ‘Blue Gypsy’, a short by the Serbian filmmaker Emir Kusturica on a juvenile offender. It is not part of the juvenile justice project of the Serbian office, however, and, at the time of the evaluation, all stakeholders interviewed stated that it had not been released in Serbia. Such a statement has been contradicted by UNICEF Country Office. The evaluation team was not in the position of identifying other sources of information.  

11 E.g. law reform or improvements in the administration of justice.  
12 During the evaluation mission both the representative of that donor and the UNICEF representative were out of the country, so the evaluation team is unable to draw any further conclusions with regard to this issue.
5.2.1 Strategies

In none of these countries was a real longer term strategy for juvenile justice reform adopted expressly. This is probably at least in part because UNICEF’s institutional culture emphasizes programmes, which are of limited duration; while juvenile justice reform requires a longer-term process that cannot be brought to completion in the space of two or three years. The evaluation team has nevertheless made an effort to identify the main elements of the strategy that was implicit in the approach to juvenile justice reform, the plans developed and activities carried out in these four countries.

The strategy of the office in Romania included the following elements: prepare a situation analysis as a basis for fundraising and the negotiation of a programme with the government; rely mainly on national experts to prepare the situation analysis; use the situation analysis to influence the implementation of the EU juvenile justice project; support the inter-sectoral team-building with emphasis on diversion and increased use of non-custodial sentences approach developed by a Romanian NGO; institutionalize training of judges; support NGOs working on delinquency prevention and on community participation in the rehabilitation of adolescents confined in correctional facilities. The strategy was a good one in many ways: it covered most facets of the system (prevention, diversion, adjudication, corrections); it included civil society and helped develop national expertise. The main flaws were the failure to anticipate the inflexibility of the EU project, and above all the lack of an alternative plan when this expectation proved unrealistic and when efforts to raise funds were unsuccessful. It is the opinion of the evaluation team that the UNICEF office, rather than deciding to abandon the work on juvenile justice when faced with these obstacles, could have taken a lower profile, keeping in touch with developments and being prepared to step in when the EU project ended. The decision that was taken was thus an error, but not an irreversible one. The work accomplished despite these difficulties and error have indeed given UNICEF the credibility with government officials and donors to revive the project.

One of the main elements of the strategy of the Serbian office was to promote law reform and simultaneously move ahead with pilot projects. The office worked on juvenile justice for two to three years before it prepared a project proposal that resulted in sufficient funding for it to work on juvenile justice in a planned and coherent way for a period of three years. The decision to work on pilot projects while simultaneously working on law reform was a good one, because the success of pilot projects contributed to support for the draft law. The part of the project focused on community based alternatives provided considerable support to two quite different approaches: the mobile child rights teams designed to support preventive and rehabilitative services that focus on the adolescent and his/her family; and victim-offender mediation (VOM). VOM was a new concept in Serbia and is, by nature, an approach that is difficult to sell to the public and authorities, who often see it as being soft on offenders and failing to understand the importance of mediation to the victim and the utility of VOM in preventing recidivism. The decision to support these two complimentary approaches, and to make a long-term investment in winning acceptance of VOM in a carefully chosen pilot community, was a wise one.

The three year project implemented in Montenegro began as part of a project covering Serbia and Montenegro. For the most part, the programme was designed as if the needs and opportunities in Serbia and in Montenegro were similar, when in fact they were quite different in several important respects. Most of the activities and objectives described in the relevant documents were identical for both countries, although some activities were planned for implementation in Serbia alone. Shortly before the project began, a new Criminal Code was adopted. UNICEF tried, without success, to convince the authorities to include provisions authorizing diversion and alternative sentences. The strategy followed during the three years of the project was designed, in large part, to overcome this. A main component of the strategy was

\[13\] The most important of these was the mobile child protection teams, established in 14 municipalities in Serbia, but not in Montenegro.
the creation of a National Commission on Juvenile Justice Reform, composed of juvenile justice professionals from all the relevant sectors, to lead the process of reform.

The strategy adopted by the office in Tajikistan was quite different. After some exploratory work with NGOs, the office took advantage of the Committee on the Rights of the Child’s recommendations to the government, to organize a high-level conference on child protection. This led to the creation of a National Commission on Child Rights (NCCR), which in turn established an Expert Group on Juvenile Justice. The process of establishing this framework began in 2001 and ended in 2003. Since then the strategy has simply been to work on all the recommendations contained in the situation analysis, to the extent the various Ministries and institutions are receptive to doing so, and to use the Experts Group and NCCR as vehicles for ensuring the cooperation of the various actors. This strategy has been moderately successful. Some Ministries, including the Ministry of the Interior and Ministry of Education, have been reluctant to accept some of the recommendations. As a result, progress in reforming the various institutions has proceeded more rapidly in some areas that others, and more progress has been made with the judiciary and with some ministries than in law reform.

Another weakness recorded in the four countries is represented by the fact that work on juvenile justice is not integrated into work on other areas to the extent it could be. In Serbia, support for juvenile justice reform is integrated into support for local plans of action for children. However, the lack of drug and alcohol abuse programmes for adolescents is a major concern of counterparts in the juvenile justice programme, but there are no links between UNICEF’s work on health and on juvenile justice. In Montenegro, the pilot project expected to become operational during 2007 should be closely linked to the local plan of action, and to UNICEF supported work on protecting children from violence and neglect and support for children with disabilities. In Romania, one of UNICEF’s former NGO partners is implementing a delinquency prevention project in secondary schools, but there was no linkage with UNICEF’s support for a campaign against violence in schools. And the Secretary of State responsible for the National Authority for the Protection of the Rights of the Child, one of UNICEF’s most important counterparts, was unfamiliar with the situation analysis on juvenile justice. In Tajikistan, the Ministry of Education has been one of the most problematic counterparts of the juvenile justice programme, although one would expect that UNICEF’s support for the Ministry in other areas would provide it with sufficient leverage to overcome such difficulties.

5.2.2 Objectives and indicators

The objectives of juvenile justice reform are often defined in rather vague terms in the plans adopted by UNICEF in the four countries, while indicators, when identified, are mainly non-quantifiable and of limited use in measuring progress towards the pertinent objective. A document of the UNICEF office in Romania14, for example, lists the following expected outcomes: increased knowledge and skills of 20 professionals from local authorities with duties in the enforcement of the standards set forth in the law on the promotion and protection of children’s rights, with focus on children in conflict with the law; strengthening inter-institutional cooperation with respect to reviewing current working methodologies and practices in dealing with children in conflict with the law; internal norms and procedures developed in order to make sure that these are consistent with the principles that underlie the respect and guarantee of the child’s rights. It also contains a quantifiable goal for one pilot project, namely, a 40% reduction in the “rate of offences committed by children below 14” years of age. The first three goals are desirable ones, but are defined in terms that are so vague that it is difficult to determine objectively the extent to which they have been met. To measure achievement of the first goal, for example, it would be necessary to identify the knowledge and skills considered most relevant, test participants knowledge and skills before and after the event, and define the degree of improvement considered necessary to qualify the event as a success. Similar observations can be made with regard to the two other goals. What are the indicators of ‘strengthened inter-institutional cooperation’? Which are “the principles that underlie the respect and

14 “Prevention of deprivation of liberty and protection of young delinquents”, Project Proposal, 2005
guarantee of the child’s rights”? Why limit the objective to principles, and not rights? A comprehensive list of internationally recognized rights and principles concerning juvenile justice would be very long, indeed.\footnote{15} How many of them, or which ones, would have to be recognized by the national regulations to conclude that this goal has been met? The goal of a 40% reduction in offences committed by children under the age of 14 had the virtue of being quantifiable, but seems arbitrary, especially for an activity consisting in the establishment of a pilot project with a capacity for 20 children.

The UNICEF office in Tajikistan was the only one to have used a logframe covering juvenile justice programme. Only one of the nine ‘outcomes’ of the 2006-2009 logframe on ‘Social Policy Reform & Child Protection’ specifically concerns juvenile justice. The meaning of the outcome – “Creation of a base for using imprisonment as a last resort supported the reduction of the number of registered juvenile offenders” – is not entirely clear. It does not cover all the outcomes one would expect from a successful and comprehensive reform of juvenile justice, nor all of the recommendations made by the situation analysis, which also addresses issues such as due process in the trials of accused juveniles and standards of care in residential facilities. The part of the logframe concerning juvenile justice identified three targets, which are relevant but vague and non-quantifiable, and three quantifiable indicators: an increase in the “number, range and innovativeness” of community based alternative services; the number of children served by such services and the reduction of re-offending. These indicators are relevant, but they are only indirectly related to the stated outcome, the use of custodial sentences as a last resort and reduction of the number of juvenile offenders.

In Serbia and in Montenegro, the juvenile justice reform programme for 2004-2006 was based on a ‘Framework’ that identifies an overall project objective, nineteen ‘sub-project objectives’ and an identical number of ‘strategic results’. The overall objective is phrased in terms of action rather than result. It would have been useful to identify the results to be obtained by the project as a whole, as well as a single strategic result for each of the ‘sub-projects’. The Framework does not include indicators. The results are, in general, relevant and clear. Many of them, however, are rather intangible and difficult to evaluate objectively. One sub-project objective, for example, is “The issue of the rights of children at risk and in conflict with the law placed much higher on public and political agenda and acknowledgement on violations of those rights increased.” Most of the strategic results describe changes in law, policy, awareness and the knowledge and skills of professionals, rather than changes in the lives of children. Three of the four strategic results of the alternative community-based care and prevention component do refer to children, however, and two of them refer to changes in their lives\footnote{16}. What is striking is the absence in the ‘Framework’ of any concrete indicators concerning the impact of the activities supported on basic questions such as recidivism, the number of children offenders diverted rather than prosecuted, the number given non-custodial sentences, and so on.

The government of Montenegro adopted a Plan of Action for Children in 2004, shortly after implementation of the juvenile justice reform project began. The Plan, developed with UNICEF support, defined four broad objectives regarding juvenile justice and the corresponding activities and indicators. It also identified the entities responsible for implementation and set a timetable, but it did not identify risks. Most of the indicators are clear, but of limited use in measuring progress towards the pertinent objective. With regard to the important objective “Current administration of justice is reformed according to international standards”, for example, there are only 4 indicators: the number of specialized ‘advanced’ trainings organized and the number of number of ‘expert’ who have attended them, the percentage of judges who have ‘passed the specialization’ and ‘institutional reforms operational.’

\footnote{15}{The UN Rules on the Protection of Juveniles Deprived of Liberty alone contain no less than 87 Rules.} \footnote{16}{“Children in custody benefit from improved quality of life, in particular from improved psycho-social and conflict resolution services” and “Life skills of children deprived of liberty are strengthened and their reintegration into the community is supported and facilitated.” It is anomalous that both refer to children in custody, not children participating in community based alternatives.}
5.2.3 Data collection, monitoring and supervision

Strengthening data collection, monitoring and supervision has not been a central part of the strategy pursued by any of the four countries thus far. New data collection, monitoring or supervision systems have not become operational in any of them during the period under review. Some efforts, however, have been made or are being planned.

Each of the four countries has some statistics concerning juvenile justice, and some of them have used the data in ways that illustrate its potential value. In Tajikistan, for example, it was decided to establish the pilot diversion/alternative sentence project in the district having the highest rate of offending by juveniles. At the end of the first year statistics not only showed a low rate of recidivism amongst participants, but also a decrease in the number of offences registered in the district. This data was invaluable in convincing policy makers of the value of community-based alternatives. Too often, though, policy decisions are taken without taking the relevant data sufficiently into account. For example, should a centralized correctional facility for juveniles be rebuilt, or should smaller facilities be built close to the communities having the largest number of juveniles receiving custodial offences? Is the number of children in a given community who receive custodial sentences sufficient to warrant the establishment of VOM as a mechanism for reducing the number of children in custody, or is the number of children prosecuted sufficient to warrant the introduction of VOM as a tool for diversion? What is the probable impact of diversion and alternative sentences on the number of juvenile offenders given custodial sentences, and what are the implications for the type of custodial facilities needed, their capacity and their location? In many cases, at least some of the data relevant to making planning decisions such as these is available. The main problem is not the lack of data, but the tendency to base decisions on common sense, past experience or simply the way things have always been done. The evaluation team believes that UNICEF has not done enough, in these countries, to advocate evidence-based planning in the area of juvenile justice reform.

UNICEF’s efforts to strengthen data collection have also been limited. In Romania, a special effort was made to collect data in the situation analysis. This effort has not yet had any impact on permanent data collection mechanisms, although it has created greater appreciation amongst many professionals of the importance of evidence-based planning. In Tajikistan the existing system for data collection is very poor, but there were valid reasons not to have made this a priority during the first phase of UNICEF’s support for juvenile justice reform: as mentioned above, the ministry that has had the central role considers the data to be confidential and was not receptive to the idea of adopting new and more relevant indicators. Furthermore, data from different sources is not compatible. Consequently, a recent draft report prepared by the National Statistical Agency indicates that the number of children convicted of crimes is substantially greater than the number of crimes attributed to children during the same period. Data such as this, that is unreliable or irrelevant, is of little use either in defining the aims of juvenile justice reform or measuring progress in achieving them. In December 2006, the National Roundtable on Juvenile Justice adopted, however, a recommendation that data collection be transferred to and centralised to the Ministry of Justice. If adopted, this will create an opportunity to incorporate data collection and perhaps monitoring into the strategy for juvenile justice reform. In Serbia and in Montenegro, UNICEF is in the process of expanding the DevInfo data collection system to include data on juvenile justice, but this process has not reached the point where results can be evaluated. At the local level, the matrix developed in Serbia for quantifying the risk of offending and progress made in reducing it is a very interesting and possibly valuable tool, whose accuracy and utility should be evaluated at some point.

In none of the countries has UNICEF supported efforts to develop a system specifically for monitoring the functioning of the juvenile justice system as such. The project covering Serbia and Montenegro included a component calling for strengthening the capacity of ombudsmen to monitoring the situation of the rights of children, including children in conflict with the law. This has been done in Montenegro, but in Serbia the institution has not yet been established. Similarly, none of the countries concerned has developed a mechanism to review systematically the functioning of the institutions that form part of the juvenile justice system. In Tajikistan, an independent body having this function would play a valuable role, but it would not have been realistic to include this in the first phase of support for juvenile justice reform. In Serbia, conditions for supporting supervision seem to exist, and it may be that this area should have been incorporated into the juvenile justice programme before now. A great deal has been accomplished,
however, and the failure to cover this issue heretofore has not had any perceivable impact the process of reform as a whole. In Montenegro, the ‘system’ is so small that developing an institution or mechanism specifically for supervising the way it functions might not be cost-effective.17

5.2.4 Evaluation of juvenile justice activities and projects

In general, with the exception of Serbia, evaluation (and monitoring) was not fully adequate to measure progress in a systematic way and thus make corrections when needed. Some of the activities carried out do not appear to have been evaluated at all, particularly when support was for a limited objective and limited period of time so that the question of continuing support did not come up, or when the decision not to renew support was based on reasons other than the results obtained by the implementing partner, such as lack of funding. The methods that have been used, either to evaluate specific activities or progress of support for juvenile justice reform as a whole, are quite varied.

In Tajikistan, the main method used to evaluate the activities carried out is to ask the international experts and organizations participating in the project for their views on the progress made by national counterparts. Reports have been produced, for example, on the training of police (by the trainer), on conditions in the residential facility and on the conformity of draft legislation with international standards. In addition, implementing partners report data on indicators such as the number of children receiving services and rates of recidivism in the areas in which alternative programmes have been established. The combination of these methods has, in general, allowed UNICEF to evaluate progress, detect problems in implementation and make corrections when needed. There are exceptions. The training of judges is not evaluated, except in the usual way, by the professors responsible for the courses. The evaluation of law reform has focused on the content of draft laws and decrees, rather than the overall progress of law reform. Certain gaps had been overlooked, until the present evaluation drew attention to them. However, this was probably due to the lack of clearly defined objectives concerning law reform more than a weakness in evaluation and monitoring as such.

In Serbia, progress in law and policy reform is monitored directly by UNICEF, in so far as the adoption of new laws and policies is concerned. Evaluation of the content of such laws and policies takes place primarily through the exchange of views amongst UNICEF counterparts in the Juvenile Justice Committee. Since some of the members of the Juvenile Justice Committee are independent and have considerable expertise, this method has worked satisfactorily. Some secondary legislation also was evaluated by independent experts who, in essence, confirmed the views of the national experts. UNICEF support for improving the services provided in the main residential facility for juvenile offenders is monitored and evaluated informally by periodic visits by UNICEF staff. A formal independent evaluation of the facility also was carried out by a foreign expert in 2006, although the focus was on conditions rather than UNICEF support as such. In so far as training is concerned, the outputs (number of persons trained, etc.) are monitored through the annual reports of counterparts to UNICEF. Interdisciplinary training on the local level was evaluated by the use of questionnaires that solicit the views of the trainees, a method which allows certain problems (e.g. poor presentation) to be detected, but not others. The training of police is evaluated by the police academy through the traditional method of evaluating what has been learned by the trainees, a method similar to that used by the University to evaluate students who follow courses on mediation. The training of VOM mediators is evaluated by the use of questionnaires that solicit the views of the trainees. In addition, the international trainer informally evaluates the effect of the training by soliciting information from the trainees participating in advanced or refresher courses on their experiences putting their training to work. None of these training activities as such has been formally and independently evaluated. The UNICEF office has made a serious effort to develop tools for monitoring the implementation of the two community-based alternative projects. The tools used to evaluate the work

17 Efforts to develop mechanisms to monitor the functioning of specific parts of the system, such as compliance with norms regarding the interviewing of child suspects or norms concerning the time limits for adjudication of cases of juveniles accused of an offence, for example, could be appropriate.
of the mobile child protection teams are particularly innovative, because they are designed to measure the impact of the services provided on children and their families. The tools used to evaluate the services provided by the VOM mediation pilot project are useful, but their value would be enhanced if data on compliance with the agreements between the victim and offender and victim satisfaction at that point were also collected. In general, the methods used to monitor and evaluate the progress of activities supported by the office in Serbia have been sufficient to measure progress and make corrections as needed, although the methods used to evaluate some training activities are less so.

In Montenegro, experts from the Child Rights Centre-Belgrade have reviewed the compatibility of draft legislation and/or recently adopted legislation and secondary legislation with the relevant international standards at least annually, since 2003. This has been a reasonably effective means of evaluating the progress made and identifying areas needing attention, although it might have been more effective if there was greater consultation between the expert and local juvenile justice professionals. Most of the other activities have not reached the point where monitoring and evaluation would be useful (e.g. mediation has not yet begun, professionals have not yet been trained). In 2005, an independent evaluation of implementation of the Children’s Chance for Change project in both Serbia and Montenegro was carried out by a foreign expert. Given the professional qualifications of the consultant, the evaluation focused mainly on the social rather than legal aspects of juvenile justice reform, which in Montenegro meant VOM and reform of the custodial facility in Podgorica. The evaluation team is of the opinion that, in so far as Montenegro is concerned, this evaluation was of limited use in detecting problems that needed to be addressed.18

In Romania, the training of judges was evaluated by the counterpart responsible for the training by the use of questionnaires that solicit the views of the trainees on the course. This method, as said above, allows certain problems to be detected, but not others (e.g. gaps in the content, or erroneous interpretation of international standards). Community based pilot projects were not formally evaluated because UNICEF support for them was stopped for reasons other than their effectiveness. The ongoing pilot project on a new model of custodial care for children under the minimum age for adjudication who have committed offences has not been evaluated.

5.3 EFFICIENCY AND EFFECTIVENESS

5.3.1 UNICEF expenditures on juvenile justice reform

The office in Serbia expects to have spent some US$1,900,000 over the course of three and a half years that will end in June 2007.19 Approximately US$379,000 was invested by UNICEF in juvenile justice reform in Montenegro during the years 2004 to 2006. The office in Romania spent some US$204,000 during a three-year period, and the office in Tajikistan estimated that some US$200,000 was spent on juvenile justice reform over the course of three years.

In Serbia, Tajikistan and Montenegro, the financial resources available were sufficient to support the strategy and activities pursued and supported during the period under review. While the resources

18 For example, the evaluation praised the selection of Bijelo Polje as the pilot site for VOM in Montenegro, without addressing the question of whether the number of cases of children accused of an offence is sufficient to warrant the effort made in training trainers. The evaluation also did not address the issue of the neglect of support for implementation of other forms of diversion and alternative sentences, and raised changes in the physical environment of the custodial facility in Podgorica that were due mainly to the efforts of an international NGO, not UNICEF. (The team is not able to evaluate the impact of this evaluation on UNICEF activities in Serbia, because it was not aware of the existence of this evaluation until well after the mission in Serbia.)

19 Figures taken from different UNICEF documents vary somewhat, presumably due to currency fluctuations (the grant was made in Swedish Kroners) and uncertainties or discrepancies related to the allocation of certain expenses to activities in Serbia and activities in Montenegro.
available in Serbia and even in Montenegro were much greater than those available in Tajikistan, the evaluation team believes that conditions in Serbia allowed for a more ambitious package of activities, and that activities supported in Tajikistan were consonant with the opportunities that existed. In Romania, UNICEF felt obliged to cease work on juvenile justice largely because it did not have funds to finance programme activities. In this sense one can conclude that the financial resources were insufficient, although the evaluation team believes that advocacy could have continued despite the shortage of funding.

5.3.2 Human resources used by UNICEF

In Romania, the UNICEF staff that worked on the juvenile justice programme included the Child Protection Officer and an Assistant Programme Officer. One international consultant was used sparingly, to provide input on international standards to the group of national experts that prepared the situation analysis, and two international experts were used in a small project designed to introduce Romanian professionals to restorative justice. Most of the work was done by national experts, in particular those associated with the NGO Alternativa Sociale, including public officials involved in the pilot project carried out by that organization.

In Tajikistan, as in Romania, the UNICEF staff that worked on the juvenile justice programme consisted of the Child Protection Officer and an Assistant Programme Officer. Foreign expertise was key to implementation of all aspects of this project, including the situation analysis, planning, training and the development of proposals for legal and institutional reform. A British NGO has been the main source of expertise, provided in part at its own expense, and its representatives maintain a constant presence in Tajikistan.

The Serbian Country Office has a Child Protection Team of four local staff. At the time of the evaluation mission, a Programme Officer, a Programme Assistant and a consultant had been working on juvenile justice project full time for the previous year. A combination of national and foreign experts, and Serbian professionals living and working abroad, have been used: a foreign expert prepared the situation analysis; a national NGO has provided most of the expertise on legal issues; a foreign expert has provided extensive VOM training and a professor from Serbia affiliated with a US university played a vital role in police training.

At the beginning of this project, UNICEF’s work in Montenegro was coordinated by the Child Protection Programme Officer of the sub-office, with support of the Child Protection staff of the Belgrade office. In May 2006, the Programme Officer of the sub-office (as it then was) left for another post, and since then this work has been managed by an Assistant Programme Officer. Two of the foreign experts relied upon to support the programme in Serbia, in particular the VOM trainer and the expert in law enforcement and corrections, especially the former, also have been used in Montenegro. The national juvenile justice expert working for the Serbian office and the Serbian child rights NGO that played a central role in law reform in Serbia, also have played an important role in implementation of the juvenile justice project in Montenegro, before and after independence.

Although the UNICEF office in Serbia had more staff assigned to juvenile justice reform, this was appropriate only because external circumstances were favourable to implementation of the project. The evaluation team does not believe that additional staff would have allowed work on juvenile justice reform to have proceeded at a significantly different pace in Montenegro or Tajikistan. That situation may be changing now, due to the changing environment in both of countries. In Romania, the evaluation team believes that the large amount of time invested in juvenile justice by the child protection staff during 2004 and 2005 was not sustainable, and that competing priorities was a factor in the decision to discontinue work on juvenile justice. In so far as access to professional expertise is concerned, the different solutions found by UNICEF offices in Romania, Serbia and Tajikistan all worked well, and all could be considered viable models for similar circumstances. In Montenegro, the evaluation team believes that extensive reliance on experts whose work was focused mainly on Serbia may have led, in some instances, to a failure to fully appreciate the differences between the two countries.
5.3.3  The extent to which planned outputs and outcomes were met

It is difficult to determine the extent to which planned outputs and outcomes were met, because outputs and especially outcomes often were not identified clearly in planning documents. In general, it can be affirmed that what planned has been reached at a varied degree in the various countries and under the various activities. In Romania, for example, no outcomes are clearly identified in the planning documents made available to the evaluation team, and no outputs are identified for many activities, such as those concerning rehabilitation facilities supported in 2004 and 2005. When outputs were identified, however, they were generally met.

In Tajikistan, the logframe for 2005-2009 identifies three ‘targets’: community based schemes delivering services to children and families; dialogue between local NGOs and local authorities and the provision of alternative services to offenders aged 11 to 16. At the time of the evaluation, these goals had been met in two districts of the capital. A flowchart on Social Policy Reform & Child Protection covering the same period identifies three additional outcomes: awareness of the CRC and other international standards on the part of judicial and law enforcement officials; the existence of diversion schemes, and ‘minimum good practices’ in custodial centres. Both of the community based alternative programmes receive offenders through diversion as well as after sentencing, so this goal, too, has in principle been met in two districts. Training of judges has been institutionalized and training of police officers having special responsibility for children in conflict with the law has taken place and is in the process of being institutionalized. One can therefore conclude that a significant and growing number of judges and police officers are ‘aware’ of the CRC and some of the related instruments. What is not available is hard data on how good their understanding of the relevant standards is and the impact it has had on their interaction with children. In so far as custodial facilities are concerned, at the time of the evaluation minimum standards had been adopted by one of the four Ministries that operate facilities for juvenile offenders. The regulations contain many provisions based on international standards, but did not incorporate one of the main recommendations made by international experts and the inter-sectoral Experts Group, namely, that the centre be transformed into an open facility. Visits to the facility confirm that implementation of the new standards has improved the quality of life of the residents, although some practices incompatible with international standards have not yet been eliminated.

In Serbia, most of the strategic results identified in 2004 have been met, although in some cases the objective is defined in terms that are so general that there is a wide margin of appreciation. Many informants agreed that the issue of children in conflict with the law and children at risk is higher on the political agenda, although it is difficult to say whether it is ‘much’ higher. On the other hand, there is general agreement that it is not higher on the public agenda, if that means the concerns of the public in general. The new juvenile justice law has been enacted, satisfying one of the most important goals, but there does not seem to be “readiness of the government to revise existing and develop [new] legislation” in some other areas, such as legislation establishing an ombudsman and recognizing the role of NGOs. Most of the ‘sub-laws’ required for implementation of the juvenile justice law have been adopted, but the most important one, on diversion, has not yet been adopted. The disaggregated database that will accurately and uniformly track children throughout all parts of the juvenile justice system has not yet been

---

20 Of course, much more data would be required to form an opinion as to whether diversion is functioning adequately or optimally in these two districts.
21 The training did not cover the most recent UN instrument, the 2005 Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.
22 In particular the examination to determine whether girls are virgins.
23 For example, “Acknowledgement of child rights and psycho-social care and protection of children at risk and in conflict with the law in selected municipalities (approximately 10% of municipalities in Serbia and Montenegro).”
24 See the first strategic result of the Advocacy sub-project, cited above.
25 Policy and law reform strategic result No 1
26 Advocacy strategic results Nos. 2 and 5
27 Policy and law reform, strategic result No.2
piloted and tested. The curricula of the police academy, and the department of social work of the University of Belgrade, have been modified to take international standards on this subject into account, and the students following the pertinent courses no doubt have increased knowledge and understanding of the subject. This subject has not yet been introduced into the law faculty of any university, nor any department of any of the regional universities. Mediation services are available in Nis, where VOM is being piloted, and to a lesser extent in some 14 other municipalities. Data on the medium term impact of mediation on the lives of child beneficiaries is not available. The quality of life of child offenders in the main facility for juvenile offenders has improved significantly, but there is no evidence that similar improvements have taken place in other facilities where children are in custody. Similarly, there is ample anecdotal evidence that the life skills of some and perhaps many of the children in this facility have improved, and support for reintegration after release is provided in the 14 municipalities in which the mobile child protection teams are established. Finally, the prevention/protection outreach model has been successfully piloted in some 14 communities and is ready to be scaled up on the national level.

In Montenegro, the goal of assisting in the development and adoption of a comprehensive code on juvenile justice has not been met. The goal of ‘assisting in the development of legislation that better promotes and protects the rights of children in conflict with the law’ has been met to an important extent, by the adoption in 2006 of amendments to the Criminal Code and Criminal Procedure Code. The goal of ensuring that children in conflict with the law and children at risk are included in the mandate of the Montenegrin ombudsman has been met, even if the specific goal not mentioned in the project proposal of amending the statute of the ombudsman to establish a Deputy specifically responsible for the rights of children has yet to be met. Materials on international standards concerning juvenile justice in the Serbian language, which is very similar to the local language of Montenegro, have been distributed to juvenile justice professionals in Montenegro, but have not yet been distributed to students of law and of psychology in the University. Some 60 prosecutors, judges, attorneys and other juvenile justice professionals have received a one-day training on international standards concerning juvenile justice. No standard course on juvenile justice has been developed or introduced in the police training academy and, consequently, no teachers have been trained to present such a course. Montenegrin correctional officers have not received training on child-centered techniques, education officers in institutions housing child offenders have been provided with ‘state of the art’ methodologies, nor have managers in custodial facilities that house child offenders received any training specifically related to their professional role. Diversion measures have been incorporated into the relevant legislation, but are not yet being applied in practice, there have been no improvements in the kind of psycho-social care provided to children in custodial care, and no after-leave programmes have been created in Montenegro.

5.3.4 The justifiability of the investments made in specific activities

In principle, it should be possible to calculate the cost of offending by juveniles, and recidivism. This would establish a framework for making a cost-benefit analysis of some parts of juvenile justice reform, such as prevention and rehabilitation. It would be more difficult to assess the cost to society of the traumas that children suffer from contact with repressive or dysfunctional juvenile justice systems. In any event, no attempts to calculate or estimate the cost to society of laws and practices that violate the rights of children in contact with juvenile justice have been done in any of the four countries visited, and consequently it would not be possible to weigh the investments made against the benefits realized as a result of them. Indeed, whether it is appropriate to use such arguments in an area such as this is open to question. On the other hand, it should be a relatively simple matter to make a cost-benefit analysis of certain components of juvenile justice reform, such as, for example, the cost of community-based

---

28 Policy and law reform, strategic result No.2
29 Policy and law reform, strategic result No.2 and Capacity building strategic result No.5.
30 Community based alternatives, strategic result No.1
31 Community based alternatives, strategic result No.2
32 Community based alternatives, strategic result No.3
33 Community based alternatives, strategic result No.4
alternatives as opposed to confinement of a child in a correctional facility, or the cost of diversion as opposed to the prosecution and trial of a juvenile offender. The value of such calculations would be limited - one would need to factor in the impact of such forms of treatment and try to take into account the different characteristics of children put into diversion programmes, those given non-custodial sentences and other offenders - but if used with caution they might nonetheless have some value as a means of calculating the savings and/or benefits resulting from certain reforms. No efforts to do so were found by the evaluation team in any of the countries visited, but it might be worth experimenting with such an approach on a small scale.

Viewing juvenile justice reform as a whole, the complexity and long-term nature of the process precludes a simplistic comparison of the investments made with the results obtained, especially while it the process is still ongoing. Furthermore, the existence of independent factors that contribute to the reform process makes it difficult to determine with certainty to what extent positive results can be attributed to UNICEF supported activities. In Serbia, for example, the Law on Juvenile Offenders adopted is one of the most important accomplishments realized during the first stage of the project. Although drafting of this law was already underway when the project began, many counterparts expressed the belief that UNICEF’s support for the draft law was key to its adoption. In Romania, to cite another example, many sources interviewed agreed that training on child rights has made judges more aware of international standards and reduced the percentage of convicted offenders receiving custodial sentences. Many organizations have carried out or supported such training, however, so one can only assume that UNICEF sponsored training contributed to this positive outcome to some unknowable extent.

For reasons such as these, the most realistic way of evaluating the efficiency of the investments made is to weigh the total amount invested in juvenile justice reform against the overall progress achieved. If the amount invested is not a priori excessive and some important advances have been made and appear to be consolidated, and there are no signs of obstacles that might jeopardize the project as a whole, then one can assume that the investment was well-spent. In Serbia, the new law is a major achievement and, in addition, there have been major improvements in the main institution for juvenile offenders, training for judges and prosecutors has been institutionalized, the police participate actively in the project and two pilot projects (VOM and the mobile child rights teams) are showing positive results. In Romania, the situation analysis has had a major impact, one pilot project (Alternative Sociale) is widely perceived as a model worth following, and UNICEF’s support for these and other activities has left it well positioned to resume its support for juvenile justice, should it decide to do so. In Tajikistan, small but important advances have been made on most fronts: some significant changes in the law have been made; training of judges has been institutionalized; some progress has been made towards reforming correctional and detention facilities for children and the first pilot project for diversion, prevention and non-custodial treatment of convicted offenders is recognized as an unqualified success. In each of these countries some activities have not yet produced the expected results but, on balance, the results are positive and there is reason to believe that these processes will continue moving forward.

The Swedish International Development Agency (SIDA), which funded UNICEF’s juvenile justice work in Serbia and Montenegro, told the evaluation team that it considered the amount invested reasonable for a project of this kind. The amount invested by SIDA in UNICEF support for juvenile justice reform in Serbia is greater than the amount invested by the European Union in juvenile justice reform in Romania over the course of 2 years (€1,070,000), but the difference between the annual investment is of the same order (roughly US$600,000 annually in Serbia as compared to €500,000 in Romania). Two donors34 that financed UNICEF’s work on juvenile justice in Romania also indicated to the evaluation team that they were quite satisfied with the results obtained with their donations. This would seem to indicate that the amount invested in juvenile justice reform was not excessive. Indeed, the results obtained in Serbia compare very favourable to those obtained by the EU project in Romania, the only major project specifically on juvenile justice by an organization other than UNICEF that the evaluation team is in a

34 The Embassies of the Netherlands and of the United Kingdom.
position to compare with UNICEF's work on juvenile justice. Furthermore, the results obtained in all of the other three countries, where UNICEF's investments thus far have been much smaller, also seem proportionate to those obtained in Serbia.

Specifically, in Romania, the resources invested in the preparation of the situation analysis is money well spent, given the impact it has had and continues to have. The same can be said of the funds invested in the manual on juvenile justice prepared by national experts, which is of a high quality and responded to a clear need and is being widely used in professional training and education. The funds invested in familiarizing Romanian professionals with restorative justice did not lead to the kind of follow-up activities hoped for, but did contribute to their familiarity and receptivity to restorative justice, an idea which is gradually winning greater acceptance. The evaluation team considers the investment in the delinquency prevention pilot project justifiable, because it has won support from the schools where it is being implemented and from other donors and has expanded since UNICEF ceased its support. It is not possible to form an opinion on the investment made in correctional facilities for juvenile offenders, because logistical constraints precluded visiting them and the authorities of the prison service had no knowledge of them, due to personnel changes. At this time it is not possible to form an opinion on the value of the modest investment in the development of regulations on facilities for the treatment of juvenile offenders because, as indicated elsewhere, only one such facility has been established to date; if more are established, the investment will have been fully justified. On the whole, the information available leads to the conclusion that the most if not all of the investments made by UNICEF during the period reviewed were justifiable.

In Tajikistan, the investment in the situation analysis was certainly justifiable because it created the opportunity for pursuing badly needed reforms. The investment in community-based alternatives is definitely justifiable, not only because the first such project has been an unqualified success, but also because it has contributed to greater receptivity to juvenile justice reform. The fruits of investment in the training of police officials are real but limited; however, in a country like Tajikistan where the change from a repressive regime to democracy and rule of law is a gradual one, it would be unrealistic to expect dramatic changes in the attitude and behaviour of law enforcement personnel to take place quickly. The investment in training of judges has had a real impact in districts where pilot projects are being implemented; the impact of such training on the national level will not be visible until additional changes are made in the applicable law and institutional framework. The impact of the training of social workers in the area of juvenile justice also has been positive but limited in scope, due in part to the small number of social workers that have completed their training and, more importantly, to the need for changes in the structure of the juvenile justice system that will give them a greater role. The investment in law and policy reform has had limited results thus far, as indicated elsewhere in this report. It is, however, an essential part of the reforms needed in Tajikistan, and in the circumstances prevailing thus far it has been prudent to pursue such reform gradually. The progress made thus far is promising, and sufficient to conclude that the investment made has been justified. In short, the results obtained thus far in all the components of UNICEF support for juvenile justice reform lead to the conclusion that the investments made by UNICEF during the period reviewed were justifiable.

In Serbia, the investment made in law and policy reform has produced good results, and was certainly justified. The investment in the training of judges, prosecutors, correctional officers and police officers was needed and has had good results, and therefore also can be considered justified. The investment in the mobile child protection teams was justified, not only in terms of the services provided to children and families in the communities served thus far but also because it seems certain to influence the nature of social services provided to children throughout the country in the coming years. The VOM pilot project is working successfully, but for less than a year and essentially in only one community. Whether or not the investment can be considered justified depends on whether the pilot project will in time be replicated on

---

35 VOM also has been introduced to the main facility for convicted juvenile offenders, and is being used on a limited scale by some of the mobile child protection teams in other communities.
the national level. While there is no specific reason to doubt that this will happen, neither are there sufficient reasons to conclude that it is sure to happen. Consequently, while the evaluation team believes that the decision to make a significant investment in VOM was justified, only the longer-term results of the project will confirm whether that the investment itself was justified. The investment in reforming the main facility for juvenile offenders has led to major changes in the atmosphere in the facility and the services provided to the children detained there. Although there is no hard data concerning the effect that these changes have had for the children concerned, or on recidivism, the changes that the evaluation team was able to witness are sufficient to conclude that the investment was justified. The same cannot be said for the investment made in the open facility for younger offenders in the capital; the staff and former staff interviewed by the team did not feel that the support given by UNICEF had been sufficient to introduce durable improvements in the services provided to the children residing there, and other observers expressed the view that the institution and its staff had not responded adequately to the assistance provided. In either event, the investment did not lead to the anticipated results and in retrospect one must conclude that it was not justified.

In Montenegro, the evaluation team believes that the investment cannot be justified by the modest results obtained this far. The process of juvenile justice reform is still in an early stage, and the results will only be justified if the reforms enacted into law are implemented in practice, and if they have the positive impact on prevention and rehabilitation that they are designed to have. That cannot be assessed at this time.

5.3.5 Complementarity with the activities supported by other international actors

In Romania, the evaluation team did not detect any investment of funds that wastefully duplicated the expenditures of other international actors. To a large extent, the activities supported complimented those supported by other donors. UNICEF-supported training of judges on child rights, for example, complimented projects of other donors designed to modernize the personnel and data management policies and programmes. In Tajikistan, UNICEF has been successful in establishing linkages between governmental counterparts and international donors, who have provided modest contributions to cover investments that complement those made by UNICEF, in particular renovating and equipping custodial facilities for juveniles.

In Serbia, UNICEF is the main actor in juvenile justice and complementarity has been adequate in the limited areas where other international actors support relevant activities, such as the IFC’s support for mediation. Finally, in Montenegro, international agencies, such as the OSCE and CoE, agreed that UNICEF was careful not to duplicate efforts being made by other international actors. In this sense, the resources invested by UNICEF were complementary to those invested by other partners of the government.

On the whole, it can be affirmed that in all the four countries, UNICEF has demonstrated the effective ability not to duplicate other actors’ efforts.

5.4 Human Rights Based Approach

Basic human rights principles should be taken into account in the developing of strategies for juvenile justice reform. The most relevant principles are those related to the need to take into account gender, ethnicity and the views of children.

The number of female offenders is much smaller than the number of male offenders around the world, and these four counties are no exception. During the early stages of juvenile justice reform, it may be

---

36 Here, too, and exception should be made regarding the VOM within the facility for juvenile offenders, which definitely appears sustainable.
understandable to focus on the institutions and policies that affect the largest number of persons, which in this context will be adolescent boys. However, it is also necessary to be aware of the special needs of adolescent girls who come into contact with the juvenile justice system. Some of the facilities for adolescent offenders or for short-term detention in these countries receive both boys and girls. Other girls are confined in facilities for women prisoners. The situation of girls confined in facilities for adult women has received scant attention in these projects. Girls in facilities that also house boys benefit from the general improvements made, but sometimes still suffer from certain forms of discriminatory treatment. In one such facility in Tajikistan, for example, the medical examination given on admission includes an intervention to determine whether the child is a virgin, and those who are considered not to be are treated as prostitutes. On the whole, the evaluation team believes that the attention paid by UNICEF to gender issues and gender sensitivity has been limited both during planning and implementation.

In general, little effort has been made in any of the four countries also to take ethnicity into account in designing or implementing juvenile justice reform projects. In Serbia, the ethnic makeup of the municipalities where community based alternative projects were established reportedly was a factor in deciding where to locate them, and a conscious effort was made to recruit staff from the most relevant minorities. In both Serbia and Montenegro, VOM training included a component on cultural diversity. In Romania, the data collected for purposes of the situation analysis was disaggregated by ethnicity. Apart from these efforts, ethnicity does not appear to have been a factor in the design or implementation of activities concerning prevention or rehabilitation, for example. In general, the data concerning juvenile justice collected by State agencies in these countries is not disaggregated by ethnicity. In some countries, UNICEF staff have expressed concern that disaggregating data by this criteria may reinforce public prejudice against certain minorities. The evaluation team is not in a position to form an opinion on the importance that should be attributed to this risk. What can be said with certainty is that the failure to disaggregate makes it difficult to detect phenomenon such as discrimination in law enforcement, or social factors that contribute to higher rates of offending by the members of certain ethnic groups. Without such data, the effectiveness of efforts to combat these phenomena cannot be measured. Moreover, it is possible that disaggregating data by ethnicity will demonstrate that public prejudice is unfounded. The Romanian situation analysis did disaggregate the data collected, and found that it did tend to disprove stereotypes regarding the degree of involvement of Roma children in offending. It should be noted that the Committee on the Rights of the Child expressly requests Parties to the CRC to provide information about juvenile justice that is disaggregated by ethnicity.37

The principle that children have the right to be heard, and to have their views taken into account, is one of the basic principles that underlie the CRC. However, thus far children have had little or no role in the design and implementation of the juvenile justice reform projects. In Serbia, a survey of the views of children confined in the main correctional facility for adolescent offenders conducted by university students was taken into account by the staff, in evaluating the impact of reforms underway. A small number of children participated in setting up the pilot VOM centre, but they have since become adults and no other adolescents have taken their place. In Romania, the views of children were taken into account in the preparation of the situation analysis, and greatly enhanced the value of that report. The limited nature of these experiences suggests that viable models for providing concerned children with a voice in juvenile justice reform have not yet been developed.

5.5 SUSTAINABILITY

The evaluation team has dealt with the criteria of sustainability by analysing whether the governments have put in place any mechanisms and/or financial allocations to ensure continuation of activities supported by UNICEF.

37 General Guideline for periodic reports, 1996, CRC/C/58, para.137
In Romania, few steps have been taken by the government, thus far, to ensure the continuity of activities previously supported by UNICEF in the framework on the juvenile justice project. There are some exceptions: the National Institute for Magistracy has made a commitment to organizing annual courses on child rights, and uses materials produced with UNICEF support in such courses, and child-friendly interview rooms have been created in police stations throughout the country. The National Authority for the Protection of the Rights of the Child operates with its own funds the pilot facility for children who have committed criminal acts but are too young to be prosecuted. The delinquency prevention programme piloted by an NGO continues despite the end of UNICEF support, and there is considerable interest in using the approach diversion/alternative sentencing piloted by a UNICEF NGO partner as a model to be replicated nationally.

In Serbia, the adoption of the Law on Juvenile Justice seems to ensure that changes made in order to bring national law into conformity with international standards will be in place for the foreseeable future. Some of the activities supported by UNICEF, such as training of specialized judges, prosecutors and the police, are obligatory under this new law. Both the Police Academy and the Judiciary Training Centre have made a long-term commitment to continuing child rights training that began with UNICEF support. The adoption of five of the regulations called for by the law, developed with UNICEF support, also entails a formal legal commitment on the part of the pertinent authorities. One of these regulations governs the functioning of the main facility for convicted juvenile offenders, and thus embodies a commitment to long-term application of the reforms introduced with UNICEF support. The changes made in the main residential facility for convicted adolescent offenders also seem irreversible. Prospects are less clear for the victim-offender mediation centre, which relies on a temporary funding from a governmental programme for staff costs, and mobile child protection teams, which currently rely on UNICEF support to pay staff costs. If these activities are taken to scale, the costs will increase significantly. It seems entirely possible that the government, or in the case of mediation, private sources, will assume responsibility for underwriting the cost of taking these projects to scale, if their value is confirmed by the results obtained. UNICEF has taken steps to discourage dependency on its support.

In Tajikistan, the 2004 amendments to the Penal Code represent a sustainable commitment to compliance with certain internationally recognized principles concerning sentencing of juvenile offenders. The Ministry of Interior has made a commitment to applying the new regulations on the Temporary Isolation Centre. The Justice Council has made a long-term commitment to providing judges with training on child rights, and the Police Academy has made a commitment to including a course on child rights that will use training material produced with UNICEF support. The training of social workers is widely seen as an important development, so it seems safe to presume that it will become sustainable, although how such training might be integrated into the national education system has not yet been decided. The districts in which the diversion/alternative sentence/prevention project have been piloted also have made a commitment to continuing to implement them. In December 2006, the National Roundtable on Juvenile Justice adopted a recommendation that similar projects should be established throughout the country, and it seems likely that this recommendation will be confirmed by the competent authorities.

In Montenegro, the amendments to the Criminal Code and Criminal Procedure Code adopted in 2006 represent a commitment to implementing diversion, to the right of children accused of an offence to be tried without delay and to alternative sentences when appropriate. However, the new legislation regarding diversion and alternative sentences cannot be put into practice without the creation of appropriate programmes, and the only such commitment made thus far is the commitment to implementing diversion made by one municipality. The municipal government and the Ministries of Justice and of Health, Labour and Social Welfare have made concrete commitments regarding their support for this pilot project. The NPA contains a concrete commitment to training judges who will handle cases involving juvenile, and a more general commitment regarding the training of other professionals. These commitments concern the period 2004-2010, and no more specific immediate commitments have yet been made in this regard.

\[38\] In terms of the costs that they will cover.
5.6  IMPACT

5.6.1  Impact on juvenile justice and law enforcement professionals

Juvenile justice ‘systems’ are complex. Many actors, governmental and non-governmental, national and local, play a part. Not surprisingly, the evaluation team found that, in each of the four countries, UNICEF support for juvenile justice reform had a greater impact on some of the relevant institutions than others. One common trend is that the projects in all four countries appear to have had beneficial impacts on the judiciary. Training on the rights of the child has been institutionalized in Romania, Serbia and Tajikistan. In Romania and Tajikistan independent observers indicated that changes in the attitudes of judges towards juvenile offenders has already had a positive impact on sentencing. In Montenegro, the extensive contact that the evaluation team had with members of the judiciary enabled it to appreciate their solid understanding and commitment to the rights of children.39

In most of these countries, there has been some impact on correctional facilities for persons under the age of 18. The impact has been greatest in Serbia, where the approach to rehabilitation and security has changed radically in the main institution for adolescent offenders. In contrast, few changes have been made in the facilities for children who have committed offences but are too young to be prosecuted. In Tajikistan, the aims of the project are even more ambitious, in a sense, because UNICEF consultants have advocate changes in the nature and functions of most residential facilities. Significant changes in the way children are treated in some such facilities have taken place, but more extensive changes, such as the conversion of closed facilities to open ones, have not yet taken place and it is impossible to predict whether they will. The progress made is significant, but much remains to be done to create a system that is fully compliant with international standards. In Romania, UNICEF contributed to improvement of the material conditions of detention in some facilities.40 It also has supported a pilot project that takes a new approach to the rehabilitation of children who commit offences while below the minimum age for prosecution. Because this project had been in operation for less than a year at the time of the evaluation mission, it would be premature to evaluate the results. In Montenegro, UNICEF’s attempts to work in this area had met with little success during the duration of the juvenile justice reform project41.

A number of factors appear to have influenced the successfulness of these activities. The success of efforts to reform the main institution for juvenile offenders in Serbia is certainly due, in part, to the amount of human and financial resources available to UNICEF, the quality of the technical assistance it was able to provide, the importance given to this activity by UNICEF programme staff and the amount of time they invested, and the generally receptive attitude towards reform on the part of the government. In Tajikistan, the more limited character of changes in the political system have left in place more authorities who are more resistant to change, which has slowed the pace of juvenile justice reform. In both Serbia and Montenegro, the institutions that have been slower to change are those that belong to the ministries of social welfare, and are more peripherally linked to juvenile justice (they house some offenders and/or children under the minimum age of prosecution who have committed offences, together with runaways and abandoned, abused and neglected children). This may contribute to a certain disinterest in juvenile justice reform, either on the part of the staff of the facilities or the responsible staff of the ministries to which they are attached. It is also possible that the personal qualities of the directors of the institutions concerned are a significant factor. The striking difference in the results obtained in the two different institutions supported by UNICEF in Serbia suggests that this factor can not be overlooked.

Impact on the police varies considerably. Here, too, the greatest impact appears to be in Serbia, where the Law on Juvenile Offenders calls for specialized police units and UNICEF has supported their training.

---

39 The evaluation team had no meetings with judges in Serbia, except in the context of focus groups.
40 Logistical constraints and changes in personnel in the prison department prevented the evaluation team from forming views on the impact of the work done in these facilities.
41 But a new opportunity reportedly arose shortly after the evaluation mission.
The training has been well received and some police officials have become committed advocates of child rights. In addition, police stations throughout the country have set up special child friendly rooms for interviewing offenders and victims under the age of 18. In Romania, some police also have become converted to the child rights cause, through the training carried out on the local level by NGOs, with UNICEF support. In addition, police stations throughout the country have been equipped with special rooms for interviewing children - the only one of the countries visited in which this has happened. However, the evaluation team is not able to assess the impact of the UNICEF project on the police throughout the country as a whole. In Tajikistan, there has been a two-pronged effort to introduce training on child rights in the Police Academy, and to provide more intensive training for the staff of a short-term detention facility in the capital operated by the police. Independent observers indicate that conditions in the facility have improved considerably thanks to such training. The impact of the training provided in the police academy has not been assessed independently. However, a situation analysis of the specialized police units responsible for matters involving children concluded that extensive changes that go far beyond training are needed, and there is no sign of interest in pursuing such reforms. In Montenegro, the evaluation team had extensive contact with police officers involved in the establishment of a pilot project, and was favourably impressed with their understanding of and commit to the rights of children. Contact with higher-ranking officers in the capital was more limited, but the team also had a positive impression of their interest in child rights. However, since the police have received child rights training from another source, it is not clear to what extent their interest in child rights can be considered a result of UNICEF-sponsored activities.

In this area, the political/historical context has had a significant influence on the success of UNICEF’s efforts to incorporate the law enforcement sector in juvenile justice reform. However, a comparison of the experience of Serbia and Tajikistan indicates that progress can be made even when this factor is not as favourable as it might be, when the quality of the expert advice and training is good and when the task is approached with patience and a good sense of timing. The experience of Romania, Montenegro and Tajikistan also suggests that the involvement of police officers in pilot projects at the local level can be a good approach, that opens the door to broader cooperation.

In Romania, in Serbia and in Montenegro, social service agencies play a role in juvenile justice. In Serbia and in Montenegro, the role of Centres for Social Work includes supervision of children given non-custodial sentences for minor offences, liaison between children in residential facilities and their families, and support for children released from such facilities. In Serbia, this system was in crisis when the project started, and reenergizing it and introducing new methodologies has been a major aim of the project; in Montenegro, this was not the case and work with this system received less priority. In Romania, the National Authority for Protection of the Rights of the Child, which is part of the Ministry of Labour, Employment and Social Policy, is responsible for the care of younger children who commit under the minimum age of criminal responsibility, UNICEF has sponsored a pilot project in this area and developed Standards of Care for residential and non-residential treatment of such children, but these initiatives thus far have had little impact on the Ministry, which focuses on other child protection issues and gives a very low priority to juvenile justice. The Ministry of Justice’s probation service, which has responsibility for supervising non-custodial measures imposed on older children, is very child rights oriented. It has not been a UNICEF partner, although the UNICEF support for juvenile justice reform probably contributed to this orientation indirectly. In Tajikistan, the social work profession does not exist, and the supervision of minor offenders has been a responsibility of the police. UNICEF has begun to train social workers and hopes that this function (among others) will be shifted to child rights departments of local governments. The creation of a national network of child rights departments of local government staffed in part by social workers would be an important step in creating a juvenile justice system. The process seems to be

---

42 The UNICEF office in Romania did not consider the Ministry of the Interior a counterpart, and the evaluation team did not meet with the ministry.
43 Save the Children
44 In the interim, the small core of trained social workers is working for other institutions, including NGOs and the police.
proceeding apace, although it has not reached the point where impact on an institution could be assessed. In short, although some of these efforts appear promising, none of them have yet reached the point where it would be possible to compare the factors that make it more successful than others.

The impact of UNICEF support for juvenile justice reform on prosecutors has been uneven. In all four of the countries visited, there has been a perceptible impact on prosecutors who cooperate with pilot projects at the local level, but no clear evidence of changes on the national level. In none of these countries has a concerted effort to involve the legal profession (i.e. lawyers) been made.45

5.6.2 Impact on the plans and capacity of the governments

In Tajikistan, UNICEF support for the National Commission on Child Rights has strengthened the capacity of the government to carry forward the process of juvenile justice reform, in general. The capacity of juvenile justice professionals to apply the relevant international standards has been substantially increased, through the training programmes introduced by the Council of Justice and the training programmes offered to the Ministry of the Interior and to the staff of facilities for juvenile offenders and children at risk, but also through the intensive mentoring of professionals from different sectors involved in the two community based pilot projects. In December 2006, shortly after the evaluation mission, the National Roundtable on Juvenile Justice adopted a resolution containing 30 recommendations, many of which are expected to be confirmed by the competent authorities. They call for the creation of a new body with greater authority to coordinate the various ministries and institutions involved in juvenile justice, strengthening the process of reform in custodial facilities for children, replicating the pilot community based alternative projects and strengthening data collection and analysis.

In Serbia, support for the Juvenile Justice Committee has greatly enhanced the capacity of the government to coordinate between the various sectors involved in juvenile justice and evaluate the progress of juvenile justice reform. UNICEF strategies and activities also have contributed greatly to enhancing the capacity of professionals, including judges, prosecutors, police officers, social workers and correctional officers, to fulfil their professional responsibilities in accordance with the relevant international standards. At the time of the evaluation mission, no plans about the future course of juvenile justice reform – regarding, for example, the replication of pilot projects or reform of the facilities where children who have committed an offence while under the minimum age for adjudication are confined – had been adopted.

In Montenegro, UNICEF support for the National Commission on Juvenile Justice Reform also has enhanced the capacity of the government revise laws and policies, and establish appropriate programmes. UNICEF activities also have provided the Ministry of Justice, which is responsible for drafting new legislation, a better understanding of the relevant international standards and best practices. UNICEF’s strategies have not altered the government’s capacity to improve the capacity of professionals, however. The National Plan of Action for the Rights of Children (NPA) envisages the establishment of a single community based pilot project by 2007. There are at present no plans to establish others.

In Romania, the situation analysis and other activities have reinforced the capacity of many persons in government agencies and institutions to contribute to the development and implementation of laws, policies programmes in harmony with international standards concerning juvenile justice. At the time of the evaluation mission, however, the government had not yet adopted any specific plans regarding juvenile justice reform.

On the whole, the evaluation team believes that UNICEF activities have had an overall positive and acceptably even impact on governments’ capacities, while the impact on governments’ plans and future commitments is less strong (see also the part on sustainability).

45 The only exception can be found in Tajikistan, where UNICEF supported a little project providing legal services to juvenile offenders through a national NGO.
5.6.3 Impact on children and communities

The ultimate test of any programme on the rights of the child is how it impacts the lives of children. There is some evidence that interventions that have taken place in Romania, Serbia and Tajikistan have had a positive impact on the lives of hundreds of children, or perhaps thousands if the various groups impacted in different countries are added together. In the three countries where the reform process is more advanced, a modest but significant number of children – probably in hundreds – that would have been sent to closed facilities a few years ago have been spared trial or given non-custodial sentences. In each of these countries, some children in conflict with the law have benefited from quality counselling and training in life-skills and similar services that have helped them overcome social problems. The lives of children in the main institution for juvenile offenders in Serbia have been improved, as have the lives of children in the facilities that received aid from UNICEF in Romania and in Tajikistan. Even in Montenegro, where very few changes in law and policy have reached the point where they are being implemented, there is evidence that the involvement of juvenile justice and law enforcement professionals in the process of reform has had a positive effect on the way they deal with children.

Although in each of these countries UNICEF support for juvenile justice began some three years ago, many of the programmes that have the most direct impact on the lives of children are new, often only a year old. For this reason, it may be early to expect evaluations of the impact of reform on the lives of children. In three of the four countries juvenile justice reform is about to enter a new phase, and it would be useful for UNICEF to support the development of instruments that could be used to objectively assess the qualitative impact of at least some of the activities supported on the lives of children directly affected. Such instruments would not only provide evidence of the value of UNICEF’s efforts in this area, but would be useful in monitoring the impact of specific activities and, possibly, provide children with a voice in the process of reform.

If juvenile justice reform eventually achieves the ultimate aim of preventing offending and reducing recidivism, this would imply substantial benefits for the community. Thus far, however, the only claim that recidivism has been reduced that has been made is in one district of Dushanbe, Tajikistan, at the end of the first year of a pilot project. It remains to be seen whether this trend can be maintained to the point that it has a perceptible impact on the life of the community. It would be advisable to make more systematic efforts to assess the impact of juvenile justice reform on offending and recidivism in the communities in which pilot projects are in place.

5.6.4 Overall impact

In general, activities supported by UNICEF have been having a satisfactory degree of influence on the overall reform and the development of system in most of the countries, with the exception of Romania, where this remains still possible, though.

In Serbia, Montenegro and Tajikistan, new juvenile justice reform programmes designed to continue and consolidate the work done during the last three years are about to begin. Although UNICEF is not now actively involved in juvenile justice reform in Romania, the process of reform is entering a critical phase there. Consequently, although the reform is still ongoing, this is an appropriate time to weigh the overall impact of work on juvenile justice during the phase that in all four countries has recently ended.

In Romania, the approach to community based alternatives piloted by Alternativa Sociale and the situation analysis will influence the outcome of the reform process, although the extent of their influence depends on a number of factors that cannot be calculated with precision at this time. The training programme for judges also will contribute to reform of the system as a whole. The long-term impact of the pilot project for custodial care of younger children who have committed offences is impossible to predict, especially given that the project is new and has not yet been evaluated. Other activities concerning residential
facilities for juvenile offenders are unlikely to make a significant contribution to the ongoing process of reform, because of the limited objectives of the activities and other circumstances. In short, the net impact of the activities supported by UNICEF on the future course of juvenile justice reform depends on a number of unknowns, including whether UNICEF will decide to renew its activities in this sector.

In Tajikistan, the process of developing a genuine juvenile justice system is still at a relatively early stage. Two of the relevant laws have been amended, but at least two more need to be amended in the light of international standards. Positive developments include the success of two community based alternative pilot projects, which have greatly contributed to the development of a positive attitude towards juvenile justice reform within the government, the child rights training of judges and of police investigators and the training of social workers, needed for both community based and residential programmes for offenders. Thus far reforms have been carried out in only one of the four residential facilities for children accused or convicted of an offence, or in situations of risk, although progress has been made towards reforming two more. There has been and still is resistance to reform in some relevant sectors, but a consensus in favour of reform is growing stronger. In short, the activities supported to date are not yet sufficient to influence the overall development of the juvenile justice system, but the strategy appears to be an appropriate one and the activities that can be expected to be supported during the next 3 year phase of the project, barring unforeseen difficulties, appear likely to result in the development of a juvenile justice system strongly influenced by international standards.

In Serbia, the accomplishments made during the first stage of support for juvenile justice reform – notably the adoption of a comprehensive law on juvenile justice, extensive reforms in the main facility for juvenile offenders and institutionalization of training for judges, prosecutors and the police – are sufficient to conclude that the activities and strategies used during the first phase of support for juvenile justice reform have been sufficient to make substantial, lasting changes in the juvenile justice system as a whole. If, during the next stage of support for juvenile justice reform, it proves possible to carry the pilot projects on VOM and mobile child protections units to scale, and to carry out reforms in other residential facilities for children who have committed or are accused of an offence, then the activities and strategies employed will have been sufficient to make even more extensive changes in the system as a whole.

In Montenegro, the impact on the juvenile justice has been very limited thus far. Due to the delay in law reform, no systematic changes in practice have yet occurred. However, the recent changes in the law, when implemented, will make a significant change in the functioning of the system, and the investment made in creating a core group of juvenile justice professionals supportive of reform will have a more broader impact on the system over the medium term.

5.6.5 Factors that have influenced the overall impact of UNICEF support for JJ-reform

This paragraph aims at emphasising the factors that have influenced, in each of the countries, the overall impact of UNICEF activities, both positively and negatively. The positive elements will be further analysed in the following chapter.

The process of juvenile justice reform has advanced further in Serbia than in the other countries. The factors that contributed to the success of specific activities are many, but the main factors that contributed to the degree of success of the project as a whole are three: the sweeping political changes that occurred a few years before the project began and the resulting receptivity of the government to reform in all areas concerning human rights; the existence of a vibrant civil society including very competent national child rights organizations; and the large grant to support juvenile justice reform received from a single donor. The enactment during the second year of the project of a comprehensive law on juvenile justice that had

---

46 Due to a change of government, the relevant officials of the prison system are unaware of the activities supported by UNICEF.
47 See elsewhere in this report.
been in the process of development since before the project began also was key to the success of other aspects of the project.

In Romania, three factors had a negative impact on UNICEF support for juvenile justice reform: political changes that prevented a new legislation concerning juvenile justice from coming into force and adversely affected the interest of a key governmental counterpart; the failure to raise funds and a strategy that was not flexible enough to adapt to these setbacks and respond to new opportunities that later arose. The degree of success that was achieved despite these obstacles was due mainly to the strong interest of civil society and juvenile justice professionals in reform, the existence of competent and knowledgeable professionals and UNICEF’s contacts with civil society and its strategy of relying on them and empowering them.

In Montenegro, the factors that were mainly responsible for the slowness of implementation of the three years project were the lack of interest on the part of the government, whose priorities focused exclusively on reforms seen as necessary for European integration, and the weakness of civil society. A rigid and formalistic legal culture also appears to have been a factor that slowed implementation of the project. The factors that are mainly responsible for the progress made despite these obstacles were the decision to create a committee composed of juvenile justice professionals and empower them to assume leadership of the reform process, advocacy with European organizations having a presence in Montenegro to convince them to become committed to juvenile justice reform and the persistence of the UNICEF sub-office and its good strategic understanding of the context, obstacles and opportunities. The availability of ample funds raised by the UNICEF office in Belgrade also was, of course, an important advantage.

In Tajikistan, the main obstacles were the presence in certain sectors of authorities formed under the Soviet system resistant to changes in the institutional structures and policies, the lack of expertise in child rights within the country and difficulties in getting the various ministries having a stake in juvenile justice to work together in a coordinated fashion. The main factors that contributed to the degree of success achieved despite these obstacles were the patient, flexible approach to reform adopted by UNICEF, the commitment of the government to respecting its obligations under international law and the active support of the office of the prime minister, and the commitment and quality of assistance provided by the foreign experts who have provided UNICEF and the government with the technical advice and assistance needed.

6 POSITIVE LESSONS LEARNED

6.1 STRENGTHS AND “FACTORS OF SUCCESS”

6.1.1 External strengths

This paragraph will describe the components of UNICEF’s juvenile justice programmes that, according to the evaluation team, have most contributed to achieve impact on the juvenile justice systems of the four concerned countries.

The experiences of all the four countries demonstrate the potential important value of a good situation analysis. The situation analysis not only can be, through its dissemination and presentation to government’s bodies, an effective instrument of sensitization on the social importance of juvenile justice reform, but can also, more specifically, contribute to a keen appreciation on the part of governmental counterparts of the value of data collection, evidence based planning, and monitoring. This has been definitely the case for the Romania situation analysis, which included considerable empirical data. The situation analyses prepared in Romania, Serbia and Tajikistan had a major impact not only as a basis for planning but in identifying and energizing potential partners. In Serbia, it also enabled the office to obtain funding for a three year project from a bilateral donor (SIDA). The Serbian and Montenegrin situation analyses were prepared by an international consultant, the Romanian one was prepared by a group of national consultants working under the aegis of the Ministry of Justice, and in Tajikistan the situation
analysis was prepared by the Experts Group, but with very considerable inputs by an international consultant. In principle, one could say that it is preferable for the situation analysis to be prepared by a group of national consultants, when possible, because this helps build capacity; but the situation analysis of Serbia prepared by an international consultant, had no less impact than the Romanian one. In Tajikistan, the NGO with which the international consultant is affiliated (the Children’s Legal Centre UK) has become a permanent and valuable source of expertise on legal and social aspects of juvenile justice.

**Inter-ministerial, inter-sectoral bodies** have been established in Serbia, Montenegro and Tajikistan. In Serbia and Tajikistan, representatives of the most important NGO/civil society organizations also participate. In Tajikistan, foreign consultants also participate on a regular basis. The functions of such bodies include coordination and making recommendations to governmental counterparts such as Ministries. In all three countries, they also provide UNICEF with opportunities for a dialogue with all its partners in juvenile justice reform. The authority of these bodies is limited and problems of inter-ministerial cooperation persist, but they do serve an important function. If a similar body had existed in Romania, it is possible that UNICEF would not have suspended active support for juvenile justice reform and would have become aware of new opportunities in a more timely fashion.

Another important lesson is the value of creating **inter-sectoral teams** at the community level. All four countries have promoted the creation of teams involving actors such as the police, judges, prosecutors, NGOs, local government and social work departments in communities in which diversion/alternative sentencing projects are implemented. The experience of all four demonstrates very convincingly that such inter-sectoral teamwork is key to the effective implementation of such projects, and perhaps even more important than inter-ministerial coordination at the national level.

UNICEF has persuasively demonstrated its comparative advantage in providing valuable **capacity building** of the actors involved in juvenile justice reform. Most capacity building measures have consisted either of training, or the constant exchange of information and ideas that can be seen as a sort of informal mentoring. The latter has been an important dimension of the permanent relationship between UNICEF staff and experts, and the inter-ministerial, inter-sectoral coordinating bodies established in Montenegro, Serbia and Tajikistan. In Montenegro, study visits have been an important form of capacity building for the Ombudsman and his child rights team, and in Serbia they have been an important contribution to strengthening the capacity of the staff of the main facility for juvenile offenders. Some efforts also have been made to strengthen capacity in other ways. In the main facility for juvenile offenders in Serbia, some guards were transformed into a different type of professional having additional responsibilities. All police officers are now required to demonstrate certain knowledge of child rights in order to remain qualified to serve. In Romania, the establishment of a pilot project providing services exclusively to younger children who have committed an offence implied the creation of a new kind of professional post within the pertinent ministry. In Tajikistan, a foreign expert made extensive recommendations concerning personnel management policies of the Ministry of the Interior department responsible for children, but the political will to implement them does not exist yet. No capacity building of this kind has been attempted in Montenegro. To some extent, capacity building of this kind (e.g. establishing new functions, services and procedures in the judiciary, police or corrections departments) supported by other international or bilateral donors benefits the parts of those larger systems that have an impact on juvenile offenders, but the constraints inherent in a evaluation of this kind did not allow the evaluation team to study that in any detail. More capacity building of this kind is needed in all of these countries, although the degree to which the prerequisites for incorporating it into UNICEF supported activities varies from one country to another and the question of whether incorporating such activities into UNICEF supported projects is the most cost-effective way of addressing these needs would require further study.

Last but not least, one of the main strengths of UNICEF’s programmes in support of juvenile justice reform is represented by the important focus given to the creation of **community based alternatives**. As better explained in one of the next paragraphs, these initiatives vary from country to country, but all of them have an important element of innovation and are not only having a positive effect on the lives of children, but also by the force of example strengthening support for reform amongst professionals and decision makers.
6.1.2 Internal strengths

The following are the positive internal (i.e. related to the organisation itself and its ways of operating) elements that UNICEF can rely on while working for juvenile justice reform.

- **Ability not to duplicate other actors’ efforts.** As demonstrated by the experience of all the four countries, UNICEF is able to identify the areas where support is needed, without overlapping or inefficiently repeating what already being done by others. In such a way, a high degree of complementarity is ensured.

- **In three of the countries covered by the evaluation (while Romania is an exception), UNICEF has been able to guarantee a good match between available financial resources and activities pursued, ensuring the financial justifiability of the activities supported.**

- **It is striking, but greatly rewarding, to ascertain that UNICEF has been gaining a strong credibility with governmental counterparts, despite the organisation cannot count on a real specific internal expertise in juvenile justice yet. Furthermore, it is evident that UNICEF’s credibility is stronger that the one expressed by international NGOs working on the same issues.** As a consequence, UNICEF tends to be chosen as a preferred partner by governmental counterparts. Such a credibility is based, among other things, on the organisation’s capacity of coordinating work with numerous partners at the same time, as well as its proven ability to act as a bridge between governments and civil society.

- **A last but very important positive element is represented by UNICEF’s capacity to identify and rely on local expertise,** which has a twofold advantage, i.e. inform UNICEF’s work with country-specific knowledge and therefore reinforce the responsiveness of UNICEF’s intervention to the particular needs of the country and, secondly, act as a capacity development process.

The above elements gathered together represent the advantage that UNICEF can hold, while working in juvenile justice reform, compared to other international actors.

6.2 OPPORTUNITIES

6.2.1 External opportunities

The comparison of the experiences in the four countries has led to the identification of a number of factors that UNICEF should take into account when designing juvenile justice programmes in other countries. These factors can indeed represent concrete opportunities that UNICEF should expressly look for and try to take advantage of and build upon.

The most profitable social factor is represented by the presence of **civil society organizations interested in juvenile justice reform.** International standards on juvenile justice recognizes the important contribution that civil society organizations can make in areas such as delinquency protection and the rehabilitation of offenders48. In Romania, Serbia and Tajikistan, the existence of national or local NGOs interested in juvenile justice played a very positive role in the activities supported by UNICEF. In Romania, local NGOs held a crucial function in the preparation of the situation analysis, in implementation of the main community based alternative pilot project, in training, in a delinquency prevention project and in projects aimed at improving conditions in custodial facilities for adolescents and even in providing police stations with special rooms for interviewing children. In Serbia, they played a crucial role in legal reform, in training, and in the implementation of community based alternatives. And in Tajikistan, they played a critical role in the implementation of the community based alternatives pilot

---

48 See e.g. the Riyadh Guidelines on the Prevention of Juvenile Delinquency, Guideline 2 and 9(f), and UN Rules on the Protection of Children Deprived of Liberty, Rules 8, 30, 45, 49 and 80.
projects. In Serbia and in Romania, some of the local NGOs that came to play a major role on UNICEF’s work on juvenile justice had already been working on juvenile justice reform when UNICEF decided to take up this issue. In Tajikistan, UNICEF’s main NGO partner was working with street children, a closely related issue, and one of UNICEF’s main NGO partners in Serbia also was working on other social issues when UNICEF persuaded it to begin working on juvenile justice. In Montenegro, an organization based in Serbia has played an important and valuable role, but the absence of strong Montenegrin NGOs with an interest and expertise in this area has been a factor that has adversely affected progress. In principle, nothing would prevent UNICEF, in a similar situation, from concentrating some of the available funds on advocacy among NGOs on the importance of juvenile justice reform and, even further, on developing their relevant capacities. Such processes would be particularly effective if implemented as first action when UNICEF’s involvement in the area is starting in a particular country.

**Law reform is an essential part of juvenile justice reform** because there are almost always contradictions between the national law and international standards, with regard to issues such as pre-trial detention, the minimum age for adjudication as a juvenile offender, due process and sentencing. In all four of the countries covered by the evaluation, reforming juvenile justice required changes in a number of laws, such as the criminal code, code of criminal procedure, law on the execution of sentences. In Montenegro, Romania and Tajikistan, some of the relevant laws have been changed while others have not, which makes reforms of some parts of the system feasible while other reforms must be postponed for lack of a legal basis. Serbia adopted a comprehensive law on juvenile justice. Adopting a single comprehensive law on juvenile justice rather than amending existing laws that cover both adolescents and adults has several advantages. One is that the rights of the child are more fully taken into account, because the main focus of the drafting process is on the impact on children and not the impact on adults. The experience of these four countries also suggests it is a more efficient approach, because the goal of bringing all the relevant law into conformity with international standards is accomplished with less delay. The experience of Serbia also indicates that a law that spells out the measures that must be taken by the relevant actors and institutions (the appointment of specialized judges, prosecutors and police, institutional responsibility for providing training on child rights, etc.) reduces, to some extent, the need for prolonged advocacy to convince all relevant actors to carry out the reforms that come within their areas of responsibility. Of course, where the relevant authorities are not prepared to consider the advantages of a comprehensive law, support must be given to amending all the relevant legislation piece by piece. When this approach is followed, it is important to have a law reform agenda that identified all the legislation that needs to be amended or replaced, and all the contradictions with international standards that need to be eliminated.

Campaigns to change public opinion were not part of the strategy in any of the four countries. In Serbia, the mobile child protection teams established in some 10% of the municipalities in the country conducted intensive outreach activities. National campaigns to influence public opinion did not take place in any of the countries concerned, however. Some civil society organizations interviewed expressed the opinion that such campaigns would not necessarily be a positive influence on the reform process, but that it is wiser to focus on influencing juvenile justice professionals. This argument is convincing, at least unless there is some specific reason to conclude that public opinion is an obstacle to reform. Although the negative attitudes regarding juvenile offenders may exist within the general public, no evidence was found in any of the four countries that such views are or have been at any relevant time a significant obstacle to reform. Non-inclusion of activities designed to “change public attitudes towards children in conflict with the law and juvenile justice system reform” has not had any negative impact on the progress of juvenile justice reform in any of the countries covered by the evaluation. In contrast, in all of the countries, advocacy efforts addressed to juvenile justice professionals and to decision makers were part of the strategy for juvenile justice reform. Most advocacy efforts addressed to professionals aimed at awakening interest in training activities, while most of those addressed to decision makers aimed at generating support for pilot projects or for law reform. **Advocacy efforts addressed to professionals** have undoubtedly shown their critical value in fostering broader reform, while on the side of governments, it is worth noting how the use of **pilot projects as advocacy means** can sometimes turn to be more successful than resorting to the usual advocacy instruments (e.g. meetings, leaflets, sensitization activities, etc).
Another aspect that could be taken advantage of resides in the scope itself of juvenile justice reform. One threshold question that should be addressed, indeed, is whether the reform process should address the situation of children whose behaviour violated criminal law or quasi-criminal norms, but who are too young to be prosecuted because they are below what is often referred to as the ‘minimum age for criminal responsibility’⁴⁹. The relevant international standards are somewhat ambiguous on this point. The Committee on the Rights of the Child considers that Article 37 and 40 of the CRC are the articles most relevant to juvenile justice. Most of the provisions of Article 37 are applicable to any child deprived of liberty, regardless of his or her legal status.⁵⁰ Article 40 is applicable to children “alleged as, accused of, or recognized as having infringed the penal law.” Whether or not the term children ‘alleged’ to have infringed the penal law included those who have committed acts prohibited by the criminal law, but who are too young to be accused of an offence, is not entirely clear. Some of the Havana Rules on the Protection of Children Deprived of Liberty apply to all children deprived of liberty, regardless of their legal status, and the Riyadh Guidelines on the Prevention of Juvenile Delinquency envisage measures that should be taken from ‘early childhood’.⁵¹ The Beijing Rules on the Administration of Juvenile Justice are, in principle, applicable to any child who has committed an offence, not only children old enough to be prosecuted.⁵² However, the General Comment on juvenile justice adopted by the Committee in February 2007 says little about how children under the minimum age for prosecution should be treated when they have committed a criminal act.

In Romania, UNICEF supported a pilot project addressed specifically and exclusively to this group of children. In all of the other countries, some activities benefited such children. It seems appropriate for support for juvenile justice reform to include at least some activities that benefit children below the minimum age for prosecution, in particular those aimed at the prevention of offending and services designed to ‘rehabilitate’ children who have participated in illegal activity, in particular community-based services such as counselling or mediation that do not involve the deprivation of liberty. It would also be appropriate while supporting juvenile justice reform to include activities that benefit residential facilities that house a mixture of children who have committed offences and those confined for other reasons, such as runaways and victims of abuse, neglect or exploitation, provided that the activity takes fully into account relevant principles concerning the rights of such children, in particular the use of deprivation of liberty as a last resort. UNICEF has supported activities in facilities of this kind in Serbia and Tajikistan, and has tried to do so in Montenegro. To conclude, it is the evaluation team’s opinion that UNICEF could pay specific attention to the above described issues and make them fully part of its approach to juvenile justice reform. This aspect would guarantee an additional “specialisation” for UNICEF and, therefore, increase its comparative advantage in juvenile justice reform when confronted with the operations of other international actors.

It is worth mentioning another element that is in some way linked to the previous one, as it could possibly contribute to the enhancement of UNICEF’s comparative advantage, i.e. the value of ombudsman child rights unit. As emphasised in other parts of this report, strengthening the role of the ombudsman in Montenegro has led the small child rights team to assume a very dynamic role in promoting juvenile justice reform.

6.2.2 Internal opportunities

The following list points out the positive elements identified within UNICEF’s organisational and operational modalities and that, so far, have been only occasionally exploited, while they should definitely receive more attention:

⁴⁹ Committee on the Rights of the Child, General Comment No.10, Children’s rights in juvenile justice, CRC/C/GC/10, 2007, para.16-19
⁵⁰ the first sentence of para.(a) and paras. (b), (c) and d).
⁵¹ See Rules 3 and 11 and Guideline 4
⁵² Rule 2.2.
High quality methodological inputs. UNICEF Country Offices have proven their ability to support the development of ‘tools of excellence’ regarding juvenile justice. An important example is provided by the manual on juvenile justice prepared in Romania by national experts that is being widely used in professional training and education. Similar experiences should be not only further fostered, but also widely shared with other Country Offices.

A common trend in stakeholders’ consultations within the countries, above all in Serbia and Tajikistan, is represented by the appreciation of UNICEF’s ability to deliver aid more quickly than other actors and to work in a more flexible and agile way. This is an internal strength that UNICEF should further developed and build upon.

The same can be said for UNICEF’s recognised ability to raise sufficient funds to cover planned activities. Once again, the positive experience of the Serbia Country Office should be further examined and shared with other Country Offices.

Another capacity that is often recognised to UNICEF relates to the relationships between governments and civil society. It appears, indeed, that UNICEF has been able to effectively foster such relationships and exchanges, acting as a bridge and facilitator between the different actors.

6.3 ‘BEST INVESTMENTS’

On the basis of the previous paragraphs, it becomes possible to identify a few activities, among those funded by UNICEF in the four countries, that can be considered as ‘best investments’, i.e. activities that have turned out as being especially important to the overall process of juvenile justice reform. Four of such activities have been identified.

The first is the situation analysis. The very different experiences of Romania, Serbia and Tajikistan all confirm that a good situation analysis can help identify or create valuable allies amongst juvenile justice professionals, sensitive political decision makers as to the need for addressing this issue, and in general creating the momentum that can help juvenile justice reform begin to move forward. In Romania, it had the added value of strengthening a key group of national experts and giving them the credibility and links with decision makers that is helping carry the process forward even without UNICEF’s active support. In Tajikistan, too, the preparation of the situation analysis established a link between UNICEF, the government and two foreign groups (an NGO and a university) that have continued to play an important role in the process of juvenile justice reform. As mentioned above, the situation analysis can also play an important advocacy role and demonstrate the importance of data collection and evidence-based planning.

The second is support to law reform. In Serbia, the adoption of a comprehensive law on juvenile justice has created a framework for institutional and policy reform that has to some degree obviated the need for prolonged and painstaking advocacy and negotiations ministry by ministry, institution by institution, that has been necessary in other countries. And in the countries where law reform has proceeded in a more gradually and fragmentary fashion, or is still pending, most of the progress made has been made in areas where new legislation has been adopted or old legislation has been approved, and many of the delays and setbacks have been due in part to difficulties in reforming legislation. To be sure, law reform alone does not solve problems, but it is a vital step towards the solution of many of the problems that need to be solved in reforming juvenile justice systems.

The third is advocacy for and support to the creation of inter-sectoral coordination bodies, which have played in Serbia, Montenegro and Tajikistan a central role in juvenile justice reform. Two lessons stand out in the experience of these countries: the participation of civil society organizations enhances their effectiveness, and the holding of an annual meeting to take stock of progress made and set goals for the coming year, in addition to periodic monthly or fortnightly meetings, adds another dimension to the contribution that they can make.

The fourth activity whose importance stands out is the creation of community based alternatives. Montenegro is the only country where the community based pilot is still not operational. In Romania, the
most important community based alternatives project existed before UNICEF began working in this area, but UNICEF’s support helped it expand to a few other communities and become much better known nationally. The type of ‘alternatives’ offered varies from country to country, and in some countries different types of community based projects exist. Some focus mainly on counselling, others on VOM, some focus on diversion, some on diversion and non-custodial sentences, some provide preventive services and one also provides post-release support for offenders returning to their communities. Most provide services to the child and his or her family. All are associated with some sort of mechanism that facilitates coordination between all relevant sectors – police, prosecutors, courts and social services/NGO service providers – at the local level. All of them are not only making a positive difference in the lives of children, but also by the force of example strengthening support for reform amongst professionals and decision makers.

Two other types of activity stand out as being particularly valuable, although the experiences are basically limited to one country each. One is strengthening of the role of ombudsmen. In Montenegro, support for the ombudsman has led the small child rights team to assume a very dynamic role in promoting juvenile justice reform, even though UNICEF’s goal of convincing the authorities to adopt legislation establishing a Deputy Ombudsman with special responsibility for children has not yet been met, and even though most of the work of the child rights team is based on initiatives it takes on its own, rather than on complaints from children or their families. The other is reform of the policies and programmes within correctional facilities for juvenile offenders. The main example of this is in Serbia, where a far-reaching transformation of the main facility of this kind has been carried out with UNICEF support. This has not only improved the lives of the hundreds of children who have passed through this facility since the programme began, but it has also contributed greatly to the momentum of juvenile justice reform in general53.

7 THREATS OR... POTENTIAL OPPORTUNITIES?

Each of the four countries covered by this evaluation, like the other countries of Central and Eastern Europe and Central Asia, has undergone profound political, social and economic transformations during the last 18 years. In each of them, the political and historical context in which UNICEF’s juvenile justice reform programmes was launched had unique characteristics that had a major impact on the project. In Romania and Serbia, the radical changes of regime that took place in 1990 and 2000 led to governments open to the transformation of law and social policies. Montenegro’s status and the process of becoming independent, had considerable impact on UNICEF’s support for juvenile justice there. In Romania, in Serbia and in Montenegro, the transformation of the respective political systems has led to frequent changes in identity of Ministers and other key counterparts in government. In Tajikistan, as in the rest of Central Asia, the process of political change that followed independence has proceeded at a much slower pace than in Central Europe. Consequently, there is greater resistance in some sectors of government54 to what are sometimes perceived as ‘Western’ ideas. On the other hand, the commitment to respecting international legal standards is quite strong in some sectors of the government.

Both Tajikistan and Serbia had been badly affected by armed conflict – Tajikistan directly and Serbia for the most part indirectly. In Serbia, the impact of the conflict included a decade of economic sanctions, as well as a certain glorification of violence and illegality. In both countries, the impact of the conflict on various institutions having to do with juvenile justice led to a sense that restoring their capacity was a priority. In Serbia, however, the end of the conflict was followed by a radical change of regime that

53 Similar efforts are being made in Tajikistan, but the results are more modest to date. In Romania, UNICEF also supported some work in correctional facilities for juvenile offenders, but for logistical and other reasons the evaluation team was not able to obtain enough information on the results to form an opinion on them.

54 The term government is used here to refer to the apparatus of the State, i.e. the various ministries, parliament, judiciary, not the political party in power.
brought greater receptivity to innovation. Even so, the basic structure of the system and the role of the institutions that compose it remain largely unchanged, and difficulties in inter-ministerial coordination have slowed the pace of reform.

The above paragraphs are meant to underline the relevance of political, historic and institutional context while designing and then implementing juvenile justice programmes and to stress how the changes in such context can have important, sometimes negative and restrictive, effects on the reform of juvenile justice systems. It follows that it is of primary importance that UNICEF's strategies are designed not only contextually, taking into due account the specific reality of the country concerned, but also guaranteeing a high degree of flexibility and adaptability to possible developments, during the whole duration of the programme. As demonstrated by the experience in Tajikistan, indeed, keeping a high level of flexibility and ability to adapt to single events can permit the achievement of important results despite the conditions are not optimal.

The same can be said with specific regard to the influence of European institutions or the possible direct involvement of the European Union (EU) in juvenile justice reform. The experience of Romania could be read as a demonstration that the ‘entrance’ of the EU in this area can represent a concrete threat to UNICEF’s operations and, even more, its engagement in the process of juvenile justice reform. More specifically, in Romania, UNICEF’s main contribution to juvenile justice reform was a situation analysis, which it commissioned with the understanding that it would help influence a two year, one million Euro juvenile justice project financed by the EU. However, the EU project was based on one model of juvenile justice - in particular the type of court that would have competence over offences committed by juveniles - and the situation analysis endorsed another model. Hence, since the agreement between the Ministry of Justice and the EU was finalized before the situation analysis was completed, UNICEF’s contribution did not have the expected impact and shortly thereafter UNICEF decided to stop supporting juvenile justice reform. Once a government and the EU sign an agreement on a project of this kind, indeed, there is little room for modifying it and UNICEF did all they could have been expected to do to influence the process. However, what UNICEF probably should have done was to take a lower profile, waiting that the EU project ran its course, but at the same time keeping in touch with developments. In such a way, UNICEF would have been prepared to step in when the EU project ended. Consequently, the potential ‘threat’ would have been turned into a new opportunity.

This is what has happened by some means in Montenegro. In this country, UNICEF tried unsuccessfully to influence the new Criminal Code adopted nearly simultaneously with the commencement of its three year project on juvenile justice reform. It failed because the government was focused single-mindedly on law reform considered necessary for integration into Europe, and did not perceive juvenile justice reform as part of the reforms necessary for that purpose. As a result, the three years of the UNICEF project were spent winning support for the amendment of the part of the new law concerning juvenile offenders and, when that was accomplished, drafting secondary legislation necessary for implementation of the amendments. Training and other preparations for pilot projects also took place, but by the time the three year project had ended, implementation had not yet begun. This was basically due to the government’s perception, when the law was being drafted in 2003, that juvenile justice reform was not relevant for integration into Europe. The UNICEF office has since made a determined effort to work in cooperation with European agencies present in Montenegro, and is expecting to receive funding from the European Reconstruction Agency for a new, two year project on juvenile justice.
8 OVERALL RECOMMENDATIONS

This chapter aims at gathering the points that have already been identified and argued in the rest of the section. The recommendations, therefore, are shown in a rather synthetic way, in order to avoid repeating what already fully explained. Country-specific recommendations have been developed in the relevant country sections.

Any programme needs to be based on a strategy, especially when it is intended to make major reforms in a system or area as complex as juvenile justice. The experience of these four countries confirms the importance of a well-defined strategy, but also suggests that no one strategy is appropriate. A strategy must be adapted to the political, historical, social, cultural, institutional and economic context, and must be flexible enough to respond to unforeseen changes in the context. Moreover, it is well evident that the use of results-based management tools need to be importantly strengthened within the UNICEF Country Offices.

In so far as the evaluation of short-term specific activities is concerned, more emphasis should be placed on monitoring and evaluating impact, or outcomes, rather than outputs. In Serbia, some important steps have been taken in terms of evaluating the impact of pilot projects, including the ‘exit’ survey used by the VOM mediation centre at Nis, the matrix for evaluating the risk of offending and the survey of residents in the juvenile correctional facility. It would be useful to develop them further, along the lines mentioned in the relevant section of this report. In so far as training activities are concerned, it would be useful to shift the emphasis from whether the trainees appreciated the event, to what they have learned and whether or what impact, if any, the activity may have had on attitudes and values that are related to their role in the juvenile justice system. This would require testing at the beginning as well as the end of the event. In addition, it would be useful to evaluate, some time after the event, the extent to which it has influenced the way they have fulfilled their responsibilities.

The monitoring of specific short-term activities is important for its own sake, but is of limited use in evaluating the progress of juvenile justice reform as such. Positive results in a number of specific activities do not necessarily add up to significant progress in reforming the system as a whole, nor do disappointing results with regard to a number of specific short-term objectives necessarily mean that the process of reform is in serious difficulty. The process of reform is long and convoluted, and evaluation of the degree of achievement of the ultimate or strategic goals of juvenile justice reform is an ambitious and difficult task. The aims of juvenile justice reform, and consequently the indicators used to measure progress, depend on the characteristics of juvenile justice when reform begins. In some countries, for example, they might include elimination of the death penalty or the detention of girls exploited for purposes of prostitution, while in others the aims might include ensuring that all juveniles accused of an offence have prompt access to legal aid or that all children in detention have access to clean drinking water. To evaluate progress in a meaningful way, it is necessary to define objectives that are more precise and concrete and that reflect the specific problems existing in the country in question. In most countries, the number of objectives and indicators will be numerous. UNICEF needs to make a greater effort to develop indicators and tools for data collection in this area. Unless and until this is done, it will continue to be difficult to use result oriented programming and to document convincingly the impact and value of its support for juvenile justice programmes.

The annual ‘Roundtable’ on juvenile justice reform in Tajikistan, in which all relevant governmental bodies, as well as civil society organizations and interested international organizations participate, has proved to be a useful tool for evaluating progress made in juvenile justice reform as a whole, and setting objectives for the coming year. UNICEF offices in other countries would do well to consider supporting similar activities.

The evaluation team believes that there is greater potential to link UNICEF’s work on juvenile justice with its work on other areas. Some of the areas where there appears to be unrealized potential for synergy include:
• adolescent health programmes, in particular with regard to substance abuse, which is closely linked to offending in some countries;
• programmes against violence in schools that have a potential link with delinquency prevention;
• programmes on inclusion of minority children in education that could potentially help make juvenile justice activities more sensitive to the needs of such children.

An area where improvements could lead to important results is then the exchange of information and sharing of experiences within the region and specifically among the various Country Offices. The above seems indeed to be quite limited to voluntary efforts of COs staff, rather than to organised mechanisms. In contrast, the evaluation team believes that the systematic sharing of both positive and negative experiences, including day-to-day management practices, could have a positive impact on UNICEF’s overall engagement in the reform of juvenile justice in the region. Such learning processes could take different forms (e.g. periodic meetings, mailing discussion, intranet forums, etc) and should be coordinated by the Regional Office.

Linked to the above aspect, it is recommended that more attention is given to the technical expertise available in COs. As fully demonstrated by these four countries’ experiences, indeed, work on juvenile justice has proceeded more easily and recorded a greater impact on the system where valuable external national or international expertise was available to the concerned CO.

As mentioned already, UNICEF’s strategies on juvenile justice reform should be adapted to the country’s political and institutional context. Specifically, juvenile justice reform will rarely, if ever, be identified as a priority by all the relevant governmental counterparts before support for juvenile justice reform has begun. The experience in the four countries has indeed demonstrated that it could be easier, more effective and conducive for deeper and more sustainable changes, to start supporting activities which involve juvenile justice professionals and civil society organisations, rather than governmental counterparts. Such an approach would find another important element in greater emphasis given to advocacy, as a relatively inexpensive way that can in contrast foster important developments even in a ‘low profile’ situation.

An essential area where UNICEF needs to improve its modus operandi is the cooperation with the other international actors that are directly involved in juvenile justice or, even if not so, whose activities can have an impact on juvenile justice systems (e.g. reform of the overall justice system, law and policy design, EU accession, etc). Despite UNICEF has proven to be able to guarantee a good degree of complementarity and, thus, not to overlap the interventions of other actors, a higher level of experience sharing, coordination, and possibly harmonisation is desirable. This would not only make UNICEF’s interventions more ‘to the point’, more effective and sustainable, but would also avoid possible situations of ‘rivalry’ where governmental counterparts feel obliged to choose between ‘competing’ partners. More specifically, the experience of Romania teaches that the presence of EU as an actor involved in juvenile justice, as well as the possible accession to the EU, should be not seen as an obstacle but, in contrast, as an important opportunity to be exploited, being the EU a potential ‘buyer’ of UNICEF’s specific expertise in juvenile justice reform.

The attention given to gender issues during both planning and implementation of UNICEF’s activities should be undoubtedly strengthened. The same can be said about the need to develop and test models for enhancing children’s participation. Finally, the issue of whether ethnicity should be taken into account in designing and implementing juvenile justice reform projects should be further analysed.
9 SWOT MATRIX

<table>
<thead>
<tr>
<th>STRENGTHS</th>
<th>WEAKNESSES</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>External</strong></td>
<td><strong>Internal</strong></td>
</tr>
<tr>
<td>• Situation analysis’ strong potential to influence reform</td>
<td>• Insufficient participation of children</td>
</tr>
<tr>
<td>• Advocacy and support for the establishment of JJ inter-ministerial, inter-sectoral bodies</td>
<td>• Little attention to gender and ethnicity</td>
</tr>
<tr>
<td>• Intersectoral teams at the local level</td>
<td>• Failure to appreciate the value of advocacy</td>
</tr>
<tr>
<td>• Valuable capacity building and training of JJ actors being institutionalised</td>
<td></td>
</tr>
<tr>
<td>• Introduction of community-based alternatives (Rom, Ser, Tajik)</td>
<td></td>
</tr>
<tr>
<td><strong>Internal</strong></td>
<td><strong>External</strong></td>
</tr>
<tr>
<td>• Ability not to duplicate other actors’ efforts – complementarity</td>
<td>• Incomplete synergy with other UNICEF programmes</td>
</tr>
<tr>
<td>• Satisfactory match between available financial resources and activities pursued (Romania is an exception)</td>
<td>• Partial (Serbia &amp; Mon) and insufficient (Rom &amp; Tajik) development of data collection and monitoring systems</td>
</tr>
<tr>
<td>• Credibility (even without a specific expertise in JJ) compared to INGOs</td>
<td>• Limited evaluation of impact</td>
</tr>
<tr>
<td>• Capacity to rely more on local expertise</td>
<td>• Limited use of RBM approach and tools, e.g. vague logframes, objectives and indicators</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>OPPORTUNITIES</th>
<th>THREATS… to be turned into opportunities</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>External</strong></td>
<td><strong>Internal</strong></td>
</tr>
<tr>
<td>• Potential role of civil society and, consequently, opportunity to develop their capacities</td>
<td>• Limited and sporadic coordination with other international actors in JJ, including possible rivalry with international NGOs</td>
</tr>
<tr>
<td>• Law reform and adoption of a single comprehensive law on JJ</td>
<td>• Complexity of JJ and difficulty in keeping a comprehensive view</td>
</tr>
<tr>
<td>• Advocacy towards JJ professionals and pilot projects as advocacy means</td>
<td>• Partial attention to JJ expertise available to the COs</td>
</tr>
<tr>
<td>• Scope of JJ: younger children</td>
<td></td>
</tr>
<tr>
<td>• Value of ombudsman child rights unit</td>
<td></td>
</tr>
<tr>
<td><strong>Internal</strong></td>
<td><strong>External</strong></td>
</tr>
<tr>
<td>• High quality methodological inputs</td>
<td>• Political, historic and institutional context, including governments’ limited commitment to reform</td>
</tr>
<tr>
<td>• Ability to deliver aid more quickly and to work in a more flexible and agile way</td>
<td>• EU involvement in JJ and country’s accession process in EU</td>
</tr>
<tr>
<td>• Ability to raise funds (e.g. Serbia)</td>
<td></td>
</tr>
<tr>
<td>• Ability to act as a bridge between governments and civil society</td>
<td></td>
</tr>
<tr>
<td>• Info sharing within the region and internal learning processes</td>
<td></td>
</tr>
</tbody>
</table>
SECTION II: MONTENEGRO

10 BACKGROUND AND CHARACTERISTICS OF THE JUVENILE JUSTICE SYSTEM

Montenegro has a population of 630,548. The percentage of children living in poverty is 16%, much lower than any of the other countries covered by the evaluation, but 57% of minority children live in poverty. Montenegro was part of the SFR Yugoslavia when the latter ratified the CRC in 1990. It remained in federation with Serbia throughout the 1990s, and consequently suffered the economic sanctions imposed by the UN and EU. Ties with Serbia began to loosen towards the end of the 1990s, and in the year 2000 the parliament of Montenegro adopted a resolution indicating that legislation adopted by the federal parliament from that time forward would not be applicable in Montenegro. The current president was elected in 2003 and led the country to independence in June 2006.

The Initial report on implementation of the Convention on the Rights of the Child presented by the FR Yugoslavia in 1994, and examined by the Committee on the Rights of the Child in 1996, covers both Montenegro and Serbia. Reports due in 1998 and 2003 were not submitted. When Yugoslavia ratified the CRC in 1990, the legal responsibility of offenders under the age of 18 was regulated by Chapter IV of the Criminal Code. Children under the age of 14 could not be accused of an offence; those aged 14 to 16 (‘younger minors’) had limited responsibility and those aged 16 to 18 (‘older minors’) could be sentenced to a ‘minors’ prison’. The Law on Criminal Proceedings contained a chapter on juvenile offenders which recognized the right to be tried in closed court and other rights. Juvenile courts did not exist, but juvenile offenders were tried by panels composed of judges and lay assessors having special training. The number of children aged 14 to 18 convicted of an offence in Montenegro during the years 1995 to 2000 ranged from 77 to 237. The number convicted of crimes against the person during these years ranged from 7 to 20 per year.

Legislation and regulations concerning the police did not contain any norms concerning the treatment of persons under the age of 18, and no specialized facilities for the detention of children aged 14 to 18 kept in custody during the investigation of an offence existed. Juveniles (and adults) accused of ‘petty offences’ were tried by a special administrative court, which could impose reprimands, fines, sentences of ‘supervision’ and custodial sentences of up to 15 days. The UNICEF Situation analysis indicates that three to four hundred cases involving juveniles were adjudicated per month, most of them traffic offences, but some involving offences such as fighting or disturbing the peace.

Children who committed offences could be sent to three kinds of institutions. Most were sent to the semi-open ‘educational institution’ in Podgorica operated by the Ministry of Labour and Social Welfare; those aged 14 to 18 convicted of more serious offences could be sent to the Juvenile Correctional Institution in Krusevac, Serbia, and boys and girls aged 16 to 18 convicted of serious offences could be sent to prison

56 No such facility existed (or exists) in Montenegro
57 Chapter XXVII, articles 452-492, Initial Report, para.374
58 Initial Report, para.375
59 Situation analysis, p.11, citing the Federal Statistical Institute
60 Ibid, p.26 and 29
61 Ibid, p.21
62 An offence which, if committed by an adult, is punishable by a sentence of 5 years or more.
in Spuz. Sentences to the Juvenile Correctional Institution were of indefinite duration, while sentences to prison range in duration from one to ten years\(^63\). Both of these facilities were operated by the Ministry of Justice. The situation analysis indicated that the average number of offenders confined in the educational institution was ten. The number of persons under the age of 18 at the time of an offence was committed sentenced to prison in Montenegro during the years 1995 to 1999 ranged from none to four\(^64\).

The section of the Criminal Procedure Code adopted in 2004 concerning juvenile offenders was identical to the law previously in force\(^65\). The section of the Criminal Code concerning offences committed by persons under the age of 18, adopted simultaneously, also is largely identical to the relevant provisions of the law previously in force\(^66\). One positive change that was introduced is recognition of sentences obliging the offender to attend a rehabilitation facility during the day\(^67\). The maximum length of custodial sentences also was reduced. Sentences to educational institutions – a semi-open facility that houses offenders as well as runaways, victims of abuse and neglect and other children who have not committed offences – are now for a minimum of six months to a maximum of two years, and sentences to a closed facility for offenders (“educational-correctional home” or reformatory) are from one to four years\(^68\).

There is, in fact, no closed facility specifically for juvenile offenders in Montenegro. While Montenegro was in federation with Serbia, adolescent offenders who received this sentence served it in the facility in Krusevac, Serbia, mentioned above and described in the section of this report on Serbia. However, shortly after the adoption of the Code, Montenegrin judges visited that facility\(^69\) and decided that they would no longer send offenders there. Since independence, it is no longer possible to sentence an offender to that facility. There is a prison in Montenegro where adolescents given the most serious sentences that can be imposed on offenders aged 16 to 18 are sent\(^70\).

Little or no effort was made by the authors of these Codes to take the CRC and related standards into account. Indeed, a book published by the Ministry of Justice containing the two codes lists 25 international treaties that were consulted during the process of reforming the Codes, including the International Covenant on Civil and Political Rights and the International Convention on the Elimination of all Forms of Discrimination against Women, but not the Convention on the Rights of the Child. The situation analysis completed two years earlier indicated that the legislation then in force “Does not fully incorporate the provisions of the … Convention on the Rights of the Child and other critical international instruments” and warned that it was likely that a new Criminal Code and new Code of Criminal Procedure would adopted with no changes to the sections on juvenile offenders and that “legislative reform efforts are moving too fast to effectively consider the substantive changes necessary to the juvenile chapters.”\(^71\)

In 2005, the Police Law was amended to provide that “police powers” concerning suspected juvenile offenders and child victims shall be exercised by specially trained officers, except in an emergency or when other circumstances so require, and that in questioning children, a police officer has a duty to “act with

\(^{63}\) Juveniles receiving longer sentences were transferred to an adult facility upon reaching the age of 23; adolescent girls who commit similar offences were sentenced to the woman’s prison.

\(^{64}\) Ibid, p.12

\(^{65}\) Stevanovic (the document has no page numbers)

\(^{66}\) In addition to the improvements mentioned below, the sentence to “supervision by another family”, rarely used, was eliminated from the new Code. The consultant who reviewed the draft Codes for UNICEF in 2004 believes that this is unfortunate. In fact the educational facility sends residents to stay with volunteer facilities during the summer vacation, which suggests that the consultant’s opinion may deserve further consideration at the appropriate time.

\(^{67}\) Art.83(2) and 90.

\(^{68}\) Art.89(2) and 93(2) and (3)

\(^{69}\) In September, 2004

\(^{70}\) Art.100-104. The minimum sentence is 6 months and the maximum, 10 years. Art.101(1). In practice few adolescents are given this sentence, and most that do receive it are over the age of 18 by the time they begin serving their sentence.

\(^{71}\) pp. 5 and 19 (This last warning referred to federal legislation, but its applicability to Montenegro should have been evident.)
caution, taking into account the mind, sensitivity, personal capacities and privacy” of the child. It further provides that the parents of a child shall normally be present when the police are interviewing a child unless “excluded by reasons for conducting a pre-trial proceeding” or because of urgency or “other circumstances.” This, too, are important advances, although thus far a specialized police team for dealing with cases involving children have been established only in the capital.

10.1 **ACCOMPLISHMENTS AND MAIN GAPS IN THE CURRENT JJ-SYSTEM**

The following table summarises the main accomplishments and gaps identified in the current juvenile justice system in Montenegro. Accomplishments and gaps are gathered under the main components / aims of UNICEF’s work for juvenile justice reform in the country.

<table>
<thead>
<tr>
<th><strong>Law and policy reform</strong></th>
<th><strong>GAPS / TO BE DONE:</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>ACCOMPLISHMENTS:</td>
<td></td>
</tr>
<tr>
<td>2006 Amendments Criminal Code</td>
<td>Amendment law on petty offences</td>
</tr>
<tr>
<td>2006 Amendments Criminal Procedure Code</td>
<td>Amendment Law on Executions Sentences</td>
</tr>
<tr>
<td>Amendment police law</td>
<td>Comprehensive law?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Community-based alternatives</strong></th>
<th><strong>GAPS / TO BE DONE:</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>ACCOMPLISHMENTS:</td>
<td></td>
</tr>
<tr>
<td>Training of mediation team pilot project</td>
<td>Development of plans, infrastructure &amp; policy on other forms of diversion</td>
</tr>
<tr>
<td>MoU pilot project municipality</td>
<td>Development of plans, infrastructure &amp; policy on non-custodial sentences</td>
</tr>
<tr>
<td></td>
<td>Implementation &amp; evaluation pilot project</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Capacity building</strong></th>
<th><strong>GAPS / TO BE DONE:</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>ACCOMPLISHMENTS:</td>
<td></td>
</tr>
<tr>
<td>VOM training</td>
<td>In-service training needs assessment</td>
</tr>
<tr>
<td>Strengthened capacity of members juvenile justice reform commission</td>
<td>Establishment of permanent entry-level training programmes all sectors</td>
</tr>
<tr>
<td>Strengthened capacity ombudsman office</td>
<td></td>
</tr>
</tbody>
</table>

| **Environment for change** | **GAPS / TO BE DONE**
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>ACCOMPLISHMENTS:</td>
<td></td>
</tr>
<tr>
<td>Empowerment of juvenile justice professionals through reform commission</td>
<td></td>
</tr>
<tr>
<td>Ombudsman office</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Other</strong></th>
<th><strong>GAPS / TO BE DONE</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>ACCOMPLISHMENTS:</td>
<td></td>
</tr>
<tr>
<td>Creation of national coordination/advocacy body</td>
<td>Inclusion civil society in reform commission</td>
</tr>
<tr>
<td>Strengthening ombudsman child rights team</td>
<td>Better inter-ministerial cooperation</td>
</tr>
<tr>
<td>Inclusion juvenile justice in NPA</td>
<td>Comprehensive plan for custodial &amp; non-custodial rehabilitation offenders</td>
</tr>
</tbody>
</table>

72 A question mark has been put in this cell because the evaluation team believe that although negative attitudes regarding juvenile offenders may exist within the general public, no evidence was found in any of the four countries that such views are or have been at any relevant time a significant obstacle to reform.
11 OTHER ACTORS INVOLVED IN JJ-REFORM

A part from UNICEF, the intergovernmental organization that is more specifically interested in juvenile justice reform in Montenegro is the OSCE, which has programmes in several related areas, such as law reform, law enforcement, the administration of criminal justice and prison reform. UNICEF has forged strong links with the OSCE and has also maintained contacts with the Council of Europe, which supported UNICEF’s initiative to appoint a Deputy Ombudsman for Children and was actively involved in the process of amending the existing Law on Ombudsman (currently pending adoption by the Parliament).

While the World Bank’s support to Montenegro is focused on the improvement of the health system and on education reform (with a special focus on Roma), the European Union has identified the ‘improvement of prison conditions as regards juvenile offenders’ as one of its short-term priorities. More generally, judicial reform was one of the priorities set by the EC Country Strategy Paper 2002-2006. This has turned into funding a project of Good governance and institution building (managed by the EAR) that identifies justice reform as one of the main goals to be achieved, including the improvement of prison conditions in line with Council of Europe standards, with attention to vulnerable groups such as juvenile offenders; capacity building within the Ministries of Justice and Interior in drafting laws in line with EU standards; support to judiciary and prosecutor reforms; and reform of police education. Considering the broad scope of such intervention and the expertise gained by UNICEF in the specific area of juvenile justice, it is a positive result in terms of cooperation, complementarity, and effectiveness, that the EAR has recently decided (the evaluation team has been informed about this development only after the end of the evaluation mission) to channel through UNICEF its grant to the Ministry of Justice, aimed at continuing the support for juvenile justice reform.

On a bilateral side, it is worth mentioning that the Canadian International Development Agency (CIDA) has been funding between 2005 and 2009 a project on judicial system reform in Serbia and Montenegro, which includes institutional capacity building, policy and strategy development, improved administration of justice at the local level. Also USAID is working in order to strengthen the justice sector, above all by providing technical and training support to the Judicial Training Centre, Administrative Office, Appellate and Administration Courts. In contrast, SIDA is directly involved in juvenile justice reform, as one of its strategy’s priorities consists in supporting structural reforms in the legal sector (including legal aid, legal education, Ombudsman), and police reform.

Save the Children UK (SCF) has supported juvenile justice reform in Montenegro since 1999. During the period 1999 to 2005, it had organized more then 20 seminars and workshops on juvenile justice. At present SCF’s activities are complementary to those of UNICEF: it is developing a manual for police officers, supports reform of the educational institution that houses adolescent offenders together with other children in need of residential care, and helped the Ministry of Health, Labour and Social Welfare develop the national plan of action on the prevention of ‘socially unacceptable behaviour’. It has a closer working relationship with this Ministry, in so far as juvenile justice is concerned, while UNICEF has a closer relationship with the Ministry of Justice.

As far as coordination concerns, an ‘International Task Force on Juvenile Justice’ involving UNICEF, the OSCE, CoE, Save the Children Fund and Open Society Institute was set up in 2004, but has become inactive. The evaluation team concluded that, while cooperation between UNICEF, the OSCE, the CoE, and the EAR is quite good, coordination and cooperation between UNICEF and the other actors directly or not directly involved in juvenile justice should be further improved.
12 OVERVIEW OF UNICEF SUPPORT

UNICEF established a sub-office in Montenegro, then part of the FR Yugoslavia, in 1993. The office in Montenegro became an independent Country Office on 1 January 2007, but the process of phasing out has begun. Approximately US$390,000 was spent on juvenile justice reform in Montenegro from 2004 to 2006, according to the documentation provided to the evaluation team by the office in Podgorica: US$122,000 in 2004, 184,000 in 2005 and some US$64,700 in 2006, including, some US$76,500 for staff salaries.

The juvenile justice reform programme developed by UNICEF and funded by SIDA for the period 2004-2006 was based on the situation analyses of Serbia and Montenegro. Most of the objectives are stated in general terms and do not differentiate between the two Republics. In reality, conditions in Serbia and in Montenegro were very different, in at least one important respect: in Serbia civil society organizations were actively calling for juvenile justice reform and there was considerable receptivity on the part of the government, while in Montenegro, juvenile justice reform was not on the social or political agenda. Although the situation analysis concerning Montenegro (published early in 2002) stated that “The Ministry of Justice has recognized the need to focus on juvenile justice reform and is making it a priority issue in the coming years”, there was a broad consensus among the sources interviewed by the evaluation team that no such commitment existed. Complacency on the part of government regarding the issue of juvenile justice was probably due, in part, to the fact that the number of offences committed by adolescents was falling during this period, although there is some evidence that the number of more serious offences committed by older adolescents was increasing.

The basic conclusion reached in the situation analysis is the same as that reached by the situation analysis in Serbia, prepared by the same consultant: that “the juvenile justice system in Montenegro has broken down” and “every component of the juvenile justice system in Montenegro needs critical support.” The police, as in Serbia, were found to be “in sore need of training”. The judiciary was considered to be untrained, poorly motivated and “functioning at a very low level in processing the cases against juveniles.” Physical conditions in residential institutions for juvenile offenders was considered “appalling” and efforts to provide rehabilitation “at an absolute minimum.” The Juvenile Teams of the Centres for Social Work provided “only the most basic supervision” due to excessive caseloads, lack of resources and poor motivation. In contrast to Serbia, where the situation analysis had considerable impact on juvenile justice professionals, this situation analysis appears to have little impact amongst professionals in Montenegro. None of the persons interviewed cited it spontaneously, and those who were asked indicated that they were unfamiliar with it.

In Montenegro, little was done to promote juvenile justice reform between the publication of the situation analysis in February 2002 and a lobbying effort regarding new legislation that began late in 2003. In May 2002, UNICEF co-sponsored a roundtable on “Diversion and alternative measures/sanctions,” and the first of a series of seminars on victim-offender mediation took place in November 2003. However, the main emphasis during this period was on activities in Serbia, which are described at length by the Inception Report.

73 The exceptions are those specifically regarding a diversion scheme pilot project to be established in Nis, Serbia; those concerning two kinds of correctional facilities for adolescent offenders that exist only in Serbia; police training, and cooperation with the Serbian Council for Children’s Rights, which at the time had no equivalent in Montenegro. Shortly after inception of the project in 2004, a Committee for the Protection and Promotion of Children’s Rights, similar to the Serbian Council for Children’s Rights, was established in Montenegro.

74 p.5
75 p.6
76 p.7
77 The event was co-sponsored by the Ministry of Justice and American Bar Association/Centre for Eastern Europe Law Institute (ABA/CEELI)
When the new Montenegrin government took office in 2003, a very ambitious programme of law reform was established, designed in part to replace Federal legislation, but mainly to bring existing legislation into conformity with European standards and guidelines.\textsuperscript{78} The new laws to be adopted included a Criminal Code and Code of Criminal Procedure. In 2003 UNICEF commissioned an analysis of the draft laws prepared by the NGO that was leading the process of law reform in Serbia\textsuperscript{79}, and lobbied unsuccessfully for a comprehensive law on juvenile justice, similar to that being drafted in Serbia.

UNICEF reacted swiftly to this situation by encouraging and supporting the establishment of a National Commission on Juvenile Justice Reform, established by a decision of the Minister of Justice. There are 20 members, including representatives of the Office of the Supreme State Prosecutor, the judiciary\textsuperscript{80}, the police, the educational institution for juvenile offenders, the Ministry of Education, the Ministry of Health, Labour and Social Welfare,\textsuperscript{81} the Human Rights Protector (Ombudsman) and a member of his child rights team. The Commission is co-chaired by a representative of the Ministry of Justice, UNICEF’s main partner in juvenile justice reform, and UNICEF. It meets at least once a month, and usually twice monthly. Its functions include advocacy for law and policy reform, the development of promotional and informative material and intersectoral cooperation, including rapid response in actual cases.

Realizing that the process of law and institutional reform is driven largely by the quest for European integration, UNICEF has made an effort to convince the Council of Europe (CoE) to put children higher on the political agenda and to coordinate with European agencies that support activities related to those of UNICEF. In so far as juvenile justice is concerned, the most relevant organization is the OSCE. UNICEF and the OSCE coordinated closely their efforts to influence the Criminal and Criminal Procedure Codes. UNICEF also has maintained contact with the Council of Europe, as indicated above.

The Plan for Action for Children in Montenegro, developed with the support of UNICEF, was adopted by the government in April 2004, shortly after implementation of the juvenile justice project began. The Plan, which covers the years 2004-2010, devotes considerable attention to the issue of juvenile justice. The general goal in this area is to ensure that “The number of children in conflict with the law is decreasing and juvenile justice is harmonized with international standards.”\textsuperscript{82} Four broad objectives are identified: implementation of a strategy for the prevention of “socially unacceptable behaviour”; harmonizing the “administration of juvenile justice” with international standards; putting in place alternative measures and sanctions, and educating youth about the ‘basic elements of criminal justice, rights and obligations.” Specific activities envisaged include the development of peer education as part of prevention programmes, the establishment of day centres and group homes for re-socialisation /reintegration; special courses for judges dealing with juveniles; advanced training of juvenile justice professionals from different areas; improvement of the organization and praxis of the educational institution in Podgorica; improvement of the organization and praxis of the non-custodial services for juvenile offenders and the development of diversion services in every municipality.

Primary responsibility for monitoring implementation of the Plan lies with the Commission for Child Rights, established in November 2003 in order to prepare the Plan.\textsuperscript{83} It is chaired by the Deputy Prime Minister, and includes representatives of the Ministries of Health Labour and Social Welfare, of the Interior, of Education, of the Environment, of Justice, of Finance and of Foreign Affairs, as well as representatives of the Ombudsman, MONSTAT and the Commissariat for Refugees and Displaced Persons. With UNICEF support, MONSTAT, the Statistical Office of the Republic of Montenegro,

\textsuperscript{78} The Ministry of Justice adopted a plan to draft 80 new laws in five years.
\textsuperscript{79} Child Rights Centre (see the section on Serbia)
\textsuperscript{80} Both the High Court, Basic Court and Petty Offences Court.
\textsuperscript{81} Including two from the Centre for Social Work.
\textsuperscript{82} This is part of the Strategic Goal “All children are full citizens.”
\textsuperscript{83} Initially called the Commission for Developing the Plan for Children’s Rights, and also referred to by some publications as Committee for the Protection and Promotion of Children’s Rights
incorporated indicators designed to monitor progress towards the goals of the Plan into a database called DEVINFO, and a Task Force consisting of MONSTAT and the Ministries responsible for providing data on issues covered by the Plan was established.

The fact that juvenile justice reform was incorporated into the Plan of Action for children is very positive, and the activities cited above are important ones. Further comments on the Plan and monitoring mechanism are found in the part of this section on Conclusions and Recommendations.

12.1 SPECIFIC PROGRAMME COMPONENTS

a. Awareness
Approximately 250 samples of UNICEF’s publication “Children in Conflict with Law and International Standards of Protection” were disseminated to UNICEF’s governmental, local and international partners. A hundred copies of the publication were provided to the University of Montenegro/Faculty of Law and the Faculty of Political Sciences for distribution among students. UNICEF also organized, each year between 2003 and 2006, a training programme for journalists on child rights and related ethical concerns.

In November and December 2006, three one-day activities on “Rights of Children in Conflict with Law – International Legal Instruments of Protection” were organized by UNICEF. All the activities took place in Podgorica, and there were approximately 30 participants in each. The training was led by an expert from the Child Rights Centre-Belgrade.84 One training was for police inspectors and other staff of the Ministry of the Interior, and two were for mixed groups of other juvenile justice professionals from throughout the country. Participants told the evaluation team that the quality of the event was good. However, providing a single day of education on this subject towards the end of the third year of the project is too little, too late. Anyway, the close working relationship that the UNICEF office has maintained with the Commission for Juvenile Justice Reform and other authorities also has contributed to enhancing their awareness of child rights and best practices concerning juvenile justice, as well as to developing their capacity (see below).

b. Policy development and related legislative and administrative reforms
During the nearly two years that passed between the publication of the situation analysis and the lobbying concerning the Criminal Code and the Code of Criminal Procedure, UNICEF gave little attention to juvenile justice in Montenegro. Its last minute lobbying for changes in the sections of these law concerning juvenile offenders fell on deaf ears. Sources close to the law reform process indicate that the whole process of law reform was focused primarily on European standards, and there is no European equivalent to the CRC.85 The evaluation team believes that the Ministry of Justice’s decision not to reform the sections of these two Codes concerning juvenile offenders probably could not have been altered, even if UNICEF had begun advocacy earlier and made a greater effort to mobilize support for the sort of amendments adopted two years later.86

UNICEF learned from the failure of this lobbying effort, and immediately adopted an effective strategy that led to the adoption of amendments to the Criminal Code that came into force in December 2006, and will provide a framework for continuing juvenile justice reform.87 But, since many juvenile justice professionals believed that implementation of diversion and restorative justice pilot projects could not

84 The same expert who prepared the analysis of the draft Criminal Code and Criminal Procedure Code in 2004.
85 There are European norms on restorative justice, which may be one of the reasons for the emphasis on this issue in juvenile justice reform in Serbia and in Montenegro.
86 The fact that adolescent offending was decreasing during this period may have contributed to the view that the adoption of new standards and procedures was not a priority. The fact that the Committee on the Rights of the Child, upon reviewing the Report of the Federal Republic of Yugoslavia in 1996, did not point to the need for law reform was not helpful. UN doc. CRC/C/15/Add.49, 13 February 1996, para.22.
87 UNICEF continues to support the adoption of a comprehensive law on juvenile justice as a medium term goal.
begin before the law was changed and relevant guidelines were adopted, most of the three years of the juvenile justice reform project was spent building the political will to achieve this.

The amendments to the Criminal Code adopted in July 2006 concern two articles. An amendment to Art.91 recognizes sentences to community service, i.e. “humanitarian, cultural, environmental or other work in the public interest.” This sentence may be imposed on any person between the ages of 14 and 18 convicted of an offence.88 An amendment to Art.80 recognizes diversion, either before trial has begun or during trial. Diversion orders can require “settlement with the victim”, school attendance, employment, community service, participation in a substance abuse rehabilitation programme or participation in therapy.89 Diversion orders may be imposed by a judge at his own initiative or at the request of a prosecutor, if the accused juvenile confesses to the crime and if the offence is punishable by a sentence of not more than 5 years.90

Four changes were made to the Chapter of the Criminal Procedure Code concerning juveniles in 2006. One of the amendments allows the prosecutor to condition the decision not to prosecute an accused under the age of 18 on his or her agreement to participate in some form of non-custodial rehabilitation.91 The amendment stipulates that the appropriate alternative shall be determined with the consent of the victim, and that the prosecutor shall “carry out the settlement procedure between the victim and offender” with the aid of a ‘specially trained person’ i.e. a mediator. If the accused does not sufficiently comply with the alternative, the prosecutor may reinitiate proceedings. Another amendment allows the judge and prosecutor to suspend proceedings, and apply an ‘educational order’.92 Both of these options apply only for offences punishable by a sentence of 3 years, or less.93

The other two amendments refer to proceedings before trial. One provides that if the prosecutor and defence attorney wish to be present at a pre-trial hearing, they must be informed of the date and time.94 The other provides that the maximum length of detention for adolescents during trial is 4 months for those aged 14 to 16, and 6 months for those aged 16 to 18 years of age.95

The Ministry of Justice has prepared draft Rules of Procedure for the application of ‘education orders,’ i.e. diversion, and is in the process of drafting procedures and regulations on community service.96 The draft Rules of Procedure seem compatible with the relevant international standards on diversion. One provision of particular interest would oblige the prosecutor to consider the possibility of diversion.97 UNICEF is supporting the development of both these instruments.

Since 2003 UNICEF consistently has taken the position that the best way to reform the law concerning juvenile justice would be to adopt a comprehensive law similar to that adopted by Serbia in 2005. The evaluation team agrees that such a law would offer an ideal opportunity to enact norms and procedures more consistently compatible with the CRC and other relevant international standards and best practices.

88 The 2004 Criminal Code recognized sentence to community service for adults. Art.41
89 Art.80c
90 Art.80a
91 Article 482a, referring to Art.91 of the Criminal Code, which recognizes a number of alternative sentences including apology to the injured party, reparation of the harm done, school attendance, employment, treatment for substance abuse and community service.
92 Art.482b, referring to Art.80a of the Criminal Code.
93 Art.482(1)
94 Art.56 of the Amendment, amending Article 486.2 of the Code.
95 Article 57 of the Amendment, amending paragraph 3 of Article 488 of the Code. (This period is measured as from the end of ‘the preparation procedure’ i.e. the investigation that precedes the decision to transfer a case to the prosecutor, which can last two months).
96 It should be noted that the Criminal Code of 2004 (Art.41) recognized sentences to community service for adults, but this provision has not been implemented because no mechanism for supervising such sentences has been established.
97 Art.6
Shortly after the evaluation mission, the team was informed that the Ministry of Justice has agreed that the adoption of such a code should be a ‘mid-term’ priority, and UNICEF hopes that work on such a law will begin in 2008. The National Commission of Juvenile Justice Reform, and UNICEF’s support to the Commission, are largely responsible for this recent change of policy.

An Institution of the Protector of Human Rights and Freedoms (Ombudsman) was established in Montenegro in 2003. Its mandate includes examining complaints that a governmental agency has violated the human rights of an individual or group, challenging the legality of laws or regulations that affect human rights, proposing changes designed to bring laws into conformity with Montenegro’s international obligations concerning human rights and publishing an annual report on the activities of the Institution. The Institution has a small team specialized in child rights, and its annual report contains a special section on this subject. In addition, an Information Bulletin on the Rights of the Child was published in 2005, and a Special Report on Juvenile in Conflict with the Law was published in 2006. The Protector supported the 2006 amendments to the Criminal Code and Criminal Procedure Code and has called for the creation of a special custodial facility for juvenile offenders in Montenegro.98 In 2006, UNICEF provided the Institution with a grant to strengthen its capacity to defend and promote the rights of children by modifying the law establishing the Institution so as to establish the statutory position of Deputy Protector for the protection of children’s rights. A draft amendment to that effect was drawn up, in consultation with civil society organizations, but has not yet been enacted.

c. Capacity building

In Montenegro, the constant exchange of information and views with the National Commission on Juvenile Justice Reform has been an important part of UNICEF’s efforts to strengthen the capacity of partners in the area of juvenile justice. According to UNICEF, the 20 persons who form part of the Commission represent nearly half of the juvenile justice professionals in the country. The evaluation team was very impressed by the knowledge and commitment of the Commission, which is no doubt due in large part to this sort of low-profile, informal yet effective capacity building.

UNICEF also supported the preparation of a draft law to amend the law establishing the ombudsman institution, in order to strengthen its capacity to deal with issues involving the rights of children, including those in conflict with the law. This act has not yet been adopted, but UNICEF has strengthened the capacity of the office in other ways, in particular study visits. The Protector and/or his staff participated in study visits to the Deputy Ombudsman for Children in Slovenia, the Ombudsman for Children in Croatia and to attend a meeting on Ombudswork for Children in Athens. In an interview with the evaluation team, the Protector indicated that these visits had been valuable in strengthening the capacity and motivation of the office in dealing with child rights issues.

Other efforts to build capacity of juvenile justice professionals in Montenegro included VOM training and study visits. Four week-long training sessions on VOM were held in Montenegro with UNICEF support in 2004.99 One was an introductory course, two were refresher courses with a component on cultural diversity and the third was a ‘training of trainers’ course. Some twenty to thirty persons participated in each of the introductory and refresher courses, approximately half from the future team of mediators expected to work in the alternative pilot project (see below), and the remainder from Podgorica. Many of the latter were members of the National Committee on Juvenile Justice Reform. A simple written evaluation of the courses was done by the trainer at the end of each, and the results were positive.100 Twenty-two persons participated in the training of trainers course. Only four of the participants were from Bijelo Polje, where the pilot project will be established, and the suggestions of the trainer as to who should be invited were largely overruled.101

98 2005 Annual Report of the Institution, pp. 82-83, 87
99 One VOM training also took place in 2003, but less information on it is available.
100 For example, 9 of 29 responses called the first course “very positive”, 14 “educational” and 8 “useful”.
101 Report on Training of Trainers in VOM, pp.1-2
The evaluation team met with members of the future Mediation Service in Bijelo Polje, and are impressed with their motivation and commitment. Several already indicated that the training has helped them to perform their ordinary jobs with more sensitivity to the needs of children. Since they have not actually begun to mediate, however, it would be premature to assess their skills.

The participation of members of the National Commission on Juvenile Justice Reform in these activities helped ensure their support for the adoption of the amendments to the Criminal Code needed to authorize mediation as a form of diversion. However, it is difficult to see the rational for providing training of trainers to persons who had not yet acquired any practical experience in the subject they were trained to train others in, especially when there was no imminent need for additional mediators and when most of the persons who received this training were not participants in the pilot project.

A number of study tours also were organized, including one to Sweden in 2004, another to the Juvenile Correctional Institution in Krusevac, Serbia, also in 2004, and one to Slovenia in 2005. Three officials from Montenegro participated in the trip to Sweden, two from the educational institution in Podgorica and one from the Ministry of Justice. The programme included visits to 4 closed facilities for juvenile offenders or children with psychiatric disorders, a municipal department of social work, a voluntary agency, the Social Work Department of the University of Stockholm and the Ombudsman for Children. The visit has had no visible impact on the policies or practices of the educational institution in Podgorica and, given the nature of the organisations visited, it would have been preferable to include representatives of other Montenegrin bodies, such as the Ombudsman and CSW. The visit to the Juvenile Correctional Institute in Krusevac, Serbia, did not have the intended outcome. The Montenegrians concluded that the principle that VOM mediation must be voluntary was not respected by VOM as practiced in the institution, and in general the participants concluded that conditions in the institution were inhumane.

d. Development of community-based alternatives
In Montenegro, the development of community-based alternatives has focused on a pilot project in Bijelo Polje. This municipality, the third largest in Montenegro, was selected as the location for the pilot project in 2004.

UNICEF began preparing a team of mediators in Bijelo Polje in 2004. Two training activities took place that year. The team meets regularly, to perform tasks such as developing forms and ‘ground rules’ for the mediation service, and preparing community outreach materials. There are now a dozen members of the team: 3 prosecutors, 2 police inspectors, 2 judges, 1 CSW staff (a special educator), 1 court clerk, 1 attorney from the legal aid programme and 2 teachers.

In 2005, it was decided that the mediation service would be integrated into a Centre providing a broader range of services. The municipality of Bijelo Polje, UNICEF, the Ministry of Justice and the Ministry of Labour and Social Welfare signed an MoU concerning the establishment of a Centre for Family and Children’s Support. The Centre is to provide a range of services, including VOM for cases involving adolescent offenders. The other services include: counselling for children and families; shelter and counselling for child victims of violence, abuse and neglect, and a child friendly space for conducting interviews of children involved in legal proceedings. UNICEF agrees to equip the Centre and provide professional support and technical assistance; the Ministry of Justice agrees to provide the services of the mediation team; the Ministry of Labour and Social Welfare, to provide the services of other professionals (notably staff of the Centre for Social Welfare) and the Municipality agrees to provide the premises and three administrative/support staff.

---

102 Two UNICEF staff members from Montenegro also participated, as well as 10 governmental and NGO counterparts from Serbia.
103 Indeed, from this time forward no Montenegrin court sentenced any juvenile to that facility. In fairness, it should be noted that the reform process in JCIK has advanced considerably since the study visit.
104 The forms (e.g. confidentiality agreement, notice of the outcome of mediation) ‘ground rules’ and the community awareness materials were all finalized early in 2006.
Mediation has not yet begun. This may be due in part to the delay in opening the Centre where such services will be provided, but the main reason is the lack of any legal provision expressly recognizing mediation as a form of diversion, prior to the 2006 amendments of the Criminal Code, and the subsequent delay in adopting the Rules of Procedure on diversion.\(^{105}\) The mediation team informed the evaluation team, during a visit to Bijelo Polje in January 2007, that no cases had yet been referred to it.

The evaluation team met with the mediation team, as said above, and was favourably impressed with their commitment. Some, including a police inspector, a judge and a social worker, indicated that the training they had received had influenced the way they fulfil their professional duties, even though mediation had not yet begun. A police inspector said that they have always exercised some discretion as to whether to refer cases to a prosecutor or not, but now they do this taking into account what they have learned in VOM and try to promote a reconciliation between the victim and the offender. The social worker said that the training has helped her with cases involving family disputes, and a judge said that, although legally her main duty is simply to determine whether an accused adolescent has committed an offence or not, she now approaches cases “with much more understanding” because “my soul became softer.”

In May 2005, the municipality of Bijelo Polje adopted a 5 year Local Plan of Action for children, which contains a part on children in conflict with the law. The local authorities and members of the mediation team said that their experience indicates that the commission by children of offences is related to dysfunctional families and the abuse and neglect of children. Consequently, although the team for treatment of child abuse and neglect was not established as part of UNICEF’s support for juvenile justice, these services are considered part of an effort to prevent offending by children.\(^{106}\) Although support for the mediation team has not been matched by support for the development of new forms of prevention, for implementation of other forms of diversion or alternative sentences (e.g. community service, or daily participation in rehabilitation programmes) or for post-release support for social reintegration, UNICEF recognizes the need for a more balanced approach and hopes that the pilot project will evolve in that direction.

c. Reform of residential institutions
The Children’s Chance for Change Project somewhat anomalously envisages activities concerning the policies and programmes of custodial facilities for juvenile offenders as part of the “community-based alternatives” sub-project. Be that as it may, ensuring that such facilities respect the rights of the residents and effectively help them reintegrate into their communities is an essential part of juvenile justice reform. The need for reforms in this area was more pronounced in Serbia, at the time the project began. This is due in part to the presence of institutions of a kind that did not exist in Montenegro, and in part differences in the size of the two countries and the nature of juveniles offending.

The situation report nevertheless expressed a number of concerns about the educational institution at Podgorica. They include: the lack of training of the staff; the lack of genuine rehabilitation programmes; the denial of family visits as a disciplinary measure and the lack of a complaints procedure.\(^{107}\) UNICEF support for reform of this facility has been very limited, thus far. In 2005, UNICEF planned to support the establishment of a team of experts that would prepare a plan for the transformation of this facility, but the Ministry began work on a plan with the support of Save the Children\(^{108}\). Two staff members also form part of the National Commission on Juvenile Justice Reform, and in that capacity have participated in certain awareness and training activities, and study visits to Sweden and Krusevac, Serbia.

\(^{105}\) The Rules were drafted late in 2006, but had not been adopted at the time of the mission.

\(^{106}\) UNICEF supported this team, and six others in different municipalities, as part of a programme on the protection of children against abuse and neglect.

\(^{107}\) p.38

\(^{108}\) The work on this plan came to a standstill, and in February 2007, after the evaluation mission, a new working group was convened to develop such a plan. UNICEF is a member of this new working group.
An evaluation conducted by a UNICEF consultant in December 2005 concluded that the attitudes of the staff had evolved in a positive sense as a result of inclusion in these activities, and that the services offered “could soon achieve an even higher level, which would be close to satisfying the real needs” of the children living there. This suggests that the need for reforms was not compelling. Nevertheless, he did express strong reservations about the idea that this facility should assume additional functions, indicating that it would be preferable to envisage a decentralization of this function by the creation of ‘mini-institutions’ in several locations throughout the country.109 The Special Report published by the Ombudsman in 2006 expresses a more critical view, stating that “juvenile offenders are deprived of a series of rights including the right to treatment in compliance with [their] psycho-social characteristics… during custody.”110

The evaluation team visited this facility and interviewed the Director and two staff members. The team concluded that, although the staff are sensitive to the needs of the offenders who are admitted there, the facility does not have any programme specifically designed to meet their needs. The staff themselves did not raise this issue or show recognition of the need to offer special programmes for the offender population. They did express the view that there is a need for ‘half-way houses’ for children released from custodial facilities, a conclusion that the evaluation team believes should be given serious consideration in the development of a comprehensive plan for the rehabilitation of children who have committed offences (see part conclusions and recommendations).

After the evaluation mission, UNICEF informed the evaluation team that a working group to prepare a new plan for the transformation of the existing facility had again been formed. Both UNICEF and SCF will participate in the working group, together with the Ministry of Health, Labour and Social Welfare and the Ministry of Justice.

**f. Cross-cutting activities of particular relevance to juvenile justice reform**

UNICEF has been supporting the development of a data collection and management system called DevInfo, which is designed principally to monitor implementation of the National Plan of Action for the Rights of Children. The main counterpart in this activity is MONSTAT, the Montenegro Statistical Agency.111 A DevInfo Task Force composed of all the Ministries and public bodies responsible for implementing the national plan meets annually. In so far as juvenile justice is concerned, DevInfo is supposed to incorporate relevant data provided by the concerned ministries and other agencies, including the Ministry of the Interior, the court system, the Supreme State Prosecutor. The system is not yet fully operational, however, and the evaluation team found that it is not yet being used in the development of plans and policies regarding juvenile justice.

### 13 EVALUATION OF UNICEF’S SUPPORT TO JJ-REFORM

#### 13.1 UNICEF’S STRATEGY FOR JJ-REFORM

UNICEF’s strategy to juvenile justice reform is not clearly spelt out in any single document. Nevertheless, the main elements of the strategy, as it was developed and implemented, are fairly clear. They include:

- support for the establishment of the National Commission on Juvenile Justice Reform;
- capacity building, through training and above all constant exchange of information and views with the National Commission on Juvenile Justice Reform

109 p.88
110 From an advance copy of the English version.
111 MONSTAT also compiles and published data on the justice system independently of the DevInfo project. Data on offences, prosecution and sentencing is disaggregated by the legal status of the offender (adult/juvenile) and published in the Statistical yearbook, a valuable source cited in this report.
- advocacy for comprehensive law reform, but pragmatism and flexibility in supporting partial reforms in the short term
- incorporating juvenile justice reform into the national plan of action for children
- using support for local plans of action for children as an opportunity for supporting community-based prevention and non-custodial diversion programmes
- emphasis on diversion, especially VOM
- support for the Ombudsman as an independent monitor of the rights of children in conflict with the law

In general, this strategy was well adapted to the special circumstances prevailing in Montenegro during the relevant period. The UNICEF staff are well attuned to the political and social factors that influence the pace of reform, and have been flexible and pragmatic in adjusting their plans and objectives. One aspect of the strategy that was particularly successful, was giving a voice to juvenile justice professionals who are both committed to the rights of the child by supporting the establishment of the National Commission on Juvenile Justice Reform. Both UNICEF and the members of the Commission consider that this step has been the key to the success achieved in the process of juvenile justice reform thus far. Support for the office of the Ombudsman and its small child rights team also has been another of the most successful aspects of this strategy.

13.2 GENERAL OBSERVATIONS ON RELEVANCE, EFFECTIVENESS, EFFICIENCY, SUSTAINABILITY AND THE USE OF RESULTS-BASED MANAGEMENT AND THE HUMAN RIGHTS BASED APPROACH

UNICEF’s involvement in juvenile justice reform is relevant, in the sense that the system was not fully compatible with the Convention on the Rights of the Child and related international instruments. However, it was not as urgent as juvenile justice reform was in the other countries. The government of Montenegro did not consider this a priority, and civil society was not advocating juvenile justice reform. The number of children being sentenced to custodial facilities was not large.112 The Committee on the Rights of the Child had not made any comments specifically about juvenile justice in Montenegro. In retrospect, it seems likely that UNICEF would have not decided to give priority to juvenile justice reform in Montenegro, had it not been, at the time the decision was taken, part of Serbia and Montenegro. It is to UNICEF’s credit that it managed to create a commitment to juvenile justice reform on the part of the government, despite considerable resistance. It did this largely by reaching out to juvenile justice professionals, who were aware of the need for reform, and empowering them through the creation of the National Commission for Juvenile Justice Reform. So, despite UNICEF activities in support of juvenile justice reform in Montenegro can’t be considered as perfectly ‘timely’ (meant as a mix of need and opportunity), UNICEF’s activities had anyway the value of helping the law reach greater conformity with international standards and best practices.

As far as the choice of activities is concerned, more efforts could have been made to promote awareness of the need for juvenile justice reform during the time between the publication of the situation analysis early in 2002 and UNICEF’s advocacy regarding the new Codes late in 2003. On the positive side, only in Montenegro (and Serbia) did UNICEF support efforts to establish or improve data collection systems concerning juvenile justice and did include a component calling for strengthening the capacity of ombudsmen to monitoring the situation of the rights of children, including children in conflict with the law. These two monitoring and supervision related activities have been very appropriate and should be further strengthened in future. It is worth mentioning that UNICEF office in Montenegro was able to

---

112 There is only one facility for juveniles convicted of offences in Montenegro. The situation analysis does not cite any statistics on custodial sentences, but mentions that the director estimated that the population of child offenders averaged around 10 persons. (p.17). Recent statistics indicate that 7 persons between the ages of 14 and 18 received custodial sentences in 2005. (Statistical Yearbook, Table 26-8)
actively influence the preparedness and qualifications of most juvenile justice professionals, even if funds available for capacity building activities were not that big. A sort of low but effective profile has been indeed adopted, by using the meetings of the National Commission on Juvenile Justice – which almost half of Montenegro’s juvenile justice professionals participate in – as an occasion for information sharing and mutual learning.

As far as coordination and complementarity are concerned, the report has already emphasised that UNICEF has hold good and fruitful relationships with most of the actors involved in juvenile justice reform. Cooperation with some bilateral donors and international NGOs, though, should be further improved.

In general, it is not easy to judge whether the results obtained in juvenile justice reform should be considered ‘satisfactory’ with regard to stated objectives (effectiveness). Most of the goals of the programme implemented in Montenegro from late 2003 to the end of 2006 were originally defined as part of the Children’s Chance for Change programme, designed to be implemented in Serbia and Montenegro. None of those goals referred specifically to Montenegro, and most of the general goals, as stated in the part of this evaluation concerning Serbia, were defined in rather vague terms. This being said, it is clear that most of the goals pursued during this period, including those defined subsequently in the relevant part of the NPA or in annual work plans, were not fully achieved according to plan. UNICEF planned to support the drafting of a comprehensive law on juvenile justice, but after more than two years of effort it was only able to convince the government to amend the Criminal Code and Code of Criminal Procedure, and some of the most significant changes in the amended Codes have not yet been put into practice. No significant improvements had been made in the custodial programmes for the rehabilitation of juvenile offenders; the main community-based pilot project is not yet operational, and training of juvenile justice professionals has been very limited. All these matters are considered in more detail elsewhere in this report. The most significant exception concerns the Ombudsman, whose reports are making an important contribution to juvenile justice reform, despite the fact that UNICEF’s goal of encouraging the adoption of a law establishing a Deputy Ombudsman specialized in child right has not yet been realized.

The fact that progress towards stated goals has been slow does not necessarily mean that UNICEF has not worked effectively. It may mean that the original plans were not realistic. In some specific components, in particular law reform, which was a prerequisite to progress in some other areas, such as the implementation of the community-based diversion pilot project, the evaluation team believes that the original objectives were not realistically capable of implementation in Montenegro during the 3 year duration of the original project. In some other areas, such as community-based alternatives, the evaluation team believes that it may have been possible to make greater progress during these three years, especially if the aims and objectives had been interpreted more broadly or flexibly. The views of the evaluation team on these issues are described in more detail elsewhere in this report.

In so far as efficiency is concerned, UNICEF invested approximately US$390,000 in juvenile justice reform in Montenegro during the period 2004-2006. Juvenile justice reform is a complex area, in which there are no guidelines as to how a cost benefit analysis of investments might be made. Nevertheless, the evaluation team believes that this investment cannot be considered justified by the concrete results obtained during this period. The results obtained in law reform fall short of UNICEF’s goals, and thus far have had little impact on practice. The community based diversion project is not yet operational, no progress has been made in reform of custodial facilities and training has been very limited. It is true that the groundwork for has been laid, through the creation of the National Commission on Juvenile Justice Reform, study visits, VOM training and strengthening of the Ombudsman’s child right team and other activities described elsewhere in this report, for further improvements in juvenile justice in Montenegro. The investments made during 2004-2006 have not appeared proportionate to the concrete results obtained thus far. Nevertheless, after the field mission was completed, UNICEF informed the evaluation team that the European Agency for Reconstruction has decided to give UNICEF a two-year grant to continue the process of juvenile justice reform. This development adds considerable weight to the expectation that the investments made by UNICEF during 2004-2006 will soon have contributed to more substantial concrete results.
Some of the results obtained thus far appear to be sustainable, but others do not. There is every reason to believe that the child rights team of the Ombudsman, which is not dependant on external support, is a permanent feature. The National Commission on Juvenile Justice Reform is not depend on UNICEF support, and appears to be sustainable. Both of these accomplishments are important, because they will help sustain momentum of the movement towards reform. Normally, the adoption of new legislation can be seen as a development that is sustainable almost by definition, because the adoption of a law represents a commitment by the government to comply with such law. The evaluation team hesitates to take this view with regard to the amendments to the Criminal Code of Montenegro, because there are precedents of laws that are adopted but not implemented, and implementation of the alternative measures has not yet begun. While it appears certain that one pilot project will become operative in the very near future, the pilot project is presently focused on only one of the forms of diversion recognized by the new legislation. The government has made a formal commitment, in a MOU, to taking VOM to scale nationally, but one would expect and that implementation this particular form of diversion throughout the country would depend on the results of the pilot project, which of course remain to be seen. Progress made in other areas, such as training of juvenile justice professionals and reform of correctional programmes, also is too limited or incipient for sustainability to be an issue.

As far as the use of results-based management tools is concerned, the project description, as indicated in the section of this report on Serbia, contains some of the elements of a logframe, but does not contain the kind of ‘results chain’ or ‘results framework’ prescribed by UNICEF programme management tools113. The risk analysis it contains does not recognize the difference between conditions in Serbia and Montenegro. Moreover, the strategy rightly considers interest in meeting requirements for membership in the European Union to be a positive factor, but does not expressly foresees any line of action to leverage on this opportunity. More attention to this aspect will be needed.

Shortly after implementation of the Children’s Chance for Change project began, the Republic of Montenegro adopted a Plan of Action for Children which contained four objectives on juvenile justice. Inclusion of juvenile justice reform in a National Plan of Action designed to be implemented over a longer period of time (in this case 2004-2010) is important, because significant juvenile justice reform almost always requires a sustained longer-term effort. The relevant part of this NPA includes prevention, training, bringing the administration of justice into compliance with international standards and the creation of new, community-based alternatives. In this sense, it can be considered comprehensive, but the specific activities and indicators corresponding to these areas fall far short of what is actually required to reform juvenile justice in Montenegro, as indicated elsewhere in this report.

Activities concerning juvenile justice project were included in the annual work plans of the Podgorica office, but there was no annual review of progress in the implementation of the project as such.

In so far as the human rights based approach to programming is concerned, no special effort has been made to take the needs of girls or children of ethnic minorities into account in the planning or implementation of this programme, to date114. Nor is there any ongoing effort to take the views of adolescents into account in any of the activities supported by this programme, or in the orientation and implementation of the programme itself.

113 See Understanding Results-Based Programme Planning and Management, p.4.
114 Except ‘diversity’ training for mediators.
13.3 SPECIFIC FINDINGS

13.3.1 Reforming policy, legal framework and Government programmes on juvenile justice

"To what extent have UNICEF activities influenced the contents of revised policy, legal and Governments programme framework of in the following areas: (relevance and impact)

- Prevention of delinquency?

UNICEF supported development of the NPA, which includes an objective regarding the adoption and implementation of a strategy for the ‘prevention of socially unacceptable behaviour’, which apparently is considered a form of prevention of offending. A national programme for the prevention of such behaviour was subsequently developed, too, but UNICEF did not participate in that exercise. The use of such terminology is not compatible with the CRC and related international standards concerning the rights of children, as stated elsewhere in this report.

- Use of deprivation of liberty only as last resort and for shortest possible period of time?

The amendments of the Criminal Code and Criminal Procedure Code adopted in 2006, because they authorize new forms of diversion and non-custodial sentences, should, in principle, result in greater compliance with the ‘last resort’ principle, once they are applied in practice, even tough the new legislation does not expressly incorporate this principle as such.

No amendments have been made to legislation concerning the length of sentences for persons under the age of 18 convicted of an offence, nor to regulations concerning their release prior to serving their sentence.

- The quality standards for children in detention in conformity with the law. (Separation of children from adults, maintaining contacts with parents, respectful treatment, access to legal and other assistance)?

No, UNICEF activities have not yet influenced the content of law or government policies or programmes in this regard.

- Implementing restorative justice measures instead of punitive approach (ensuring physical and psychological recovery and social reintegration)?

UNICEF activities have resulted in the adoption of legislation authorizing the imposition of five kinds of diversion measures, all of which are calculated to contribute to the physical and psychological recovery and social reintegration of the child in question. However, none of these measures are yet being implemented, and preparations are being made to implement only two of them.

- System of laws, procedures, authorities and institutions specifically developed for children?"

Thus far, UNICEF activities have not led to the enactment of any new laws, or the establishment of any new authorities or institutions, specifically for juvenile offenders.115

115 They have, as indicated above, resulted in the amendment of some important laws concerning both juvenile and adult offenders, as well as the adoption of other important laws benefiting children and adults, in other areas (e.g. Family Law, Law on the Prevention of Family Violence).
"To what extent was UNICEF ensuring that changes in policy, legal and Govt programmes in JJ were prioritizing the most urgent problems and based on a thorough situation analysis? (relevance and results based management)"

It is difficult to conclude that the situation analysis prepared in 2002 was a ‘thorough’ analysis of the situation of juvenile justice in Montenegro. The executive summary of the situation analysis is almost identical to that of the situation analysis of Serbia\footnote{Only two paragraphs are substantially different, apart from substituting the word ‘Montenegro’ for the word ‘Serbia’.} – then federated with Montenegro – although in reality there were substantial differences between the two countries.

Given these doubts over the accuracy of the 2002 situation analysis, it is difficult to say which, if any, problems regarding juvenile justice should have been considered ‘urgent’ when UNICEF support for juvenile justice reform began.

The information that has emerged since support for juvenile justice reform in Montenegro began suggests that that, although many issues are important, the only one that might be considered ‘urgent’ is that of delay in adjudicating cases involving juvenile offenders.\footnote{See the Special Report of the Ombudsman, 2006.} The amendments to the law made in 2006 establish a limit of 6 months for trials of juvenile offenders, which suggests that, since UNICEF was instrumental in the adoption of these amendments, it did succeed in ensuring that priority was given to “the most urgent problem”.

13.3.2 Development of professional capacity relevant for juvenile justice (law enforcement, administrators of justice, social workers)

Which professionals (law enforcement, administrators of justice, social workers, others) did UNICEF include in activities related to professional capacity development and was the selection strategic and sufficient to influence the functioning of the JJ system? (relevance)

UNICEF’s main capacity building activity has been support for the National Commission on Juvenile Justice Reform, on which all relevant professional sectors are represented. Support for the creation of this Commission was strategic, and was sufficient to influence the law concerning juvenile justice. Some of the changes made in the Criminal Procedure Code and in the Police Law have had a positive impact on the functioning of the juvenile justice system; other important amendments to the Criminal Code have not yet had an impact on the functioning of the system, although it is probable that they will in the near future. The capacity-building directed to the Ombudsman has had a clear impact on the work of that institution. The Ombudsman’s involvement in juvenile justice has yet to have a perceptible impact on the functioning of other institutions, but has contributed to the taking of decisions (e.g. the revival of a working group on reforming the ‘educational institution’) designed to improve the functioning of the system.

What types of strategies for professional capacity development and accountabilities were used and were they sufficient to influence the way professionals in the JJ system operate? (relevance):

The strategy used thus far consisted in large part in support for strengthening the capacity of the National Commission on Juvenile Justice Reform. Although the main aim of activity has been to promote reform on the macro level (e.g law and policy reform), improving the way participants carry out their normal functions has been a valuable side benefit. The VOM paraprofessional training programme likewise has helped professionals from various sectors who have participated improve their interaction with juveniles. However, no strategies have been adopted to build the capacity of all the professionals in any specific sector, and efforts to support capacity building indirectly through supporting intersectoral groups whose
main purpose is other (e.g. law and policy reform in the capital, mediation in Bijelo Polje) have not yet been organized throughout the country.

To what extent did UNICEF activities influence an enhancement in professional capacity and accountabilities directly related to international minimum standards in the area of JJ (impact)

UNICEF activities have not enhanced professional accountability, nor has formal training designed to enhance professional capacity been organized with UNICEF support to date. However, the ongoing work on law reform and participatory planning of the diversion pilot project have enhanced the professional capacities of the members of the National Commission on Juvenile Justice Reform and the mediation team in Bijelo Polje. While the change in their professional capacity has not been formally and objectively evaluated, neither in general nor specifically with regard to international standards, the focus group discussions with the National Commission for Juvenile Justice Reform and the mediation team, and separate interviews with several members of the former, all suggest that many of the members have a good general acquaintance with the relevant international standards.

To what extent did UNICEF activities contribute to a “change in mindsets” of personnel working in the area of juvenile justice towards juvenile offenders? (impact)

In general, the attitudes and values of the juvenile justice professionals interviewed by the evaluation team are consistent with those underlying the CRC and other relevant international standards. It is somewhat speculative to form an opinion as to the extent to which this is due to UNICEF activities, because some professionals in different sectors (e.g. the judiciary and corrections) credibly claim that they have long held such views. UNICEF supported activities certainly have reinforced child-friendly attitudes and values, and given the professionals holding them greater influence in policy-making. This in turn has contributed to (and continues to contribute to) changes in the ‘mind-set’ of policy makers in local and national government who are not juvenile justice professionals.

To what extent were UNICEF activities in capacity development based on an analysis of identified gaps in professional capacity? (relevance and results based management)

The study visits described elsewhere were based on a correct analysis of the needs of different professional sectors, although some of the visits did not have the expected results. The need for training in VOM was self-evident, since mediation did not exist in Montenegro.

The capacity building that has taken place informally as a by-product of the formation and work of the National Commission on Juvenile Justice Reform cannot be said to be based on an analysis of gaps in professional capacity, because the Commission was created for other reasons and its membership comes from a wide variety of professions.

To what extent were users and beneficiaries of capacity building activities satisfied with the services provided to them? (effectiveness)

Participants in study visits were partially satisfied with them. One of the small number of Montenegrin officials who participated in the study visit to Sweden indicated that he appreciated the opportunity to see Swedish institutions, but had learned little that helped him in his work. Participants (other than the Ombudsman) also indicated that they had been disappointed with the study visit to Slovenia, and learned nothing of practical use in the visit to Krusevac, Serbia.

In contrast, the Ombudsman and members of his staff indicated that they had learned a great deal in the study visit to Slovenia and Croatia, and a meeting of ombudsmen for children in Greece.
13.3.3 Development of community based services and coordination between sectors

To what extent were UNICEF activities successful in developing community based services for children in conflict with the law and in promoting coordination and synergy between different sectors in any or several of the following aspects of juvenile justice programme: (impact)

- Prevention of delinquency among juveniles (such as community support models)

UNICEF, as indicated above, supported the development of the NPA, which contains objectives regarding the prevention of offending. The Ministry of Health, Labour and Social Welfare has primary responsibility for prevention, and has developed a national plan of action, with the assistance of Save the Children. UNICEF did not participate in the development of this plan, nor in its implementation. It does, however, support activities aimed at the protection of children from abuse and neglect in six communities, which are a form of primary prevention. The Centre for Family and Children Support expected to open in Bijelo Polje in 2007 will offer activities of this kind together with mediation and other services, and may eventually develop into a model for community-based prevention efforts.

- Restorative justice for children in conflict with the law (such as diversion of children away from the formal criminal justice system and alternatives to deprivation of liberty)

UNICEF training and advocacy has resulted in the preparation of two groups of VOM mediators, and preparations for the establishment of a pilot project offering VOM are in an advanced stage. Mediation has not yet begun, however, and UNICEF has not yet begun to support the development of programmes for the other kinds of diversion and non-custodial sentences recognized by the law.

- Rehabilitation and reintegration services in the community (also for children coming out of closed institutions)

UNICEF has not supported the development on any community-based rehabilitation and reintegration services, apart from VOM. (see above)

- Improvement in the treatment and care of children in closed institutions and the promotion and protection of the rights of children deprived of their liberty

UNICEF has not supported any activities of this kind, except by the inclusion of staff from the educational facility for juvenile offenders and other children in need of residential care in study visits and other activities addressed to juvenile justice professionals from all sectors.

The promotion and protection of the rights of children deprived of their liberty has been supported indirectly, by support for the Ombudsman who has devoted considerable attention to this issue. The Ombudsman is not a ‘community-based’ service, however.

- Links to community based care models within the overall de-institutionalization process for the country?

In Montenegro, UNICEF support for community-based de-institutionalization focuses on children with special needs (disabilities). There is little link with juvenile justice reform.

To what extent did UNICEF activities contribute to triggering an enhancement of the coordination and synergy between different sectors in the JJ system? (impact)

UNICEF support for creation of the National Commission for Juvenile Justice Reform has significantly improved cooperation between most of the ministries, institutions and agencies involved in juvenile justice. However, the Commission does not include representatives of civil society, nor the court for petty
offences, nor the Ministry of Health, Labour and Social Welfare, as such, which limits the breath of cooperation.\textsuperscript{118}

To what extent were professional in different sectors (justice, law enforcement and social welfare) satisfied with the new mechanisms/strategies put in place to enhance coordination and synergy? \textbf{(effectiveness)}

The members of the National Commission on Juvenile Justice Reform expressed great satisfaction with the role of the Commission. Members of the mediation team in Bijelo Polje, most of whom are juvenile justice professionals from different sectors (see above) also stated that their participation in VOM training and other activities has led to a substantial improvement in their cooperation in routine handling of cases of accused juveniles.

\textbf{13.3.4 Improving monitoring, data collection systems and supervision of juvenile justice system and situation}

How have the UNICEF supported activities, projects and/or strategies been linked to Government’s own databases and/or M&E systems in the area of juvenile justice? \textbf{(results based management)}

UNICEF has supported the development of DevInfo, a data base for monitoring implementation of the NPA, which collects data on juvenile justice.

To what extent did UNICEF meet its planned outputs and outcomes related to improving monitoring, data collection systems and/or results based management of the Government? \textbf{(effectiveness)}

Children’s Chance for Change, the 3 year project concerning juvenile justice reform in Serbia and Montenegro, did not contain any planned outputs or outcomes related to the improvement of monitoring, data collection systems and/or results based management in Montenegro, except in as much as strengthening the capacity of the Ombudsman can be considered monitoring. The planned outcome of UNICEF’s support for the Ombudsman was not clearly defined, but its support for the Ombudsman has had very positive results.

The NPA adopted shortly after implementation of the juvenile justice reform project began contains four objectives concerning juvenile justice. Some of the corresponding indicators (eleven in all) concern outputs.\textsuperscript{119} The NPA foresees monitoring progress made in achieving all the goals by MONSTAT, and UNICEF’s work plan for 2006 included the ‘handover’ of DevInfo, described as a “child rights based information monitoring system and data collection”.

What type of strategies did UNICEF use to improve monitoring, data collection systems and/or results based management of the Government in the area of JJ? \textbf{(relevance)}:

UNICEF’s strategy was to include a monitoring system in the design of the NPA, and assist the national statistic agency in the development of a data collection system that collects data regarding progress made towards the objectives contained in the NPA. The Ministries responsible for implementing each part of the NPA have a legal obligation to provide MONSTAT with the information it needs, and a Task Force comprising MONSTAT and all such entities meets annually. The data is to be evaluated by the Commission for the Protection and Promotion of Children’s Rights. There is no more specialized mechanism for monitoring or data collection specifically concerning juvenile justice.

\textsuperscript{118} As indicated above, the CSW and residential facility for young offenders (and other children) do participate.
\textsuperscript{119} E.g. “number of peer education programmes developed”, “number of day centres and group homes established”, number of trainings conducted”, information sheet published” and .. ‘in circulation’.
Were these strategies sufficient to influence they way the JJ system is monitored? *(efficiency)*

No. The 2006 report on implementing the NPA contains four paragraphs on developments concerning juvenile justice, including one containing some data on offences committed by juveniles during the period 2004-2006.\(^2\) This data is relevant to the part of the overriding goal that calls for a reduction of offending by persons under the age of 18, but it is inconclusive and, more importantly, the Report does not analyze or comment upon its implications. Some of the information contained in the part of the Report concerning juvenile justice is relevant to one or two of the relevant, non-quantifiable objectives of the NPA, notably “administration of juvenile justice is reformed according to international standards”, but no effort is made to systematically and objectively assess the progress made towards all the relevant objectives and indicators.

To what extent did UNICEF activities trigger an enhancement of monitoring-, data collection systems and/or results based management of the Government in the area of juvenile justice in any of the following areas: *(impact)*

- Building and/or strengthening M&E systems for services and professionals in JJ system?

See the answer to the previous questions.

- Building and/or strengthening coordination mechanisms for data handling (such as databases)?

See the answer to the previous questions.

- Encouraging and/or influencing transparency and accessibility of data?

The data contained in the database is public, and any interested agency, organization or individual can request the software necessary to access it.

- Development and implementation of specialized studies or surveys?

As specialised studies or surveys are concerned, the Ombudsman’s special report on juvenile justice was developed. Furthermore, during 2006 the Juvenile Justice Commission was involved in the preparation of a Guideline for juvenile justice professionals for work with juveniles in conflict with law in line with international standards. Finally, UNICEF Montenegro was requested by the Parliament to conduct an assessment of compliance of national child-related legislation with international standards, including those governing juvenile justice. The assessment was prepared by Child Rights Center Belgrade’s experts in December 2006.

- Building and/or strengthening of indicator frameworks?

This activity is still pending.

Have the Governments put in place any mechanisms and financial budget allocations to ensure continuation of monitoring, data collection systems and/or results based management of JJ-system? *(impact and sustainability)*

MONSTAT has assumed responsibility for DevInfo, and plans to continue supporting this database.

\[^2\] This data shows an increase from 2004 to 2005, and a decline during the first half of 2006.
To what extent were professionals in justice, law enforcement and social work sectors satisfied with new M&E systems? (effectiveness)

None of the professionals whom the evaluation team asked whether or not they had consulted DevInfo had ever done so.

13.3.5 Creating an environment for change (public)

Have the activities, projects and/or strategies used by UNICEF contributed to empowering disadvantaged children and families? (human rights based approach)

No. None of the activities supported by UNICEF regarding juvenile justice have yet been implemented in communities. Most of the work done by the Ombudsman on juvenile justice is based on investigations undertaken at the initiative of the office, not complaints from children or their families.

Was information accessible in the language of different minority groups? (human rights based approach)

No. Information regarding juvenile justice was not, and is not, available in Albanian or the Roma language.

14 CONCLUSIONS AND LESSONS LEARNED

14.1 IMPACT

There have been some important achievements during the implementation of this project during the period 2004-2006. In the area of law reform, a range of diversion orders and non-custodial sentences are now recognized; deadlines intended to reduce delays in the adjudication of cases against accused adolescents have been introduced and the law governing police procedures has been amended to incorporate new provisions on the rights of children. More remains to be done, but what has been accomplished is significant, both from the perspective of the obstacles overcome and because of the potential consequences for children, once these new norms are fully implemented. The child rights team in the Office of the Ombudsman is playing a very positive role in drawing attention to laws and practices that need to be changed in order to meet international standards on the rights of children in conflict with the law. The National Commission on Juvenile Justice Reform has become an important mechanism for advocacy vis-à-vis policy makers and for cooperation and exchange of information between relevant sectors. The groundwork for a community based pilot project on diversion and prevention has been laid. Many professionals from different sectors, including the police, prosecutors and judges, have obtained a better understanding of international standards and best practices, and are committed to pursuing reform of the system.

Progress in other areas has been slow, and much still remains to be done, as indicated below. However, it can be affirmed that UNICEF is the only intergovernmental actor that has been looking at juvenile justice system reform holistically. More than this, discussions with all main stakeholders in Montenegro have confirmed that what has positively taken place in the last three years regarding juvenile justice reform, would have not happened without the work of UNICEF.

---

121 The project has been extended six months, and will end in June 2007.
14.2 **LESSONS LEARNED AND OPPORTUNITIES**

14.2.1 **Plan of Action 2004-2010**

The fact that juvenile justice reform was incorporated into the Plan of Action for children is very positive, and most of the activities incorporated into the relevant part of the Plan are valuable ones. There are, however, some difficulties with this part of the Plan, as well as with the monitoring mechanism and with the progress made thus far in implementation.

One difficulty with the Plan concerns the part of the general goal in that refers to a decrease in the “number of children in conflict with the law”. The indicator for this is the “Number of children who have been reported for any form of illegal activity.” The Statistical Yearbook defined “reported juvenile” as “an under-aged person against whom legal proceeding have not been initiated (criminal charges dropped), and against whom preparatory proceedings are suspended or the charge motion submitted to a juvenile court…” A decision not to proceed can be taken for different reasons, including a decision on the part of the prosecutor that it is not in the interest of justice to proceed, even though the individual has committed an act punishable by law. However, it can also mean that there was not sufficient evidence to prosecute, that is, that there is not sufficient evidence that an offence was committed, or the individual being investigated was responsible for the act in question. Statistics for 2005 indicate that approximately 40% of the children aged 14 to 18 ‘reported’ that year were not prosecuted.122 Some unknown part of those 84 children did not commit an offence.123 This raises a question as to whether the number of cases ‘reported’ is the most reliable indicator of the number of children who commit offences. (It should be noted, parenthetically, that the number of children ‘reported’ has been in decline since at least 2001, before the project began and before the Plan was adopted.)124 This is not to suggest that the indicator of children accused or convicted would be a more reliable indicator of the number of offences committed by children, which is relevant to the effectiveness of prevention efforts. These indicators also are not reliable, because of the unknown number of cases that are not prosecuted for reasons other than insufficient evidence that the suspect did commit an offence. The ideal solution would be either to conduct a survey of offending by juveniles, which would detect even unreported offending, or to modify existing data collection parameters to be able to differentiate between cases that are not pursued because of doubts as the existence of an offence or the identity of the offender, and other reasons. At the least, reporting should not be singled out as the only relevant indicator, if only because it perpetuates the prejudicial misconception that any child investigated for an offence can be presumed guilty.

Similarly, the stated aim of “preventing socially unacceptable behaviour” is an unfortunate choice of words, from the perspective of child rights. One of the most fundamental principles of human rights is that every person should be free to engage in any conduct that is not prohibited by law. It may be that this principle should not be read too generously, where children are concerned, given their duties towards their family and institutions like the school.125 Nevertheless, adolescence is a stage of life in which the healthy development of one’s own personality, independence and, indeed, sense of social and moral responsibility, requires a certain amount of experimentation and, for many, challenging social norms. It is true that delinquency prevention may legitimately aim at preventing some dangerous behaviour regardless of whether or not it legally constitutes an offence. Nevertheless, identifying the prevention of ‘socially unacceptable behaviour’ as an aim of this project does not seem in harmony with the vision of the rights of children that underlies the CRC.126

---

122 212 cases were reported, 128 accused and 109 convicted. Statistical Yearbook 2006, tables 26-5, 26-7 and 26-8.
123 This appears to be confirmed by the fact that, during the last 5 years for which data is available, from 10% to 25% of juveniles aged 14 to 18 tried for an offence are not convicted. Ibid, Tables 26-8 and 26-10.
124 Data cited during the meeting between the evaluation team and the National Commission on Juvenile Justice Reform.
125 See generally Art.5 of the Convention on the Rights of the Child.
126 This plan was developed with the aid of Save the Children-U.K.
Some of the indicators identified in the Plan of Action seem somewhat superficial. The “number of trainings conducted” and number of persons who attended them, for example, says nothing about any change in their skills, attitudes or performance – in contrast to the better indicator regarding the training of judges. And the publication and circulation of an ‘information sheet’ seems to be a poor indicator of whether young people have been ‘educated’ regarding anything, not to mention a very modest output for an activity that is to be carried out over the course of several years.

Since the National Plan of Action includes some goals regarding juvenile justice, it is logical and positive for DevInfo to collect data that can be used to monitor progress in attaining the goals regarding juvenile justice. However, none of the indicators identified in the NPA itself directly concern to the treatment of children in conflict with the law.127

14.2.2 The law reform process

The Criminal Code adopted in 2004 recognized one new alternative to custodial sentences: sentences to day-time attendance at facilities for juvenile offenders. No facility of this kind ever existed in Montenegro, however, and even when Montenegro was in federation with Serbia, it would have been physically impossible for convicted juveniles from Montenegro to attend a facility in Serbia on a daily basis. Implementation of this alternative would have required establishing a facility of this type in Montenegro, or amending the law so that this sentence could be served in another kind of facility, and creating the relevant services. The 2006 amendments to Criminal Code did not address this issue, however, nor has any effort been made thus far to establish the appropriate services for the rehabilitation of juvenile offenders, which some offenders could participate in during the day. UNICEF states that the Centre for Family and Children’s Support in Bijelo Polje will assume this function, but the evaluation team did not see any indication that preparations for offering this service, or steps to change the relevant law, are underway. The failure to make any progress towards putting this alternative sentence into effect is very unfortunate.

The availability of the diversion orders, as recognized by the 2006 amendments to the Criminal Code, is limited. They cannot be applied to children aged 14 to 18 accused of a petty offence128, nor to children under the age of 14 who have committed a criminal act, nor to children accused of an offence punishable by a sentence of more than 5 years. The number of offences punishable by a term of imprisonment of 5 years or more relatively limited, so reconsideration of this limitation does not seem urgent.129 There does not appear to be any valid reason, however, why victim-offender mediation should not be made available to children accused of a petty offence, or children under the age of 14 who have committed a criminal act. Indeed, the pamphlet developed by the mediation team in Bijelo Polje to make the community aware of the services they intend to provide indicates that mediation will be available in a broad range of situations, including ‘petty offences’, cases involving ‘offenders’ under 14, school conflicts and conflicts between an offender and the community. Lawyers consulted by the evaluation team differed on whether this is legally possible or not. The evaluation team can only conclude that the delay of more than two years in beginning to mediate is due to a combination of reasons, including the time required to amend the Criminal Code and adopt the necessary secondary legislation, uncertainty as to the legality of mediation for offences not governed by that Code, and the time required to plan, finance and set up the Centre in which the mediation team will work.

127 E.g. ‘the number of experts attending training’ or ‘the number of day centres established.’
128 ‘Prekrsaj’, sometimes translated into English as misdemeanour.
129 Examples, in addition to homicide, include rape, punishable by 2 to 10 years imprisonment; grave theft and robbery, punishable by 1 to 8 years; computer sabotage, punishable by 1 to 8 years and terrorism, punishable by 3 to 15 years.
14.2.3 Community-based alternatives

Although the decision that the pilot mediation service in Bijelo Polje will be integrated into a Centre for Family and Children’s Support is a sound idea, the fact remains that the only new services that will be offered are a shelter for child victims, space and services for interviewing children who are involved in legal cases, and mediation. The 2006 amendments to the Criminal Code recognize five forms of diversion orders including, in addition to mediation, regular attendance at school or work, community service, treatment for substance abuse and counselling. While VOM is a valuable tool for the rehabilitation/reintegration of offenders and the prevention of recidivism, and has the additional advantage of responding to the needs of the victim, other types of diversion also have their place and there is no apparent reason why a pilot diversion programme should be limited to providing the services required for a single type of diversion. There is no pilot project in Montenegro designed to offer the range of services – preventive counselling, counselling as a form of diversion, counselling the families of offenders and post-release assistance – that is offered by the Mobile Child Protection Teams in Serbia.

The draft Rules of Procedure indicate that mediators must be licensed, but no licensing procedure has yet been established. Moreover, they indicate that judges, prosecutors and attorneys are not eligible to be licensed, and more than half the members of the pilot mediation team in Bijelo Polje belong to these professions.

14.2.4 Custodial facilities for the rehabilitation of juvenile offenders

UNICEF has provided no specific support to either of the two custodial facilities that house juvenile offenders along with children in need (in the educational institution) and adult offenders (in the prison). The educational institution in Podgorica, despite the commitment and humane attitude of the staff, does not offer any real rehabilitation programme. For several years the educational institution has lobbied for permission and support to add a small secure unit exclusively for juvenile offenders. Because no such institution exists in Montenegro at present, it is not possible for courts to impose the alternative sentence of attending such as facility during the days only. An alternative, as indicated above, would be to change the law so that this kind of part-time participation in rehabilitation programmes would not need to be provided in a juvenile correctional institution. However, this would require establishing suitable programmes for the rehabilitation of juvenile offenders in the existing educational facility, and would have the disadvantage of putting more juvenile offenders, and presumably offenders that have committed more serious offences, in an institution that also houses younger children who have committed no offence.

Plans reportedly have been adopted to build/refurbish a new unit in the prison that will hold adolescents, women and foreigners - a situation that a priori is not compatible with international standards. UNICEF has not participated, directly or indirectly, in this activity. The creation of a secure facility specifically for juveniles would reduce, and possibly eliminate, the need to sentence persons under the age of 18 to the prison. The idea of smaller decentralized facilities also reportedly is under consideration.

---

130 Art.18
131 An ‘educational-correctional’ home or institution, of the kind referred to in Art.93 of the Criminal Code.
132 See inter alia Art.37(c) of the CRC, Art.10.2(b) of the International Covenant on Civil and Political Rights and Rule 8(d) of the UN Standard Minimum Rules for the Treatment of Offenders.
15 RECOMMENDATIONS FOR FUTURE STEPS

UNICEF should continue to support juvenile justice reform in Montenegro. Some important changes in the legislative framework have been made, and the National Commission on Juvenile Justice Reform is determined to continue advocating and planning further reforms. However, the evaluation team has the impression that the Commission may not be strong enough to take full responsibility for juvenile justice reform, and believes that the process could come to a standstill without the support of UNICEF.

UNICEF should encourage the government to consider expanding the membership in the Commission to include representatives of relevant civil society bodies, such as the Human Rights Centre of the University of Montenegro and Save the Children Foundation. Consideration also should be given to giving the Commission the function of evaluating annually progress made in implementing the part of the NPA concerning children, and eventually adopting additional, complementary recommendations or objectives.

More generally, UNICEF should continue on the positive path of cooperation and complementarity established with OSCE, the CoE and the European Union, with whom has started adopting an effective strategy of leverage. Coordination with other bilateral donors as well as international NGOs should be further enhanced, though.

If possible, UNICEF should make an effort to convince the relevant authorities to adopt new interpretations of some of the parts of the NPA concerning juvenile justice. It would be desirable to adopt a narrow interpretation of “socially undesirable behaviour” and, indeed, encourage authorities and policy makers to use terminology that conveys greater respect for the rights and freedoms of children and adolescents, and has more positive connotations regarding their role in society.

The weakness of civil society in Montenegro, in particular organizations interested in the rights of children, is a significant obstacle to implementation of juvenile justice reform, in particular community-based alternatives. UNICEF should be alert to opportunities to help develop the capacity of independent civil society organizations having a commitment to children. Both awareness and capacity building activities would be helpful in this direction.

Restorative justice, in particular VOM, is an important element of juvenile justice reform and no effort should be spared to ensure that the pilot project becomes operational as soon as possible. It should not, however, be given so much priority that other important issues are neglected or overlooked. UNICEF should support the establishment of the programmes and structures needed to implement the whole range of diversion measures and non-custodial sentences authorized by the legislation now in force. Helping to ensure that cases involving adolescent offenders that are prosecuted be adjudicated without delay, which the Ombudsman considers to be one of the most pressing issues affecting children in conflict with the law, also should be a priority for future activities supported by UNICEF.

UNICEF should advocate the development of a standardised, comprehensive, evidence-based plan for the rehabilitation of offenders, including custodial and non-custodial programmes and, if the relevant

---

133 UNICEF recently (November 2006) invited SCF UK to get actively involved in the work of the Commission. To date no SCF UK representative has attended a meeting of the Commission.

134 The specific types of conduct referred to in the matrix used by the mobile child protection teams in Serbia to evaluate the need for preventive assistance is a good example of the identification of behaviour that may not constitute an offence but is serious enough to warrant an offer of assistance, while still respecting the child’s freedom and individuality.

135 At this regard, a Memorandum of Understanding was signed between the Ministry of Justice of Montenegro, Office of the Supreme State Prosecutor and UNICEF in order to ensure implementation of mediation in practice before the revision of the respective criminal provisions takes place.
authorities agree to commission one, should support the development of such a plan, based on a sound understanding of the relevant international principles and best practices, as well as reliable data about the present and foreseeable demand for different types of rehabilitation programmes. In addition, the experience of other countries, including Serbia and Tajikistan, indicates that UNICEF could make a valuable contribution to the design of programmes for the rehabilitation of children in conflict with the law and related capacity building.

A training needs assessment covering all relevant sectors (judges, police, prosecutors, correctional staff and CSW staff responsible for supervision sentences and orders), should be funded by UNICEF, and a training strategy should be developed in consultation with the National Commission on Juvenile Justice Reform and the relevant authorities. Furthermore, plans should be developed, with UNICEF support, for introducing the subject of child rights in professional training centres. The good cooperation established with the relevant university departments should be further enhanced: UNICEF has been cooperating with the Faculty of Law since 2004 and a Memorandum of Understanding, defining the terms of such cooperation was recently signed with the Faculty. UNICEF is currently negotiating with Faculty of Political Sciences of Montenegro the inclusion of a Juvenile Justice related subject in the Faculty’s curriculum.

UNICEF should actively support the drafting and adoption of a comprehensive law on juvenile justice. Furthermore, it should begin encouraging and supporting public discussion of what norms concerning the rights of the child should be incorporated into the future constitution of independent Montenegro.

It would be useful to continue developing the part of DevInfo concerning juvenile justice. The main reasons would be to ensure that all those in a position to contribute to the juvenile justice reform in Montenegro have easy access to reliable to all the relevant data. This would be useful, as suggested above, in calculating the predictable demand for custodial rehabilitation and the ideal geographical location of both custodial and non-custodial programmes. It also would be important for evaluating the effectiveness of new preventive and rehabilitative programmes. In addition, this data collection sub-system should be designed so as to collect data on indicators relevant to compliance with new national legislation, and all the standards on juvenile justice contained in the Convention on the Rights of the Child. Examples would include, for example, the length of time between the accusation and sentencing of children who have committed an offence, a question whose importance has been underlined by a recent report of the ombudsman and on which new legislative standards have been adopted.

---

130 See note 51, above.
SECTION III: ROMANIA

16 BACKGROUND

Although the political situation in Romania has been stable since the collapse of the Marxist regime in 1989, there have been significant changes in the structure of governmental institutions, which are still ongoing. Responsibility for drafting new legislation lies with the concerned Ministry, which usually establishes a commission incorporating some representatives of other Ministries or civil society, in the form of academic experts. The Parliament does not take the leading role in law reform, and the influence of civil society, in the form of NGOs, has been very limited. In contrast, the process of accession to the EU has had a major impact on law reform, through requisites for admission as well as technical assistance provided by the European Commission.

As far as the justice system is concerned, an act on the organization of the judicial system was adopted in 1992, and replaced by a new law on judicial organization in 2004. Also in 2004, the role of the Superior Council of the Judiciary was strengthened, reducing the role of the Ministry of Justice, UNICEF’s main governmental counterpart in juvenile justice reform.

17 CHARACTERISTICS OF THE JUVENILE JUSTICE SYSTEM

During the late 1990s, a number of emergency decrees concerning children were adopted. Many of them were consolidated into the Law 272 on the promotion and protection of the rights of children, adopted in 2004. The law is one of the most comprehensive pieces of legislation on child rights adopted in Central and Eastern Europe since 1990. It was drafted by the National Authority for the Child Protection and Adoption of the Ministry of Labour and Social Protection137, transformed by the law into the National Authority for the Protection of the Rights of the Child (“National Authority”). The National Authority has a very broad mandate under that law, including responsibility for children under the age of 14 who have committed an offence.138 Although the law is generally applicable to all children under the age of 18, it did not modify the law and procedure applicable to persons over the age of 14 accused or convicted of an offence, which is regulated by the Penal Code and Code of Criminal Procedure. Extensive amendments to the Penal Code, including the chapter on juvenile offenders, were enacted by the Parliament in 2004, but did not come into force because of the election of a new government prior to the date set for entry into force.

In so far as juvenile justice is concerned, the most relevant types of courts are the courts of first instance (‘judecatoria’) and the county tribunals. The former have limited civil and criminal jurisdiction; the latter have original jurisdiction over more serious crimes and civil cases, as well as appellate jurisdiction over decisions and sentences of the judecatoria. One of the first reforms of the judicial system introduced in under democratic regime was to increase the number of the former, in order to facilitate access to justice. There are 188 magistrate’s courts and 42 tribunals.

---

137 Now the Ministry of Labour, Social Solidarity and Family.
138 Pursuant to Art.100 of the law, the mandate includes ‘the coordination and control of the child rights protection and promotion activities’ throughout the country.
The Convention on the Rights of the Child was ratified in 1990. Romania’s first report to the Committee on the Rights of the Child was submitted in 1993; its second report was submitted in 1999 and examined in January 2003. After examining these reports, the Committee on the Rights of the Child encouraged Romania to make reforms in the juvenile justice system to bring it into conformity with its obligations under the Convention.\textsuperscript{139}

As a consequence, the Law on judicial organization adopted in 2004 envisaged the creation of specialized juvenile and family courts in each county by stages ending in 2008.\textsuperscript{140} One such specialized court was set up in Brasov in November 2004 as a pilot project, but during the next two years no effort was made to establish similar courts elsewhere. In November 2006, the Ministry has announced the intention to create at the level of each tribunal specialized sections for minors and family, competent for civil and criminal matters and both for children offenders as well as victims. This decision led to the EU PHARE project on juvenile justice (see below).

At the time the UNICEF situation analysis was prepared, suspects and offenders under the age of 18 could be detained in at least four types of facilities: the ‘re-education centre’, the ‘prison for minors and youth’, the ‘adult prisons’ and ‘emergency reception centres’. Emergency reception centres are operated by the National Authority Protection of the Rights of the Child. They receive children under the age of 14 who have committed offences as well as those who have left home or have been removed from their home due to abuse or neglect. Children are housed in facilities of this kind for 2 to 4 weeks while their situation is evaluated and appropriate durable solution is identified. The National Administration of Penitentiaries operated two types of facilities for persons under the age of 18: ‘re-education centres’ and ‘penitentiaries for minors and youth’. At the time there were three of the former and two of the latter.\textsuperscript{141}

Two of the re-education centres have been established during the last 5 years, and the third has been thoroughly renovated.

A new law on execution of punishments came into force on the 18 October 2006. The law, which replaces the legislation from 1969 and is based on the international norms, principles and regulations, is a major step forward in the Romanian prison system reform. Changes include the introduction of a judge responsible for the supervision and control of legality for all sentences, who oversees the individualization of prison regime and reviews complaints of inmates regarding their treatment. The law also introduces four kinds of imprisonment regimes: maximum security, closed, semi-open and open prisons.

An additional positive element is represented by the fact that the number of persons under 18 given custodial sentences began to fall sharply in 1998 (from 2071 in 1997 – typical of the previous 5 years - to

\textsuperscript{139} The Concluding observations adopted in 2003, for example, include this paragraph: The Committee recommends that the State party:
(a) Ensure that the ongoing reforms establish a juvenile justice system that has adequate human and financial resources and fully integrates international juvenile justice standards, in particular articles 37, 40 and 39 of the Convention, as well as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the Guidelines for Action on Children in the Criminal Justice System;
(b) Ensure that the system of juvenile justice is adequately resourced;
(c) Ensure that no children are detained illegally and that when detention is necessary, as a measure of last resort, children are detained separately from adults;
(d) Promote alternative measures for dealing with children without resorting to judicial proceedings, provided human rights safeguards are respected;
(e) Strengthen the capacity of the juvenile justice system to provide a timely response;
(f) Guarantee that children in pre-trial detention will not be denied access to a lawyer.
CRC/C/CO/15/Add.199 , para.63.

\textsuperscript{140} Law No.304/2004.

\textsuperscript{141} In Buzias, Gaesti and Targu Ocna, and Tichilesti and Craiova, respectively.
766 in 2003). The number ‘punished with a measure of hospitalization’ fell even more dramatically and earlier, from 3448 in 1992 to 1104 in 1994, to 178 in 2003.\textsuperscript{142}

Despite such improvement, the Romanian juvenile justice system still presents important gaps. For example, there are no special facilities for pre-trial detention (detention on remand) of accused juveniles. Both girls and boys alleged or accused of committing crimes are detained during trial in local prisons, which most of the time are adult penitentaries. In such establishments, there are separate sections for remand. When sentenced, minors are sent to a re-education centre or a prison for minors and youth.

### 17.1 ACCOMPLISHMENTS AND MAIN GAPS IN THE CURRENT JJ-SYSTEM

The following table summarises the main accomplishments and gaps identified in the current juvenile justice system in Romania. Accomplishments and gaps are gathered under the main components / aims of UNICEF’s work for juvenile justice reform in the country.

<table>
<thead>
<tr>
<th>Law and policy reform</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>ACCOMPLISHMENTS:</td>
<td>GAPS / TO BE DONE:</td>
</tr>
<tr>
<td>• UNICEF credibility as potential actor in law reform recognized.</td>
<td>• Relevant laws need to be brought into compliance with international standards.</td>
</tr>
<tr>
<td>• Regulations adopted re treatment of children who commit offences but do not have criminal responsibility</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Community-based alternatives</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>ACCOMPLISHMENTS:</td>
<td>GAPS / TO BE DONE:</td>
</tr>
<tr>
<td>• Pilot project established and expanded to small number of additional municipalities</td>
<td>• Approach piloted should be taken to scale</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Capacity building</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>ACCOMPLISHMENTS:</td>
<td>GAPS / TO BE DONE:</td>
</tr>
<tr>
<td>• Training of judges institutionalized</td>
<td>• (Capacity-building needs have not been assessed)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Environment for change</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>ACCOMPLISHMENTS:</td>
<td>GAPS / TO BE DONE:</td>
</tr>
<tr>
<td>• (None)</td>
<td>• New strategy for juvenile justice reform needed.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Other</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>ACCOMPLISHMENTS:</td>
<td>GAPS / TO BE DONE:</td>
</tr>
<tr>
<td>• Situation analysis created broad recognition of need for reform</td>
<td>• Attention would need to be paid to girls and minorities.</td>
</tr>
<tr>
<td>• All police stations equipped with child friendly interview rooms</td>
<td></td>
</tr>
<tr>
<td>• Delinquency prevention project is consolidated in capital despite end of UNICEF support</td>
<td></td>
</tr>
</tbody>
</table>

\textsuperscript{142} Justice for Minors in Romania, Annex II to a letter from the Secretary of State for Justice to UNICEF 17 February 2004

\textsuperscript{143} A question mark has been put in this cell because the evaluation team believe that although negative attitudes regarding juvenile offenders may exist within the general public, no evidence was found in any of the four countries that such views are or have been at any relevant time a significant obstacle to reform
18 OTHER ACTORS INVOLVED IN JJ-REFORM

Romania is the only one of the four countries in which another international organization was committed to supporting juvenile justice reform, i.e. the European Union, through the implementation of the 2 million Euro PHARE project on “Support for the justice for minors”. This project and its interactions with UNICEF’s support are further described in the next chapter.

In some areas, the activities supported by UNICEF clearly complemented activities supported by others. This is particularly evident with regard to UNICEF’s support for training on child rights and juvenile justice in particular sectors (as opposed to intersectoral training on the local level). The World Bank is supporting a project to develop the management capacity of the judiciary, and USAID is supporting, within the assistance given for the child welfare reform, the National Authority develop a data processing system, training systems and strengthen management policies and capacity. As emphasised by the next chapter, UNICEF’s contribution to training therefore complements the contributions of others to other dimensions of capacity building.

In other areas, UNICEF may have missed opportunities to influence technical assistance projects supported by other members of the international community. The World Bank, for example, is supporting the process of preparing a new Criminal Code and Code of Criminal Procedure. No effort had been made to explore the possibility of seeking the Bank’s support for UNICEF’s interests with regard to the reform of this legislation. The suggestion is not that UNICEF should seek the Bank’s support for specific standards, but should seek support for a process that involves genuine participation of civil society (see chapter on recommendations).

In still other areas, UNICEF supported activities are similar to those being supported by others. A great deal of training on child rights and juvenile justice was being supported by different actors, and it may be that UNICEF’s limited resources might have had more impact if allocated to more neglected areas.

To an extent, UNICEF also was able to leverage its support for pilot projects by aiding partners identify other donors willing to support them. The British and Dutch embassies indicated that they trusted UNICEF to help them identify projects in this areas deserving of support. This applies to relatively modest projects of NGOs.

19 OVERVIEW OF UNICEF’S SUPPORT

UNICEF established a country office in Romania in 1990, shortly after the fall of communism. In September 2006 the European decided to admit Romania to the Union, effective January 2007. Due to Romania’s admission to the EU, the current programme, for the period 2004-2009, will be the last. UNICEF’s work on juvenile justice, during the current programme, began with an agreement with the Ministry of Justice dated 19 February 2004, that called for the elaboration of a comprehensive situation analysis, a manual on ‘best practices’ and training. Some emphasis also was placed on support for NGO sponsored pilot projects in 2004: the religious NGO “Cuvantul care Zideste” established a vocational training programme in a facility for young offenders, the “Association Jean Valjean,” established a primary prevention programme in schools in Bucharest and the Romanian Centre for Education and Human Development (CRED) undertook activities designed to promote diversion and restorative justice. Approximately US$129,000 was spent on juvenile justice in 2004, including some US$54,000 for the situation analysis prepared under the auspices of the Ministry of Justice and approximately US$75,000 on three NGO pilot projects mentioned above.

144 The tracking system does not collect data on the children over 14 who committed a fraud.
145 Craiova
The situation analysis, which was funded by the Dutch Matra programme, was published early in 2005 with the title “Practices and Norms in the System of Juvenile Justice in Romania” (the ‘situation analysis’). UNICEF hoped that this situation analysis would inform the implementation of a two-year, 2 million Euro PHARE project on “Support for the justice for minors”\(^{146}\). This did not happen and UNICEF consequently greatly reduced its support for juvenile justice reform\(^{147}\).

In 2005 a total of US$55,000 was spent on juvenile justice activities: some US$29,000 was spent on renovating and equipment three residential facilities for young offenders; US$14,000 was allocated to the NGO Alternative Sociale for a project on alternatives to imprisonment and some US$11,000 was divided between the Ministry of Justice and National Authority for the Protection and Promotion of the for the development of new legislation.

In 2006, the amount spent on juvenile justice was reduced to a mere US$20,000, including approximately US$17,000 for the preparation of a manual on the Law on the Rights of the Child (Law 272/2004) and some US$3,600 for a training activity\(^{148}\). Since the failure of the situation analysis to influence the implementation of the large EU project on juvenile justice reform had significant consequences for UNICEF’s support for juvenile justice reform during the following two years, it is necessary to make an effort to understand what occurred.

The TOR of the PHARE project was prepared by the Ministry of Justice in 2003. A pilot juvenile court based on the French model had been established in Brasov, in 2001. One aim of the PHARE project was to replicate this pilot project throughout the country i.e. establish a specialized juvenile court having exclusive jurisdiction over offences committed by juveniles and child protection cases in each country. Other aims included establishing in each county inter-sectoral teams comprised of police officers, prosecutors, judges and social workers for child protection; establishing four ‘re-education centres’ for juvenile offenders; strengthening the new (2000) Probation Department and training judges, prosecutors, police and correctional staff. France was selected as ‘twinning partner’ for implementation of the project, which began late in 2004.

The Brasov pilot juvenile court was one of two juvenile justice pilot projects in Romania. The other was established in the city of Iasi, in 2000, through the joint efforts of the NGO Alternative Sociale, the local government and the local judges, prosecutors and police\(^{149}\). In contrast to the Brasov court, the Iasi project initially focused primarily on juvenile offenders rather than child victims, and emphasized diversion rather than adjudication. The UNICEF situation analysis was prepared by national consultants, some of whom were involved in the Iasi pilot project. Persons involved in the Iasi project initially participated in the EU PHARE project, in particular training. Strong differences between these experts and the project management soon appeared, however. National experts objected to centralizing competence over cases involving juveniles in country capitals, which ran counter to earlier reforms aimed at enhancing access to justice through the magistrates’ courts. In addition, they objected to the lack of attention to diversion.

---

\(^{146}\) PHARE 2003/005-551.04.16. (The overall budget was 2 million Euros, the remainder being allocated in part to the renovation of four centres for juvenile offenders.

\(^{147}\) There was a second reason for this, as stated below: the failure of efforts to raise funds for work on juvenile justice.

\(^{148}\) It should be noted that it is sometimes difficult to decide whether certain expenditures should be considered support to juvenile justice reform. This is, in part, because activities designed to prevent delinquency are often difficult to distinguish from those designed to respond to social problems that may lead to offending. In addition, in Romania as in many other countries, norms (including the above mentioned Law on the Rights of the Child) and institutions for offenders under the age of 14 also cover issues and serve other children, such as those without parental care.

\(^{149}\) Support also was received from the University of Swansea.
Government disillusionment with the Brasov model grew shortly after implementation of the PHARE project began. The new authorities who took office early in 2005 realized that the choice of this option was not based on any needs assessment and implementation of this model throughout the country had not been costed. The transfer of some functions from the Ministry of Justice to the Superior Council of the Magistracy also facilitated questioning of the aims the PHARE project. The government began to favour the creation of sections or panels of specially trained judges, rather than specialized courts having exclusive jurisdiction.

The MoJ asked its counterpart to modify the project, and to use the foreign experts to prepare an evidenced-based study concerning juvenile justice reform. Two studies were presented, but did not contain a restructuring/reform plan, in part because of lack of sufficient relevant and reliable data and in part because the development of a plan would be difficult in the absence of certain basic decisions regarding the framework. A meeting to discuss the development the juvenile justice system was held shortly after the evaluation mission (October 2006). In November a press release marking the end of the PHARE project stated that the government has decided to establish specialized sections with exclusive civil and criminal competence over cases involving the family and children - whether as offenders or victims - rather than specialized courts.

When implementation of the PHARE project began in 2004, the MoJ established a working group involving all relevant departments of the Ministry, including the General Direction of Penitentiaries, and invited UNICEF and the Delegation of the European Commission to participate. UNICEF became marginalized from this process, however, and invitations ceased.

After production of the situation analysis, UNICEF prepared a programme proposal that sought US$170,000 to support activities through 2007. No funds were received, and a summer in-service training course for judges and magistrates on juvenile justice, taking place in 2005, was the last significant activity on juvenile justice supported by UNICEF. The difficulties encountered in promoting reliance on the situation analysis as a guide for reform and lack of response to its efforts to raise funds led UNICEF to shift its attention to other aspects of the Child Protection Programme. Nevertheless, it is worth in this report to provide an overview of the specific components of the support given by UNICEF to juvenile justice reform. The relevant activities were managed and followed up by the Child Protection Officer and an assistant programme officer.

### 19.1 SPECIFIC PROGRAMME COMPONENTS

UNICEF’s support for juvenile justice reform consisted of the following four ‘lines of action’.

#### a. Policy Development

Planned activities included the development of:
- a policy on the development of alternatives to deprivation of liberty
- ‘secondary legislation’ regarding the 2004 Law on the Promotion and Protection of the Rights of the Child and the Penal Code enacted in 2004
- ‘standards of care’ regarding “services for children below the minimum age of criminal responsibility” who have committed offences.

The situation analysis made a valuable contribution to debate on alternatives to the deprivation of liberty, and wider acceptance of the idea of diversion among judges, prosecutors and policy makers in the area of justice. The policy debate is still ongoing, and UNICEF’s work may yet contribute to the formalization of the desired policies, even though UNICEF itself is not at present actively supporting this effort (see part on recommendations).

In so far as ‘secondary legislation’ on the Law 272/2004 is concerned, a government Decision No. 1439/2004 regulating centres for children who have ‘committed an offence and can not be held liable’ came into force on 1 January 2005, also thanks to UNICEF’s advocacy. These children include those below the age of 14 who have committed an offence and those aged 14 and 15 who are considered too immature to be prosecuted as juvenile offenders. The Decision provides for the establishment of both
residential homes for such children, and non-residential ‘day centres’, both of which are to provide “orientation, supervision and support of the child’s reintegration.”

Counselling is provided not only to the child but also his or her family or guardian. Children placed in the residential centres are to attend schools in the community. The participation of volunteers in such centres is regulated. These provisions are in conformity with the relevant international standards, such as the UN Rules on the Protection of Juveniles Deprived of Liberty. The goal of developing secondary legislation on the 2004 Penal Code, by contrast, became moot when the new government decided not to promulgate the Code.

Standards of care for both types of centres also have been prepared with UNICEF support. The Minimum Standards of Care for Specialized Residential Services and Minimum Standards for Day Centres were adopted in February 2004 by order of the Minister of Labour, Social Solidarity and Family and came into force in January 2005. Both are designed to promote the child’s social reintegration and the child’s assuming a constructive role in the society, and both recognize principles similar to those set forth in the relevant international instruments, including the best interests principle, child’s right to participation, the prohibition of discrimination, family and community involvement in the process of development of a positive behaviour of children; inter-institutional co-operation for social reintegration of children. A detailed summary of the standards is contained in annex. The impact of these standards is limited, at least for the present, because only one pilot centre of the first mentioned type exists, and centres of the second type are still in the process of being established.

To sum up, it would seem that UNICEF work in this component has been quite conducive and effective.

b. Capacity Building

The concept of capacity building includes training and the development of policies regarding recruitment and promotion, systems for classifying posts and evaluating performance and management skills in general. UNICEF’s objectives in this regard included strengthening the capacity of juvenile justice professionals to apply international standards concerning juvenile justice, and the capacity of such professionals and staff of the National Authority to apply of a ‘restorative justice’ approach. The planned activities were largely limited to training. A considerable amount of training related to international standards on juvenile justice did take place. The training also included the development of skills and of a shared ethos and approach amongst different professional groups involved in juvenile justice on the community level. Three types of training took place: training specifically on restorative justice; training of judges and local inter-sectoral training designed to build team-work as well as to develop awareness of international standards and best practices.

Training specifically on restorative justice was carried out as part of the CRED project in 2004. The main aim of the project was to prepare a needs assessment/feasibility study and, despite the number of persons trained was small, it is widely believed that such training could eventually contribute to the successful promotion of the idea of restorative justice in Romania.

In-service training of judges and prosecutors on child rights and juvenile justice has become institutionalized. It is carried out by the National Institute for Magistracy (NIM), under the Superior Council of Magistracy. This training began in 2003, 73 judges received such training and in 2004 approximately twice that number were trained. UNICEF supported this training in 2005. The course was one week long, and had parallel ‘criminal’ and ‘civil’ sections. The quality of the trainers provided by UNICEF was highly regarded by the NIM. The situation analysis produced with UNICEF support was used in the course, and it continues to be used. The ‘best practices’ manual published in 6000 copies based

---

150 Art.5 and 6 (The misleading term ‘day care centre’ is also used in English versions of Romanian documents to refer to the second type of facility.)
151 Art.3 and 7
152 Art. 8
153 Art.11 (The criminal record of persons wishing to act as volunteers is to be vetted.)
154 The course also was supported by the German Foundation for International Legal Cooperation.
on Iasi approach has been distributed to all prosecutor offices and county courts. This manual is also required reading in law schools and masters program offered by NIM.

UNICEF was one of many donors to sponsor training on juvenile justice and the rights of the child. Its support, although limited in time and in terms of activities supported directly, seems to have given an important contribution to the approach used in the training. Materials and methodologies developed or supported by UNICEF, for instance, continue to be used, even though UNICEF itself no longer supports training.

c. Preventive and Restorative Services
Several pilot projects have been implemented in this area in Romania in the last years, but most of them have started on initiative of NGOs or governmental bodies, without UNICEF playing an important role. UNICEF’s support in this area was limited and largely ad hoc.

An important example of progress in this area is given by the experience of the NGO Romanian Centre for Education and Human Development (CRED), which in 2004 undertook an eight month project (which was started with Belgium support and then saw the involvement of UNICEF too) aimed at exploring the feasibility and preparing the groundwork for alternative sentencing. The work was initially carried out in cooperation with Belgian juvenile justice practitioners. A field trip to visit juvenile courts in Belgium took place, and three meetings took place in Romania to promote the idea of alternative sentences, to evaluate the interest in them on the part of Romanian professionals and their applicability in the light of the Romanian law and institutional framework. The conclusions and recommendations adopted at the end of this exploratory project include these five: (1) that the law offered very little space for alternative measures because they could only be imposed for offences punishable by terms of 3 years of prison or less, and most offences (in particular theft) were punishable by longer sentences; (2) there was a need for continuing to promote awareness and acceptance of alternative sentences, in particular amongst judges; (3) there was a need to promote greater understanding and communication between different juvenile justice actors (e.g. judges, prosecutors, police, probation workers etc); (4) greater NGO participation in the execution of alternative sentences should be promoted and (5) a pilot project concerning non-custodial sentences should be supported, in the hopes that the experience would help support the objectives mentioned above.

There has been significant progress in two or three of these areas, although more through the efforts of other partners than thanks to UNICEF’s support. The National Institute for Magistracy (NIM) has taken responsibility for promoting understanding of alternative sentences among judges and prosecutors. The NIM also actively promotes the practice of close coordination amongst all concerned professional groups. The NIM is also promoted, without UNICEF support, the pilot project on alternative sentencing of the NGO Alternative Sociale that is described below. The analysis of the extent to which the legal framework allows or encourages alternative sentencing was based mainly on a new Criminal Code adopted in 2004, which however did not enter into force. Far from making the analysis inapplicable, this development created a second chance to either strengthen the provisions of the criminal law concerning alternative sentences for minors, or draft a new law specifically on juvenile justice based more closely on international standards and best practices. As indicated above, UNICEF has not pursued that opportunity, but the process of law reform is ongoing and the window of opportunity to join forces with others advocating the type of reforms proposed by this project remains open.

As anticipated above, a pilot project involving alternative sentences was implemented by the NGO Alternative Sociale. This NGO became involved in juvenile justice reform in the year 2000, prior to UNICEF’s involvement in this area. Initially its work focused largely on making investigative and judicial procedures more ‘child-friendly’. It organized inter-sectoral training and helped create more child-friendly physical facilities for interviewing children during the investigation of offences and for hearings involving children. Piloted in the city of Iasi, this approach was later promoted in three other cities of Iasi county and two other counties, Vaslui and Botosani, with funds from the EU and the UK Embassy. Involvement of Alternative Sociale with the UNICEF juvenile justice project came about largely through the participation in the situation analysis of some of its staff and other professionals from Iasi involved in the new child-friendly, intersectoral approach. Judges, prosecutors and police in Iasi believe that the results are
positive - although no details were given – and expressed the view that the absence of strong, structured non-residential programmes throughout Romania is the main obstacle to reducing the rate of detention and imprisonment of juvenile suspects and offenders.

Another NGO established two victim-offender pilot projects involving juvenile offenders, but this organization did not receive support from UNICEF and the evaluation team received no information about the results of these pilots.\(^{155}\)

The NGO ‘Association Jean Valjean’ implemented a pilot project on the prevention of delinquency and drug abuse with UNICEF support in 2004\(^{156}\). The programme consisted in participatory after-school activities for children between 12 to 16 years old in four secondary schools in Bucharest, designed to make children more aware of their rights, encourage them to express their concerns about problems they face and help them develop attitudes and skills such as self-respect and self-confidence. It was piloted in sector 5 of Bucharest, which is considered to have the highest level of school leaving, juvenile delinquency and drug use in the capital, with the support of the Bucharest Police Department and of the National Anti-Drug Agency. Although UNICEF support ended in 2005, the NGO has not only maintained this programme but has expanded it to additional schools in Bucharest.

d. Support for closed residential facilities

During the period 2003-2005 UNICEF provided support to three facilities for older adolescents awaiting trial or convicted of offences. In two, the primary aim was to improve conditions of detention by providing equipment such as televisions, sports equipment or school supplies and enrich the type of services offered.\(^{157}\) In a third facility, support was provided to the NGO Cuvantul Care Zideste (‘Words that Build’) for activities that included rehabilitation of the physical infrastructure of a prison for adolescents and young adults, but also included support for the improvement of vocational training, life skills training and counselling.\(^{158}\) This assistance was not given with the aim of transforming the way these facilities operate, but rather improving the quality of life of the adolescents confined there and, to an extent, the quality of the services provided.\(^{159}\) Organizations such as the EU were taking the lead in supporting more far-reaching reforms of the prison system, including facilities for juvenile offenders between the ages of 14 and 18.

In addition, UNICEF supported the establishment of a pilot residential facility for children who commit offences but are too young to be prosecuted as juvenile offenders.\(^{160}\) This is a new type of facility, in that it is small and intended specifically for children too young to be prosecuted as juvenile offenders but who are repeat offenders or whose offence represents a higher risk to society.\(^{161}\) Previously children under the age of 14 who committed offences were sent to larger facilities that also included abandoned children and those in need of protection. The capacity of the pilot facility, which opened early in 2006, is 20 persons. At the time of the evaluation it housed 11 boys, most of whom had committed non-violent property offences. Most of the children housed there, being under the minimum age for adjudication as juvenile offenders, are sent here by decision of the local Child Protection Commission, with the consent of their parent(s).\(^{162}\) If the parents do not agree, placement can be authorized only by a court.\(^{163}\) The duration of

\(^{155}\) Foundation for the Family and Child Protection
\(^{156}\) The contribution of UNICEF consisted in supporting the costs of equipment of a room inside the school, the costs of books and notebooks for the children and the cost of producing a documentary film designed to prevent drug-abuse in schools.
\(^{157}\) The prison for minors and youth at Rahova, which houses adolescents and adults under the age of 21 awaiting trial, and the reeducation centre at Targu Ocna.
\(^{158}\) The Craiova Correctional Facility for Minors and Young People.
\(^{159}\) This project was supported by the UNICEF National Committee in the UK.
\(^{160}\) This facility is located in Targu Frumos
\(^{161}\) Law 272 of 2004, Art.88
\(^{162}\) This is authorized by Art.56(e) and 61(1) of Law 272 of 2004. The Commission is an administrative body composed of representatives of the local government, the Child Protection Authority (of the Ministry of , the
placement is from 3 months to one year. Originally the plan was that the residents would attend the local schools. In practice, since many of them needed remedial education, a teacher was added to the staff. In addition to remedial education, the facility offers sports, life skills, counselling and IT training. UNICEF provided support for rehabilitation of the facility and training of the staff.

This pilot project has been in operation for less than a year, and has not yet been evaluated. A priori, it is legitimate to assume that there may be some children that commit offences while too young to be prosecuted as juvenile offenders, who may need to receive rehabilitation in a residential facility for a limited period of time. Assuming that there is sufficient demand for this kind of facility – that is, a sufficient number of children who commit such acts while too young to be prosecuted whose needs could not be adequately met by services provided in a non-residential setting – small, decentralized residential facilities offering programmes of limited duration should help such children develop the values and aptitudes needed to become constructive members of society. This is why this kind of small, decentralized facilities are encouraged by international standards, as they facilitate individualized treatment of children, and allow them to remain closer to their families.

Although the staff member of the local Child Protection Direction responsible for overseeing this facility was interviewed, time constraints did not permit the evaluation team to visit this facility itself. The team consequently does not have sufficient information to form an opinion on whether this pilot facility is operating in conformity with the principle that children shall not be deprived of their liberty unless no other type of programme would meet their needs, nor whether the physical conditions comply with international standards. In any event, after less than one year of operation, it would be premature to evaluate the impact of the programme on the children who have participated in it. The deputy head of the Child Protection Department, which is responsible for the facility, indicated that he believes that the pilot project is successful and that there will be no problem in obtaining the resources necessary to replicate it throughout the country, but also stated that there were, at the time, no specific plans for evaluating it. Plans for replicating this project should not be developed until the experience has been evaluated in the light of the above-mentioned criteria and the demand for the type of programme has been assessed on the basis of disaggregated data on offending by children of this age group and their personal and social characteristics of the offenders.

d. Advocacy and communication

Advocacy and communication is a broad area, ranging from the development and use of awareness materials in print or electronic media for the general public or specific sectors, to lobbying governmental authorities. UNICEF’s support for advocacy and communications regarding juvenile justice was limited during the period under review. In so far as the materials designed to convey information are concerned, the main product was the situation analysis itself. The situation analysis had considerable impact although, paradoxically, almost no effort was made to publicize it. Many of the sources interviewed expressed disappointment that UNICEF made no effort to publicize the situation analysis, and appeared to have no strategy for promoting it. The decision not to publicize it was deliberate, due to the controversy that surrounded the release of a situation analysis on the abandonment of children, shortly before completion of the situation analysis on juvenile justice.

department of education, the department of public health, the police and, at least in some cases, a representative of civil society.


164 The ‘last resort principle’ recognized by Article 37(b) of the CRC.

165 The ultimate goal of juvenile justice, according to Art.40.1 of the CRC; see also Art.32.1, which recognizes the right of every child to wholesome “moral and social development” and Rule 30 of the UN Rules on Juveniles Deprived of their Liberty, which recognizes the right of “juveniles detained in facilities to meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society.”

166 UN Rules on Juveniles Deprived of their Liberty, Rule 30
UNICEF also supported the preparation and printing of two manuals, designed for use in training. One is the interdisciplinary manual on best practices concerning juvenile justice, written by various authors (judges, prosecutors, psychologists, university professors, social workers and probation officers) and based in large part on the Iasi experience. Six thousand copies of ‘Guide on institutional practices developed in juvenile cases’ were published in 2005. The manual has been distributed to judges and prosecutors throughout the country and is used in the NIM in-services courses for judges as well as in some university courses.

The second is a manual on the Law 272/2004 for the use of social workers, teachers, psychologists and others. This manual was not developed as part of the juvenile justice project, but since the law covers the treatment of children under the age of criminal liability who commit offences, it is relevant.

20 EVALUATION OF UNICEF’S SUPPORT TO JJ-REFORM

20.1 UNICEF’S STRATEGY FOR SUPPORTING JUVENILE JUSTICE REFORM

The situation analysis prepared by UNICEF has been widely used as a training tool and has contributed to the greater recognition and understanding of the rights of children by civil servants, in particular judges and prosecutors. This, in turn, has contributed to a documented decrease in the number of children in detention. The situation analysis also has contributed to the ongoing policy debate on juvenile justice reform. Despite the fact that UNICEF does not presently participate in this policy debate, many of the higher level civil servants who do participate are aware of the Study and see the situation analysis as a key contribution to the process.

The strategy of the office in Romania included the following elements: prepare a situation analysis as a basis for fundraising and the negotiation of a programme with the government; rely mainly on national experts to prepare the situation analysis; use the situation analysis to influence the implementation of the EU juvenile justice project; support the inter-sectoral team-building with emphasis on diversion and increased use of non-custodial sentences approach developed by a Romanian NGO; institutionalize training of judges; support NGOs working on delinquency prevention and on community participation in the rehabilitation of adolescents confined in correctional facilities. The strategy was a good one in many ways: it covered most facets of the system (prevention, diversion, adjudication, corrections); it included civil society and helped develop national expertise. Nevertheless, UNICEF’s strategy for promoting juvenile justice was a short term strategy, based on an expectation that the situation analysis would influence the shape of the larger project supported by the EU. UNICEF also anticipated that the situation analysis would serve as the basis for fundraising, and for the development of a longer-term project with governmental counterparts. There was no other medium term strategy, or no contingency planning for the possibility that the situation analysis did not have the anticipated impact in the short term.

As a consequence, on the whole UNICEF strategy in Romania proved to be insufficient. When the MoJ-EU project moved ahead without taking into account the recommendations of the situation analysis and when efforts to raise funds were not successful, UNICEF abandoned juvenile justice reform and lost contact with counterparts who remained interested in juvenile justice reform, to the point that it was unaware of new opportunities that began to open up within a relatively short time. It did not know, for example, that work on drafting a new Criminal Code and Code of Criminal Procedure is moving ahead. UNICEF was not fully aware of the impact that the situation analysis had had, nor the implications of widespread disappointment with the EU project.

20.2 GENERAL OBSERVATIONS ON RELEVANCE, EFFECTIVENESS, EFFICIENCY, SUSTAINABILITY AND THE USE OF RESULTS BASED MANAGEMENT PRINCIPLES AND HUMAN RIGHTS BASED APPROACH

UNICEF’s involvement in juvenile justice reform in Romania is relevant, in the sense that the system was and still is incompatible with the Convention on the Rights of the Child and related international
standards. The need for change was amply and convincingly documented by the situation analysis prepared with UNICEF support. UNICEF’s decision to support the juvenile justice reform also was relevant in the sense that many partners in the Government, such as the probation department, the prisons department and the National Institute for Magistracy, recognize the importance of reform in this area. The NGOs and the other international organizations interviewed also agreed that juvenile justice reform should be a priority. Furthermore, considering what done by other partners in this area, UNICEF support has been – and could have been – complementary. As said above, for example, the World Bank is supporting the reform of the Criminal Code and Criminal Procedure Code, both of which contain chapters or sections on juvenile offenders. Often, the international agencies supporting such reforms will have little expertise in child rights, and the impact of the reforms on children may be overlooked. UNICEF support to juvenile justice reform can thus be considered ‘timely’, meant as a mix of need and opportunity. But surely, the Romania office should have tried to better leverage on what done by other actors, an example being the limited support given to development of a data collection system in the National Authority for the Protection of the Rights of the Child.

The attainment of satisfactory results in relation to stated objectives (effectiveness) is not easy to analyse as objectives regarding juvenile justice reform are often defined in rather vague terms. In Romania, for example, the 2005 Project Proposal for “Prevention of deprivation of liberty and protection of young delinquents” lists the following expected outcomes:

- Increased knowledge and skills of 20 professionals from local authorities with duties in the enforcement of the standards set forth in the law on the promotion and protection of children's rights, with focus on children in conflict with the law;
- Strengthening inter-institutional cooperation with respect to reviewing current working methodologies and practices in dealing with children in conflict with the law;
- Internal norms and procedures developed in order to make sure that these are consistent with the principles that underlie the respect and guarantee of the child's rights.

It also contains a quantifiable goal with respect to one pilot project, namely, a 40% reduction in the ‘rate of offences committed by children below 14’ years of age.

The first three goals are desirable ones, but defined in terms that are so vague that it is not possible to determine whether they have been met. To be sure, it is not difficult to establish whether 20 professionals from local authorities and having certain responsibilities attended training activities, nor would it be difficult to establish whether there has been some measurable increase in their knowledge. But what knowledge and which skills are relevant? And how much increase would be necessary to conclude that the event was a success?

Similar observations could be made with regard to the two other goals. What are the indicators of 'strengthened inter-institutional cooperation'? Which are “the principles that underlie the respect and guarantee of the child’s rights”? Why limit the objective to principles, and not rights? A comprehensive list of internationally recognized rights and principles concerning juvenile justice would be very long, indeed. The UN Rules on the Protection of Juveniles Deprived of Liberty alone contain no less than 87 Rules. How many of them would have to be recognized by the national regulations to conclude that this goal has been met? The goal of a 40% reduction in offences committed by children under the age of 14 had the virtue of being quantifiable, but seems arbitrary, especially for an activity consisting in the establishment of a pilot project with a capacity for 20 children.

As far as efficiency is concerned, the office in Romania spent some US$204,000 during a three-year period. Two donors that financed UNICEF’s work on juvenile justice in Romania also indicated that they were quite satisfied with the results obtained with their donations167. This would seem to indicate that the amount invested in juvenile justice reform, generally, was not excessive. Juvenile justice reform is a complex and long-term process, which precludes a simplistic comparison of the investments made with

167 The Government of the Netherlands (Matra) and UK National Committee.
the results obtained. It would be more realistic to weigh the total amount invested in juvenile justice reform against the overall progress achieved. If the amount invested is not a priori excessive – and donors in two of these countries have stated it was not - and some important advances have been made and appear to be consolidated, and there are no signs of obstacles that might jeopardize the project as a whole, then one can assume that the investment was well-spent. The situation analysis has had a major impact, one pilot project (Alternativa Sociale) is widely perceived as a model worth following, and UNICEF’s support for these and other activities has left it well positioned to resume its support for juvenile justice, should it decide to do so.

As far as the use of results based management principles is concerned, it can be stated that the use of such principles have not been constant or systematic. Despite the production of a situation analysis of good level, UNICEF, as better shown in the replies to the relevant evaluation questions, in the next chapter, has not put in place an organised M&E system nor a system for collecting and processing data. It has to be considered, though, that UNICEF CO considers the project as basically still-born. So, what done (i.e. the situation analysis and a few exploratory and confidence-building activities) was all could be done. In any case, UNICEF has not managed to support the Government in establishing its own databases and M&E systems in the area.

Specifically, the database being developed by the National Authority for Child Rights, with support of USAID, is partially operational and includes only the children below 14 who enter in the evidence of the child protection system. It would seem that the weak cooperation between the Authority and other juvenile justice actors, needs to be overcome for research, monitoring and planning to become comprehensive and effective.

As far as the use of the human rights based approach is concerned, no particular effort has been made to take ethnicity into account in designing or implementing the programme. The situation analysis did disaggregate data on offending by ethnic background, and documented that offending by Roma children is not was widespread as many believe. Ethnicity was not a factor in any other activity concerning juvenile justice supported by UNICEF, however, and no information in any language other than Romanian was produced as part of UNICEF support for juvenile justice reform. Similarly, no specific attention to treatment reserved to girl offenders and suspects was given. As detailed in the following chapter, it is difficult to assess the impact of UNICEF’s activities on the lives of children. A part from some positive observations and, therefore, assumptions, it would be necessary to fund relevant specific project evaluations (see chapter on recommendations).

UNICEF actively supported juvenile justice reform for a relatively short time, and some important activities (e.g. law reform) did not reach the point where their sustainability could be assessed. A few projects, notably the renovation of some facilities for juvenile offenders, also cannot be evaluated from this perspective, because the objectives were short-term ones. In contrast, the investment in equipping police stations with special rooms to interview children has been replicated nationally and appears to be sustainable. More than this, the situation analysis has surely had an important impact, as already emphasised.

Other activities also are going ahead, despite the lack of UNICEF support. Examples include the NIM training of judges, Alternativa Sociale’s pilot on diversion and non-custodial sentences and the Association Jean Valjean’s delinquency prevention project. Some of these activities began prior to UNICEF’s decision to support them so that, while UNICEF’s support may have helped them develop to the point that they were sustainable, it would be an exaggeration to suggest that UNICEF helped to establish a project that is sustainable.

It would be premature to assess the sustainability of the new pilot project on residential care for offenders under 14. The National Authority has expressed willingness to replicate this model nationally, but it has not yet been evaluated and the demand similar facilities has not yet been assessed. The Standards of Care for this type of facility and for the ‘day centres’ for older offenders who do not require residential placement would, on the face of it, seem sustainable as such. However, since no day centres have yet been
established and the other type of facility remains at this point a single pilot project, the relevance of these Standards over the longer term remains an open question.

20.3 SPECIFIC FINDINGS

20.3.1 Reforming policy, legal framework and Government programmes on juvenile justice

"To what extent have UNICEF activities influenced the contents of revised policy, legal and Governments programme framework of in the following areas: (relevance and impact)

- Prevention of delinquency?

The support given by UNICEF in the area of delinquency prevention in Romania has not yet had any visible impact on law, or governmental policy or programmes.

- Use of deprivation of liberty only as last resort and for shortest possible period of time?
- The quality standards for children in detention in conformity with the law. (Separation of children from adults, maintaining contacts with parents, respectful treatment, access to legal and other assistance)?
- Implementing restorative justice measures instead of punitive approach (ensuring physical and psychological recovery and social reintegration)?

Law No. 272/2004 on the protection and promotion of the rights of the child provides that children under minimum age for adjudication as juvenile offender who commit a criminal act may not be placed in a residential facility unless the act is a serious one or the child has committed a similar act previously (Art.82). Placement is for a period ranging from 3 to 12 months. In so far as programmes are concerned, only one facility for children in the circumstances described above has been established, to date.

Standards have been adopted for facilities for children under the minimum age for adjudication who have committed criminal acts, but not for facilities for older offenders.

As described above in the report, restorative justice measures are being implemented on a pilot basis in a small number of municipalities, but this has not been formally endorsed by policy of the national government nor has new legislation on this subject been adopted.

It is widely recognised that UNICEF’s advocacy and work have contributed to greater sensitivity to these issues. But since the law and policy are still in the process of being reformed, it is not yet possible to judge the actual impact of the activities supported by UNICEF.

- System of laws, procedures, authorities and institutions specifically developed for children?"

The National Authority for the Protection of Child Rights is an important new institution supported by UNICEF, although not as part of UNICEF’s work on juvenile justice. It is responsible for the care of children under the minimum age for adjudication who commit criminal acts, and one pilot facility specifically for such children has been established as part of UNICEF’s juvenile justice programme. It also has a broader mandate, pursuant to the Law on the Protection and Promotion of the Rights of the Child (adopted with UNICEF support) to protect the rights of all persons under the age of 18, but has not sought to develop this mandate with regard to older adolescent offenders. Regulations have been adopted regarding the type of custodial facility mentioned above, and for non-residential ‘day’ centres for offenders. Centres of the latter type have not yet been established, however. No changes have yet been made in procedures governing juvenile offenders, except on a trial basis in selected localities.

"To what extent was UNICEF ensuring that changes in policy, legal and Govt. programmes in JJ were prioritizing the most urgent problems and based on a thorough situation analysis? (relevance and results based management)"
The situation analysis did not expressly identify any specific shortcomings as urgent, and concludes with a comprehensive list of recommendations. It would seem reasonable to assume that the issues highlighted in the introduction were more urgent than others. They include a punitive approach to sentencing and excessive use of custodial sentences, the lack of community-based alternatives to custodial sentences, the lack of effective programmes for the rehabilitation of offenders, whether in custody or not, and the lack of a coherent legal framework compatible with international standards. A change of government took place shortly after UNICEF’s support for juvenile justice reform took place, and the new government did not view the adoption of a new law on juvenile justice as a priority. Priority is now being given to reform of the existing codes that govern offending by juveniles, rather than the development of a law specifically on juvenile justice, but this development has occurred without any direct involvement of UNICEF.

Although the legislation concerning sentencing has not changed, extensive training of judges and prosecutors with UNICEF support has had a positive impact on sentencing practices. Effective programmes for working with offenders in a non-custodial setting have been piloted, with the active cooperation of local governments, but the central government has not yet made a commitment to replicating these experiences throughout the country. UNICEF made an effort to improve rehabilitation programmes offered in one custodial facility for juvenile offenders, but its support has not had any evident impact on the policies or programmes of the present prison administration. This is due at least in part to changes in the hierarchy of the prisons department that occurred subsequently to UNICEF’s support for activities in this area. In short, UNICEF had limited success in convincing the national authorities to take action to address the issues that the situation analysis seems to consider more urgent than others.

**20.3.2 Development of professional capacity relevant for juvenile justice (law enforcement, administrators of justice, social workers)**

Which professionals (law enforcement, administrators of justice, social workers, others) did UNICEF include in activities related to professional capacity development and was the selection strategic and sufficient to influence the functioning of the JJ system? (relevance)

Training supported by UNICEF included training of judges and training of interdisciplinary teams, including law enforcement officers, social workers, prosecutors and judges, on the local level. In addition, the staff of a small pilot project for custodial treatment of children under the minimum age for adjudication who committed criminal acts, received also some training. The training was not strategic, because UNICEF’s work on juvenile justice reform ceased shortly after the situation analysis was completed, before a comprehensive strategy was implemented. Nevertheless, the training of judges and the interdisciplinary training on the local level, together with the training materials developed for these purposes, has had and continues to have an important impact on the still ongoing juvenile justice reform. The full extent of its impact remains to be seen, and will be difficult to differentiate clearly from the extensive capacity building carried out by other actors.

What types of strategies for professional capacity development and accountabilities were used and were they sufficient to influence the way professionals in the JJ system operate? (relevance):

- Training to boost competency and knowledge
- Change in mandates of professionals
- Establishment of new professions
- Establishment of monitoring (including relevant sanction mechanisms) for professional performance
- Development/strengthening of curriculum for university students and/or for on-the-job training.
- Other

The training carried out is described in general terms in the reply to the previous question. It would seem that the training of interdisciplinary teams has had an impact on the local level. The training of judges is
being evaluated, but the results of the evaluation are not yet available. Few changes in the mandate of juvenile justice professionals were brought to the attention of the evaluation team. The staff assigned to the new pilot facility for children who commit criminal acts naturally assumed functions different from those that they had occupied previously, because the facility is the first of its kind. So, this development was more dependant by the nature of the new facility than to a deliberate decision. Examples of the creation of professions that are new in the countries concerned are rare and no examples were found in Romania.

No programmes for monitoring the professional performance of juvenile justice professionals were introduced with UNICEF support, although such initiatives are reportedly being introduced with regard to police and judges in Romania and Serbia with the support of other actors, as mentioned elsewhere in this report.

In service training has been introduced for judges in Romania, Serbia and Tajikistan. No hard data on the impact of this training has yet become available, but informants in all three countries consider that it has had a perceptible impact in the sensitivity of judges to children who appear before them and on sentencing, especially in municipalities or districts where alternative community based projects have been established.

It is difficult to measure the impact of UNICEF’s support in the area of capacity development of professionals in juvenile justice. What is notable in Romania is the fact that with UNICEF support, it was for the first time in 2005 when a specialized training for judges in juvenile justice was taking place. Also, the study produced with UNICEF support is used as a training manual for judges and prosecutors at the School of Magistrates. The contribution of UNICEF is thus important in pushing forward the introduction of juvenile justice curricula and training for magistrates. The impact on the way professionals behave is anyway positive if we look at the figures provided by the Ministry of Justice, i.e. less children have been arrested and convicted to imprisonment in the last two years.

To what extent did UNICEF activities influence an enhancement in professional capacity and accountabilities directly related to international minimum standards in the area of JJ (impact)

The evaluation team did not find any UNICEF activities in any of the countries covered specifically aimed at enhancing accountabilities. In none of the countries covered by the evaluation did UNICEF evaluate objectively and independently the enhancement of professional capacity directly related to international standards concerning juvenile justice. The evaluation of training activities conducted as part of the juvenile justice programmes was of two kinds: questionnaires implemented by the trainers themselves designed to obtain the trainees’ opinions on the quality of the training activity, and traditional testing of the trainees understanding of the content of the course. The former provides little information on what has been learned. The latter does, but the evaluation team did not have the sort of access to test results that would permit differentiation between what had been learned about international standards and what has been learned about other subjects covered by the courses in question.

The evaluation team did an independent evaluation of the results of two training activities supported by UNICEF in Romania: a training course for 18 staff members of a pilot project for children under the minimum age for adjudication who have committed criminal acts, and a training course for judges carried out the National Institute of the Magistracy. Only the results of the evaluation of the training of the staff of the pilot project have been received by the evaluation team. They reveal that all of the 12 trainees still working for the project, except one, have the basic knowledge of the Romanian legal framework on child rights. The results regarding knowledge of relevant provisions of the CRC is quite different, however: two-thirds of the trainees are not aware of the principles concerning sentencing contained in the CRC and almost half of them did not know the provisions related to promotion of diversion measures.

To what extent did UNICEF activities contribute to a “change in mindsets” of personnel working in the area of juvenile justice towards juvenile offenders? (impact)
The evaluation team found that members of the intersectoral team it interviewed were very committed to internationally recognized principles concerning the treatment of juvenile offenders. Because this particular team began working for juvenile justice reform before becoming involved in UNICEF activities, it is difficult to say to what extent the present ‘mindset’ of this particular group can be attributed to UNICEF activities. However, UNICEF’s actively supported the work of this team, by promoting the approach developed by them, supporting their participation in training and preparing a manual on juvenile justice based largely on their experience, and has thus helped change the attitudes of other professionals throughout the country. An evaluation designed in part to assess the impact of training of judges carried out by the National Institute of the Magistracy on the attitudes of the trainees has been undertaken, but the results are not yet available.

To what extent were UNICEF activities in capacity development based on an analysis of identified gaps in professional capacity? (relevance and results based management)

In general, capacity development activities supported by UNICEF – which consisted almost exclusively in training – were not based on specific exercises designed to measure ‘gaps in professional capacity’. They were based on the situation analyses and on impressions formed by UNICEF staff and trusted counterparts through preliminary exploratory activities. Once a series of training events were underway, subsequent events were generally based on an evaluation of needs made by the trainers as part of earlier training courses.

To what extent were users and beneficiaries of capacity building activities satisfied with the services provided to them? (effectiveness)

In many instances, trainers who conducted training events sponsored by UNICEF asked trainees to evaluate courses at the conclusion of each. The reports submitted to UNICEF sometimes describe the results of such evaluations in general terms, which are invariably positive.

20.3.3 Development of community based services and coordination between sectors

To what extent were UNICEF activities successful in developing community based services for children in conflict with the law and in promoting coordination and synergy between different sectors in any or several of the following aspects of juvenile justice programme: (impact)

- Prevention of delinquency among juveniles (such as community support models)
- Restorative justice for children in conflict with the law (such as diversion of children away from the formal criminal justice system and alternatives to deprivation of liberty)
- Rehabilitation and reintegration services in the community (also for children coming out of closed institutions)
- Improvement in the treatment and care of children in closed institutions and the promotion and protection of the rights of children deprived of their liberty
- Links to community based care models within the overall de-institutionalization process for the country?

UNICEF supported a community based rehabilitation and reintegration project that was initiated by an NGO, Alternative Sociale, in Iasi. Also thanks to UNICEF support\(^\text{168}\), this project was replicated in three other communities and has become widely known and is considered by many authorities a model that should influence the future shape of the juvenile justice system, including future national policies regarding respect for the last resort principle as set forth in Article 37 of the CRC. UNICEF provided

\(^{168}\) DFID the main funder of the project. The support from UNICEF consisted in equipment of all police stations with special mirrors in the interrogation rooms. Also, UNICEF funded the equipment for the closed residential facility for minors under 14, located in Iasi County, in Targu Frumos.
support for the implementation of diversion orders and alternative sentences, but not post-release support services.

UNICEF’s support to a community based delinquency prevention programme established by an NGO (‘Association Jean Valjean’) also helped that programme develop and consolidate, although it is still implemented only in certain parts of the capital. By contrast, UNICEF’s exploratory support for promotion of restorative justice did not lead to support for actual programmes in this area. The evaluation team was unable to assess the impact of UNICEF’s support for programmes and physical conditions in certain custodial facilities for adolescent offenders, for the reasons mentioned elsewhere in this report. Significant synergy between different institutions and sectors (notably the police, prosecutors, the judiciary, local government and civil society) exists in the communities in which community based alternatives have been established with UNICEF support.

To what extent did UNICEF activities contribute to triggering an enhancement of the coordination and synergy between different sectors in the JJ system? (impact)

UNICEF’s activities had little or no medium-term impact on coordination and synergy between different sectors of the juvenile justice system. We can consider the study on Practices and Standards in the juvenile justice system as an attempt to coordinate the actions of all key actors in the area. Unfortunately, not enough has been done to sustain the study, while this could have been a real opportunity for UNICEF to act as a bridge in helping the justice reform, and in taking the lead in public policy for law reform.

To what extent were professional in different sectors (justice, law enforcement and social welfare) satisfied with the new mechanisms/strategies put in place to enhance coordination and synergy? (effectiveness)

In Romania this question is moot for the reasons indicated in the reply to the previous question.

20.3.4 Improving monitoring, data collection systems and supervision of juvenile justice system and situation

How have the UNICEF supported activities, projects and/or strategies been linked to Government’s own databases and/or M&E systems in the area of juvenile justice? (results based management)

The situation report prepared by the National Institute of Criminology contains considerable data on the functioning of juvenile justice. No effort was made to continue collecting or analyzing such data, however, and the Minister of Justice reportedly has decided to close the Institute. The National Authority for the Protection of Children is developing a computerized case management system that should contain information inter alia on children who have committed criminal acts but are too young to be prosecuted, including those in the UNICEF-supported pilot project, but this system was not yet fully operational at the time of the evaluation mission and the National Authority seemed unaware of the potential relevance of this new system for juvenile justice.

To what extent did UNICEF meet its planned outputs and outcomes related to improving monitoring, data collection systems and/or results based management of the Government? (effectiveness)

In Romania UNICEF’s work on juvenile justice did not reach the point where outputs or outcomes of the kind referred to by this question were adopted.

What type of strategies did UNICEF use to improve monitoring, data collection systems and/or results based management of the Government in the area of JJ? (relevance):

The UNICEF office in Romania has not yet implemented strategies of the kind referred to by this question.
Were these strategies sufficient to influence they way the JJ system is monitored? **(efficiency)**

This question is moot for the reasons indicated in the reply to the previous question.

To what extent did UNICEF activities trigger an enhancement of monitoring-, data collection systems and/or results based management of the Government in the area of juvenile justice in any of the following areas: **(impact)**

- Building and/or strengthening M&E systems for services and professionals in JJ system?
- Building and/or strengthening coordination mechanisms for data handling (such as databases)?
- Encouraging and/or influencing transparency and accessibility of data?
- Development and implementation of specialized studies or surveys?
- Building and/or strengthening of indicator frameworks?

The situation analysis carried out with UNICEF support is the only example of a specialized study or survey concerning juvenile justice. Although it led to a greater appreciation of the importance of evidence-based planning for juvenile justice reform, it had not yet, at the time of the evaluation mission, led to the adoption of a policy of basing legal and institutional reforms on data. Nor had the situation analysis or any other activity supported by UNICEF led to the improvement of data collection systems, the establishment of monitoring programmes, the introduction of results based management, new mechanisms for the coordination of data handling, greater transparency and accessibility of data or the improvement of indicator frameworks.

Have the Governments put in place any mechanisms and financial budget allocations to ensure continuation of monitoring, data collection systems and/or results based management of JJ-system? **(impact and sustainability)**

The Romanian government had not put in place any such mechanisms or allocations at the time of the evaluation mission.

To what extent were professionals in justice, law enforcement and social work sectors satisfied with new M&E systems? **(effectiveness)**

This question is moot because no such monitoring systems had become operative on the national level at the time of the evaluation mission.

20.3.5 Creating an environment for change (public)

Have the activities, projects and/or strategies used by UNICEF contributed to empowering disadvantaged children and families? **(human rights based approach)**

No attempt has been made to measure any impact of the activities, projects and strategies used by UNICEF on the empowerment of children and families, in any of the countries covered by this evaluation. In Romania, several of the activities supported were designed to empower children and/or their families in certain ways. The community based diversion/alternative sentence pilot projects are designed to provide children with life skills and similar services that are empowering. They also provide counselling and similar services to the families of the children referred to the projects, designed to help them deal with any social problems that may have contributed to the child's illegal conduct. The success of these programmes in terms of social reinsertion suggests that they are successful in some degree in empowering the children and families who participate in them, but this specific outcome has not been measured and the question cannot be answered more categorically. The delinquency prevention programme implemented in schools in disadvantaged districts of the capital once supported by UNICEF are designed to help adolescent children avoid falling into difficulties such as drug abuse and violence, by empowering them to take health decisions concerning their own lives. The programme is considered a success, which presumably implies that the participating adolescents have been empowered to some degree, although no hard data is available to confirm this. The small pilot project for younger children
who have committed criminal acts is also designed to empower the children committed to this facility and their families to adopt a more healthy life-style but it has not yet been evaluated, and the evaluation team believes that such kind of elements (i.e. empowerment) should be evaluated by a further exercise.

Was information accessible in the language of different minority groups? (human rights based approach)

No information in any language other than Romanian and English was produced as part of UNICEF support for juvenile justice reform.

21 CONCLUSIONS AND LESSONS LEARNED

21.1 IMPACT

UNICEF supported activities have had beneficial impacts on the judiciary. Training on the rights of the child has been institutionalized and independent observers indicated that changes in the attitudes of judges towards juvenile offenders has already had a positive impact on sentencing.

There has been some impact on correctional facilities for persons under the age of 18. UNICEF contributed to the improvement of the material conditions of detention in some facilities, but most work on other changes in the correctional system for persons under the age of 18 was done by other international agencies. UNICEF’s contribution to a new approach to younger children who commit offences may in time prove to be important, but it would be premature to evaluate the impact of this new pilot project at this time.

Some police officers have become converted to the child rights cause, through the training carried out on the local level by NGOs, with UNICEF support. The evaluation team received no information that would allow it to form an opinion on the impact of the project on the police throughout the country as a whole.

The National Authority for Protection of the Rights of the Child, which is part of the Ministry of Labour, Social Solidarity and Family, is responsible for the care of younger children who commit under the minimum age of criminal responsibility. UNICEF has sponsored a pilot project in this area and developed Standards of Care for residential and non-residential treatment of such children, but these initiatives thus far have had little impact on the Ministry, which focuses on other child protection issues and gives a very low priority to juvenile justice. The Ministry of Justice’s probation service, which has responsibility for supervising non-custodial measures imposed on older children, by contrast, is very child rights oriented. It has not been a UNICEF partner, although the UNICEF project has contributed to this orientation indirectly.

The impact on prosecutors has been uneven. Some prosecutors have been trained through the local intersectoral training courses, which have had had a positive impact on diversion in the towns where they have taken place. Nevertheless, there is no evidence yet of an impact on the functioning of this institution on the national level.

In general, despite many activities for juvenile justice reform in Romania have started before UNICEF had started its work in this area, some of the work supported by UNICEF has had important influence (possibly more than the EU PHARE project), even though UNICEF itself has seemed not to be fully aware of this. More than this and as emphasised later on in this chapter, there is plenty room for UNICEF to still play a significant role in juvenile justice reform in Romania. This is why it is recommended that UNICEF resume its support to this area.
21.2 LESSONS LEARNED AND OPPORTUNITIES

Despite the important flaws described in the previous paragraph, UNICEF’s strategy had some positive aspects, which should be given the necessary attention, also in other countries. The decision that the situation analysis should be carried out by national experts was a sound one. Those selected were competent to undertake this task, and entrusting it to them helped strengthen national capacity in this area. The range of activities UNICEF supported also was appropriate. Law reform, training of judges and prosecutors, new approaches to diversion and non-custodial sentences, delinquency prevention, new types of residential facilities for younger offenders and inter-sectoral cooperation on the local level covers most of the essential components of a juvenile justice system.

In general, counterparts expressed appreciation for the role UNICEF has played in juvenile justice reform. The head of the MoJ’s department of international cooperation indicated that “the work of UNICEF and its NGO partners is very important.” The EU had had more impact, he added, only because it invested more funds. The National Authority was very positive about UNICEF cooperation, although its views seem to be based on cooperation on a broader range of issues and not particularly juvenile justice. UNICEF is quicker to deliver aid once an agreement has been reached, according to the authority, and although they do not always agree with UNICEF, different views on questions of substance never lead to a crisis.

NGOs, despite their disappointment with UNICEF’s withdrawal from juvenile justice, also had positive comments on UNICEF’s efficiency. One stated that it is more flexible and agile than other donors. On one occasion another major donor took one year to respond to a project proposal, by which time the proposal needed to be reformulated because of the work done in the interim with UNICEF support.

The criticisms made by governmental counterparts focused on the lack of follow-up to the situation analysis, including the decision not to publicize it. Not surprisingly, former NGO partners were critical of UNICEF for lack of continuity in the support it provided to their projects, and the perceived lack of a strategic approach to juvenile justice reform. In both cases, these criticisms were tempered by the belief that it is not too late for UNICEF to return to juvenile justice reform and there are important opportunities which UNICEF is well positioned to take advantage of. The deputy head of the probation department indicated that UNICEF’s expertise and knowledge is needed and it “has a lot of work to do.” The NIM, probation department and others agreed that UNICEF could play a very important role in law reform. The two bilateral donors that had supported UNICEF’s work on juvenile justice expressed some surprise at UNICEF’s present lack of involvement in this area and indicated that, in principle, they would be quite prepared to support additional activities. One added that some European embassies also would be prepared to join forces with UNICEF to provide political support for the reform process. Furthermore, the difficulties that limited the effectiveness of the EU juvenile justice project and the fact that EU funding for such activities has come to an end has created an atmosphere that is very receptive to UNICEF’s approach to international cooperation in this area. Indeed, some of those interviewed considered UNICEF’s working relationship with “the best professionals” in the country to be one of its strengths.

The UNICEF office in Tajikistan enjoys the support of a half-time volunteer and interns, whose contributions – especially those of the volunteer who is a retired social worker with considerable expertise - have been greatly appreciated by national counterparts. The UNICEF office in Serbia has enjoyed the support of international consultants, who have greatly contributed to the attainment of the expected results. In contrast, the lack of such support staff for the juvenile justice programme in Romania is very probably one of the reasons for the unfortunate decision to suspend work on juvenile justice reform. The

169 Some support was provided through the UNICEF Regional Office by an international expert whose contribution was greatly appreciated.
child protection component of a UNICEF programme often covers three of four areas, and no matter how competent and dedicated a single child protection programme officer is, even with the support of an assistant programme officer, will not have the capacity to manage a project on juvenile justice at the same time as two or three other child protection projects. Insufficient coordination with other international actors also may have been a factor. Officials of aid programmes of two embassies (the UK and Netherlands) indicated that they had lost touch with the status of UNICEF’s work on juvenile justice reform and would be willing to help both materially and in lobbying the pertinent government officials, and UNICEF was unaware that the World Bank was assuming a significant role in areas affecting juvenile justice.

On the basis of the above, the decision to abandon work on juvenile justice was an error, but not an irreversible one. The work accomplished despite the difficulties and errors have given UNICEF the credibility with government officials and donors to revive the project.

22 RECOMMENDATIONS FOR FUTURE STEPS

Although UNICEF did not manage to raise funds for a multi-year project on juvenile justice reform based on the situation analysis and its investments in this area were only a fraction of those made by the EU, UNICEF made a valuable contribution to juvenile justice reform that is greatly appreciated by many in government and civil society. Indeed, disappointment with the results of the PHARE project have led to growing support for the approach and types of reforms advocated by the pilot project of Alternativa Sociale supported by UNICEF. It is therefore recommended that UNICEF resumes its support in this area. UNICEF has begun the process of phasing out, because Romania has entered the EU, which means that it will probably not possible to invest large amounts. While it is true that support for juvenile justice reform is labour intensive and requires a considerable investment of staff time, it is believed that UNICEF can play a role in advocacy with minimum investment of other resources. Because of the recognition and moral authority UNICEF has earned, simply recognizing the importance of the ongoing law reform process, for example, would help consolidate political support and maintain momentum. UNICEF’s ability to act as a bridge between civil society and the government, and between different sectors in the government, is particularly relevant in a situation like that prevailing in Romania, where inter-ministerial and inter-sectoral tensions and rivalries are significant. Specifically, UNICEF’s experience in promoting participatory processes and its credibility would be of great help in the underway process of law reform, which is encompassing not only the Penal Code and Code of Criminal Procedure, but also the Civil Code and Code of Civil Procedure, and is expected to conclude in 2007, possibly as early as the middle of the year. Thus far, participation in the process has been limited to the members of ad hoc Commissions, which are composed mainly, if not entirely, of high-ranking representatives of the relevant ministries and public institutions and a small number of academic experts. The drafts will be published for comments before being sent to the Parliament, but no structured process of dialogue with civil society is planned. In such direction, UNICEF should try to play a role.

Should UNICEF decide to renew its support to juvenile justice reform in Romania, greater efforts should be made on two crucial aspects, i.e.:

- the development of indicators and tools for data collection in this area. Unless this is done, it will be continue to be difficult to use result oriented programming and to document convincingly the impact and value of its support for juvenile justice programmes;
- the promotion of strong and constant cooperation with other international agencies/donors, above all given the credibility UNICEF has been able to acquire as provider of quality technical assistance and as facilitator of civil society’s participation in the whole process.

In case UNICEF decides to renew its support to juvenile justice reform and manages to obtain substantial financial resources, a specific area where support would have a visible and almost immediate impact regards the implementation of structured non-residential programmes, which is still lacking in Romania and is perceived as one of the main obstacles to reducing the rate of detention and imprisonment of juvenile suspects and offenders. UNICEF could also give a specific concrete contribution to the government’s intention of replicating, all over the country, the pilot residential facility for children who
commit offences but are too young to be prosecuted as juvenile offenders. No plans for first evaluating this project has indeed been made. UNICEF could actually sponsor the ad hoc evaluation of the project. Another valuable attempt to facilitate efforts would consist in supporting linkages between the database being developed by the National Authority for the Protection of Children’s Rights and other databases being developed by judicial and law enforcement authorities.
SECTION IV: SERBIA

23 BACKGROUND

Milosevic was forced from office by a popular uprising in 2000, opening a period of profound social, economic and political transformation. The economy has been privatized and economic recovery has begun. Production remains far below pre-war levels, however, and in 2005 one-third of the population of lived below or close to the poverty line. 179 The percentage is double for vulnerable groups such as Roma and refugees and displaced persons. 171 Montenegro became independent in June 2006, after a popular referendum. Despite these events, however, and the continued volatility of electoral politics, democracy has been consolidated and there appears to be little or no risk of backsliding towards authoritarianism and extreme nationalism. Serbia became a member of the Council of Europe in 2003. The process of applying for membership in the European Union began in 2000, but has been suspended due to dissatisfaction with the degree of Serbian cooperation with the International Criminal Tribunal for former Yugoslavia.

23.1 CHARACTERISTICS OF THE JUVENILE JUSTICE SYSTEM

When Yugoslavia ratified the CRC in 1990, the legal responsibility of offenders under the age of 18 was regulated by Chapter IV of the Criminal Code. Children under the age of 14 could not be accused of an offence; those aged 14 to 16 (younger minors') had limited responsibility and those aged 16 to 18 (older minors') could be sentenced to a 'minors' prison'. The Law on Criminal Proceedings contained a chapter on juvenile offenders which recognized the right to be tried in closed court and other rights. 172 Juvenile courts did not exist, but juvenile offenders were tried by panels composed of judges and lay assessors having special training. 173 The number of children accused of an offence in the FR Yugoslavia (Serbia and Montenegro) during the years 1990 to 1993 ranged from 3,328 to 4,848, and the number sentenced from 3,011 to 3,685. 174 Children who committed offences could be sent to three kinds of institutions, depending on their age, the nature of the offence and their prior record: those under the age of 14 could be sent to one of three semi-open 175 'educational institutions' operated by the Ministry of Labour and Social Policy; those aged 14 to 18 could be sent to the Juvenile Correctional Institution in Krusevac and male offenders aged 16 to 18 who commit more serious offences 176 could be sent to the 'juvenile prison' at Valjevo. Sentences to the Juvenile Correctional Institution were of indefinite duration 177, while sentences to the juvenile prison range in duration from one to ten years. 178 Both of these facilities were (and are) operated by the Ministry of Justice. At the time of the 2002 situation analysis made by UNICEF, two of the educational institutions held a total of 88 children 179, and the population of the Juvenile Correctional

170 Country Programme Action Plan, supra, para.2
171 Ibid, para.373
172 Chapter XXVII, articles 452-492, Initial Report, para.374
173 Initial Report, para.375
174 Initial Report, Tables 2 and 3. The number alleged to have committed an offence during these years was considerably higher, ranging from 4,947 to 7,426. Ibid, Table 1.
175 Children are not allowed to leave without permission, but there are no physical barriers to departure.
176 An offence which, if committed by an adult, is punishable by a sentence of 5 years or more.
177 A maximum of five years, with the possibility of release being reviewed annually.
178 Juveniles receiving longer sentences were transferred to an adult facility upon reaching the age of 23; adolescent girls who commit similar offences were sentenced to the woman’s prison.
179 No data was given for the third.
Institution was 215; only one offender under the age of 18 was confined in the ‘juvenile prison’ and only one adolescent girl was confined in the woman's prison.

The Constitution of the Federal Republic of Yugoslavia, adopted in 1992, recognized the new State, composed of Serbia and Montenegro, as a successor in international law to the SFR Yugoslavia. The Initial Report of the FR Yugoslavia to the Committee on the Rights of the Child was presented in 1994. The Concluding Observations on that report adopted by the Committee on the Rights of the Child in 1996 are rather limited in scope, in so far as juvenile justice is concerned. The periodic reports due in 1998 and 2003 have not yet been submitted. The government established two new bodies that help coordinate juvenile justice reform. The Council for Children’s Rights, an advisory body composed of representative of various ministries and civil society, was established in 2002. It has made recommendations on law reform, and drafted the Plan of Action for Children adopted by the government 2004. The Plan of Action nevertheless does not address the issue of juvenile justice, nor does it expressly address delinquency prevention.

A Juvenile Justice Committee was established in December 2004. Membership includes the Ministries of Justice, of the Interior, of Education and of Labour and Social Affairs, as well as the judiciary, the office of the prosecutor, three NGOs and UNICEF. Its main functions are to coordinate and make recommendations. The creation of a Committee on which these ministries are represented is a major accomplishment, although inter-ministerial cooperation still could be improved. UNICEF has provided support for the Council for Children’s Rights and the Juvenile Justice Committee.

23.2 ACCOMPLISHMENTS AND MAIN GAPS IN THE CURRENT JJ-SYSTEM

The following table summarises the main accomplishments and gaps identified in the current juvenile justice system in Serbia. Accomplishments and gaps are gathered under the main components / aims of UNICEF’s work for juvenile justice reform in the country.

180 CRC/C/8/Add. 16
181 “Various matters relating to juvenile justice are a cause of concern to the Committee. For example, the Committee is concerned that social welfare agencies and services might enjoy wide discretionary powers to the detriment of the application of the principle of the rights of the child as the framework for the functioning of the administration of the juvenile justice system. The apparent lack of mechanisms for the registration by children of complaints of ill-treatment and for the full and impartial investigation of those complaints is also a cause for concern. Additionally, the Committee is concerned as to the adequacy of measures taken for the protection of the rights of the child during investigation procedures and during the period of pre-trial detention.” para.22
182 Aims such as reduction of poverty, prevention of school-leaving, and reduction of alcohol and drug use by adolescents presumably help prevent offending, although that is not described as an express aim.
183 It is a Committee of the Penal Reform Steering Board, established by Ministry of Justice’s Department for the Execution of Penal Sanctions.
184 The full name of this Ministry is Labour, Employment and Social Affairs.
### Law and policy reform

**ACCOMPLISHMENTS:**
- Comprehensive law adopted
- Most secondary legislation adopted

**GAPS / TO BE DONE:**
- Adoption of secondary legislation on diversion

### Community-based alternatives

**ACCOMPLISHMENTS:**
- Pilot VOM mediation projects
- ‘Mobile child protection teams’ in 14 municipalities
- Transformation of main facility for juvenile offenders

**GAPS / TO BE DONE:**
- Evaluation of impact of VOM and mobile teams
- Take VOM and mobile team experiences to scale
- Expand scope of support for alternative community based measures
- Reform of MOLESP facilities

### Capacity building

**ACCOMPLISHMENTS:**
- Institutionalization of training for juvenile justice professionals
- Establishment of inter-sectoral Juvenile Justice Committee

**GAPS / TO BE DONE:**

### Environment for change

**ACCOMPLISHMENTS:**
- Activities at local level to build receptivity for pilot projects

**GAPS / TO BE DONE:**

?  

### Other

**ACCOMPLISHMENTS:**
- Risk assessment tool
- Course in U. Belgrade

**GAPS / TO BE DONE:**
- Expand support for university child rights courses
- Document / enhance participation of minority communities
- Develop mechanisms for child participation

---

24 **OTHER ACTORS INVOLVED IN JJ-REFORM**

No other international donor or agency has competed directly with UNICEF’s efforts to reform the juvenile justice system. The Council of Europe has supported some activities that overlap with certain components of the UNICEF project, such as evaluations of the Law on Juvenile Offenders, the ‘House Rules’ for juvenile correctional facilities developed with UNICEF support, and conditions in the two facilities operated by the Ministry of Justice, including the one in Krusevac that has been one of UNICEF’s major counterparts. However, the CoE has provided little actual assistance. The evaluation of conditions in JCIK did contain one recommendation that “it would undoubtedly be relevant to reduce the number of young people [in the facility] by creating other centres better distributed in the national territory…”.\(^{185}\)

This recommendation, which echoes Rule 30 of the UN Rules on Juveniles Deprived of

---

\(^{185}\) A question mark has been put in this cell because the evaluation team believe that although negative attitudes regarding juvenile offenders may exist within the general public, no evidence was found in any of the four countries that such views are or have been at any relevant time a significant obstacle to reform

\(^{186}\) Report of Mission Serbia, M. Lorcć, 2006
Liberty, apparently was not taken into account and a decision reportedly has been taken to build a new centralised facility with the same capacity and functions at the JCIK site.\footnote{187}

The OSCE has been involved in judicial reform (including legal advice, training for judiciary, capacity building of the Judicial Training Centre) as well as prison reform and support to Ombudsman institution. Also UNDP and CIDA have been partially involved in judicial reform. The latter has funded a project of assistance for the reform of the correctional system as well as a broader project of judicial system reform, including institutional capacity building and policy development. The training and technical assistance provided by those international organisations and donors, such as the introduction of licensing requirements for the police and mediators have complemented those provided by UNICEF. For instance, the introduction of different kinds of mediation, including commercial, labour and family mediation, is being supported by the International Finance Corporation (IFC).

While USAID has been working in order to strengthen the justice sector, with no specific focus on juvenile justice, SIDA is directly involved in juvenile justice reform, as one of its strategy’s priorities consists in supporting structural reforms in the legal sector (including legal aid, legal education, Ombudsman), and police reform.

Finally, while the World Bank’s support to Serbia is focused on the improvement of the health system and on education reform (with a special focus on Roma), the European Union has identified the ‘improvement of prison conditions as regards juvenile offenders’ as one of its short-term priorities. More generally, judicial reform was one of the priorities set by the EC Country Strategy Paper 2002-2006. This has turned into funding a project of Good governance and institution building (managed by the EAR) that identifies justice reform as one of the main goals to be achieved, including the improvement of prison conditions in line with Council of Europe standards, with attention to vulnerable groups such as juvenile offenders; capacity building within the Ministries of Justice and Interior in drafting laws in line with EU standards; support to judiciary and prosecutor reforms; and reform of police education.

Justice reform is thus an area quite “crowded” in Serbia, where many actors are directly involved in juvenile justice reform or support activities that can have an influence on the juvenile justice system. The UNICEF office should thus put all the needed efforts not only in promoting actual cooperation among the various actors, but also in trying to more effectively leverage on what they are doing.

25 OVERVIEW OF UNICEF’S SUPPORT

The UNICEF office in Belgrade, then capital of the Federal Republic of Yugoslavia, was established in 1993. During the 1990s, aid focused on the emergency. The activities of the UNICEF country office for Serbia do not cover Kosovo. UNICEF’s present programme covers the years 2005-2009. The consolidation of governmental institutions and economic progress in Serbia has led UNICEF to begin the process of phasing out.

UNICEF began working on juvenile justice reform systematically in 2001, with the decision to prepare situation analyses on juvenile justice in Serbia and Montenegro, the only two Republics of the former Yugoslavia then remaining in the federation. The report on Serbia, “Children in Conflict with the Law -

\footnote{187}{Rule 30 provides in part “Detention facilities for juveniles should be decentralized and of such size as to facilitate access and contact between the juveniles and their families. Small-scale detention facilities should be established and integrated into the social, economic and cultural environment of the community.” The evaluation team does not have enough information to state whether the need for residential facilities in other parts of the country is sufficient to warrant the construction of smaller facilities elsewhere; the point it that option of decentralization should have been considered and the information available suggests that it was not.}
Victims of Transition”, was prepared by an international consultant\(^{188}\) and published in 2002. It concluded that “the juvenile justice system in Serbia had broken down” during the previous decade and “every component of the juvenile justice system in Serbia needs critical support and attention.”\(^{189}\) In particular, the police were “in sore need of training”, judges were poorly trained and motivated, social work teams responsible for juvenile offenders were barely functional and conditions in residential facilities for juvenile offenders were “appalling”\(^{190}\). The report also concluded that the legislation then in force did not fully incorporate the relevant provisions of the Convention on the Rights of the Child and related international instruments (although drafting of a new comprehensive juvenile justice code had already begun) and recommended the establishment of diversion and alternative sentencing programmes.\(^{191}\) Additional recommendations were addressed to the Ministries of Justice, the Interior and Social Affairs, as well as to the judiciary and prosecutors. Many persons interviewed during the present evaluation commented that this report was well-done and has had a big impact on professionals involved in different aspect of juvenile justice.

The remainder of UNICEF’s work on juvenile justice reform during this initial period of 2001 to 2003 was devoted to needs assessment, identification of partners, evaluation of feasibility, project development and fundraising. The resulting project on juvenile justice reform, entitled “Children’s Chance for Change”, was signed in September 2003 and launched in May 2004. The second phase of UNICEF’s support for juvenile justice reform consisted in implementation of this project, which had four components or ‘sub-projects’: policy development and related legislative and administrative reforms; the development of alternative community based care and prevention programmes; capacity building and advocacy. The second phase was scheduled to end in December 2006, but has been extended for six months. Funding for the project was approximately US$2,100,000, of which some US$ 1,853,500. was spent in Serbia during 2004-2006.

Since UNICEF’s work on juvenile justice has, since 2004, been funded by a single donor, SIDA, the objectives spelt out in the funding proposal constitute the basic framework for the project. During the first year of implementation, the donor provided the services of an expert whose observations led to some fine-tuning of the objectives and an increased emphasis on the social, rather than legal, dimension of juvenile justice reform.

The Serbian Country Office has a Child Protection Team of five local staff, including a consultant, who spends much of her time conducting training programmes. At the time of the evaluation mission three of them had been working on juvenile justice project full time for the previous year.

### 25.1 Specific Programme Components

UNICEF’s support for juvenile justice reform consisted of the following four components.

#### a. Policy development and related legislative and administrative reforms

The objectives of this component include the adoption of a new juvenile justice code and related norms and standards of practice. NGOs had been promoting new legislation on juvenile justice since 2001, and in 2002 a draft was produced by the Child Rights Centre-Belgrade.\(^{192}\) UNICEF prepared comments on the draft law, and in 2003 began supporting the Child Rights Centre’s work on the draft law. A number public round-table discussions were organized to ensure an open, participatory process and mobilize support.\(^{193}\)

---

\(^{188}\) Ms, Carol Conragan, J.D.

\(^{189}\) p.5

\(^{190}\) p.5-6

\(^{191}\) p.6

\(^{192}\) An NGO established in 1997, originally known as the Yugoslav Child Rights Centre. This draft law was produced with the support of the Danish Centre for Human Rights.

\(^{193}\) This process was supported by the Council for the Rights of the Child, the Juvenile Justice Committee. and the Council of Europe, in addition to UNICEF and the Child Rights Centre.
An official draft was completed by the Ministry of Justice in 2004, the law was adopted by the national legislature in 2005 and entered into force on 1 January 2006. The debate was not politicized and there was no significant opposition because the subject was not considered controversial. Many persons interviewed during this evaluation expressed the view that UNICEF’s support for the law, in particular its efforts to sensitize juvenile justice professionals, was crucial to the adoption of the law. Given the importance of such law, it is worth providing, in the following paragraphs, some details on its contents.

The law governs offences committed by children aged 14 to 18, as well as offences committed by young adults aged 18 to 21, and children of any age involved in criminal proceedings as witnesses or victims. The new law makes important changes in the treatment of offenders aged 14 and 15; changes concerning those aged 16 and 17 are more modest. For example, the principle that custodial sentences should be imposed a last resort and only for “as long as necessary to achieve the purpose of the educational measure” is recognized in so far as educational measures are concerned, but not with regard to prison sentences that may be imposed on juveniles aged 16 and 17 who have committed serious offences. A wide range of non-custodial sentences are recognized. This is a major breakthrough, since only two alternative sentences, intensive supervision and ‘disciplinary measures’, were recognized under the older law. Another important breakthrough is recognition of diversion. Diversion orders may be imposed by the prosecutor or by the judge, in cases involving both younger and older juveniles. In contrast to non-custodial sentences, they are available only for less serious offences. Cases against juvenile offenders may only be brought by a specialized prosecutor, before a specialized juvenile court. A defence attorney must be present when an accused juvenile is questioned prior to trial, and the trial of a juvenile may not proceed unless the accused is represented by an attorney. Juvenile suspects may no longer be held in police custody for 48 hours for questioning. The provisions of the law concerning residential facilities for convicted offenders reflect the influence of the UN Rules on the protection of juveniles deprived of liberty. The right to education, to religion, to health care, adequate food and clothing, recreation and family visits are recognized, individualized treatment plans are prescribed and solitary confinement is prohibited.

The juvenile justice law of 2005 calls for six pieces of secondary legislation: regulations concerning the application of diversion orders; regulations on the enforcement of alternative sentences; regulations on recordkeeping on the execution of the sentences imposed; rules on the work of a Council on juvenile justice and ‘house rules’ for the juvenile correctional institution and juvenile prison. Draft regulations and rules were prepared by the Centre for Child Rights, with UNICEF’s support and with the participation of staff of the two facilities for offenders. The drafts also were discussed with the staff of these facilities

---

194 Compare Art.11, regarding ‘educational measures’ with Art.28 on offences carrying a sentence of more than 5 years committed by persons 16 or 17, which is substantially identical to Art.77 of the now repealed Chapter of the Criminal Code concerning juvenile offenders. The maximum sentence that may be imposed on an offender aged 16 or 17, 10 years, also remains unchanged. (Compare Art. 29 of the new law with Article 78 of the SFRY Criminal Code of 1977.)


196 Criminal Code of the SFR Yugoslavia, Art.75

197 Articles 5 to 10

198 Art.5. (The term ‘serious offences’ refers to those carrying a sentence greater than 5 years or more. The Criminal Code of Serbia of 2005 imposes such sentences for a relatively small number of crimes, mainly crimes of violence against the person resulting in serious injury or death, rape, robbery and other serious forms of theft. See Articles 121, 134, 178, 204 and 206.)

199 Art.42 and 57.

200 Art.49 and 65

201 Art.61 (Article 60 incorporates Art.226(3) of the Code of Criminal Procedure of Serbia, 2001, which limits questioning by the police to 4 hours)

202 Arts.89-91, 93, 128 and 145(The right to family visits includes the right to private visits with a spouse or common law partner – children over the age of 16 may marry in certain circumstances.)

203 The term ‘by-law’, a misnomer, is often used in English translations from the Serbian.

204 Articles 37, 86, 99, 101 and 166-167
and the pilot project on diversion. All of these rules and regulations have been approved by the relevant Ministries and other authorities and have entered into force, except for the regulations on diversion and those on the Council.

b. Capacity building
The stated goals of the project include the training of the judiciary, prosecutors, attorneys, police and staff in correctional institutions on relevant international standards on children in conflict with the law and current, effective standards of practice. Approximately 75 training events have been organized during the last 5 years. Some were organized by local NGOs, especially Amity and the Child Rights Centre, others were organized by the UNICEF’s national consultant and still others by international consultants. Two or three international consultants have been used repeatedly, and their contributions are greatly appreciated by those who have been trained by them.205

Judiciary, prosecutors and attorneys
In 2004, some two-day training activities specifically for judges, prosecutors and attorneys were organized. An evaluation of these events suggested that activities incorporating police officers, social workers and representatives of local governments would be more effective, and a series of 3-day seminars of this kind were organized by the Child Rights Centre in 2005. These activities focused largely on international standards, best practices and new national laws or draft legislation concerning children, such as the 2005 Law on Juvenile Offenders, the Family Code and certain amendments to the Criminal Code concerning juvenile offenders. In 2005, 271 persons participated in such trainings, including 95 members of the judiciary. Participants evaluated the relevance of the material for their future work very highly.206 The new law on juvenile justice assigns responsibility for the training of judges and prosecutors to the Judicial Training Centre, which UNICEF has agreed to support.

Police
UNICEF began working with the police in 2004, when a training activity on child rights and juvenile justice was organized. The first training event was focused on the then draft law on juvenile offenders. Other training activities, conducted by a foreign expert, followed and a total of some 350 officers participated. The quality of the most recent such course was evaluated as excellent by 76% of the police officers who participated, and ‘good’ by an additional 17.5%. Training on child rights has now been introduced into the curricula of the police academy, for basic entry-level training as well as in-service training. Questions on child rights are included in the exam that police officers must pass exams periodically in order to remain in service. A ‘package’ of international standards on juvenile justice prepared by UNICEF is used in the training. The training is not limited to knowledge of the rights of children, but also includes skills such as communication with children. Increased understanding of child rights also led the Ministry of the Interior to undertake internal evaluations of the relationship between the police and the community. Representatives of the Ministry of the Interior interviewed considered that UNICEF’s assistance played a key role reforming the police’s role in juvenile justice, and assistance received from UNICEF was “quicker, more comprehensive and more concrete” that assistance received from other donors. Their only complaint was that UNICEF did not approach the police earlier in the project.

Correctional staff
There are, as stated above, three types of residential facilities for children who have committed offences. Three educational facilities operated by the Ministry of Social Affairs house children under the age of 14 who have committed offences207, as well as runaways and children in need of protection or shelter. The Ministry of Justice operates two facilities, the Juvenile Correctional Institution at Krusevac (JCIK) and the

205 In particular Prof. D. Stakic of the Pennsylvania State University, who has trained police officers, and Ms. Miriam Lichmann of the United Kingdom, trainer on Victim-Offender Mediation.
206 4.44 out of 5.00
207 Offenders aged 14 to 18 also can be sentenced to such institutions, in the circumstances indicated in Art.20 of the Law on Juvenile Justice.
juvenile prison. Almost all the residents of the juvenile prison are over the age of 18, although many are serving sentences for offences committed when they were 16 or 17 years of age.\textsuperscript{208} UNICEF’s work has focused mainly on JCIK, the facility that houses the largest number of juvenile offenders, of both sexes.\textsuperscript{209}

From 2003 to 2006 UNICEF supported more than twelve training activities for the administration and staff of JCIK. This training, together with the new Law on Juvenile Offenders, the new ‘house rules’ adopted pursuant to the new law and a study visit to a juvenile facility in Sweden, led to far-reaching changes in this facility. A new category of staff called ‘personal assistants’ was created, and some of the guards were retrained for this new position, which involves closer involvement in the rehabilitation of offenders. The minimum stay was reduced from 12 to 6 months, the maximum stay from five years to four, and a new ‘behaviour modification’ system, which rewards good behaviour, was introduced. The use of violence as a means of discipline and control was eliminated, and Victim-offender mediation (VOM) was introduced as a means of reducing violence amongst the offender population (see below). The educational, vocational, cultural and recreational programmes have been diversified and strengthened. The facility has established a working relationship with the mobile child protection teams in order to involve the offender’s family in rehabilitation efforts, when possible. A survey of the views of the offenders residing in the facility was conducted by volunteers from a university, and the results reportedly were taken into account in the reform process. International consultants provided by UNICEF played a direct role in designing many of the changes described above. The new approaches are still in the process of being adapted to Serbian realities. The Director of JCIK has become an active supporter of the rights of the child, and at the time of the evaluation mission was chair of the Juvenile Justice Committee. Indeed, he also was instrumental in establishing a local plan of action for children in the community in which the facility is located.

In 2005 and 2006 UNICEF organized two three-month long seminars for the staff of the educational centre in Belgrade, one of the three operated by the Ministry of Social Affairs whose population includes some offenders under the age of 14. Despite these seminars and the assistance provided by student volunteers through a UNICEF-supported programme at the University of Belgrade\textsuperscript{210}, staff of the Belgrade centre expressed resentment about the limited amount of support received from the Ministry and UNICEF, compared to that provided to JCIK. There are two reasons for this situation: the perceived need to redefine the role of these institutions in light of the policy of promoting non-custodial forms of assistance to young juvenile offenders, and the impression that the staff of this facility have not responded adequately to the training that was provided.

c. Development of community based care and prevention programmes

Emphasis has been placed on two pilot projects, one concerning victim-offender mediation and the other, a delinquency prevention outreach programme. There is some overlap between the two, as will be seen.

\textit{Victim-offender mediation (VOM)}

The city of Nis was selected as the site for piloting VOM as a form of diversion. Training by a British expert began in 2003 and four training sessions, including a basic introductory course, refresher course and course in cultural diversity,\textsuperscript{211} took place between 2003 and 2005. Extensive efforts also were made, during this period, to build support for VOM within the law enforcement agencies, local government and civil society. Mediators receive a modest fee for each case handled; other activities are not remunerated. In addition to providing mediation services, the Mediation Centre has working groups that undertake outreach in the community, including child rights/ delinquency prevention activities in secondary schools, and evaluate client satisfaction with VOM services. The offices of the Mediation Centre are provided by the local government, and the fees of mediators have been covered by a start-up grant from the Ministry.

\textsuperscript{208} This facility also holds young adults sentenced as juveniles. In 2005, it held 125 prisoners, of whom only 4 were under the age of 18.

\textsuperscript{209} At the time of the situation analysis, this facility housed 215 offenders.

\textsuperscript{210} The students provided psychosocial support and counselling services.

\textsuperscript{211} Many juvenile offenders in Nis are Roma.
of Social Affairs, UNICEF’s support has been mainly to cover the cost of training and office equipment. The Centre hopes to finance operating costs from the local community and private sector in the future. Mediation of cases of juvenile offenders began in 2006, when the Law on Juvenile Offenders entered into effect. At the time of the evaluation (October 2006) 53 cases had been referred, mostly by the prosecutor. The cases referred for mediation represent more than a quarter of all cases of juvenile offenders investigated in Niš during this period. Agreement had been reached in 35 cases, 7 were still pending and 11 were not solved. Offenders who participated in mediation were very satisfied with the experience.212

The British expert whose services have been contracted by UNICEF also trained mediators in the Juvenile Correctional Institution and provided VOM training to the members of the mobile teams. Mediators at the correctional facility, who include teachers, guards and other staff, have received two training sessions. During the first two and half years mediation was attempted in 134 cases, and was successful in more than half. Mediation of conflicts between offenders confined in the institution has had very positive impact on the reduction of peer violence, according to the staff.213 At the time of the evaluation mission, a group of more experienced mediators from Niš and the correctional institution were receiving training for trainers, in order to prepare for replication of the pilot project in other communities. Professors of social work from Belgrade University also have received VOM training.

The introduction of different kinds of mediation, including commercial, labour and family mediation, is being supported by the IFC. A law on mediation has been adopted and a national Centre for Mediation that will license qualified practitioners is being established. The IFC staff responsible for the mediation project considered that cooperation with UNICEF had been very good, and had a positive opinion of UNICEF’s support for VOM mediation involving juvenile offenders.

Mobile child protection teams
In 2003214 UNICEF began supporting the establishment of ‘mobile child protection teams’ through the NGO ‘Amity’. The essential aim of this activity was to revitalize the approach to social services, given the grave problems with the Centres for Social Work diagnosed by the situation analysis carried out in 2003. The ‘Juvenile Teams’ of Centres for Social Work play an important role in juvenile justice, taking decisions on the institutionalization of offenders under the age of 14, preparing pre-sentencing reports for offenders aged 14 to 18, assisting in the execution of sentences of ‘supervision’, liaising with the families of adolescents in correctional facilities and facilitating the social reinsertion of juvenile offenders released from correctional facilities. The deterioration of socio-economic conditions during the 1990s led to a substantial increase of the caseload of the Juvenile Teams, which coincided with deteriorating salaries, deterioration of infrastructure and equipment, lack of information and isolation from international professional exchanges.

Mobile teams are staffed by professionals from different areas, such as social workers, health workers and teachers. First established in 4 municipalities, they now provide services in 14 – almost one-tenth of the municipalities in Serbia. Their work initially focused on children with developmental problems, victims of abuse and neglect and those with behavioural problems. Their methodology differs from that of the Centres for Social Welfare (CSW) in that they provide outreach to outlying villages, make home visits and use the case conference approach. Members of mobile teams have received VOM training215 and provide

---

212 91% indicated that they thought mediation “was good” for them, and 89% indicated that they would recommend mediation to others, according to a survey carried out by the mediation centre.

213 No statistics were offered to confirm this and, in any event, it would be impossible to attribute any reduction in the incidence of peer violence to the introduction of VOM because it has coincided with other important changes in the regime. A group of offenders selected by the staff confirmed this in a meeting with the authors of this evaluation, but it is not possible to know whether their views are representative of those of other residents.

214 CO indicates 2001, but no mention of Amity or the mobile teams can be found in the project description nor Inception Report.

215 Some CSW staff in these 14 municipalities who do not form part of these teams also have received VOM training.
mediation services, although the number of mediations appears to be modest.216 UNICEF covers the staff costs of the teams and training.

The work of the teams eventually expanded to delinquency prevention and work with juvenile offenders and their families, including accused juveniles awaiting trial, sentenced offenders, those in diversion programmes and post-release support for those released from residential facilities. Over the course of a year, services were provided to more than 449 juvenile offenders and 1500 children ‘at risk’217 Participation in preventive activities for children at risk is voluntary, and is based in part on a matrix developed by the UNICEF local consultant that provides clear, objective criteria for identifying more serious forms of behaviour that indicate a need for preventive interventions.218 Recidivism amongst the mobile teams’ caseload is reportedly 10 to 12%.219 The child protection teams coordinate closely with local government, in particular the Centres for Social Work, schools, health clinics, police and community-based organizations. In addition to services provided to children and their families, they conduct meetings and forums to raise awareness of issues concerning the rights of children, often focusing on the rights of offenders and prevention of delinquency.220

d. Advocacy and awareness raising

A broad spectrum of awareness activities have been supported, including specialized publications for professionals, activities designed to influence public opinion that rely on the media, outreach carried out by local child protection advocacy groups and internet sites. In 2005 UNICEF HQ sponsored the production of a film consisting of short documentaries by directors, including one on a juvenile offender by the Serbian filmmaker Emir Kusturica. As far as the evaluation team knows, the film had not yet been released in Serbia nor in Montenegro at the time of the evaluation mission.221 UNICEF also supported the preparation of a documentary on human rights in correctional facilities, including those for juvenile offenders.

Several publications were prepared and distributed with UNICEF support during 2005 and 2006, including some directly related to law reform. They include “Compilation of international standards on juvenile justice” (5,000 copies), the text of the 2005 Law on Juvenile Justice (2,000 copies) and the Ministry of the Interior’s “Instruction on legal aspects of conduct with juveniles” (1,000 copies).222 The Compilation of international standards was evaluated by the participants in the training activities organized by the Child Rights Centre in 2004 and 2005, who found it very useful but believed it would be improved by the inclusion of European as well as UN instruments.

---

216 The report on activities from Sept.2004 to August 2005 indicated that 12 teams had carried out 38 of mediations. The report does not indicate the type of conflict in which mediation was attempted nor the number of successful mediations. UNICEF CO refers to 80 as being the total number of mediations undertaken till 2006.
217 September 2004 to August 2005.
218 Anti-social behaviour, for example, is narrowly defined as aggression to persons or animals, deliberate destruction of property, theft and lying in order to obtain advantages or avoid obligations. Another matrix identifies positive personal, family and social characteristics that can help prevent involvement in criminal or anti-social behaviour.
220 Nearly 200 activities of this kind were organized from Sept.2004 to Aug.2005. Ibid p.5
221 A ‘preview’ was organized in October 2005, but none of the juvenile justice professionals asked by the evaluation team what they thought of the film had seen it, except for one person who saw it during a trip abroad. The team concludes that it has not yet had any significant impact on public attitudes towards children in conflict with the law in Serbia.
222 Children’s Chance for Change Annual Progress Report, June 2006, p.15 All these publications are in the local language. Some were distributed in Montenegro: 250 samples of “Children in Conflict with Law and International Standards of Protection” were disseminated to UNICEF’s governmental, local and international partners. A hundred copies of the publication were provided to the University of Montenegro/Faculty of Law and the Faculty of Political Science for distribution among students.
UNICEF also organized a training programme for journalists on child rights and related ethical concerns, in 2003, and has provided NGO partners with training on public communications strategies. NGO partners have played an active role in awareness activities of different kinds. The mobile child protection teams organized by the NGO Amity sponsored some 200 community events, which have generated coverage of issues concerning child rights and juvenile justice by the local electronic and print media throughout Serbia. The pilot VOM/diversion pilot project also has conducted extensive outreach in the community and in schools, and has established a website to promote awareness of this innovative dimension of juvenile justice reform. Similarly, UNICEF staff and consultants have participated in disseminating the approaches and methodologies developed in pilot projects to professionals throughout Serbia through publications in professional journals and presentations in professional meetings. Independent observers report, however, that there is not a great deal of public interest in juvenile justice.

26 EVALUATION OF UNICEF’S SUPPORT TO JJ-REFORM

26.1 UNICEF’S STRATEGY FOR SUPPORTING JUVENILE JUSTICE REFORM

In Serbia, the adoption of the new comprehensive law on juvenile justice was the cornerstone of UNICEF strategy for juvenile justice reform. The law was already being drafted by a national NGO when UNICEF’s project began. UNICEF threw its support behind the law, which was adopted in 2005. Once the law came into force in 2006, most of the goals of juvenile justice reform were legally sanctioned. This law is the only law in any of these four countries to regulate juvenile justice comprehensively.

No single document explicitly spells out UNICEF’s strategy for juvenile justice reform in Serbia. Indeed, it might be unreasonable to expect there to be one, since UNICEF is programme oriented and juvenile justice reform is not something that can be achieved within the framework of a three-year programme like the one now coming to a close in Serbia. Indeed, the stated objectives of the programme imply that the process would need to continue after the end of the programme itself, and a new programme is indeed now in the advanced stage of preparation. Nevertheless, elements of a strategy can be easily perceived in the approach to juvenile justice reform followed by UNICEF during the programme and during the years leading up to implementation of the programme. They include:

- preparing a situation analysis that served as the basis a broad consensus on the need for reform and key elements of the changes needed
- using advocacy mainly in an intensive and narrowly focused way to generate favourable conditions for the implementation of pilot projects
- careful selection of NGO counterparts and the localities chosen for implementation of pilot projects
- using pilot projects to generate evidence that new methodologies are viable and have positive results
- intensive efforts to win the active support of municipal governments
- promoting close inter-sectoral cooperation on the local level
- supporting the development and adoption of new comprehensive law on juvenile justice while simultaneously supporting innovative pilot projects
- close and continuous contact with and support for implementing partners, both governmental and non-governmental
- promoting inter-ministerial cooperation and government-civil cooperation on the national level
- emphasizing technical assistance and access to information (international standards and best practices) over material assistance, while still covering recurring costs for critical pilot projects.

Each of these elements of the strategy applied has produced positive results thus far, which indicates that they were well adapted to the needs and opportunities in Serbia at this time.

Two other positive characteristics of the strategy applied should be mentioned. One is that the programme covers all the main sectors of juvenile justice: law reform, the courts, prosecutors, the police, prevention, community based diversion and non-custodial rehabilitation programmes, facilities for juveniles offenders and facilities for younger children who commit illegal acts. Another is the synergy with
other aspects of UNICEF’s child protection programme, in particular in strengthening the social work system. On the basis of what many UNICEF counterparts recognize, it can be asserted that UNICEF strategy for supporting juvenile justice reform is well adapted to the needs and opportunities of Serbia and has been on the whole successful.

More specifically, one of the main elements of the strategy of the Serbian office was to promote law reform and simultaneously move ahead with pilot projects. It worked on juvenile justice for two to three years before it prepared a project proposal that resulted in sufficient funding for it to work on juvenile justice in a planned and coherent way for a period of three years. The decision to work on pilot projects while simultaneously working on law reform was a good one, because the success of pilot projects contributed to support for the draft law. The part of the project focused on community based alternatives provided considerable support to two quite different approaches: the mobile child rights teams designed to support preventive and rehabilitative services that focus on the adolescent and his/her family, and victim-offender mediation (VOM).

VOM was a new concept in Serbia, and is by nature an approach that is difficult to sell to the public and authorities, who often see it as being soft on offenders and failing to understand the importance of mediation to the victim and the utility of VOM in preventing recidivism. The decision to support these two complimentary approaches, and to make a long-term investment in winning acceptance of VOM in a carefully chosen pilot community, was a wise one.

The situation analysis, which was prepared by an international consultant, thus had a major impact not only as a basis for planning but in identifying and energizing potential partners. It also enabled the UNICEF office to obtain funding for a three year project from a bilateral donor (SIDA).

26.2 GENERAL OBSERVATIONS ON RELEVANCE, EFFECTIVENESS, EFFICIENCY, SUSTAINABILITY AND THE USE OF RESULTS BASED MANAGEMENT PRINCIPLES AND HUMAN RIGHTS BASED APPROACH

UNICEF’s decision to support juvenile justice reform in Serbia was relevant. In 1996 the Committee on the Rights of the Child had expressed concern with various aspects of the juvenile justice system, including the broad discretion of administrative bodies and inadequate protection of the rights of children during the investigation of offences and during pre-trial detention. By the time the situation analysis was undertaken, the situation had deteriorated. It concluded that “every component of the juvenile justice system in Serbia needs critical support and attention” and “the juvenile justice system has broken down”. The preparation of the situation analysis coincided with a commitment to juvenile justice reform by the government as part of the process of applying for membership in the Council of Europe. More importantly, the drafting of a new juvenile justice code had begun, evidencing strong commitment to juvenile justice reform on the part of the government - especially the Ministry of Justice - and NGOs. The situation analysis and the process of preparing it had sparked interest in reform and cooperation with UNICEF on the part of other potential governmental partners, in particular the main institution for convicted juvenile offenders. Considering that no other international agencies had shown interest in juvenile justice reform, and that the number of children coming into contact with the authorities because of the commission of offences or for similar reasons was relatively large, UNICEF intervention was very relevant and timely (considered as mix of need and opportunity).

As far as the choice of activities is concerned, only in Serbia (and Montenegro) did UNICEF support efforts to establish or improve data collection systems concerning juvenile justice. As far as coordination with other actors is concerned, juvenile justice reform has been incorporated into the UNDAF, but actual

223 CRC/C/15/Add.49, 1996, para.22
224 Children in Conflict with the Law: Victims of the Transition, p.5
cooperation with other UN agencies on juvenile justice reform is very limited. Cooperation with other international actors working on related issues, such as the EU and OSCE, exists, but is sporadic. Furthermore and as already mentioned, UNICEF should improve its capacity of leveraging on what other actors are doing.

The attainment of satisfactory results in relation to stated objectives (effectiveness) is not easy to analyse as objectives regarding juvenile justice reform are often defined in rather vague terms. As said above, no single document explicitly spells out UNICEF’s strategy and relevant objectives for juvenile justice reform in Serbia. Moreover, the process of reform is so long and convoluted that short-term objectives – in particular quantifiable ones – have limited relevance. And non-quantifiable objectives tend to be so vague that they invite subjective conclusions as to whether or not they have been met. Some of the criteria and methods for evaluating specific activities that have been seen during this evaluation, such as the questionnaires completed by trainees at the end of a training session or the evaluations of VOM mediators by the participants made at the point an agreement is reached, shed little light on the real value of the activity as a part of the reform process. The evaluations that seem to better capture the overall value of an activity as part of the process of are unstructured ones, such as the reports on trainings of the police prepared by the trainers at the end of the activity.

As far as efficiency is concerned, the office in Serbia expects to have spent some US$2,100,000. over the course of three years and a half years that will end in June 2007. The Swedish International Development Agency, exclusive source of funding for UNICEF’s juvenile justice work in Serbia, indicated that it considered this amount reasonable for a project of this kind. Juvenile justice reform is a complex and long-term process, which precludes a simplistic comparison of the investments made with the results obtained. It would be more realistic to weigh the total amount invested in juvenile justice reform against the overall progress achieved. If the amount invested is not a priori excessive – and donors in two of these countries have stated it was not - and some important advances have been made and appear to be consolidated, and there are no signs of obstacles that might jeopardize the project as a whole, then one can assume that the investment was well-spent. The new law is a major achievement and, in addition, there have been major improvements in the main institution for juvenile offenders, training for judges and prosecutors has been institutionalized, the police participate actively in the project and two pilot projects (VOM and the mobile child rights teams) are showing positive results.

As said above, in Serbia UNICEF is the main actor in juvenile justice and complementarity has been adequate in the limited areas where other international actors support relevant activities, such as the IFC’s support for mediation. Stronger efforts in order to try and influence what the others are doing should be appropriate.

In Serbia an effort was made to apply results based management principles, although with some gaps. The project description used to raise funds for this three year effort to support juvenile justice reform contains a description of the ‘problem(s) to be solved’, identifies partners, the ‘overall objective’, and specific objectives and results for each of the four ‘areas of activity’. It also indicates that “UNICEF will develop a results-based management matrix in order to clearly identify inputs, expected outputs, outcomes and impact of the activities in each activity area, as well as for the overall programme.” The project description contains a rather perfunctory risk analysis and plan for ensuring sustainability, and does not set forth the kind of ‘results chain’ or ‘results framework’ prescribed by UNICEF programme management tools.

The description of the ‘problem(s) to be solved’ consists of three paragraphs. Some of the observations it contains – e.g. that the juvenile justice system has “suffered from ten years of neglect” are undisputable.

---

225 The amount of the grant was SK19,000,000. which originally would have been US$2,000,000., but whose value in dollars increased by the time the funds were transferred. After deductions (indirect programme support costs) the programmable amount was US$2,123,495. (Children’s Chance for Change, Annual Progress Report, 2006, p.4) Part of these funds were spent in Montenegro, as indicated in Section 1, above.

226 See Understanding Results-Based Programme Planning and Management, p.4.
Others, in particular the affirmation that there is anecdotal evidence that “increasing numbers of children are committing more serious crimes...”, are not supported by statistical data. Most of the objectives are defined in general terms, such as “To assist in the development and adoption of a comprehensive juvenile justice code”, “To train correctional officers in the use of child centred techniques in the supervision of children in custody” or “To provide psycho-social care to children living in institutions in order to assist in their effective rehabilitation.” None of them is expressed in quantifiable terms. The ‘overall objective’ is defined as “to promote the comprehensive and multi-disciplinary reform of the juvenile justice systems of Serbia and Montenegro in order to better protect the rights of children at risk and children in conflict with the law”, which describes the intended result in vague and relative terms.

Certain programme management tools have been used to good effect. One is the interministerial-intersectoral coordinating mechanism known as the Juvenile Justice Committee, established by one of the main counterparts. Another is the annual report required of all partners, which must follow a certain format and helps them develop a sense of accountability. In general, however, the results of interventions are either evaluated in qualitative terms, or in terms of output rather than impact.

Training activities are often evaluated by the implementing partner, but most evaluations focus on the trainees opinion about the quality of the event, rather than an objective evaluation of what they have learned or changes in attitudes or beliefs that may have a bearing on their work with children. The evaluations of police training did, however, ask participants to describe the two most important things they learned, which often led to description of changes in attitudes, and how they intended to apply what they had learned in the training. No evaluation has been done of the effect training has had on job performance as it affects children.

Some efforts have been made to measure the impact of interventions. The outcome of mediation is evaluated by asking the participants their opinion of the process. The results are interesting, although it would be more relevant to know whether the victim is still satisfied after the agreement with the offender has been implemented, and the rate of recidivism. The reports of mobile child protection teams indicate the rate of recidivism of offenders serving alternative sentences under their supervision (10-12% during the year). This is an important indicator, although appreciation of its significance would require comparison with an appropriate control group. An interesting tool for measuring the success of preventive interventions, the Rapid Risk Assessment Matrix for Conflict with the Law, also has been developed. Factors considered to correlate with the risk of offending are assessed by the counsellor at the beginning and end of each child’s involvement in the programme, allowing the team to calculate the number and percentage of cases in which the risk has been reduced (75% in the 2005 Report). Efforts are being made to develop intersectoral monitoring mechanisms in these communities, bringing together data from the police, prosecutors, courts and CSW.

As far as the use of the human rights based approach is concerned, UNICEF indicates that the ethnic makeup of the population was one of the factors taken into account in selecting the 14 municipalities where the mobile child protection teams were to be established, and a conscious effort was made to recruit persons from the Roma and Albanian minorities as members of the teams. VOM training also included a component on ethnic diversity, and some pamphlets and posters were produced in Albanian and Roma. In contrast, despite some specific attention to gender issues should be ensured by the presence of an ad hoc officer in the CO, treatment reserved to girl offenders and suspects didn’t receive so much attention during

---

227 The Project description was prepared in 2003, and data from the Statistical Office of the Republic of Serbia and the Republican Prosecutors Office indicates that offending by persons under the age of 18 had begun to decline towards the late 1990s. For example, the number of persons under 18 reported for a criminal offence in 2002 was less than half that reported in 1996, according to data of the Republican Prosecutors Office.

228 For the discussion on whether ethnicity in data collection, planning and implementation, should be considered an issue, we cross-refer to the Section I of the report.
implementation. As detailed in the following chapter, it is difficult to assess the impact of UNICEF’s activities on the lives of children. A part from some positive observations and, therefore, assumptions, it would be necessary to fund relevant specific project evaluations.

The Law on Juvenile Justice came into force on 1 January 2006, and most of the ‘secondary legislation’ foreseen by the Law also has been adopted. Legislation can, of course, always be amended or repealed. This can occur for a variety of reasons: the political climate can change, the law can prove difficult to implement, or cases of great notoriety can turn public opinion against a law even though it is working well. In Serbia, support for the law may well depend, in the medium term, on the extent to which the institutions and programmes needed for effective delinquency prevention, diversion and rehabilitation are established and consolidated nation-wide. It is not possible to predict with certainty that this will occur, but there is every reason to think that it could happen. In short, there is no reason to believe that the law reform that has taken place is not sustainable.

The law requires police, judges and prosecutors to receive training on the rights of the child, and programmes to provide such training has been established by the Police Academy and the Judiciary Training Centre. The sustainability of these programmes should thus be ensured. The changes made in the main residential facility for convicted adolescent offenders were introduced with the active participation of staff, including guards. Although the correctional department of the Ministry of Justice initially did not support these reforms, this situation has changed. These accomplishments therefore also appear sustainable.

The sustainability of the victim-offender mediation project and mobile child protection teams poses different challenges. Both currently rely on UNICEF support or other temporary funding to pay staff costs and, if they are taken to scale, such costs will increase significantly. The mobile child protection teams are designed to change and revitalize the ethos and working methods of the public child welfare service and to encourage governmental-civil society partnership in providing services to children and families at risk. It is operative in roughly 10% of the municipalities in Serbia. Ultimately, it will be necessary for the government to assume responsibility for providing such services, which would require profound reforms in the Ministry of Labour, Employment and Social Policy, or to subsidize the work of local NGOs to complement the work of the Centres for Social Work. Whether there will be sufficient political will to commit the necessary resources to do this is unforeseeable at present. The mediation project is currently being piloted in only one municipality. Plans are to obtain funding from the private sector. Whether this will prove to be feasible, especially on the national scale, is also unforeseeable. Since there will be a single Mediation Centre to supervise all forms of mediation in Serbia – including commercial mediation – another possibility might be that a percentage of the income generated by other kinds of mediation could be allocated to support VOM mediation, which is free. Here too, however, it is difficult to predict whether the challenge of ensuring sustainability can be met.

26.3 **SPECIFIC FINDINGS**

26.3.1 Reforming policy, legal framework and Government programmes on juvenile justice

"To what extent have UNICEF activities influenced the contents of revised policy, legal and governments programme framework of in the following areas: (relevance and impact)

- Prevention of delinquency?
- Use of deprivation of liberty only as last resort and for shortest possible period of time?

---

229 UNICEF supports staff costs of the mobile child protection teams, while those of the Nis mediation pilot project are supported by the Social Innovation Fund, a governmental fund used to provide temporary start-up funding for innovative projects by civil society in the social area.
The mobile child protection teams pilot project has had an impact on policy/programme on the municipal level, in the communities in which it has been implemented, but this has not yet affected law, policy or programme concerning prevention on the national level.

Specifically on the use of deprivation of liberty as last resort, the minimum duration of sentences to residential facilities was reduced to six months by the Law on Juvenile Offenders of 2005, and the need for continued detention is reviewed every six months. (Art.20, 21 and 29). The last resort principle is not reproduced as such, but the law provides for a variety of alternative sentences and the factors that the court should consult in deciding whether to apply a custodial or non-custodial sentences are specified in detail (Art.11-21). Custodial sentences are not mandatory for any category of offence. These provisions are clearly inspired by the last resort and shortest appropriate period principles. Although government policy is to apply the law, the creation of programmes required for implementation of non-custodial sentences on the national level has lagged behind.

- The quality standards for children in detention in conformity with the law. (Separation of children from adults, maintaining contacts with parents, respectful treatment, access to legal and other assistance)?

New regulations have been adopted for the main facility for juvenile offenders, and the penal-correctional institution for older offenders, but not for the facilities for younger children.

- Implementing restorative justice measures instead of punitive approach (ensuring physical and psychological recovery and social reintegration)?

The new law mentioned above specifically recognizes certain forms of restorative justice, such as apologies and compensation and community service, both as alternative sentences and as grounds for diversion (Art.5 and 14). Victim-offender mediation is not expressly recognized by the law, but is being offered in one pilot mediation centre and in selected municipalities. Structured programmes for the implementation of other forms of restorative justice are available in some municipalities, but not on the national level.

- System of laws, procedures, authorities and institutions specifically developed for children?”

Further to the adoption of a new comprehensive law on juvenile justice in 2005, new ‘authorities’ have not been established yet, but the law does require existing authorities, notably the judiciary, police and prosecutors, to develop benches, units or departments. The new law also establishes new procedures on diversion, the prosecution and adjudication of accused juveniles and the execution of custodial and non-custodial sentences. At the time of the evaluation, no new institutions had been established.

“To what extent was UNICEF ensuring that changes in policy, legal and Govt. programmes in JJ were prioritizing the most urgent problems and based on a thorough situation analysis? (relevance and results based management)”

There is no simple answer to the question whether UNICEF ‘was .. ensuring that changes .. were prioritizing the most urgent questions…”. The fact that UNICEF urged a government to give priority to a issue or change that in fact did receive priority does not necessarily mean that this was due to UNICEF’s advocacy and, inversely, UNICEF cannot always be held responsible for a government’s failure to agree with its views at to the government’s priorities should be. Moreover, at the time of the evaluation changes in juvenile justice are ongoing and UNICEF continues to try to influence them.

In Serbia, the situation analysis does not pinpoint issues considered urgent. In this case, it is reasonable to assume that those mentioned in the executive summary are the most important ones. They include: law reform; training of police, judges and prosecutors; motivation of social workers; poor conditions and the lack of rehabilitation programmes in custodial facilities for juvenile offenders, and the lack of diversion and alternative sentencing schemes. Law reform, already underway, was brought to fruition, thanks in part to UNICEF advocacy, and the training of police, judges and prosecutors has been institutionalized.
Changes in the material conditions in custodial facilities for juvenile offenders have not changed greatly, but the rehabilitation programmes provided in the main facility have improved very substantially. The new law fully recognizes the diversion and non-custodial sentences and programmes for the implementation of these alternatives are still being piloted, although they have yet to be taken to scale. Similarly, a pilot programme designed to revitalize the sector of the social work system dealing with offending has been implemented in a significant number of municipalities, although the government has not yet made a commitment to taking it to scale. These developments suggest that the government has given priority to addressing many of the issues highlighted by the situation analysis, and the interviews conducted by the evaluation team indicate that UNICEF’s advocacy had a significant impact in this regard.

26.3.2 Development of professional capacity relevant for juvenile justice (law enforcement, administrators of justice, social workers)

Which professionals (law enforcement, administrators of justice, social workers, others) did UNICEF include in activities related to professional capacity development and was the selection strategic and sufficient to influence the functioning of the JJ system? (relevance)

Capacity building was strategic, in the sense that it encompassed all relevant sectors, including judges, prosecutors, the police, social workers, correctional staff and the staff of community based alternative projects. Capacity building, like reform of the system itself, is ongoing, but although the full extent of its impact on the functioning of the system remains to be seen, there is no doubt but that its impact thus far has been significant.

What types of strategies for professional capacity development and accountabilities were used and were they sufficient to influence the way professionals in the JJ system operate? (relevance):

- Training to boost competency and knowledge
- Change in mandates of professionals
- Establishment of new professions
- Establishment of monitoring (including relevant sanction mechanisms) for professional performance
- Development/strengthening of curriculum for university students and/or for on-the-job training.
- Other

The impact of the training provided to juvenile justice professionals on their job performance has not been evaluated objectively and systematically, but the interviews with key informants carried out by the evaluation team indicate that the training has had a positive impact on all the groups trained, with the exception of the staff of one facility for younger children.

Few changes in the mandate of juvenile justice professionals were brought to the attention of the evaluation team. Some of the guards in the main facility for juvenile offenders were reassigned to a newly created position that involves informal counselling. In addition, the functions of staff of different occupations (e.g. teachers, counsellors) were expanded to include mediation, but this is done in a voluntary capacity and does not involve a formal redefinition of their professional responsibilities. The new law establishes specialized benches to examine cases involving juvenile offenders and specialized prosecutors to work in them, which entails a modification of the functions of the judges and prosecutors concerned. The creation of trained victim-offender mediators might be seen as the establishment of a new profession, although it would be more accurate to consider them paraprofessionals.

No programmes for monitoring the professional performance of juvenile justice professionals were introduced with UNICEF support. A course on psycho-social care of juvenile offenders has been introduced to the Department of Psychology and one on victim-offender mediation has been added to the curriculum of the Faculty of Political Science of the University of Belgrade. No other developments involving curriculum changes in universities were reported to the evaluation team.
In service training has been introduced for judges, police and the staff of the main facility for juvenile offenders. No hard data on the impact of this training has yet become available, but informants consider that it has had a perceptible impact in the sensitivity of judges to children who appear before them and on sentencing, especially in municipalities or districts where alternative community based projects have been established, as well as impact on the police and facility staff’s performance of their duties.

To sum up, the activities supported by UNICEF have had beneficial effects on the judiciary as well as on the staff of correctional facilities and the police. In contrast, no actual effort to involve the legal profession (i.e. lawyers) been made.

To what extent did UNICEF activities influence an enhancement in professional capacity and accountabilities directly related to international minimum standards in the area of JJ (impact)

The evaluation team did not find any UNICEF activities in any of the countries covered specifically aimed at enhancing accountabilities In none of the countries covered by the evaluation did UNICEF evaluate objectively and independently the enhancement of professional capacity directly related to international standards concerning juvenile justice. The evaluation of training activities conducted as part of the juvenile justice programmes was of two kinds: questionnaires implemented by the trainers themselves designed to obtain the trainees’ opinions on the quality of the training activity, and traditional testing of the trainees understanding of the content of the course. The former provides little information on what has been learned. The latter does, but the evaluation team did not have the sort of access to test results that would permit differentiation between what had been learned about international standards and what has been learned about other subjects covered by the courses in question.

To what extent did UNICEF activities contribute to a “change in mindsets” of personnel working in the area of juvenile justice towards juvenile offenders? (impact)

The members of the evaluation team were able to observe positive attitude towards juvenile offenders amongst the correctional staff of the main facility for juvenile offenders. Statements made by key informants amongst the staff and by impartial observers confirmed that these attitudes represent a change from those held some years earlier, and are due largely to activities sponsored by UNICEF. Most of the police officers interviewed by the evaluation team during field visits also demonstrated positive attitudes towards juvenile offenders, and the higher ranking police officials interviewed at greater length also demonstrated very positive attitudes towards child rights, including the rights of adolescent offenders, that they themselves attributed to their cooperation with UNICEF. Members of the social work profession who also participate in the mobile child protection teams and were interviewed by the evaluation team had very good attitudes towards juvenile offenders, which is certainly due in part to their participation in that UNICEF supported project. To some extent, their experience also has had a positive effect on the attitudes of their co-workers in social work teams who do not participate in that project. No hard data is available on the impact of UNICEF’s activities on the attitudes of judges and prosecutors, and the evaluation team’s contact with member of these professions was limited, which makes it difficult to form an opinion on this question with regard to this sector.

To what extent were UNICEF activities in capacity development based on an analysis of identified gaps in professional capacity? (relevance and results based management)

In general, capacity development activities supported by UNICEF – which consisted almost exclusively in training – were not based on specific exercises designed to measure “gaps in professional capacity”230. They were based on the situation analyses and on impressions formed by UNICEF staff and trusted national counterparts through preliminary exploratory activities. Once a series of training events were underway, subsequent events were generally based on an evaluation of needs made by the trainers as part of earlier training courses.

230 CO Serbia refers to 2005 SIDA report, but no relevant info found.
To what extent were users and beneficiaries of capacity building activities satisfied with the services provided to them? (effectiveness)

In many instances, trainers who conducted training events sponsored by UNICEF asked trainees to evaluate courses at the conclusion of each. The reports submitted to UNICEF sometimes describe the results of such evaluations in general terms, which are invariably positive. In other cases, reports simply mention that evaluations have been conducted without mentioning the results. Examples include the report on interdisciplinary training presented by the Child Rights Centre to UNICEF Serbia in 2005 and the report on police training that took place in Tajikistan in 2006. In Serbia, a report on the several training activities for police contained a detailed report on the trainees opinion of the training activities (more than 76% of the 226 trainees rated the training excellent and an additional 17.5% rated the activity 'good'). This is the only example the evaluation team found of a report to UNICEF that contained detailed information on the trainees evaluation of training.

26.3.3 Development of community based services and coordination between sectors

To what extent were UNICEF activities successful in developing community based services for children in conflict with the law and in promoting coordination and synergy between different sectors in any or several of the following aspects of juvenile justice programme: (impact)

- Prevention of delinquency among juveniles (such as community support models)
- Restorative justice for children in conflict with the law (such as diversion of children away from the formal criminal justice system and alternatives to deprivation of liberty)
- Rehabilitation and reintegration services in the community (also for children coming out of closed institutions)
- Improvement in the treatment and care of children in closed institutions and the promotion and protection of the rights of children deprived of their liberty
- Links to community based care models within the overall de-institutionalization process for the country?

Delinquency prevention and post-release support for the reintegration of adolescent offenders are two of the main aims of the project that has supported the development of mobile child protection teams in some 10% of municipalities. Tools for identifying children at risk of involvement in offending and evaluating the effectiveness of interventions designed to assist them have been developed and are used to evaluate the effectiveness of the services provided. The most recent annual report of the implementing organization ‘Amity’ indicates that the services provided resulted in a reduced risk in 75% of the cases. The pilot project on victim-offender mediation in Nis— the only restorative justice project supported by UNICEF in any of the countries covered by the evaluation – had been operative less than a year at the time of the evaluation mission, but preliminary indications are that it is functioning according to expectations. UNICEF supported activities have improved considerably the care and treatment of adolescents in the main institution for juvenile offenders in Serbia, as indicated in more detail elsewhere in this report. Their impact on open custodial facilities for younger children who have committed criminal acts, and for the facility for older adolescents (most of whose residents are actually young adults) has been limited. Moreover, it has to be specified that the services introduced on a pilot basis are not sufficient to cover the needs of the entire country.

To what extent did UNICEF activities contribute to triggering an enhancement of the coordination and synergy between different sectors in the JJ system? (impact)

The Juvenile Justice Committee, also thanks to UNICEF support, has enhanced coordination between relevant Ministries and other public institutions, and between government and civil society. Inter-ministerial cooperation nevertheless remains limited and should be further encouraged.

To what extent were professional in different sectors (justice, law enforcement and social welfare) satisfied with the new mechanisms/strategies put in place to enhance coordination and synergy? (effectiveness)
The various professional sectors and relevant civil society organizations appreciate the opportunities to exchange information and views offered by the Juvenile Justice Committee, but are aware of the limited effectiveness of the Committee, which does not have the authority to take decisions, and believe that greater cooperation is needed, in particular between the justice and social sectors.

26.3.4 Improving monitoring, data collection systems and supervision of juvenile justice system and situation

How have the UNICEF supported activities, projects and/or strategies been linked to Government’s own databases and/or M&E systems in the area of juvenile justice? (results based management)

The two community based alternative projects have developed their own data collection tools and mechanisms. The data is shared with the local governments, but has not been integrated into national data banks. There are no functioning monitoring and evaluation mechanisms specifically concerning juvenile justice on the national level.

To what extent did UNICEF meet its planned outputs and outcomes related to improving monitoring, data collection systems and/or results based management of the Government? (effectiveness)

The objectives of the present stage of the juvenile justice reform include one defined as “To develop a data collection system in selected municipalities to accurately and uniformly record and track children through the social welfare and legal systems”, and a result defined as “Accurate records will be available in Nis to effectively track children’s progress through the social welfare and legal systems.” The law on juvenile offenders adopted in 2005 calls for the adoption of regulations on record-keeping on sentences imposed on adolescent offenders, including non-custodial ones, and the execution of such sentences. Such regulations were adopted, with UNICEF support, during 2006. In addition, a data collection system to linking data from the police, office of the prosecutors office, courts, Centres for Social Work and the main centre for adolescent offenders is being piloted in the 14 municipalities in which the mobile child protection teams are operative. See below for further information about these efforts.

What type of strategies did UNICEF use to improve monitoring, data collection systems and/or results based management of the Government in the area of JJ? (relevance):

The strategy adopted for the first juvenile justice project (2004-2006) has several components. One was the inclusion in the law on juvenile offender of certain requirements regarding record keeping concerning the enforcement of sentences, and the adoption of regulations governing the way this is to be done. Another was to pilot data collection in the communities in which mobile child protection teams were established. These systems are designed to cover, on one hand, social services for offenders and children considered to be at risk of offending (prevention, implementation of diversion orders and alternative sentences, and post-release services) and, on the other, law enforcement, adjudication and the correctional institution for children over the minimum age for adjudication. The indicators were developed in consultation with all the concerned institutions. The UNICEF juvenile justice consultant developed tools for evaluating the risk of offending which are used to collect data on the impact of preventive services. Taking this pilot project to scale is not part of the juvenile justice project, but presumably will be part of the next juvenile justice reform project scheduled to begin in 2007.

UNICEF also supported a survey of the views of adolescents on the quality of programming at the main institution for juvenile offenders. The victim-offender mediation pilot project regularly solicits the views of persons who have participated in mediation on the experience, and the NGO that was responsible for child rights training of juvenile justice professionals also asked trainees to evaluate the training sessions. The results of these efforts is mixed. Although the administration correctional facility in which the survey was conducted is sensitive to the views of adolescents confined there, the evaluation team has seen no evidence that the survey per se has influenced policy or practices. Mediators indicate that the survey of client satisfaction with mediation has helped improve their practice. Similarly, the NGO responsible for
training juvenile justice professionals before the newly established Judiciary Training Centre took over this function reported that evaluation of each seminars helped monitor achievement of their objectives.

Were these strategies sufficient to influence they way the JJ system is monitored? (efficiency)

The strategy is only sufficient to monitor the way the juvenile justice system works on the local level, in approximately 10% of the municipalities. The evaluation team did not learn of any examples of concrete instances in which changes have been made to the policies or practices of any institution dealing with juvenile offenders or with the prevention of offending because of information that came to light as a result of these efforts to collect data and/or monitor the functioning of such institutions. In any event, the objectives of the programme evaluated (i.e. 2004-2006) with regard to monitoring were limited and did not include influencing the way the system as a whole is monitored.

To what extent did UNICEF activities trigger an enhancement of monitoring, data collection systems and/or results based management of the Government in the area of juvenile justice in any of the following areas: (impact)
- Building and/or strengthening M&E systems for services and professionals in JJ system?
- Building and/or strengthening coordination mechanisms for data handling (such as databases)?
- Encouraging and/or influencing transparency and accessibility of data?
- Development and implementation of specialized studies or surveys?
- Building and/or strengthening of indicator frameworks?

A new indicator framework concerning adolescents at risk of offending and re-offending, which also allows evaluation of interventions designed to reduce such risks, has been developed. The reliability of this tool - the extent to which they actually do predict whether a child will become in offending – has not been evaluated, and since they have been in use only for a limited time, it might still be premature to do so. Attitudes towards the transparency and accessibility of data have improved thanks to the changes in the political climate. UNICEF’s support for juvenile justice reform may have contributed to this in some measure, although it is probably more accurate to say that UNICEF’s activities have taken advantage of this greater transparency. Systems for evaluating services provided in this area are limited to the evaluation the impact of preventive services, as described above, and of satisfaction with VOM. Systems for monitoring the performance of juvenile justice professionals had not been established, at least not as a part of any activities supported by UNICEF. Mechanisms for coordinating the collection of data handling are being developed on the local level in some 14 municipalities, as also indicated above, but not at the national level. UNICEF’s work on juvenile justice included a survey on the views of convicted offenders confined in the main facility for juvenile offenders, as also mentioned above. The evaluation team found no other examples of studies or surveys – except of course for the situation analysis, which had a major impact on juvenile justice reform in Serbia.

Have the Governments put in place any mechanisms and financial budget allocations to ensure continuation of monitoring, data collection systems and/or results based management of JJ system? (impact and sustainability)

The Serbian government has set up, with UNICEF support, a data collection system called DevInfo. This system is currently being strengthened, in particular by the addition of indicators regarding juvenile justice. On the local level, the Mobile Protection Teams have adopted, in consultation with juvenile justice professionals, a system for collecting data on children provided with services by the teams and cases referred to the Centres for Social Work. Such children include juveniles at risk of offending, those given diversion orders and those provided with support after release from a custodial facility. This is basically a case-management system, which is operational in 14 municipalities. The competent authorities have not yet made a commitment to using it nationally or incorporating it into a national system for collecting data on or monitoring juvenile justice.

26.3.5 Creating an environment for change (public)
Have the activities, projects and/or strategies used by UNICEF contributed to empowering disadvantaged children and families? (human rights based approach)

No attempt has been made to measure any impact of the activities, projects and strategies used by UNICEF on the empowerment of children and families, in any of the countries covered by this evaluation. In Serbia, the extensive reforms to the programmes and services provided to adolescent offenders at the main correctional facility is intended to empower them to improve life skills, and acquire education or training that will allow them to become productive members of their communities. The new system of behaviour management that offers every adolescent sentenced to the facility to return home after a stay as short as six months, depending on his or her behaviour, is certainly designed to empower them. The facility also cooperates with the mobile child protection teams, in the communities that have them, in order to empower parents to take a more active and positive role in the rehabilitation and social reinsertion of their children. Although no effort has been made to measure the extent to which the adolescents concerned feel empowered or have acquired skills and attitudes that can be considered empowering, the overall success of the reforms introduced on their own terms strongly suggests that they have helped empowering many of the children affected by them.

Both the VOM project and the mobile child protection teams are designed to empower the children who participate in them, and in the case of the mobile teams, their families. The decision of an adolescent offender to participate in mediation, represents a decision to assume an significant degree of control over the process of social reintegration. The tools used to evaluate the impact of preventive services offered by the mobile teams also confirm that the aim is to help children at risk assume greater control over their lives. The fact that participation in that programme is voluntary is another indicator of empowering effect of the programme. The programme aims at empowering families to overcome social problems that may have contributed to the difficulties or dangers that have affected their children. In this area, too, the success of the programme in general terms must certainly be attributed to a degree of success in empowering the participating children and families.

Was information accessible in the language of different minority groups? (human rights based approach)

Most information materials have been produced in Serbian, but some pamphlets and posters have been produced in Albanian and the Roma language, according to UNICEF.

27 CONCLUSIONS AND LESSONS LEARNED

27.1 IMPACT

There have been many important accomplishments during the last three years. The creation of the Juvenile Justice Committee, with the participation of civil society as well as the relevant ministries and public authorities, is one. The adoption of the 2005 Law on Juvenile Offenders and most of the secondary legislation231 required for implementation of the law, and the participatory way in which both the law and the second legislation was developed, is another. The transformation of the correctional facility that houses most juvenile offenders is also major accomplishment. The pilot diversion/restorative justice project in Nis, and the mobile child protection teams are not only providing needed services, but are

231 The Ministry of Justice’s Working group for drafting secondary legislation (secondary laws on Diversion schemes, Alternative sanctioning, House rules for Juvenile Correctional Institution in Krusevac and Juvenile Prison in Valjevo, and on mechanisms and procedures for record keeping, monitoring and control of enforcement of diversion measures and alternative sanctioning), has been supported by UNICEF throughout the entire drafting process. Particularly, UNICEF has provided great support to MoJ Working Group for drafting new JCIK House Rules (UNICEF prepared written recommendations in March and May 2006, and many of them were accepted by the MoJ Working Group). UNICEF also organized round-table discussions (on draft House Rules prepared by the MoJ Working group and UNICEF recommendations to the draft House rules) in JCI in Krusevac, as well as in Juvenile Prison in Valjevo (participated representatives of correctional staff, judiciary, MoJ Working Group...).
helping to transform the basic concepts and presumptions concerning juvenile justice, delinquency prevention, approaches to social work and the responsibility of local communities.

Awareness activities have consisted largely of meetings designed to prepare the ground for other project activities, e.g. diversion. The strategy of using narrowly targeted and relatively intensive awareness activities to identify and develop opportunities for undertaking pilot projects, which eventually can provide evidence that can be used for broader awareness and advocacy activities, has had good results. A considerable amount of training has been done, and is greatly appreciated by the agencies and institutions whose staff have benefited from it. There is widespread agreement that training, often preceded by awareness-raising, has been instrumental in transforming the mentality of many public servants, making them more creative and committed to the rights of the child. There is, for example, some evidence that the behaviour of prosecutors has become more child-friendly in localities where pilot projects are located, despite there is no evidence of changes in the institution on the national level. VOM training and training of the police is being institutionalized. In addition, police stations throughout the country have set up special child friendly rooms for interviewing offenders and victims under the age of 18.

The ultimate test of any programme on the rights of the child is how it impacts the lives of children. In the course of this evaluation, only one survey on the impact of reform on a specific group of children was found, the Adolescent Survey Assessing Juveniles' Perceptions of the Quality of Programming at the Juvenile Correctional Institution in Krusevac, 2005. However, although the survey provides some interesting insights into the opinions and concerns of the children at the time it was conducted, originally it was not meant to measure the impact but to create baseline. As a consequence, it does not give any indication on the impact of changes in the institutional policies on children.

Despite such progresses, which have been facilitated by UNICEF, there are still important limitations in the actual juvenile justice system. The contrast between the transformation of the main MoJ facility for offenders over the age of 14 with the lack of substantial change in the MoLESA centres that house children under the age of 14 who have committed offences reflects the fragmentation of authority to make decisions regarding the system as a whole and the limited cooperation between the responsible Ministries. The ministries of education and health play no role in the project, and the participation of the judiciary, prosecutors and legal profession (i.e. lawyers) is relatively weak. The emphasis on restorative justice/VOM has overshadowed support for more traditional diversion measures and non-custodial sentences, such as community service and treatment for drug and alcohol abuse. Data collection focuses mainly on the quantity and quality of the services provided, rather than their impact on the phenomena (e.g. offending, recidivism) they are intended to address. The participation of adolescents has been limited. All these aspects indicate that there is still room for continued support by UNICEF to the reform of the juvenile justice system.

27.2 LESSONS LEARNED AND OPPORTUNITIES

The following paragraphs describe some elements that have been conducive for UNICEF own activities and efforts, and others which have been introduced by UNICEF itself and are deemed to be quite valuable. In all cases, some important lessons learned can be derived:

- The importance of the existence of an inter-ministerial, inter-sectoral body like the Juvenile Justice Committee, in which representatives of the most important NGO/civil society organizations participate, and whose functions include coordination and making recommendations to governmental counterparts such as ministries. Such an institution provides UNICEF with opportunities for dialogue with all its partners in juvenile justice reform.

- UNICEF maintained contact with the donor, SIDA, which on one opportunity has provided technical expertise, and a few other international agencies that play much smaller or peripheral roles in juvenile justice reform (the EU, OSCE and IFC) which consult with UNICEF on an ad hoc basis.
- On a human resources and management side, the office in Serbia has contracted the services of a full-time consultant with experience in the social side of juvenile justice, and the presence of a professional working on the project full time has certainly contributed to the success of the project. Moreover, two or three international consultants have been used repeatedly, and their contributions are greatly appreciated by those who have been trained by them.

- UNICEF’s assistance played a key role reforming the police’s role in juvenile justice. Training on child rights has now been introduced into the curricula of the police academy, for basic entry-level training as well as in-service training. Questions on child rights are included in the exam that police officers must pass exams periodically in order to remain in service. The training is not limited to knowledge of the rights of children, but also includes skills such as communication with children.

- UNICEF has been able to introduce some important innovations, the main ones being the Victim-offender mediation (VOM), which is the only restorative justice project supported by UNICEF in any of the countries covered by the evaluation, and the establishment of ‘mobile child protection teams’. Both of them were expressly designed to empower the children who participate and, in the case of the mobile teams, their families.

- UNICEF has managed to ensure a certain degree of synergy with other aspects of UNICEF’s child protection programme, in particular in strengthening the social work system. Moreover, support for juvenile justice reform is integrated into support for local plans of action for children.

Generally, UNICEF’s counterparts praise the quality of the assistance provided and the nature of the working relationship with UNICEF. A representative of the Social Investment Fund, for example, called cooperation with UNICEF “very fruitful,” adding that UNICEF is “less bureaucratic” than other donors and has longer experience in Serbia. Many stressed that new ideas and information was more important than material assistance. A representative of the Ministry of the Interior, for example, described the technical assistance received as “extraordinary… excellent.” A representative of the Ministry of Justice indicated that UNICEF is “much more professional than other donors” and “No one else had the expertise we needed.” The mayor of a municipality that has adopted a local plan of action for children indicated that the “expertise provided by UNICEF has been very valuable”. A social worker indicated that “during the last few years the Ministry hasn't provided any help” to the Centres for Social Work but “much has changed” thanks to the juvenile justice situation analysis and the “very valuable” training provided by UNICEF through Amity. A police officer who attended one of the seminars sponsored by UNICEF called it “one of the best” he had ever participated in. The head of the Judicial Training Centre said that UNICEF “is one of the best partners” because it “is always focused on implementation” and, unlike some other donors, “does not have its own agenda.”

UNICEF works closely with counterparts in the planning of activities with the conscious aim of helping to develop their capacity. The Head of JCJK commented that UNICEF allows plenty of time for planning and “works on even detail” of the activities supported, “allowing us to do quality work.” UNICEF, he added, “gave us the chance to become one of the best in the world. From just a small institution we’ve become a protagonist in change.” A representative of the Social Investment Fund stated that UNICEF “is not just a donor but a supporter” and that the planning, management and reporting competencies developed through working with UNICEF set an example for other governmental agencies. Amity, one of UNICEF’s main NGO partners, said that “partnership with UNICEF is not a formal partnership, but a genuine partnership” and “UNICEF works hard at strengthening partners.” The Child Rights Centre, the other main NGO counterpart, expressed the view that “UNICEF is a very good partner” and “is always open to input” from civil society.
Other international agencies and donors also expressed high regard for UNICEF’s activities in Serbia, including its work on juvenile justice reform. The International Finance Corporation\textsuperscript{232}, which is supporting the development of mediation in Serbia, expressed the view that UNICEF “has the right partners and good timing” and that VOM for juvenile offenders responds to a “huge need”. A representative of the Council of Europe stated that UNICEF is always willing to coordinate and cooperate with other donors, to avoid duplication of efforts and ensure complementarity. A representative of the OSCE prison reform unit also indicated that relations with UNICEF are good and UNICEF’s objectives are clearly defined.

To sum up, UNICEF experience in Serbia is widely perceived as being highly valuable and many counterparts stressed the need for UNICEF to continue supporting juvenile justice reform. Furthermore, it is worth noting that one strength of UNICEF that underlies everything that has been accomplished thus far is the ability to raise funds. The work done on juvenile justice reform during the last three years had been covered entirely by supplemental funding from a single donor, SIDA.

### 28 RECOMMENDATIONS FOR FUTURE STEPS

The main recommendation that the evaluation team would like to make, in agreement with all interviewed counterparts, is that UNICEF should continue working on juvenile justice reform after the end of the present project in June 2007, in order to ensure that the gains made are consolidated and successful pilot projects are taken to scale.

As clearly expressed by the head of the Child Rights Centre, there is a need for continuity, in particular concerning advocacy at the ministerial level to ensure that sufficient funds are allocated for implementation of the law. “A longer-term commitment is necessary,” she concluded. “We have political support now, and must take advantage of it. Without continued political support, the new projects will remain pilot projects.” Speaking for 15 persons who participated in a focus group on law and policy reform, one participant said “There is political will to advance with implementation of the law. I think that we all agree that we need UNICEF as a strategic partner.”

In the views of the evaluation team, one of the main aims of the new UNICEF project should be to ensure that the VOM and mobile child protection teams pilot projects are carried to scale and made sustainable. Particular attention, though, should be given to the actual costs of the projects and to whether the government would be able to afford.

Another should be to support reforms concerning the role of the Ministry of Labour, Employment and Social Policy, including reforms concerning the residential schools for younger children who have committed illegal acts, as well as children at risk, as well as reforms concerning the role of the Centres for Social Work in delinquency prevention and non-residential programmes for the rehabilitation of juvenile offenders.

The biggest challenge facing juvenile justice reform at this point may be to ensure that the Ministries who have a role or potential role in juvenile justice, mainly the Ministry of Justice and the Ministry Labour, Employment and Social Policy, but also the ministries of education and health, cooperate more closely so as to ensure that the reforms carried out affect the system as a whole in a coherent way. Enhanced coordination between relevant Ministries and other public institutions, and between government and civil society should be therefore actively promoted by UNICEF.

An important challenge concerns the further development of existing M&E instruments. Starting from what already achieved (e.g. the two community based alternative projects have developed their own data collection tools and mechanisms at local level in some 14 municipalities), UNICEF should facilitate the

\textsuperscript{232} An affiliate of the World Bank.
creation of mechanisms for coordinating the collection of data at the national level and the integration of local data into national data banks, with the aim of affecting policies and practices. Furthermore, and quite specifically, systems for monitoring the performance of juvenile justice professionals should be introduced.

Despite the synergy already attained with other aspects of UNICEF’s child protection programme, in particular in strengthening the social work system, more can be done. In particular, the establishment of substance abuse programmes for adolescents, which is related to both delinquency prevention and rehabilitation of offenders, is felt as an priority step to be taken, which will create further links between UNICEF’s work on health and on juvenile justice.

Finally, while training of social workers on child rights has been introduced in the University of Belgrade and the Judiciary Training Centre and Police Training Academy have introduced training courses on child rights, support should be given to introducing the subject of child rights in the law faculty and to introducing the subject of child rights in regional universities and to the training facility for correctional officers.

Negotiations for a much larger grant to continue support for juvenile justice reform are nearing completion. The evaluation team believe that a new 3-year grant will enable UNICEF to address many of the gaps mentioned above.
SECTION V: TAJIKISTAN

29 BACKGROUND AND CHARACTERISTICS OF THE JUVENILE JUSTICE SYSTEM


Most data regarding offending by juveniles is collected by the Ministry of the Interior. The indicators used have not changed since independence, and the data collected is confidential. Relevant data is also collected by the Council of Justice and Office of the Prosecutor, but there is no system for consolidating the data collected by such agencies, and no effort has been made to ensure that the data collected is based on indicators that are identical or, at least, compatible. In 2006 State Statistical Agency published a study on juvenile justice containing some data concerning the last 5 years, but it did so at the request of an international research centre. There is no evidence of any intention to use such data to inform the process of juvenile justice reform.

Although official statistics are somewhat incomplete and contradictory, they appear to indicate that offending by juveniles has declined during the last decade. The number of recorded offences has fallen from 976 in 1994 to 790 in 1995, and to 509 offences in 2003. Statistics cited in the Expert Report on Children in Conflict with the Law (see below) indicate that juvenile offenders commit 7.8% of all recorded offences, and that 95% of the offences committed by children consist of theft of food. At the time the Report was prepared in 2003, 278 persons under the age of 18 were confined in 4 residential facilities for juvenile offenders. (This figure did not include those confined in prisons for adults, for which no data was available, nor the number in the Temporary Isolation Centre.) In 2005, 248 children were admitted to these facilities.

---

233 The Innocenti Research Centre, UNICEF
234 Initial Report to the Committee on the Rights of the Child. CRC/C/28/Add.14, 1998, para.44draft; draft Report to the Committee on the Rights of the Child, 2006, p.245 (It should be noted that the breakdown of this data by type of offence is not easy to reconcile with the statement that 95% of all offences committed by juveniles are theft.)
235 Para.2.5 However, a recent publication of the State Statistical Agency indicates that only 65% of all sentences imposed on juvenile offenders are for theft. Children in Conflict with the Law, 2006.
236 A closed facility operated by the Ministry of the Interior that provides temporary care to run-away children of all ages while arrangements are being made for their return home or placement, and children accused of an offence awaiting trial. In 2003, 451 children passed through to this Centre.
237 91 to the ‘colony’ for boys, 77 to the Special Vocational School and 87 to the Special School. Children in Conflict with the Law, State Statistical Agency, 2006, Table 1. The number admitted to the Temporary Isolation Centre in 2005 was 291.
In Tajikistan the basic structure of the juvenile justice system - if it can be called that\textsuperscript{238} - is largely similar to that which existed prior to independence.\textsuperscript{239} There is no separate legislation regarding juveniles offenders: the applicable law consists mainly of special chapters of the Criminal Code of 1998,\textsuperscript{240} the Code of Criminal Procedure of 1961 and Code on the Execution of Sentences, adopted in 2005. There are no specialized juvenile courts. Older juvenile offenders are confined in separate sections of correctional facilities for adults; younger juvenile offenders given custodial sentences are confined in together with children institutionalized for other reasons, principally anti-social behaviour. Facilities for juveniles are centralized in the capital\textsuperscript{241}, but are under the control of four different ministries.

A police department specialized in juvenile delinquency, known as the Department for fighting and prevention of delinquency among juveniles and young people, or 9\textsuperscript{th} Department, has existed since the Soviet period.\textsuperscript{242} It maintains a list of juvenile offenders released from custodial facilities, children “not involved in the socially useful activities” and those who, because of their circumstances of family background, are considered at risk of delinquency, and supervises their activities. The number of ‘listed’ children has decreased from 3,106 in 2000 to 1,302 in 2005.\textsuperscript{243} The department also conducts periodic raids to bring in children found in the streets.\textsuperscript{244} During the period 2000 to 2005, the number of children caught in such raids ranged from 5,991 to 7,656.\textsuperscript{245} Inspectors also act as a child’s legal representative during an initial investigation for a criminal offence.\textsuperscript{246}

Children between the age of 16 and 18, and those between the age of 14 and 16 charged with certain offences, including theft,\textsuperscript{247} can be prosecuted under the Criminal Code and Code of Criminal Procedure of 1961.\textsuperscript{248} If convicted, they may be sent to the “Special Vocational School” operated by the Ministry of Labour and Social Protection or to a correctional “colony” operated by the Ministry of Justice.\textsuperscript{249} Sentences to the Special Vocational School, which also houses children involved in ‘socially destructive

\textsuperscript{238} The Report of an Expert Group on Children in Conflict with the Law recognized that “There is no separate legislation governing juveniles in conflict with the law, no separate procedures for juveniles, no specific and specialised judicial authority to hear case against juveniles, and no specific, separate and comprehensive set of sentences that can be applied to juveniles”, concluding that “The absence of a juvenile justice system violates Article 40(3) of the Convention on the Rights of the Child.” In 2000 the Committee on the Rights of the Child endorsed this conclusion, expressing “concerns at the poor quality of the administration of justice for juvenile offenders and the lack of a juvenile justice system.” CRC/C/15/Add.136, 2000, para.52

\textsuperscript{239} There has, however, been significant restructuring of judicial and correctional systems. In 2004, the judiciary was separated from the Ministry of Justice, and became an independent branch of government under the Supreme Court and the Council of the Justice, and in 2004 control over correctional facilities was transferred from the Ministry of the Interior to the Ministry of Justice.

\textsuperscript{240} Amended 2005

\textsuperscript{241} There also is a Temporary Isolation Centre in Khojan, in Northern Tajikistan, but it is not clear whether it is presently in use.

\textsuperscript{242} Formerly known as the ‘Inspection of Minors’ Department.

\textsuperscript{243} Children in Conflict with the Law, State Statistical Agency, 2006, Table 4. It is unclear whether this decrease is due to changes in the situation of children in Tajikistan, or a decrease in the number of police assigned to the responsible Department.

\textsuperscript{244} Review of the Inspection of Minors Department, Ministry of the Interior, p.24-25. Most such children reportedly are released to their parents, if they can be located.

\textsuperscript{245} Children in conflict with the law (supra) Table 3

\textsuperscript{246} Review (supra), p.24. The Review correctly observes that “This is in total contradiction of the provisions of Article 40 of the Convention and can only be termed as a ‘conflict of interest’.”

\textsuperscript{247} Art.23.2 of the Criminal Code lists 22 such offences, including offences involving violence against the person (Art.104, 105, 110, 111, 138 and 139) drug offences (Art.200-202 and 204), terrorism (Art.179 and 181) and theft (Art.244)

\textsuperscript{248} A separate provision of the Code provides that children who have reached these age limits (16, or 14 for certain specified crimes) do not have criminal responsibility if it is determined that they did not realize the social consequences of his or her act or was unable to control his or her actions. (Art.23(4))

\textsuperscript{249} There is one colony for boys and one for girls. In 2004 they were transferred from the Ministry of the Interior to the Ministry of Justice.
activities’, are until the juvenile reaches the age of 18. The maximum sentence that can be imposed on children sent to a ‘colony’ is 7 years for a child aged 14 or 15 convicted of a single, serious offence, and 10 years a child aged 16 or 17 convicted of such an offence.250

Children under the age of 14 who commit offences, and those aged 14 to 16 who commit minor offences, may be committed to a “Special School” operated by the Ministry of Education.251 Authority to commit children to this facility is vested in the Commission on Minors, an administrative body that forms part of local (i.e. district) government. They may be kept in this facility until they ‘graduate’ at the age of 14, or may be returned to their family and the local school earlier on the recommendation of the administration of the facility, which annually reviews the progress of each child. The Special School also receives children committed by a Commission on Minors at the request of the child’s parents or school, for reasons such as running away from, refusal to attend school or simple inability of poor parents to provide adequate care. In fact, offenders are in the minority.

Children taken into custody by the police in the capital, whatever their age or the reason for their detention,252 are detained in the ‘Temporary Isolation Centre’ operated by the Ministry of the Interior. The law authorizes three days detention for purposes of investigation.253 In practice, children admitted to this centre often are detained for longer periods, due to difficulties in establishing their identity or in arranging their transportation home. Children detained outside the capital are detained in the local police station.

Detention while awaiting trial is not allowed unless the charge is for a crime that carries a sentence of more than one year; detention prior to trial for more serious offences normally should not exceed two months, but can be extended in special circumstances to 15 months.254 Children aged 14 to 18 awaiting trial are detained in remand centres operated by the Ministry of Interior, which reportedly keeps juvenile prisoners separate from adults.

The law complies with international standards regarding due process in some important respects. Juveniles deprived of liberty have the right to free legal assistance, and to challenge the legality of their deprivation of liberty before a court. Courts are obliged to take a juvenile offender’s “life and upbringing, mental development, health and other circumstances” into account in sentencing255. These rights are not always respected in practice, however. A survey conducted in 2000, for example, concluded that only 43% of accused juveniles had enjoyed legal representation during their trial.256 Courts do not receive pre-sentence reports from psychologists or social workers, which makes it difficult to adequately take into account an offender’s personal characteristics and background.257 A Report prepared by the government-appointed Expert Group on Juvenile Justice in 2004 (see below) concluded that neither the law nor the practice of

250 Criminal Code, as amended, Art.87(6). The maximum for cumulative sentences is 10 years for children aged 14 or 15, and 12 for children aged 16 or 17. Art.88(2) and (3), as amended.
251 In 2003, the upper age limit for girls was raised to 18.
252 On the district level the Commissions are chaired of the local government, and include representatives of the police and education department. They have a broad mandate to ‘protect’ children. Commissions also exist on the regional (oblast) and a representative of the Commissions forms part of the Office of the President, and acts as Secretary to the NCCR.
253 The Regulations adopted in 2005 allow the admission of boys and girls aged 13 to 18 for a wide range of reason, including being runaways, abandonment, the need for protection and the commission of a minor offence. (Regulation 15) Children addicted to drugs, mentally ill children and those accused of serious offences are not admitted. (Regulation 16)
254 Expert Group Report, para.5.2-5.5.
255 This is one of the provisions of the existing law that it is hoped will be changed in the new Criminal Procedure Code now being drafted.
256 Art.88(1) of the Criminal Code
258 Report, para.5.30 (It should be noted that the social work profession does not exist in Tajikistan, although a programme to train professional social workers has now begun. Information of this kind may be presented to the court by a representative of the Commission on Minors or the police.
the courts and Commissions is compatible with basic principles concerning juvenile justice recognized by the Convention on the Rights of the Child.

Although the basic structure of the juvenile justice ‘system’ remains unchanged, some significant changes have been made in recent years, including:
- provisions of the Criminal Code concerning juvenile offenders have been amended
- two diversion/non-custodial sentence pilot projects have been established in the capital
- specialized judges have been assigned to handle juvenile cases in two courts in the capital
- a Code on the Execution of Sentences contains new provisions on juvenile offenders
- two facilities for juvenile offenders have been renovated and provided with new equipment
- new regulations concerning one facility for children deprived of liberty have been adopted
- judges, police officers, prosecutors and staff of rehabilitation facilities have received training.

These developments will be considered in more detail below.

### 29.1 ACCOMPLISHMENTS AND MAIN GAPS IN THE CURRENT JJ-SYSTEM

The following table summarises the main accomplishments and gaps identified in the current juvenile justice system in Tajikistan. Accomplishments and gaps are gathered under the main components / aims of UNICEF’s work for juvenile justice reform in the country.

<table>
<thead>
<tr>
<th></th>
<th>Law and policy reform</th>
<th>Community-based alternatives</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ACCOMPLISHMENTS:</strong></td>
<td>- Criminal Code amended to authorize diversion and non-custodial sentences</td>
<td>- Establishment of two pilot projects in capital</td>
</tr>
<tr>
<td></td>
<td>- New regulations for short-term detention centre in capital</td>
<td>- Reform (partial) of Ministry of Interior detention centre in capital</td>
</tr>
<tr>
<td><strong>GAPS / TO BE DONE:</strong></td>
<td>- Part of Criminal Procedure Code concerning juveniles should be brought into compliance with international standards</td>
<td>- Establishment of similar projects elsewhere</td>
</tr>
<tr>
<td></td>
<td>- Competence to commit children to custodial care should be transferred from administrative to judicial authorities</td>
<td>- Continue process of reform Ministry of Interior facilities where children are detained</td>
</tr>
<tr>
<td></td>
<td>- Redefine functions of residential facilities, especially those operated by ministries of education and of labour, and adopt new regulations concerning their functioning</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Shift responsibility for monitoring ‘children at risk’ from Ministry of the Interior to ‘Child Rights Departments’</td>
<td></td>
</tr>
<tr>
<td><strong>Capacity building</strong></td>
<td>- Institutionalization of training for judges</td>
<td></td>
</tr>
<tr>
<td><strong>ACCOMPLISHMENTS:</strong></td>
<td>- Establishment of Expert Group on Juvenile Justice</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Establishment of programme for training social workers</td>
<td></td>
</tr>
<tr>
<td><strong>GAPS / TO BE DONE:</strong></td>
<td>- Advocate for reforms in Ministry of Interior personnel rules and procedures as recommended by international expert</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Continue strengthening capacity of Expert Group on Juvenile Justice</td>
<td></td>
</tr>
<tr>
<td><strong>Environment for change</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| ACCOMPLISHMENTS: | GAPS / TO BE DONE:
| (None) | Other |
|  |  |

| ACCOMPLISHMENTS: | GAPS / TO BE DONE:
|  | • Strengthening data collection/monitoring systems
|  | • Greater attention to girls involved in juvenile justice |

### 30 OTHER ACTORS INVOLVED IN JJ-REFORM

No other major donors or international agencies are directly working in juvenile justice in Tajikistan, while some of them are working in areas closely related to juvenile justice. The EU strategy for the region of Central Asia, for example, identifies democracy and human rights as one of the main priorities. This also includes judicial reform and rule of law. More specifically, within the European Initiative for Democracy and Human Rights (EIDHR), work has been done to strengthen the Ombudsman institution and to provide technical assistance to governments in order to bring their legislation in line with European standards. In Tajikistan, specific support for judicial reform has been provided, including the improvement of pre-detention, probation and penitentiary systems, support for the implementation of the new criminal code, as well as training for judges, prosecutors and investigation services. With a more limited scope, OSCE has been providing support for prison reform, while the Swiss Agency for Development and Cooperation (SDC) has provided support to the Council of Justice and the Judicial Training Centre, as well as free legal aid for the poor and dissemination of legal information.

A few international NGOs, such as Save the Children and the Open Society Institute, had some small projects that had some limited relevance for juvenile justice.

On the whole, it would seem that the need for a comprehensive approach was not being met by any other international actor, except UNICEF.

### 31 OVERVIEW OF UNICEF'S SUPPORT

The UNICEF office in Tajikistan was established in 1992 and the present UNICEF programme covers the years 2005 to 2009. UNICEF's involvement in juvenile justice reform is largely a result of the Committee on the Rights of the Child's review of the Initial Report of Tajikistan, which was submitted in 1998 and examined in 2000. In 2000, UNICEF also commissioned an NGO to prepare a study on the compatibility of Tajik law with international standards and funded a legal aid project by another NGO. In 2001, a National Conference on Child Protection was held, leading to the creation of a National Commission on Child Rights (NCCR or 'the Commission'). In 2003 the Commission adopted a National Plan of Action, which covers the period ending in 2010 and includes a paragraph on juvenile justice. The same year, the NCCR set up an Expert Group on Juvenile Justice, comprising representatives of the Ministries of Justice, of the Interior, of Labour and Social Protection, as well as the Office of the

---

259 A question mark has been put in this cell because the evaluation team believe that although negative attitudes regarding juvenile offenders may exist within the general public, no evidence was found in any of the four countries that such views are or have been at any relevant time a significant obstacle to reform.


261 Initially called the National Commission on Child Protection.
President, Office of the Prosecutor and the Committee on Women and Family Affairs. The Report of the Expert Group, a comprehensive and objective situation analysis of law and practice concerning juvenile justice, was completed late in 2003 and approved early in 2004. UNICEF supported all of these activities: the National Conference, the creation of a National Commission on Child Rights and the preparation of the Report of the Expert Group.

With UNICEF support, the Expert Group prepared a situation analysis, the “Report on Children in Conflict with the Law”. The Report analyzes the relevant law and practice, including conditions in detention facilities, empirical information on the workings of courts and administrative bodies (‘Commissions on Minors’) and available data on children in conflict with the law.262 It is comprehensive and objective. Despite the official status of the Experts Group, however, it did not have access to pre-trial detention facilities and the ‘colony’ for convicted girls, had only limited access to the ‘colony’ for boys and did not have access to data on sensitive issues such as the number of persons under 18 confined in adult prisons or jails. The Report concludes with 50 recommendations on issues such as prevention, pre-trial detention, non-custodial sentences, institutional treatment, post-release programmes, the adjudication of juvenile offenders, the role of the Commissions on Minors, research and training.263 In general, the recommendations appear to be valid. Some seem to imply the need for major restructuring of existing systems, although the need for restructuring is not expressly identified. The cost of the changes recommended is not addressed, there is little analysis of the ‘demand’ for different types of institutions/services, and no timetable or strategy for implementation is proposed. In short, it provides a valuable situation analysis and useful list of changes that are needed to bring the ‘system’ into conformity with Tajikistan’s obligations under international law, but it is not a strategic plan of action.

While the Expert Group Report was being prepared, UNICEF established a working relationship with the Children’s Legal Centre, UK. The Centre has been the main source of expert advice and training since then, and the contributions it has made to the juvenile justice reform process264 are highly valued and appreciated by many of the governmental counterparts. The selection of a national NGO having practical experience as well as expertise, and prepared to make a long-term commitment to supporting juvenile justice reform, has greatly contributed to the results obtained thus far.

After providing technical assistance to the Report of the Expert Group, the Children’s Legal Centre prepared a number of proposals designed to address certain problems identified by the Report, including one concerning the establishment of a community-based diversion pilot project, and three concerning the functions, infrastructure, staffing, admissions policies, length of stay and the services provided to children and their families by residential facilities.265 It also prepared a situation analysis of the Ministry of the Interior’s Inspection of Minors’ Department, jointly with the Ministry and the Office of the Prosecutor.

The UNICEF country office allocated some US$200,000 to juvenile justice reform during the period 2004-2006. The Child Protection staff consists of one programme officer and two assistant programme officers, all local staff.

Juvenile justice reform is coordinated through the Expert Group on Juvenile Justice and annual roundtables convened by the National Commission on Child Rights. Participants in the annual round tables include all the members of the NCCR, local governments from districts in which pilot projects are being implemented and NGOs.

262 This vague term is appropriate here because the Report found that many children in institutions for offenders had not in fact been convicted of any offence and were detained illegally at the time the report was being prepared.
263 One noteworthy aspect of the Report is the number of recommendations concerning the need for a child welfare system.
264 The Centre also contributes to child welfare/protection reform.
265 The Special School, Special Vocational School and Temporary Isolation Centre.
In December 2006, shortly after the evaluation mission, the annual roundtable adopted a resolution calling for “the development and strengthening of a state coordinating body on juvenile justice” having “the authority to develop, implement and monitor juvenile justice reform.”  

31.1 SPECIFIC PROGRAMME COMPONENTS

UNICEF’s support for juvenile justice reform consisted of the following components.

a. Policy Development and Law Reform

This component of juvenile justice reform includes the reform of legislation, adoption of regulations and establishment of the Expert Group on Juvenile Justice.

Reform of legislation

Of the three legal codes that contain provisions concerning juvenile offenders, two have been amended and the process of amending the third has begun. A new Code on the Execution of Sentences was adopted in 2004. It contains extensive provisions on offenders under the age of 18, including a list of the basic rights of convicted juveniles. It also provides that “public associations [NGOs] can take part in the work of the juvenile colonies” and envisages the creation of parent’s committees. The Expert Group, and hence UNICEF, had no role in the drafting of this new law. In 2004 the Criminal Code was amended in order to provide non-custodial sentences for first offenders aged 14 to 18 convicted of minor offences.

A new Criminal Procedure Code is to be prepared during 2007. UNICEF has prepared an analysis of the present Code with a view to identifying provisions that need to be changed in order to bring the law into conformity with international standards and facilitate the on-going process of juvenile justice reform. One of the most important changes proposed would authorize the diversion of offenders aged 16 to 18 and those aged 14 to 16 accused of more serious offences. Presently diversion is available for children 10 to 18 who are first offenders and whose offence is not serious. Other changes the study proposed concern strengthening the provisions on the confidentiality of legal proceedings concerning persons under the age of 18, the provisions on the right of an accused child to be informed of the charges, the article on the duty to notify parents when a child is arrested, and provisions on the separation of adolescent detainees from adult detainees. It also proposes that the use of solitary confinement and corporal punishment as means of enforcing discipline for juveniles on remand be prohibited; that guards in facilities in which juveniles are detained be prohibited from carrying weapons; and that the length of time a person under 18 years of age may be detained for purposes of investigation by the police be reduced to 24 hours, and that the length of pre-trial detention to two months, without exception.

This process of law reform mainly concerns offenders aged 16 to 18, and those aged 14 to 16 accused of more serious offences. Cases of children under the age of 14 who commit offences, and those aged 14 to 16 who commit less serious offences, are brought before the Commissions on Minors and may be sent to facilities operated by the Ministry of Education or Ministry of Labour and Social Protection, to which these laws are inapplicable. This idea of adopting a law on juvenile justice covering all aspects of this problem has not been considered. This appears to reflect the belief that existing deficiencies can be

---

260 Operative paragraphs 1 and 3.
267 Article 16 recognizes their right to be provide with information about their rights and obligations; their right to make complaints to administrative authorities, independent national authorities, NGOs and international human rights bodies; the right to an interpreter as necessary; the right to health care; the right to social benefits recognized by law; the right to legal assistance and the right to contact with their families.
268 Chapter 5, sub-chapter 14.
269 The term is used broadly here, since children under the age of 14 do not have ‘criminal responsibility.’
270 It is presently two months, which can be extended to as long as 15 months in exceptional circumstances.
overcome by improving existing policies, procedures and methodologies, without significant restructuring of the juvenile justice ‘system’ as such, or the development of a coherent system worthy of the name. This issue is quite serious, as the approach of addressing issues concerning juveniles within the framework of legislation applicable to both children and adults often results in laws that do not take fully into account the special needs of children and international standards on child rights. The two laws already amended in Tajikistan are no exception. The provisions of the Criminal Procedure Code concerning disciplinary procedures in correctional facilities, for example, do not recognize the right to due process, nor do they prohibit sanctions that are incompatible with international standards, such as solitary confinement and suspension of contact between the prisoner and his or her family.\textsuperscript{271} The amendments to the Criminal Code mentioned above do not allow the use of diversion for serious offences – a category that includes theft, one of the most common offences committed by juveniles – even when the offender has no record of prior offences.\textsuperscript{272}

\textbf{Regulations}

Regulations are key to the process of reforming the various facilities for juvenile offenders not regulated by the Code on the Execution of Sentences, viz, the Special School, the Special Vocational School and the Temporary Centre. New regulations concerning the Temporary Centre were adopted by the Minister of the Interior in December 2005. The new regulations, developed with UNICEF support, recognize the best interest principle, the right of children to be heard and to have their views taken into account, the principle of family unity and the last resort principle.\textsuperscript{273} They also contain sections listing the rights of children and those of their families.\textsuperscript{274} Regulations concerning the Special Vocational School were being prepared, also with UNICEF assistance, at the time of the evaluation. The Ministry of Labour and Social Protection agrees with the draft regulations, which will redefine the purpose of this facility and its place in the juvenile justice system, but the Ministry of Justice and the Ministry of Interior have not yet agreed. Agreement has not yet been reached as to proper function of the Special School operated by the Ministry of Education, presently the facility with the largest population of juvenile offenders and children committed due to anti-social behaviour. Regulations cannot be prepared until this fundamental policy decision has been taken.

\textbf{The Expert Group on Juvenile Justice}

The Expert Group is an inter-ministerial and inter-sectoral body whose aims include making recommendations regarding laws and policy concerning children. Members include the Ministries of Justice, Interior and Labour and Social Protection; the Office of the Presidency/Commission on Minors; the Council of Justice; the Office of the General Prosecutor. It is supported by UNICEF, and UNICEF sometimes participates directly in the work of the Expert Group, inter alia by contracting international experts to comment on draft laws and regulations, or on the compatibility of existing laws and regulations with international standards.

The drafting of new laws and regulations is done by ad hoc Working Groups established specifically for that purpose. The role of the Expert Group is to make recommendations as to laws and regulations that need to be amended or replaced, and the content of amendments or new laws. Its recommendations are not always accepted. The Ministry of Interior, for example, did not accept the Expert Group’s recommendation that the Temporary Children’s Centre should be converted to an open centre. The role of the Expert Group does not appear to be the same in all legal reforms concerning juvenile justice. It made recommendations regarding the amendments to the Criminal Code and the new Code of Criminal Procedure, but not the Code on the Execution of Sentences. The Expert Group also makes recommendations concerning policy and allocation of resources, and serves as a useful vehicle for coordination between different sectors.

\textsuperscript{271} See Section ‘L’ of the UN Rules on the Protection of Juvenile Deprived of Liberty.
\textsuperscript{272} UNICEF reports that, in practice, children under the age of 16 who have committed theft can be referred to a diversion programme, if they are first offenders.
\textsuperscript{273} Paragraph 2
\textsuperscript{274} Paragraphs 13 and 14
**Child Rights Departments**

Commissions on Minors are an institution inherited from the Soviet period. The 2003 Expert Report considered them incompatible with the Convention on the Rights of the Child, because they have competence to order children to closed facilities on the basis of behaviour that does not constitute an offence, or on the basis of an offence without an actual finding that the offence has been committed. 

Furthermore, it found that, in practice, the Commissions often take such decisions on the basis of requests and reports from schools, parents and the police, without actually hearing the child. UNICEF’s strategy for juvenile justice reform envisages the replacement of such Commissions by Child Rights Departments. In contrast to the Commissions, the Child Rights Departments would have the capacity to provide social services to children and their families, and are expected to make greater use of alternative, non-custodial measures. They would still have authority to send children to a closed facility, however. Consequently, although replacement of the present Commissions on Minors by Child Rights Departments would be an important step forward, this change would not necessarily remedy the due process issues identified in the Expert Report.

**Courts**

In the two districts where pilot projects on diversion and non-custodial sentence have been established with the support of UNICEF and the Children’s Legal Centre (see below), specific judges who have received training in international standards regarding juvenile justice have been assigned exclusive responsibility for all cases involving children, whether as offenders or as victims. The introduction of specialized judges has facilitated referral of cases to these pilot projects and has decreased the number of juvenile offenders from these districts receiving custodial sentences.

**b. Development of community-based alternatives**

The amendment of the Criminal Code in November 2004 opened the door to the use of non-custodial sentences for first offenders aged 14 to 18 who have not committed a serious offence. A non-custodial, community based programme for the rehabilitation of juvenile offenders was established in 2004, in the district of the capital having the highest incidence of juvenile offending. It was designed by the Children’s Legal Centre, which also trained the programme staff, and implemented by a local NGO Nasli Navras (‘New Generation’) that had experience working with street children. In addition to rehabilitation of convicted juveniles offenders, the programme admits juvenile offenders diverted by the police, prosecutor or Commission on Minors, and provides preventive services to adolescents in the community. The programme works closely with a coordinating committee consisting of representatives of the police, court, office of the prosecutor and local Commission on Minors. The services offered consist of a package that includes remedial education, vocational training, life skills training, family counselling and free medical care, provided for a period of 3 to 6 months. Participants live at home and attend the programme after school. Since it was established, assistance has been provided to 84 juveniles of whom only 4 have subsequently committed of a new offence. Moreover, official statistics indicate that offending by juveniles has decreased in the district since this programme began. The local government provided the infrastructure, which was rehabilitated with the assistance of other donors and UNICEF provided equipment. Staff costs are paid in part by UNICEF and in part by a foreign NGO (Children’s Legal Centre).

---

275 para.6.5, 6.11, 7.1 and 7.3
276 para.6.8
277 The Child Rights Department would also replace the Commission on Guardianship, which has authority to place children in residential facilities for other reasons, e.g. abandonment or the inability of parents to provide appropriate care.
278 See annex 3, on the deprivation of liberty by non-judicial bodies.
279 Sino district
280 22 cases were referred by the Commission on Minors; 20 by the court and 42 by the police or prosecutor.
281 Including Save the Children and the Swiss Development Agency.
In 2005 the NCCR decided to open a second pilot project in the capital, again with UNICEF support.\footnote{In Firdevsi District} The second centre experienced more difficulties in getting started, because the NGO chosen to implement did not have experience working with street children. Nevertheless, the problems were overcome. The Expert Group on Juvenile Justice considers that the pilot projects are more successful than anticipated, and that this approach should be replicated through the country. A proposal to this effect was to be examined by the NCCR before the end of 2006.

**c. Reform of closed institutions**

Four different ministries operate residential facilities for juveniles accused or convicted of an offence or anti-social behaviour. One of the main conclusions of the 2003 Report of the Expert Group is that custodial sentences were too often imposed on “juveniles who are really in need of social welfare protection,” and that many of the children confined in such institutions – particularly offenders under the age of 14 and older adolescents charged with minor offences - were there in violation of both national law and international standards.\footnote{Supra, p.2} The Report of the Expert Group contains many recommendations designed to bring them into conformity with international standards.\footnote{The recommendations are arranged by subject; recommendations concerning the role of specific facilities were developed only later.}

From 2004 to 2006, UNICEF helped locate a bilateral donor that provided needed equipment and assistance for the repair and modest improvements in the infrastructure of two such facilities.\footnote{The UK Embassy this assistance to the Special Vocational School and the Temporary Isolation Centre, but not the colony for older and more serious offenders. The equipment provided ranges from cows to computers.} The Children’s Legal Centre prepared proposals for reforming three of the facilities, designed to respond to the needs and problems identified by the Report of the Expert Group. The Ministry of Justice, responsible for the colonies for juvenile offenders located in adult facilities, has not been part of the juvenile justice reform process thus far, reportedly because UNICEF did not meet its demands for the construction of a new facility for juvenile offenders.

**Special School**

A proposal submitted to the Ministry of Education in 2006 contained the following recommendations:

- that the school not be used for children involved in anti-social behaviour who have not committed offences;
- that the purpose of the school be redefined to (i) provide after-school programmes to offenders from the capital and (ii) residential care to a small number of offenders (25-30) for whom community based treatment would not be appropriate;
- that all girls be removed from the school;
- that a plan for the rehabilitation of each resident be developed;
- that the length of residence be reduced to six months;
- that rehabilitation services be expanded to include work with the families of offenders;
- that a review of all staff be conducted with a view to removing those lacking the qualifications and motivation necessary to participate in the new approach and that all staff retained be provided with training;
- that the disciplinary regime be changed to prohibit collective punishments, corporal punishment and other sanctions incompatible with international standards (e.g. solitary confinement and denial of family visits)

Some of these changes are tied to other proposed changes, in particular the development of community-based, non-residential programmes for adolescents involved in ‘anti-social behaviour’ who have not committed offences – that is, delinquency prevention programmes - in the capital and elsewhere.
At the time of the evaluation (November 2006) few of these changes had been made, and UNICEF was not providing support to the school. The number of students residing in the institution was 95, including 7 girls. Most are not offenders. In principle students are still admitted for 3 years, although many are released earlier, depending on the result of annual review of their progress. The programme still emphasizes schooling, and counselling is carried out informally by the teaching staff. The staff make efforts to involve parents, but have no special training in social work. When specific problems that may prejudice the social reinsertion of the child are identified the school’s psychologist is requested to work with the parents with a view to overcoming them.

*Special Vocational School*

The Special Vocational School was intended as a residential facility for boys aged 14 to 18 convicted of minor offences. At the time of the Expert Group Report (late 2003) it contained some 46 boys and girls, many of whom were below the age of 14 and most of whom had not been convicted of offences but had been sent there for anti-social behaviour. In 2005 UNICEF and the Children’s Legal Centre presented the Ministry of Labour and Social Protection with an options paper proposing that the facility be converted into an ordinary vocational school, or replaced by two smaller decentralized vocational schools for offenders, or be converted into a ‘multi-purpose centre’. The Ministry of Labour and Social Protection decided to transform the facility into a ‘multi-purpose centre’ having two main functions. A small residential unit will no longer receive offenders or children involved in anti-social behaviour, but will serve as a ‘half-way’ house for adolescent boys leaving facilities for children without parental care. In addition, the facility would offer non-residential programmes for adolescents convicted of minor offences or involved in anti-social behaviour. A Working Group to oversee the reform process was established late in 2005. At the time of the evaluation, progress had been made in rehabilitating the physical infrastructure, the vocational training offered had been improved, and staff also had received some training, all with support of UNICEF and the Children’s Legal Centre. The number of residents had been reduced to 30 and all girls removed, but the functions of the facility had not yet been changed.

*Temporary Isolation Centre*

The changes in this centre have been significant, but not as far-reaching as one could hope. The physical facilities have been renovated and children are no longer confined in locked isolation cells on admission. Four staff members have received social work training, and the staff have become more sensitive to the needs of children. A bilateral donor identified through UNICEF provided the Children’s Legal Centre with a vehicle used to transport children to their homes. However, the continued use of the facility for temporary detention of young persons suspected of an offence, as well as runaways and abandoned children, has prevented its transformation to an open facility. The Ministry of the Interior’s capacity for identifying children and locating their families has been cited as justification for the broad range of functions this facility has. However, the disadvantages of confining children aged 3 to 18 for such a broad range of reasons in a single closed facility seem to outweigh the advantages, especially in a city where three other facilities for juvenile offenders exist.

*Colonies*

The colonies for juvenile offenders aged 16 to 18, and serious offenders aged 14 to 16, were transferred from the Ministry of the Interior to the Ministry of Justice in 2004. The number of children detained in colonies for offenders (114 boys and 11 girls in 2003) has been reduced considerably, thanks in part to an amnesty decree in September 2006. No specific reforms in the services offered by the colony have been reported, however. At the time of the evaluation, UNICEF supported no activities concerning the colonies.

**d. Other cross-cutting activities**

---

286 UNICEF also helped mobilize bilateral donors who covered part of the expenses of the rehabilitation.
UNICEF has sponsored certain activities that have had an impact on the above mentioned components of its juvenile justice programme, but which are not identified as a separate component. They are described below.

Training
Several kinds of training activities have been supported by UNICEF, including training of judges, training of social workers and inter-sectoral training on the local level. Training of judges is carried out through the Council of the Judiciary, which was established in 1999. The training module and training materials were developed with the assistance of UNICEF and the Children’s Legal Centre, but is carried out by national experts (judges). With UNICEF support, some 15 judges received training for trainers, and three of them were selected to provide in-service training in juvenile justice. 118 judges have participated in such training. UNICEF also provided material support to the training centre, in particular computers.

The first programme for social workers offered by the University of Stockholm began in 2005 and was completed in 2006. It consisted of 8 courses of 40 hours each. Twenty-eight persons participated, of whom twenty-two completed the course and eight received a diploma. The course on adolescence included the topic of juvenile offenders. The same course will be offered indefinitely. A five-day course aimed largely at police officers took place in 2004. Participation was poor, which seemed to reflect lack of interest or scepticism regarding child rights. In 2006 a three-day course aimed largely at police officers and staff of the Police Academy took place, with more satisfactory results. Five prosecutors also participated. The number of police having received such training remains small, however, and there are no plans to make child rights training a regular part of the training of police officers.

Access to information
Most of the materials published by UNICEF are intended for use in training. In 2004, a compilation of UN standards on juvenile justice was published in Tajik, and in 2005 a special issue of the Children of Tajikistan Bulletin devoted to juvenile justice was published. In 2006, a manual on ‘Adolescents and Law’ was published for use in the Police academy, training modules on the UN Minimum Standards on Juvenile Justice were published for use in the Council of Justice’s training programme for judges, together with a manual for the pilot projects on juvenile justice alternatives.

Capacity building
One of the functions of the Expert Group on Juvenile Justice is to develop the members’ awareness and understanding of international standards concerning juvenile justice, and the institutions, policies and methodologies that have been developed in other countries. This has been effective, to a degree, although some participants have benefited more than others. A situation analysis of the department of the Ministry of the Interior’s Department that deals with juveniles, carried out in April 2005, details serious problems concerning the training and selection of officers, morale and management practices. No action has yet been taken to redress these problems, and at the present time the requisite commitment to reform does not exist. Throughout the juvenile justice ‘system’, managers lack training in planning and management skills.

---

287 An annual publication of the National Commission on Child Rights.
32 EVALUATION OF UNICEF’S SUPPORT TO JJ-REFORM

32.1 UNICEF’S STRATEGY FOR SUPPORTING JUVENILE JUSTICE REFORM

Conventional programme planning wisdom calls for planning that addresses all the causes of the problem that the programme is designed to eliminate, and a comprehensive programme of activities designed to produce a specific chain of results leading to the ultimate goal or ‘strategic result’. In Tajikistan, UNICEF’s support for juvenile justice reform was not based on a comprehensive plan containing all the steps that would lead to a juvenile justice system that would satisfy all the requirements of the Convention on the Rights of the Child. It is a step-by-step process that has produced uneven results.

After some exploratory work with NGOs, the office took advantage of the Committee on the Rights of the Child’s recommendations to the government, to organize a high-level conference on child protection. This led to the creation of a National Commission on Child Rights, which in turn established an Expert’s Group on Juvenile Justice. The process of establishing this framework began in 2001 and ended in 2003. Since then the strategy has simply been to work on all the recommendations contained in the situation analysis, to the extent the various Ministries and institutions are receptive to doing so, and to use the Experts Group and NCCR as vehicles for ensuring the cooperation of the various actors. Some Ministries, including the Ministry of the Interior and Ministry of Education, have been reluctant to accept some of the recommendations. As a result, progress in reforming the various institutions has proceeded more rapidly in some areas that others, and more progress has been made with the judiciary and with some ministries than in law reform.

It could be said, therefore, that UNICEF strategy has been moderately successful. At the same time, the specific conditions of Tajikistan should be duly considered. The approach to reform of any system reflects the political, social, cultural, economic and historical context. In Tajikistan, the government that assumed power in 1992, shortly after independence, and has remained in power ever since, was composed in large part of persons closely linked to institutions inherited from the Soviet system. Consequently, there was little willingness to examine the basic structure of the juvenile justice ‘system’. Moreover, the system involved many actors: in addition to the judiciary, prosecutors and police, facilities for juvenile offenders are operated by four different ministries. Consequently, reform requires the support of many actors having different perspectives, values and interests. Juvenile justice is not a popular issue, and does not easily lend itself to high-level political decisions that could facilitate the broad, sweeping reform of a system in which there are so many vested interests. The decline in offending that seems to have followed the end of the civil war approximately a decade ago also may have contributed to limited interest in reform.

In this context, a step-by-step approach to juvenile justice reform, as the one adopted by UNICEF, may well be appropriate, although it is important for such an approach to be applied by an office that has a broad, long-term understanding and vision of all the changes that are ultimately needed to bring the entire system into compatibility with the relevant international standards.

The office also has an annual ‘strategy’ for child protection. The strategic goal for 2006 was the “Establishment of alternatives to deprivation of liberty as a sentence in law and practice for children above and below the age of criminal responsibility”.

288 The reference to alternative sentences but not diversion is surprising, as diversion is, in practice, one of the main aims of UNICEF’s work in this area. Three bullet points appear under this strategic goal, including one that refers to the reform of custodial

288 See ‘Understanding Results-based Programme Planning and Management: Tools to reinforce Good Programme Practice’, UNICEF, NY, 2005
289 Most of which also contain non-offenders.
290 Child Protection Strategic Paper for 2006, Strategic goal No.4
facilities rather than to non-custodial alternatives. The strategies listed in the document consist in a list of activities, defined essentially in terms of action to be taken rather than the result to be obtained (see more on these aspects in the following paragraph on results based management principles).

32.2 **GENERAL OBSERVATIONS ON RELEVANCE, EFFECTIVENESS, EFFICIENCY, SUSTAINABILITY AND THE USE OF RESULTS BASED MANAGEMENT PRINCIPLES AND HUMAN RIGHTS BASED APPROACH**

UNICEF’s decision to support juvenile justice reform in Tajikistan was relevant. In its Concluding Observations on the Initial Report of Tajikistan, the Committee on the Rights of the Child expressed “concerned at the poor quality of the administration of justice for juvenile offenders and the lack of a juvenile justice system” and recommended that Tajikistan “take all measures to fully integrate into its legislation and practice the provisions of the Convention, in particular articles 37, 40 and 39, as well as other relevant international standards…” 291 The Committee specifically recommended that “Facilities and programmes for the physical and psychological recovery and social reintegration of juveniles should be developed” and the authorities seek assistance from UNICEF in establishing a juvenile justice system. In response to the Committee’s comments, the government established a National Commission on Child Rights and adopted a National Plan of Action indicating that the legal framework for juvenile justice would be revised. The Commission established an Expert Group on Juvenile Justice, which prepared a situation analysis. Furthermore, the institutions dealing with juvenile offenders had suffered greatly during the civil war that followed independence during the 1990s. An international NGO has provided one ministry with assistance concerning juvenile justice, 292 but the need for a comprehensive approach was not being met by any other international actor, and the necessary expertise was not available within the country. These factors and developments confirm the relevance of UNICEF’s decision to support the creation of a juvenile justice system compatible with international standards.

The attainment of satisfactory results in relation to stated objectives (effectiveness) is not easy to analyse as objectives regarding juvenile justice reform are often defined in rather vague terms. Moreover, the process of reform is so long and convoluted that short-term objectives – in particular quantifiable ones – have limited relevance. And non-quantifiable objectives tend to be so vague that they invite subjective conclusions as to whether or not they have been met. Some of the criteria and methods for evaluating specific activities that have been seen during this evaluation, such as the questionnaires completed by trainees at the end of a training session, shed little light on the real value of the activity as a part of the reform process. The evaluations that seem to better capture the overall value of an activity as part of the process of are unstructured ones, such as the reports on trainings of the police prepared by the trainers at the end of the activity.

As far as efficiency is concerned, the office in Tajikistan estimated that some US$200,000 was spent on juvenile justice reform over the course of three years. Juvenile justice reform is a complex and long-term process, which precludes a simplistic comparison of the investments made with the results obtained. It would be more realistic to weigh the total amount invested in juvenile justice reform against the overall progress achieved. In Tajikistan, small but important advances have been made on most fronts: some significant changes in the law have been made; training of judges has been institutionalized; some progress has been made towards reforming correctional and detention facilities for children and the first pilot project for diversion, prevention and non-custodial treatment of convicted offenders is recognized as an unqualified success. Some activities have not yet produced the expected results but, on balance, the results are positive and there is reason to believe that this process will continue moving forward.

291 CRC/C/15/Add.136, para.52-53
292 The Open Society Institute provides assistance to the Ministry of Justice.
The use of results based management principles has been mixed. On one side, the strategy designed and followed by the UNICEF office was more a step-by-step process, rather than a systematic planning clearly defining the objectives to be reached, the activities to undertake and the results to realise. The office has produced a logframe for the programme area covering juvenile justice, Social Policy Reform and Child Protection. The most recent logframe for the present period (2005-2009) refers to only one output specifically concerning juvenile justice, which refers in a somewhat confusing way to the principle that imprisonment shall be a last resort and to reduction of the number of ‘registered juvenile offenders’. Three indicators are mentioned: reduction of re-offending or recidivism; the ‘number, range and innovativeness’ of community based diversion and alternative sentencing programmes, and the number of children benefiting from such programmes. Three targets also are identified: the provision of alternative services to offenders aged 11 to 16; the existence of a dialogue between local governments and local NGOs, and the particularly vague target “community based schemes delivering services to children and families.” The ‘means of verification’ include Ministry of Justice and Ministry of the Interior statistics. The three indicators – recidivism, the number of community based alternative programmes and the number of children benefiting from them - are useful ones, but no specific targets are mentioned.

What is most striking about this logframe is lack of reference to objectives that are in fact being pursued, such as the improvement of conditions in facilities for juvenile offenders, the training of judges and police, delinquency prevention and the support for inter-sectoral cooperation between authorities involved in juvenile justice on the local level, to name some of the most important ones. The lack of clearly defined objectives in the area of law reform is also a significant shortcoming. In fact, the adoption of a new Code of Criminal Procedure is on the agenda of the government, and one of UNICEF’s partners has prepared an analysis of the changes needed to bring it into conformity with international standards. The situation analysis also recognizes the need to modify the norms concerning the role of the Commissions on Minors, and administrative body that at present has authority to deprive children of liberty without the right to appeal. This issue appears to have been set aside or forgotten. A third difficulty with this logframe is the presumption that official statistics can be used as a means of verification. The data collected by different institutions is not compatible and the indicators used to collect data by the Ministry of the Interior, at least, have not been modified to take into account contemporary norms and practices regarding juvenile justice.

At the same time, UNICEF has made its own efforts to improve the situation related to data collection and activity monitoring. The plans for some activities, indeed, such as the first pilot diversion/alternative sentencing project, do included detailed plans for monitoring implementation, including indicators on the impact on child beneficiaries. Indicators include the number of children referred to the project who agree to participate, the number of children who return to their homes, the number of participants who re-offend and the opinion of the child and parent participants on the quality of the services provided. Data on the number of participants who re-offend has been compiled, shared with the interested national authorities and provided to the evaluation team. The low number of beneficiaries in the first pilot project who have re-offended has helped consolidate political support for continued reform and is a good example of the importance of monitoring. The annual reports of the pilot project also contains data on the number of children who participate in the project, but not on the opinions of the children and parents on the quality of the services provided.

One management tool that has been used effectively is the Experts Group on Juvenile Justice, which facilitates inter-ministerial and inter-sectoral exchange of information and coordination, and provides UNICEF with a forum for making its views known to its counterparts. Although it is a body created by the government and lacks it authority to take decisions, it is a valuable instrument for coordination.

293 “Creation of a base for using imprisonment as a last resort supported the reduction of the number of registered juvenile offenders.”
As far as the use of the human rights based approach is concerned, no particular effort has been made to take ethnicity into account in designing or implementing the programme. No information in any language other than Tajik or Russian was produced as part of UNICEF support for juvenile justice reform. Furthermore, juvenile justice reform has been carried out, thus far, with little regard to the situation of girls. It is true that, here as in other countries, the vast majority of offences are committed by boys. Nevertheless, hundreds of girls have contact with the police each year, according to official statistics, and some of are detained for some time. Although no data is available, and the Expert Group that prepared the situation analysis of juvenile justice in 2003 was not given access to this facility, it is known that adolescent female offenders have been detained in the colony for women prisoners. The Children’s Legal Centre later examined the situation of girls in a facility housing both boy and girls, and recommended that the practice of admitting girls be discontinued. This recommendation has not yet been heeded. As detailed in the following chapter, it is difficult to assess the impact of UNICEF’s activities on the lives of children. A part from some positive observations and, therefore, assumptions, it would be necessary to fund relevant specific project evaluations.

Sustainability concerns arise above all with regard to the pilot diversion/alternative sentence projects. There are hopeful signs that the government will rise to the challenge of funding similar projects throughout the country. An internal evaluation of the first pilot project was carried out by the Children’s Legal Centre last year. The results of this evaluation were used to inform the development of the project in Firdarvsi and will be used to inform the development of the two new projects in Khujand and Gafarov.

The guide to the juvenile justice alternative projects will be amended this year to include an evaluation of the two existing pilots and amendments to the guide will be made based on the experiences of these two projects. The amended guide should be ready for distribution by the middle of this year.

It is acknowledged that the cost of running the pilot projects in Dushanbe have been relatively high, in Firdarvsi district in particular, because of the staff costs. It is recognised that the salary costs could not be matched by the local governments. However, it was considered necessary to pay higher salary costs in order to attract adequately qualified staff to ensure the success of the projects at this early stage. The new projects should be run on a more sustainable budget with a realistic salary scale for staff. It is already established that one of the project budgets in the north will be managed entirely by the local government for a short while, as the ultimate plan if that the project will be a service contracted out to local NGOs and community groups.

A sign that sustainability of these projects is possible has been given by a resolution of the National Roundtable on Juvenile Justice held in December 2006 (after the end of the evaluation mission), which included a specific obligation on national, regional and local bodies to support the replication of the projects in the whole Tajikistan. Furthermore, the Roundtable adopted an additional recommendation to amend the criminal code and the criminal procedure code to explicitly permit referral of juvenile offenders to NGOs and community-run projects. The same act recognised the need to develop a comprehensive reform of the juvenile justice system.

The training of judges has been institutionalized, and there seems no doubt as to its sustainability. The training of social workers is widely seen as an important development, so it seems safe to presume that it will become sustainable, although how such training might be integrated into the national education system has not yet been decided. The receptivity of the Ministry of the Interior to training of police has been less than enthusiastic, so its sustainability in the medium or long term is difficult to predict. Other aspects of juvenile justice reform have not yet advanced to the point that sustainability is an issue.

294 The number of girls having contact with the police annually from 2000 to 2005 varied from 158 to 601. Children in Conflict with the Law, supra. Table 3
295 The number of girls admitted to the Temporary Isolation Centre annually from 2001 to 2005 varied from 32 to 57. Children in Conflict with the Law, supra, Table 1
296 See e.g. Expert Report (supra), para.5.33 and 1.3, respectively
297 Special School options for reform, undated, p.5
32.3 **SPECIFIC FINDINGS**

32.3.1 Reforming policy, legal framework and Government programmes on juvenile justice

“To what extent have UNICEF activities influenced the contents of revised policy, legal and Governments programme framework of in the following areas: (relevance and impact)

- Prevention of delinquency?

The community based alternative pilot projects have a preventive dimension, that has influenced policy in the districts in which they have been implemented, but thus far there has been no tangible impact on law, policy or programmes at the national level.

- Use of deprivation of liberty only as last resort and for shortest possible period of time?

Amendments to the Criminal Code made in 2004 authorize non-custodial sentences for children convicted of minor offences. Full compliance with the last resort principle would require further changes in the law. Programmes designed to provide opportunities to serve non-custodial sentences have only been established in two districts, to date; a policy on this subject has not yet been formally adopted on the national level. Thus far there have been no changes in law, policy or programmes concerning the length of sentences.

- The quality standards for children in detention in conformity with the law. (Separation of children from adults, maintaining contacts with parents, respectful treatment, access to legal and other assistance)?

At the time of the evaluation new standards had been adopted for the facility in the capital operated by the Ministry of the Interior, but not yet for facilities operated by three other Ministries.

- Implementing restorative justice measures instead of punitive approach (ensuring physical and psychological recovery and social reintegration)?

The Criminal Code was amended in 2004 to allow non-custodial measures to be imposed in certain cases. Pilot programmes for supervision of custodial measures are available in two districts in the capital, but they do not include victim-offender mediation.

- System of laws, procedures, authorities and institutions specifically developed for children?”

No new authorities or institutions for juvenile offenders have been established, to date, and no new laws specifically concerning juvenile justice have been adopted. A regulation governing diversion has been adopted.

“To what extent was UNICEF ensuring that changes in policy, legal and Govt. programmes in JJ were prioritizing the most urgent problems and based on a thorough situation analysis? (relevance and results based management)”

There were some gaps in the situation analysis prepared in Tajikistan due to the unwillingness of the Ministry of Justice to give access to correctional facilities to all members of the Expert Group responsible for preparing the analysis. Moreover, the situation analysis did not expressly indicate that certain problems were more urgent than others, but it did single out ‘main findings.’ They include punitive sentencing, the lack of separate legislation on juvenile justice, the lack of specialized judges, social workers, specialized procedures and sentences specifically designed for the rehabilitation of juvenile offenders, including non-custodial sentences, lack of effective access to legal advice and representation, inadequate cooperation between the law enforcement and the social welfare authorities and lack of social programmes for older adolescents. The government has not recognized the desirability of legislation specifically on juvenile offenders, nor has the government given priority to ensuring effective access by
accused juvenile to legal assistance. The criminal law has been amended to allow for non-custodial sentences for younger first offenders, but changes to procedures for the prosecution and adjudication of juveniles are still pending. Pilot projects undertaken with the support of the national authorities have led to effective cooperation between social welfare, law enforcement and other relevant actors in two districts, and the government has indicated that it intends to gradually replicate this approach on the national level. The Justice Council has decided that only judges with specialized training should be assigned to cases involving juvenile offenders, and the training of judges and the creation of interdisciplinary teams in the pilot districts has led to a decrease in punitive sentencing there. The data needed to determine whether this trend exists elsewhere in the country is not available. In sum, substantial progress has been made on several of the issues considered important by the situation analysis, and the evaluation team is convinced that this is due to a large extent to UNICEF’s advocacy, strategy and technical assistance.

32.3.2 Development of professional capacity relevant for juvenile justice (law enforcement, administrators of justice, social workers)

Which professionals (law enforcement, administrators of justice, social workers, others) did UNICEF include in activities related to professional capacity development and was the selection strategic and sufficient to influence the functioning of the JJ system? (relevance)

UNICEF support for capacity building focused mainly on judges, the police, social workers, the staff of custodial facilities for juvenile offenders and the staff of community based pilot projects. Prosecutors received less attention. The selection was strategically sound, with the exception of the low priority given to training of prosecutors, and is largely responsible for the reforms that have been made thus far to the juvenile justice system.

What types of strategies for professional capacity development and accountabilities were used and were they sufficient to influence the way professionals in the JJ system operate? (relevance):

- Training to boost competency and knowledge
- Change in mandates of professionals
- Establishment of new professions
- Establishment of monitoring (including relevant sanction mechanisms) for professional performance
- Development/strengthening of curriculum for university students and/or for on-the-job training.
- Other

Training of judges, police and the staff of alternative community based projects has had visible results thus far only in the communities in which pilot projects are being implemented. The number of social workers who have successfully completed training thus far is small, but the training has definitely had an influence on the work done by those who are employed in juvenile justice institutions and programmes. The training of staff of correctional facilities for juveniles has had a significant impact on the work of the staff in two such facilities, but less impact on the performance of the staff of a third facility.

Examples of the creation of professions that are new in the countries concerned are rare. The establishment of a programme for training professional social workers in Tajikistan is the best example of such an outcome in any of the four countries evaluated. This initiative is not limited to UNICEF’s juvenile justice programme as such, but is linked to other parts of its child protection programme.

No programmes for monitoring the professional performance of juvenile justice professionals were introduced with UNICEF support.

In service training has been introduced for judges. No hard data on the impact of this training has yet become available, but informants consider that it has had a perceptible impact in the sensitivity of judges
to children who appear before them and on sentencing, especially in municipalities or districts where alternative community based projects have been established.

To what extent did UNICEF activities influence an enhancement in professional capacity and accountabilities directly related to international minimum standards in the area of JJ (impact)

The evaluation team did not find any UNICEF activities in any of the countries covered specifically aimed at enhancing accountabilities. In none of the countries covered by the evaluation did UNICEF evaluate objectively and independently the enhancement of professional capacity directly related to international standards concerning juvenile justice. The evaluation of training activities conducted as part of the juvenile justice programmes was of two kinds: questionnaires implemented by the trainers themselves designed to obtain the trainees’ opinions on the quality of the training activity, and traditional testing of the trainees understanding of the content of the course. The former provides little information on what has been learned. The latter does, but the evaluation team did not have the sort of access to test results that would permit differentiation between what had been learned about international standards and what has been learned about other subjects covered by the courses in question.

To what extent did UNICEF activities contribute to a “change in mindsets” of personnel working in the area of juvenile justice towards juvenile offenders? (impact)

Key informants informed the evaluation team that UNICEF’s activities have had a very significant impact on the attitude of some juvenile justice professionals towards adolescent offenders, as well as some governmental officials. Such changes in attitudes appear more pronounced in districts where pilot projects have been developed, and in two of the custodial facilities that have received training and technical assistance from UNICEF’s partners.

To what extent were UNICEF activities in capacity development based on an analysis of identified gaps in professional capacity? (relevance and results based management)

In general, capacity development activities supported by UNICEF – which consisted almost exclusively in training – were not based on specific exercises designed to measure ‘gaps in professional capacity’. They were based on the situation analyses and on impressions formed by UNICEF staff and trusted national or national counterparts through preliminary exploratory activities. Once a series of training events were underway, subsequent events were generally based on an evaluation of needs made by the trainers as part of earlier training courses.

To what extent were users and beneficiaries of capacity building activities satisfied with the services provided to them? (effectiveness)

In some instances, trainers who conducted training events sponsored by UNICEF asked trainees to evaluate courses at the conclusion of each. Often, however, reports simply mention that evaluations have been conducted without mentioning the results. The report on police training that took place in Tajikistan in 2006 is an example.

32.3.3 Development of community based services and coordination between sectors

To what extent were UNICEF activities successful in developing community based services for children in conflict with the law and in promoting coordination and synergy between different sectors in any or several of the following aspects of juvenile justice programme: (impact)

- Prevention of delinquency among juveniles (such as community support models)
- Restorative justice for children in conflict with the law (such as diversion of children away from the formal criminal justice system and alternatives to deprivation of liberty)
- Rehabilitation and reintegration services in the community (also for children coming out of closed institutions)
- Improvement in the treatment and care of children in closed institutions and the promotion and protection of the rights of children deprived of their liberty
- Links to community based care models within the overall de-institutionalization process for the country?

UNICEF's support for community based rehabilitation and reintegration activities has proved quite successful in the first pilot project established, and the recently established second pilot project also shows signs of success. Both projects also conduct some outreach activities and provide services to children ‘at risk’. The success of such activities in preventing offending is more difficult to assess, although the rate of offending in the district covered by the first pilot project did decline during the first year of the project. These pilot projects – which cover diversion and alternative sentences but not post-release support services - are closely watched by the relevant national authorities, who are fully aware of their implications for future developments of law and policy regarding juvenile justice and in particular the last resort principle.

Significant synergy between different institutions and sectors (including the police, prosecutors, the judiciary, local government and civil society) exists in the communities in which community based alternatives have been established with UNICEF support. The success of UNICEF-supported reforms of the four main custodial facilities for children and adolescents who have committed offences or are presumed to be ‘at risk’ varies considerably from one Ministry to the other. Substantial reforms have taken place at the main facility operated by the Ministry of Justice, although they are not (as explained elsewhere in this report) as far reaching as UNICEF and the Experts Group had hoped. Preparations for a sweeping transformation of the functions of the facility operated by the Ministry of Labour and Social Protection are quite advanced, although the policy decision needed to put this transformation into effect had not been taken at the time of the evaluation. Substantial efforts have been made to promote reforms in the facility operated by the Ministry of Education, but they were suspended due to the failure of the administration to respond appropriately to a pattern of abuse that came to light. The Ministry of Justice has not accepted UNICEF’s offers of cooperation in the reform of the facilities it operates. Restorative justice programmes have not been introduced to date.

To what extent did UNICEF activities contribute to triggering an enhancement of the coordination and synergy between different sectors in the JJ system? (Impact)

The creation of the National Commission on Child Rights and its Expert Group on Juvenile Justice, described elsewhere in this report, and the celebration of an annual meeting on juvenile justice, have enhanced coordination amongst the relevant ministries and other governmental institutions, in particular the judiciary, and between government and civil society. Ministries still defend their territorial interests, however, and cooperation is far from ideal. Synergy can be perceived in the operation of community based pilot projects, but not elsewhere.

To what extent were professional in different sectors (justice, law enforcement and social welfare) satisfied with the new mechanisms/strategies put in place to enhance coordination and synergy? (effectiveness)

The annual meeting on juvenile justice convened shortly after the evaluation mission concluded that “to date, there has not been a coherent or coordinated strategy among the Ministries and State Agencies responsible for children in conflict with the law’’ and called for “development and strengthening of a state coordinating body on juvenile justice.” This confirms that the different professional sectors appreciate the efforts that have been made to coordinate, but also recognize their limited effectiveness and believe that they need to be transformed into a stronger coordination mechanism.

32.3.4 Improving monitoring, data collection systems and supervision of juvenile justice system and situation

How have the UNICEF supported activities, projects and/or strategies been linked to Government’s own databases and/or M&E systems in the area of juvenile justice? (results based management)
The relevant government databases are not linked to one another and use indicators that are at least partly incompatible, and monitoring and evaluation systems are practically non-existent. UNICEF-supported activities are not linked to them. Nevertheless, the relevant authorities do closely follow the functioning of the pilot projects, and take into account data obtained on an ad-hoc basis from local public institutions.

To what extent did UNICEF meet its planned outputs and outcomes related to improving monitoring, data collection systems and/or results based management of the Government? (effectiveness)

No outputs or outcomes specifically concerning monitoring, data collection systems and/or results based management are included in the current UNICEF logframe. The plan does include an outcome defined as “monitoring system for vulnerable children established” in 15 priority districts. Such monitoring systems may well include information on children at risk of offending, or other questions related to juvenile justice, but they have not yet been established because the new institutions expected to carry out this function (Child Rights Departments) have yet to be established.

What type of strategies did UNICEF use to improve monitoring, data collection systems and/or results based management of the Government in the area of JJ? (relevance):

The UNICEF office in Tajikistan have not yet implemented strategies of the kind referred to by this question.

Were these strategies sufficient to influence they way the JJ system is monitored? (efficiency)

This question is moot for the reasons indicated in the reply to the previous question.

To what extent did UNICEF activities trigger an enhancement of monitoring-, data collection systems and/or results based management of the Government in the area of juvenile justice in any of the following areas: (impact)

- Building and/or strengthening M&E systems for services and professionals in JJ system?
- Building and/or strengthening coordination mechanisms for data handling (such as databases)?
- Encouraging and/or influencing transparency and accessibility of data?
- Development and implementation of specialized studies or surveys?
- Building and/or strengthening of indicator frameworks?

The situation analysis not only established the foundation for all subsequent efforts to reform juvenile justice, but also opened the door to other studies on specific aspects of the juvenile justice system. The most important of these is an important study on the Ministry of the Interior and juvenile justice, prepared by a representative of the Ministry, a representative of the Office of the General Prosecutor and a foreign expert. At the time of the evaluation mission, however, UNICEF activities concerning juvenile justice reform in Tajikistan had not triggered an enhancement of monitoring, data collection systems or results based management, nor had they led to modernization of indicators or notable changes in transparency and accessibility of data.

Have the Governments put in place any mechanisms and financial budget allocations to ensure continuation of monitoring, data collection systems and/or results based management of JJ-system? (impact and sustainability)

No such mechanisms or allocations had been put in place by the government at the time of the evaluation mission.

To what extent were professionals in justice, law enforcement and social work sectors satisfied with new M&E systems? (effectiveness)
This question is moot because no such monitoring systems had become operative on the national level at the time of the evaluation mission.

32.3.5 Creating an environment for change (public)

Have the activities, projects and/or strategies used by UNICEF contributed to empowering disadvantaged children and families? (human rights based approach)

No attempt has been made to measure any impact of the activities, projects and strategies used by UNICEF on the empowerment of children and families, in any of the countries covered by this evaluation. In Tajikistan, the community-based alternative pilot projects are designed to empower children referred to them and their families, as well as other children who participate in preventive outreach on a voluntary basis, to overcome the problems that have led the children into conflict with the law. The initial successfullness of these programmes in terms of social reinsertion and reduction of recidivism would seem to imply a degree of success in empowering the participants, but no hard data is available to confirm that this is, indeed, the mechanism at work.

Was information accessible in the language of different minority groups? (human rights based approach)

Information has been produced in Tajik, the official language, and Russian. Russians are a small ethnic minority, but the Russian language is widely language used by professionals regardless of their ethnic background.

33 CONCLUSIONS AND LESSONS LEARNED

33.1 IMPACT

Although UNICEF began supporting juvenile justice reform in 2000, its work with government partners began in earnest in 2003. The results, as indicated above, are mixed. Significant progress has been made in three important areas: the introduction of diversion and alternative sentences; the reduction of the number of children in closed facilities and improvement in conditions of detention, and greater respect for the rights of children on the part of judges. Tangible progress is more limited with regard to the role of prosecutors, decentralization of programmes for the rehabilitation of juvenile offenders, redefining the functions of residential facilities for juvenile offenders, law reform and new approaches to delinquency prevention. Further details are given here below.

Law reform has proceeded slowly, in a piece-meal fashion. This approach may well have been necessary because of the limited recognition on the part of many officials of the need for new legal norms, especially at the beginning of this project. The result, however, is that there is still no law specifically on juvenile justice, and the two new/amended laws that have been enacted, while they represent an important advance, do not fully incorporate the relevant international principles.

Progress made in revising the regulations governing facilities for juvenile offenders and juveniles involved in anti-social behaviour/juveniles at risk is limited. UNICEF has promoted the revision of the regulations governing three of such facilities, but not the juvenile ‘colonies’ for older and more serious juvenile offenders, because of lack of interest on the part of the Ministry of Justice. Only one new regulation has been adopted thus far, however. The changes it makes in the way the Temporary Isolation Centre operates, while important, do not include the changes in the nature and purpose of the facility recommended by the Expert Group on Juvenile Justice.

298 Those aged 16 and 17, and those aged 14 or 15 who have committed ‘serious’ offences.
No regulations, other than those mentioned above, had been adopted at the time of the evaluation. Other agencies and institutions whose regulations have an impact on juvenile justice include those of the Commissions on Minors, the Office of the Prosecutor, the Council of Justice (courts) and the Minister of the Interior’s 9th Department. In 2004 the Expert Group concluded that “Although the Regulations of the Commission on Minors established by Order No 178 of the President of the Republic of Tajikistan (23 February 1995) provide some protection to children, these do not meet the standards required by the” Convention on the Rights of the Child.299 The Review of the Inspection of Minors Department carried out in 2005 concluded that “The terms of reference for the department should be updated to reflect international norms and standards.”300 The regulations of the Office of the Prosecutor have not been evaluated for compliance with international standards.301 The Council of Justice is reportedly considering the adoption of a new regulation designed to ensure that cases involving children are handled only by judges who have received specialized training.

The two community-based centres that provide services to juvenile offenders diverted prior to trial and those who receive non-custodial sentences302 are widely recognized as successful, on several accounts: rates of recidivism for offenders who have participated in these projects are low, the number of recorded offences in the first pilot district have declined, and local government and law enforcement officials of the districts where these pilot projects are located are convinced that they work.

Trained social workers are essential in order to provide delinquency prevention and rehabilitation services, especially in community-based programmes, but also in residential facilities. Both types of training now provided – in-service training of teachers, community workers and local officials provided by the Children’s Legal Centre and more structured academic programme provided by the University of Stockholm – meet an urgent need and should be continued for the foreseeable future. The training of police and judges is evaluated by their trainers according to traditional methods. Anecdotal evidence suggests that the training has had a positive impact on the way persons from all of these sectors fulfil their professional duties concerning children, but the impact of the training in this regard had not been assessed systematically and objectively. The same situation concerns prosecutors. In the district where the first diversion project was piloted they seem to have changed their attitude towards juvenile offenders, but there is no evidence of broader changes elsewhere.

If juvenile justice reform eventually achieves the ultimate aim of preventing offending and reducing recidivism, this would imply substantial benefits for the community. Thus far, however, the only claim that recidivism has been reduced that has been made is in one district of Dushanbe, Tajikistan, at the end of the first year of a pilot project. It remains to be seen whether this trend can be maintained to the point that it has a perceptible impact on the life of the community.

The ultimate test of any programme on the rights of the child is how it impacts the lives of children. Significant changes in the way children are treated in some (but not all) facilities have taken place, but more extensive changes, such as the conversion of closed facilities to open ones, have not yet taken place and it is impossible to predict whether they will. The progress made is significant, but much remains to be done to create a system that is fully compliant with international standards. Moreover, the development of instruments that would allow a serious evaluation of the qualitative impact on the lives of children and the number of children affected would be time consuming and expensive.

On balance, the progress made during the period 2003-2006 is significant, and appears to contain the seeds of continued reform.

299 Report on the Situation of Juvenile Justice, p.2
300 Recommendation 2
301 In particular, the regulations of the ‘Department on inspecting the execution of law towards adolescents’.
302 They also provide similar services to juveniles at a risk of offending, as indicated above.
33.2 LESSONS LEARNED AND OPPORTUNITIES

The following paragraphs describe some of the major lessons learned in Tajikistan, which could provide hints for the application of similar programmes in other countries:

- The importance of the existence of an inter-ministerial, inter-sectoral body such as the Experts Group on Juvenile Justice. Although it lacks it authority to take decisions, it is a valuable instrument for coordination and provides UNICEF with opportunities for a dialogue with all its partners in juvenile justice reform. (If a similar body had existed in Romania, it is possible that UNICEF would not have suspended active support for juvenile justice reform and would have become aware of new opportunities in a more timely fashion.)

- On a human resources and management side, the office in Tajikistan enjoys the support of a half-time volunteer and interns, whose contributions - especially those of the volunteer who is a retired social worker with considerable expertise - have been greatly appreciated by national counterparts.

- The UNICEF office has enjoyed the collaboration of an international NGO (the Children's Legal Centre UK), which has become a permanent and valuable source of expertise on legal and social aspects of juvenile justice.

- UNICEF has been able to introduce some innovative elements, which, if further developed, could have important effects. An example is given by the programme, started in 2000, providing legal services to juvenile offenders through a national NGO. The programme ceased when UNICEF support was discontinued. In 2005, another NGO established a Child Rights Centre, with the support of UNICEF and the Children's Legal Centre, UK. The staff include two local lawyers who provide various services to children in detention. A project such as this does not have the potential to satisfy the need for legal assistance to all children accused of offences or deprived of liberty. However, continued support is justified in order to maintain a nucleus of lawyers who are familiar with the system but independent of it, and thus in a position to make a useful contribution to training and advocacy for reforms.

A major opportunity for UNICEF in Tajikistan is represented by the fact that the status of juvenile justice reform at the end of 2006 is quite dynamic. Indeed, it could be said that the first phase of reform is just coming to an end. The annual round table on juvenile justice reform that has taken place in December 2006 has considered replication of the successful community-based diversion/alternative sentence/prevention pilot projects on a broader scale, and next steps in redefining the functions of residential facilities for offenders. The Country Office is aware of the important moment the juvenile justice reform is entering and has indeed requested US$1,800,000. for juvenile justice and social welfare reform for the period 2007-2009. It is believed that this request will receive favourable consideration.
34 RECOMMENDATIONS FOR FUTURE STEPS

The main recommendation that the evaluation team would like to make, in agreement with the momentum in juvenile justice reform described above, is that UNICEF should continue working on juvenile justice reform after the end of the present project.

One priority area where UNICEF’s influence and activity should be addressed to concerns law reform, where much still needs to be attained. In the short term, for instance, efforts should be made to ensure that the new Criminal Procedure Code now being drafted fully incorporates relevant international standards, as per the memo prepared by the Children’s Legal Centre.303 In the longer term, consideration should be given to promoting the replacement of the existing laws with a comprehensive law covering all aspects of the juvenile justice, from prevention, arrest, investigation and diversion to the substantive law defining offences, judicial procedure and rehabilitation. UNICEF should not only strongly advocate for increasing commitment towards such developments, but also provide the necessary technical assistance.

Another attainment towards which UNICEF could address its advocacy efforts might concern the establishment of an ombudsman for children. It is believed that it would be feasible to establish an ombudsman office with a mandate to enforce compliance with the laws and regulations concerning residential facilities for offenders, and perhaps other residential institutions for children, and even schools. In so far as facilities for juvenile offenders are concerned, the existence of an ombudsman would help compensate the lack of a central administrative structure. More generally, an ombudsman could contribute to law reform, help provide children with a voice and promote the growth of the new and fragile culture of respect for child rights. UNICEF therefore should explore the feasibility of creating a child rights ombudsman, and strongly support such an initiative if there is sufficient interest on the part of authorities bearing in mind that, to be effective, an ombudsman requires adequate guarantees of independence (in line with the Paris Principles), clearly defined powers of access to records, facilities, personnel and children, and sufficient resources.304

An area where UNICEF concrete support and technical assistance would have great positive effects relates to the systems of data collection, and monitoring and evaluation in the juvenile justice system. The Ministries and institutions that collect data on juvenile justice should be assisted in jointly reviewing the indicators used to ensure that the data collected is compatible, and adapted to evaluating the extent to which their activities are compatible with the Convention on the Rights of the Child and related international standards. In addition, a system should be developed to consolidate the most relevant part of the data generated by such bodies, so that it can be used as a basis for the development of policy concerning juvenile justice.305 This effort, in a longer term, could not be limited to juvenile justice, but to law enforcement and judicial data concerning offences against children; consideration also should be given to extending it to other legal matters concerning children, such as adoption, guardianship, custody and maintenance (child support).

A challenge to be further addressed through the support of UNICEF concerns the need for greater coordination. UNICEF itself does not coordinate its support for juvenile justice reform with other international agencies and donors, even though part of its difficulties in coordinating with one ministry are

303 Operative para. 23 of Resolution adopted by the National Roundtable on Juvenile Justice in December 2006 calls for amending "primary and secondary legislation … to fully reflect" relevant international standards.
304 "Principles relating to the status of national institutions for the promotion and protection of human rights, General Assembly resolution 48/134 of 20 December 1993; See generally the Committee on the Rights of the Child’s General Comment No.2, The role of independent national human rights institutions in the promotion and protection of the rights of the child, UN doc. CRC/GC/2002/2 (2002)
305 Operative para. 26 of Resolution adopted by the National Roundtable on Juvenile Justice in December 2006 calls upon the Ministry of Justice to develop the collection and compilation of “statistics relating to all aspects of juvenile offending … in order to inform the process of reform.”
said to be due to the priority that it gives to cooperation with another donor (the Open Society Institute). Moreover, despite the existence of the Experts Group is generally appreciated, the belief is widespread that such institution should be transformed into a stronger coordination mechanism.306

In the same way, it is perceived as necessary that UNICEF makes a greater effort to increase the synergy of its work in juvenile justice with its work in other areas. An example supporting this perception is given by the working experience with the Ministry of Education, which has been one of the most problematic counterparts of the juvenile justice programme, although one would expect that UNICEF’s support for the Ministry in other areas would provide it with sufficient leverage to overcome such difficulties.

As far as specific activities are concerned, the evaluation team would like to suggest the following as potential areas for support:

- **Legal assistance.** What is currently ongoing (described above in the report) does not have the potential to satisfy the need for legal assistance of all children accused of offences or deprived of liberty. However, continued support would be justified in order to maintain a nucleus of lawyers who are familiar with the system but independent of it, and thus in a position to make a useful contribution to training and advocacy for reforms.

- **Gender and juvenile justice.**307 As described somewhere else in the report, juvenile justice reform has been carried out, thus far, with little, if any, regard to the situation of girls. This creates some unacceptable situations (e.g. facilities hosting both boys and girls) that should be brought to an end. Consequently, it is recommended that UNICEF sponsors the preparation of a situation analysis of girls and juvenile justice.

- **Child Rights Departments.** In Tajikistan, the social work profession has not existed, and the supervision of minor offenders has been a responsibility of the police. UNICEF has begun to train social workers and hopes that this function (among others) will be shifted to child rights departments of local governments.308 The creation of a national network of child rights departments of local government staffed in part by social workers would be an important step in creating a juvenile justice system. The process seems to be proceeding apace, although it has not reached the point where impact on an institution could be assessed. The establishment of Child Rights Departments on the national scale would give local governments309 the capacity to assume co-responsibility for providing such services, in cooperation with the police and NGOs, as well as other social services needed by children and their families. It is recommended that UNICEF devotes its advocacy and, if possible, some financial resources to the establishment of such bodies.

- **Regulations governing facilities.**310 UNICEF should continue to promote the adoption of new regulations for the Special School and Special Vocational School, and when the opportunity arises should promote additional changes in the regulations of the Temporary Isolation Centre and support an evaluation in order to assess the need for changes in the regulations of the colonies.

---

306 Operative paras. 1 to 4 of Resolution adopted by the National Roundtable on Juvenile Justice in December 2006 call for the creation of a new, stronger coordination mechanism, as indicated above.

307 Operative paras. 29 and 30 of Resolution adopted by the National Roundtable on Juvenile Justice in December 2006 recommend that issues concerning girls and juvenile justice be addressed in training of the police and by targeting some community based activities specifically to girls.

308 In the interim, the small core of trained social workers is working for other institutions, including NGOs and the police.

309 “Rayon”

310 Operative para. 16 of Resolution adopted by the National Roundtable on Juvenile Justice in December 2006 recommends that “The regulations of closed institutions [be] reformed to bring them into full compliance with” relevant international standards. (see also operative paras. 17 to 22)
addition, a mechanism for coordinating the policies and work of residential facilities for juveniles should be created.

- **Regulations concerning law enforcement and the administration of justice.** In 2004 the Expert Group concluded that “Although the Regulations of the Commission on Minors established by Order No 178 of the President of the Republic of Tajikistan (23 February 1995) provide some protection to children, these do not meet the standards required by the Convention on the Rights of the Child.”\(^{311}\) The Review of the Inspection of Minors Department carried out in 2005 concluded that “The terms of reference for the department should be updated to reflect international norms and standards.”\(^{312}\) The regulations of the Office of the Prosecutor have not been evaluated for compliance with international standards. The Council of Justice is reportedly considering the adoption of a new regulation designed to ensure that cases involving children are handled only by judges who have received specialized training. It is thus recommended that UNICEF supports the process of evaluating the compatibility of regulations with the CRC and other relevant international standards be expanded to include the sectors mentioned above.\(^{313}\)

- **Community based alternatives.** In the next stage of juvenile justice reform, similar projects should be gradually established in other districts where the number and nature of offences committed by juveniles indicate that there is a need for them.\(^{314}\) In addition, as this approach becomes an accepted part of juvenile justice, consideration should be given to amending the law to allow diversion and/or alternative sentences for juveniles convicted of ‘serious’ offences, in appropriate cases. UNICEF advocacy on both points would be necessary.

- **Prevention.** Greater attention should be paid to the prevention of offending. Prevention should be recognized as one of the aims of community based programmes, which should strengthen assistance provided to children at risk of offending as well as those diverted or given non-custodial sentences. It would be useful to carry out a mapping exercise to identify stakeholders in the community (e.g. children’s groups like child clubs, child led organisations, community organisations, village development committees, etc), local institutions (schools, sport facilities, vocational training organisations) and national levels (relevant Ministries, Committees, Departments, etc).

- **Training.** The successes obtained so far should be maintained and expanded further. In-service training of teachers, community workers and local officials is highly valuable and should be continued for the foreseeable future.\(^{315}\) The same should be said for the specialised training delivered to judges, who would also benefit from visits to specialized juvenile courts in other countries, in order to better appreciate child-friendly practices. Also inter-sectoral training events for prosecutors have been found relevant and having positive impact. Nevertheless, the training provided thus far does not include the important UN Guidelines on justice for child witnesses and victims of crimes.\(^{316}\) The Office of the Prosecutor General has a Department for Minors, which dates to the Soviet period, but its functions are limited to investigating situations involving

---

\(^{311}\) Report on the Situation of Juvenile Justice, p.2

\(^{312}\) Recommendation 2

\(^{313}\) UNICEF decided that modification of these regulations was not needed, due to the anticipated replacement of the Commissions by Child Rights Departments. However, the question of powers and procedures of the Child Rights Departments is an important one that needs to be considered carefully in the light of the CRC and other related norms.

\(^{314}\) Operative paras. 10 to 15 of Resolution adopted by the National Roundtable on Juvenile Justice in December 2006 calls for the creation of similar projects in two other districts and for the development of a strategy and allocation of resources for the establishment of such projects throughout the country.

\(^{315}\) Operative para.25 of Resolution adopted by the National Roundtable on Juvenile Justice in December 2006 call for continued training of judges.

\(^{316}\) Approved by ECOSOC resolution 2004/27.
possible violations of the rights of children by public authorities or institutions. The prosecutors who investigate offences committed by children and offences in which children are victims have no special training for this function, and no prosecutors are assigned specifically to such cases, even in the capital. Specialized training of prosecutors would not only benefit juvenile justice reform, but a wide range of child protection issues. 317

317 E.g. child prostitution, child abuse, trafficking of children and any other form of exploitation or abuse that may involve criminal responsibility of adults.
ANNEXES

MONTENEGRO

LIST OF PERSONS INTERVIEWED

UNICEF
- A.L. Svensson, representative for Croatia, Montenegro and Serbia
- B. Kovacevic, HO UNICEF Podgorica
- N. Krnic, Child Protection Assistant

Main governmental counterparts
- B. Lakocevic, Deputy Minister of Justice of Montenegro
- S. Rabrenovic, National Coordinator on Juvenile Justice Reform, Ministry of Justice
- V. Medenica, Supreme State Prosecutor of Montenegro
- S. Mijuskovic, Deputy Minister of Health, Labour and Social Welfare

Ombudsman office
- S. Crnovrsanin, Montenegrin Ombudsman
- N. Stankovic, Legal Advisor on Child Rights at Ombudsman of Montenegro Office
- V. Seekic, Legal Advisor on Child Rights at Ombudsman of Montenegro Office
- N. Dobardzic, Advisor for International Cooperation at Ombudsman of Montenegro Office

Commission on Juvenile Justice Reform (focus group)
- B. Kankaras, Ministry of Education
- N. Gjolazic, Center for Children and Youth “Ljubovic”
- M. Scečić, Center for Children and Youth “Ljubovic”
- D. Pajović, Center for Children and Youth “Ljubovic”
- C. Veljić, Educator at the Center for Children and Youth “Ljubovic”
- M. Scečić, Educator at the Center for Children and Youth “Ljubovic”
- S. Orlandić, Center for Social Work Podgorica
- D. Popović – Gvravanovic, Center for Social Work Podgorica
- R. Stijovic, Police Commissioner, Podgorica
- R. Cukovic, Supreme State Prosecutor Office
- R. Ademovic, Ministry of Health, Labour and Social Welfare
- V. Soc, Ministry of Health, Labour and Social Welfare of Montenegro
- M. Samardzic, Deputy of Higher State Prosecutor in Podgorica
- N. Boricic, Judge of Basci Court in Podgorica
M. Bulatovic, Police Administration, Head of Juvenile Delinquency Department
S. Djurovic, Inspector at Juvenile Delinquency Department
S. Rakocevic, Police Unit in Podgorica, Head of Juvenile Delinquency Department
S. Radovan, Police Commissioner, Podgorica

**Bijelo Polje Center for mediation (focus group)**
G. Belevic, Basic Court in Bijelo Polje, General Secretary
R. Jasarevic, Deputy Basic State Prosecutor in Bijelo Polje
N. Bugarin, Deputy Higher State Prosecutor in Bijelo Polje
Z. Rakonjac, President of Misdemeanour Court in Bijelo Polje
L. Medenica, Deputy Higher State Prosecutor in Bijelo Polje
V. Rakonjac, Municipality of Bijelo Polje, Free Legal Aid Advisor
R. Banda, Judge of the Basic Court in Bijelo Polje
M. Bulatovic, Police Department in Bijelo Polje
V. Maskovic, Center for Social Work in Bijelo Polje

**Other public officials**
I. Stankovic, President of Podgorica Higher Court
M. Pavlicevic, Judge of the Higher Court in Podgorica
S. Đurović, President of Misdemeanour Court in Podgorica
M. Rakocevic, Judge of Misdemeanour Court in Podgorica and Member of the National Commission on Juvenile Justice Reform
L. Culafic, Judge of Misdemeanour Court in Podgorica
D. Damjanovic, Judge Assistant of Misdemeanour Court in Podgorica
I. Stanisic, MONSTAT Director
R. Djurovic, MONSTAT Vice Director
R. Bojadzic, Vice President of the Parliament of Bijelo Polje Municipality

**Civil society**
M. Latovac, Save the Children UK, Legal Advisor on Juvenile Justice Programs

**European Organizations**
A. Zec, Council of Europe Office in Montenegro, Legal Advisor on Justice Reform
S. Karisik, Council of Europe Office in Montenegro, Legal Advisor on Justice Reform
L. Lalicić, Council of Europe Office in Montenegro, Legal Advisor on Justice Reform
M. Velimirovic, OSCE Mission in Montenegro Legal Advisor

**Other**
I. Stevanovic, Child Rights Centre Belgrade (telephone interview)
LIST OF DOCUMENTS CONSULTED

Legislation and regulations

○ Criminal Procedure Code, 2004
○ Criminal Procedure Code, 2004
○ Act amending the Criminal Code, 2006
○ Act amending the Criminal Procedure Code, 2006
○ Rules of Procedure for the application of education orders for juvenile in conflict with the law (2006)

UNICEF documents

○ A Legal Review of the Juvenile Justice System in the Republic of Montenegro, Carol Conragan, February 2002 (referred to in the text as ‘the situation analysis’)
○ International legal instruments in juvenile criminal justice and Drafts of the CRIMINAL CODE and CRIMINAL PROCEDURE CODE of the Republic of Montenegro, I. Stevanovic [undated memo, 2004]
○ Annual Report 2006, UNICEF, Serbia and Montenegro
○ Report on VOM Skills Training Course, 7-11 June 2004, M. Liebmann
○ Report on VOM Refresher and Cultural Diversity Course, 1-5 November 2004, M. Liebmann
○ Trip Report on study visit to Juvenile Correctional Institute Krusevac, Serbia, Sept.20004
○ Trip Report on study visit to Slovenia, Sept-Oct. 2004
○ Trip Report, debriefing on study visit to Slovenia, May 2005
Government publications

- Plan of Action for Children, Republic of Montenegro (undated)
- New Criminal Legislation in Montenegro, Ministry of Justice, Podgorica, 2006
- 2005 Annual Report, Protector of Human Rights and Freedoms, Podgorica
- Report on the implementation of the National Plan of Action for Children in Montenegro, Government of the Republic of Montenegro, Podgorica, December 2006
- Montenegro in Figures, Monstat, Podgorica, 2006
- Statistical Yearbook 2006, MONSTAT, Podgorica

Other

- MoU on the establishment of the Centre for Family and Children’s Support in Bijelo Polje (July 2005)
- Mediation between victim and offender. pamphlet, Mediation Service, Bijelo Polje
ROMANIA

LIST OF PERSONS INTERVIEWED

UNICEF
- P. Poupard, UNICEF Representative
- V. Pop, Child Protection Officer
- E. Crai, Project Officer Education

Main governmental counterparts
- B. Panait, Secretary of State, National Authority for the Protection of Child Rights
- M. Salagean and L. Leterache, Director and Deputy Director, National Institute of Magistracy
- C. Danilet, Ministry of Justice team leader of EU PHARE Project “Support for Juvenile Justice System in Romania”
- M. Calangiu, legal advisor, MoJ Department for European Integration
- I. Durnescu, probation inspector, MoJ Department of Probation
- C. Nicula, legal advisor, National Institute of Criminology
- S. Cerbu and F. Serpe, Deputy Director General and Director, Department of Social Intervention and Reintegration, National Administration of Penitentiaries
- M. Mantalea, psychologist, Targu Frumos Residential Institution, Iasi county

Donors
- E. Barjovan, Project Officer, British Embassy in Bucharest
- F. van Helsdingen, Project Officer, Dutch Embassy in Bucharest

European Organizations
- D. Tudorache, Justice and Home Affairs, Delegation of the European Union
- Marie Boulon, team leader, Phare EU 2003 Twinning Project “Support for the Juvenile Justice System in Romania”.

NGOs focus group, Bucharest
- G. Iorgulescu and Georgiana Fusu, Executive Director and lawyer Center for Legal Resources
- M. Godinac, Director, Jean Valjean Association
- C. Tancu, Director, Romanian Center for Education and Development (CRED)
- S. Dumitru, project coordinator, Penal Reform International

Diversion/Alternative sentencing focus group in IASI (NE Romania)
- C. Luca, Executive Director, NGO ‘Alternative Sociale’
- A. Nica, prosecutor, Iasi Prosecutor Office
- N. Stefaro, judge, Iasi County Court
- R. Moisescu, prosecutor, Iasi Prosecutor Office
- S. Luca, juvenile judge, Iasi court
o M. Taranu, police officer, Iasi Police Department

o G. Catanu, Chief of Emergency Service, Iasi General Department for Social Assistance and Child Protection

**Other**

o M. Crohn, Representative, American Bar Association Central European and Eurasian Law Initiative
LIST OF DOCUMENTS CONSULTED

Situation analysis
o Practices and Norms in the System of Juvenile Justice in Romania [the situation analysis], Bucharest, 2005

Legislation and secondary legislation
o Law no. 275/2006 on the execution of punishments and other measures imposed by the judiciary during trial, published in the Official Gazette, Part 1, No.627, Bucharest, 20 June 2006
o Decision 1439/2004 regarding specialized services for children who committed a criminal offence but cannot be held responsible, Government of Romania, 2004
o Minimum Standards of Care for Specialized Residential Services, Order of the Minister of Labour, Social Solidarity and Family, Bucharest, February 2004
o Minimum Standards for Day Centres, Order of the Minister of Labour, Social Solidarity and Family, Bucharest, February 2004

UNICEF documents
o Donor Report to Matra (Embassy of the Netherlands), UNICEF, Bucharest, 2005
o Donor Report to UK National Committee for UNICEF, UNICEF, Bucharest, 200

Other UN documents
o Second Periodic Report [sic] of Romania to the Committee on the Rights of the Child, CRC/C/65/Add.19, 2000

Publications of the juvenile justice project
o GUID DE PRACTICI INSTITUTIONALE ÎN INSTRUMENTAREA CAUZELOR CU MINORI, A. Dublea and others, Alternativa Sociale, Iasi, 2005

Government documents

Other documents
o Project Report, PRO-Alternative Measures for Young Offenders, CRED, 2005
o Project proposal, Summer School 2005, National Institute of Magistracy, Bucharest (undated)

o Juvenile Justice in Romania, Notes for the Report, N. Cantwell, Geneva, 2004

o Juvenile Justice: a review of international standards, N. Cantwell, Geneva, 2004

o PHARE 2003 STANDARDS SUMMARY PROJECT FICHE, Support for the improvement for the justice for minors, EU, Bucharest, 2003

o RAPPORT FINAL DE MISSION DAN LE CADRE DU PROJECT MESURES ALTERNATIVES POUR JEUNES DÉLINQUANTS, Y. Seieur et D. Van Dooselaere, UNICEF-CRED, Bucharest, 2004

o RAPPORT FINAL SUR LE JUMELAGE RO03/IB/JH09, Soutien pour l’amélioration de la justice des mineurs en Roumanie, Commission of Europe, Belgrade, 2006
LAW 272 OF 2004

Law no. 272/2004 of 06/21/2004 on the protection and promotion of the rights of the child

Promulgated through Decree no. 481/2004

Published in the Romanian Official Gazette, Part I, no. 557 on 06/23/2004

The Parliament of Romania adopts the present law.

CHAPTER 1

General provisions and definitions

Art. 1 – (1) The present law regulates the legal framework concerning the observance, promotion and guaranteeing of the rights of the child.
(2) The public authorities, the authorized private institutions, as well as the natural and legal persons responsible for child protection must observe, promote and guarantee the rights of the child, as stipulated by the Constitution and the law, in accordance with the provisions of the UN Convention on the Rights of the Child, ratified through Law no. 18/1990, republished, and with the other international regulations in this field, to which Romania is a State party.

Art. 2 – (1) The present law, any other regulations adopted in the field of observing and promoting the rights of the child, as well as any legal act, issued or, if the case, signed in this field, are subordinated primarily to the child's best interests.
(2) The best interests of the child also take priority over the rights and duties of the child's parents, legal guardians, or other persons legally responsible for him or her.
(3) In all actions and decisions concerning children, whether undertaken by public authorities and authorized private institutions, as well as courts of law, the best interests of the child shall be a primary consideration.
(4) The persons stipulated under paragraph (3) must involve the family in all decisions, actions and measures taken in connection with the child and support the care, upbringing, development and education of the child in the family.

Art. 3 – The following categories of persons benefit from the provisions of the present law:

a) children with Romanian citizenship, located on the territory or Romania;
b) children with Romanian citizenship, located abroad;
c) children without citizenship, located on the territory of Romania;
d) children who request or benefit from a form of protection, according to the legal regulations on the status and treatment of refugees in Romania;
e) children with foreign citizenship, located on the territory of Romania, who are in emergency situations, as defined, in accordance with the present law, by the competent Romanian public authorities.

Art. 4 – For the present law, the terms and expressions below have the following meanings:

a) child - a human being below the age of 18, who has not acquired full capacity of exercise, according to the law;
b) family - the parents and their children;
c) extended family - the child, his or her parents, and their relatives up to the 4th degree of kinship;
d) substitute family - the persons, other than those who belong to the extended family, and who provide care and support for bringing up the child, according to the law;
e) the individualized protection plan - the document which provides the planning of special child protection services, measures, and actions, based on the psycho-social evaluation of the child and his or her family, in order to integrate a child who has been separated by his or her family, into a permanent and stable family environment, in the shortest possible time;
f) the service plan - the document which includes the planning of the social services which are to be provided, based on a psycho-social evaluation of the child and his or her family, in order to prevent the separation of the child from his or her family;
g) the child’s legal guardian - the parent or person assigned, in accordance with the law, to exercise the child's rights and to fulfill parental duties towards the child;

h) N.A.P.R.C. – the National Authority for the Protection of the Rights of the Child;

i) C.P.C. – the child protection commission;

j) G.D.S.S.C.P. – the general department for social security and child protection;

k) P.S.S.S – the public social security service;

l) R.O.A – the Romanian Office for Adoptions.

Art. 5 – (1) Children have the right to receive protection and support, in order to fully achieve and exercise their rights, in accordance with the present law.

(2) The parents' main responsibility is to raise and ensure the proper development of the child; they have the duty to exercise their rights and to fulfill their duties towards the child, having the child's best interests as a primary consideration;

(3) Subsidiary, this responsibility falls onto the local community to which the child belongs. The local public administration authorities have the duty to support the parents or, if the case, any persons who are legally responsible for the child, in fulfilling their duties towards the child, by developing and providing for this specific purpose diversified, accessible and high quality services, which should respond to the child's needs;

(4) The intervention of the state is complementary; the state ensures the protection of the child and guarantees the observance of all of the rights of the child, through a specific activity conducted by the state institutions and the public authorities responsible in this field.

Art. 6 – Observing and guaranteeing the rights of the child should be conducted in accordance with the following principles:

a) observing and primarily promoting the best interests of the child;

b) equal opportunities and non-discrimination;

c) raising the awareness of the parents on the exercise of their rights and on the fulfillment of parental duties;

d) the primordial responsibility of the parents to observe and guarantee the rights of the child;

e) the decentralization of the child protection services, the multi-sectorial intervention and the partnership between the public institutions and the authorized private institutions;

f) providing individualized and personalized care for each child;

g) observing the dignity of the child;

h) hearing the opinion of the child and giving it due weight, in accordance with the age and maturity of the child;

i) providing stability and continuity in caring, raising and educating the child, taking into account the child’s ethnic, religious, cultural and linguistic background, in the case of undertaking a protection measure.

j) celerity in making all decisions concerning the child;

k) providing protection against child abuse and neglect;

l) interpreting each legal act concerning the rights of the child in correlation with the entire collection of regulations in this filed.

Art. 7 – The rights specified under the current law are guaranteed for all children, without any discrimination, and irrespective of race, color, gender, language, political or any other opinion, nationality, ethnic affiliation or social origin, financial situation, degree and type of disability, status at birth or acquired status, shape, development or other types of difficulties of the child, of the parents or legal representatives, or of any other distinction.

CHAPTER II
The rights of the child

SECTION I
Civil rights and liberties

Art. 8 – (1) The child has the right to receive and maintain his or her identity.

(2) The child is registered immediately after the birth and starting from this date, the child has the right to a name, the right to receive citizenship and, if possible, to meet his / her parents, to receive care, be raised and educated by them.
(3) The parents choose the child’s last name and first name, in compliance with the law;
(4) The child has the right to maintain his / her citizenship, name and family relations, in compliance with the law, with no interference;
(5) When a child is illegally deprived entirely or partly of his / her identity, the public institutions and authorities shall take emergency measures in order to reinstate the child’s identity.

Art. 9 – (1) In order to observe the right stipulated under art. 8, paragraph (1), the medical institutions which include maternities and / or pediatric units must employ a social worker or, if the case, a person with social security responsibilities.

(2) In order to establish the identity of an abandoned or found child, or of his / her parents, the competent police authorities must appoint one or more individuals who are in charge of taking the necessary steps, in accordance with the law, in order to register the child’s birth.

Art. 10 – (1) The birth certificate proving the child’s birth, both for the child born alive, as well as for the still born child, is issued within 24 hours from the child’s birth.

(2) The chief doctor of the unit or the doctor who assisted or acknowledged the birth are responsible for fulfilling the obligation stipulated under paragraph (1).

(3) When the birth occurred outside a healthcare institution, the family physician, whose cabinet is located in the territorial range where the birth took place, has the duty to acknowledge the birth of the child, upon the request of any person, within 24 hours, and then draft and issue the medical certificate which acknowledges the birth of the child, even if the mother is not one of the patients registered with his or her cabinet.

Art. 11 – (1) If the child is abandoned by his or her mother in the maternity, the healthcare institution must report this fact by phone and in writing to the general department for social security and child protection and the police, within 24 hours after the mother’s disappearance has been acknowledged.

(2) Within 5 days from issuing the notification stipulated under paragraph (1), a record acknowledging the child’s abandonment is drafted and then signed by the representative of the general department for social security and child protection, the police representative and the maternity representative; when the child’s health condition allows the discharge from hospital, based on that record, the general department for social security and child protection will decide the emergency placement measure for the child;

(3) Within 30 days from the date when the record was drafted, the police must conduct specific investigations concerning the mother’s identity and must notify the general department for social security and child protection on the results.

(4) In case the mother is identified, the general department for social security and child protection will provide counseling and support for the mother, in view of undertaking the necessary steps for the issuance of the birth certificate.

(5) If, following the police investigation, the mother’s identification is not possible, the general department for social security and child protection sends to the public social security service in whose territorial range the birth has occurred, the file containing the medical certificate acknowledging the birth, the record stipulated under paragraph (2), the emergency placement decision and the results of the police investigation.

(6) Within 5 days from the receipt of the documents stipulated under paragraph (5), the public social security service must obtain the decision concerning the child’s last name and first name, in accordance with the provisions of Law no. 119/1996 on the civil status documents and make the birth recording statement at the competent civil service.

(7) After recording the child’s birth, the public social security service must send to the general department for social security and child protection the document registering the child’s birth.

Art. 12 – (1) In the case of a foundling, as well as of a child who was abandoned by his / her parents in other healthcare units, whose birth has not been registered, the obligation to take the legal steps stipulated by the law for the registration of the child’s birth belongs to the public social security service in whose administrative and territorial range the child has been found or abandoned.

(2) The forensic examination necessary for the registration of the child’s birth is free of charge.

Art. 13 – (1) The healthcare institutions, social protection institutions, residential care services, entities with no legal status, other legal, as well as natural persons, who receive or provide care for pregnant women or children who do not have any documents based on which their identity can be determined, must notify within 24 hours, through a written report, the local public administration authority, in whose
territorial range their headquarters or, if the case, their residence is located, in order to establish the identity of the above-mentioned.

(2) The person who takes a child in order to provide temporary care or protection until the establishment of a legal protection measure, has the obligation to maintain the child and within 48 hours, he / she must notify the local public administration in whose territorial range is located his / her headquarters or domicile.

Art. 14 – (1) The child has the right to maintain personal relations and direct contacts with his or her parents, relatives, as well as with other persons with whom the child has developed relations based on attachment.

(2) The child has the right to meet his or her relatives and to maintain personal relations with them, as well as with other persons with whom the child has enjoyed a family life, to the extent that this is not contrary to the best interests of the child.

(3) The parents or a person who is legally responsible for the child may not prevent the personal relations of the child with his or her grandparents, brothers and sisters, or with any other persons with whom the child has enjoyed a family life, except when a court of law so decides, assessing that there are rigorous reasons which may endanger the physical, mental, intellectual or moral development of the child.

Art. 15 – (1) For the present law, personal relations may be achieved through:

a) meetings between the child and the parent or another person who, according to the present law, has the right to maintain personal relations with the child;

b) visiting the child at his or her residence;

c) hosting the child, for a specific period of time, by the parent or by another person with whom the child does not live on a regular basis;

d) correspondence or any other form of communication with the child;

e) sending to the child information regarding the parent or other persons who, according to the present law, have the right to maintain personal relations with the child.

f) sending to the parent or to other persons who have the right to maintain personal relations with the child, information regarding the child, including recent photos, medical evaluations or school records.

(2) Sending the information stipulated under paragraph (1) lines e) and f) must be achieved in a way which would observe the best interests of the child and the special provisions on the confidentiality and dissemination of personal data.

Art. 16 – (1) The child who has been separated from both of his / her parents or from just one of them, as a result of a legal measure, has the right to maintain personal relations and direct contacts with both parents, except when this is contrary to the best interests of the child.

(2) The court of law, considering the best interests of the child as a priority, can limit the exercise of this right, if there are rigorous reasons which may endanger the physical, mental, intellectual, moral or social development of the child.

Art. 17 – (1) The child, whose parents reside in different states, has the right to maintain personal relations and direct contacts with both of them, except when this is contrary to the best interests of the child.

(2) The National Authority for the Protection of the Rights of the Child will facilitate the exercise of the right stipulated under paragraph (1), in cooperation with the Romanian Ministry of Foreign Affairs, based on a procedure approved through a joint order.

Art. 18 – (1) Children who are not accompanied by parents or by a person who is legally responsible for the child, or are not under the legal supervision of any persons, have the right to have their return to the legal representatives ensured, as soon as possible.

(2) The children’s travel in the country or abroad may only be done when both parents have been notified and have agreed; any misunderstandings between the parents concerning the expression of this agreement is ruled upon by the court of law.

(3) The parents or, if the case, the person responsible for supervising, upbringing and caring for the child must notify the police on the disappearance of the child from the residence, within 24 hours after noticing that the child is missing.
Art. 19 – (1) The diplomatic and consular missions of Romania must inform the National Authority for the Protection of the Rights of the Child about any children with Romanian citizenship who are located abroad, and who, for whatever reasons, are not accompanied by parents or by a legal guardian, or are not under the legal supervision of certain persons who are abroad.

(2) The National Authority for the Protection of the Rights of the Child will undertake the necessary measures for the return of the child to his or her parents or to a legal guardian, immediately after these persons have been identified. In case the identified persons cannot or refuse to take the child in their care, upon the request of the National Authority for the Protection of the Rights of the Child, the second level court (tribunal) in whose territorial range is located the residence of the child, or the Bucharest tribunal, in case the child’s residence is unknown, will decide the child’s placement in a special protection service proposed by the National Authority for the Protection of the Rights of the Child.

(3) The procedures related to the children’s return to the country, to the identification of the parents or the legal guardians, the method through which the advanced payment is made for the expenses necessary for the children’s return to the country, as well as the public or private special child protection services, which have the competency to provide the emergency protection of the children who are in the situation stipulated under paragraph (1), are established through a Government decision.

Art. 20 – (1) The foreign diplomatic and consular missions must inform the Authority for the Protection of the Rights of the Child and the Authority for Foreigners about all cases involving children with foreign citizenship who are located in Romania, and who, for whatever reasons, are not accompanied by parents or by a legal guardian, or are not under the legal supervision of other persons. If the Romanian authorities take notice of such cases by themselves, they will immediately inform the competent foreign mission about the respective children.

(2) In the cases stipulated under paragraph (1), the Authority for the Protection of the Rights of the Child will request the second level court of Bucharest to decide the placement of the child in a special protection service proposed by the Authority for the Protection of the Rights of the Child, until the completion of the legal steps that must be undertaken by the Authority for Foreigners.

(3) The placement measure lasts until the return of the child to his / her parents’ residence country or to the country where relatives willing to look after the child have been identified.

(4) In case the child is not returned, he / she will benefit from the special protection stipulated by the present law.

Art. 21 – In view of enforcing the provisions stipulated under art. 19 and 20, the necessary treaties are concluded with the states or authorities of the envisaged states, based on the proposals put forth by the Authority for the Protection of the Rights of the Child and the Ministry of Foreign Affairs, as well as by other interested institutions.

Art. 22 – (1) The child has the right to have his or her public image and personal, private and family life protected.

(2) Any action which may affect the public image of the child the child’s right to personal, private and family life is forbidden.

(3) The participation of the child below the age of 14 years old to public debates, during audiovisual programs, can only be made with the written consent of the child and of his or her parents or, if the case, of any person who is legally responsible for the child.

(4) Children cannot be used or exposed by their parents, their legal guardians or by any other persons who are legally responsible for raising and caring for them, in order to gain personal advantages or to influence the decisions made by public authorities.

(5) The National Audiovisual Council monitors the way in which audiovisual programs are conducted, in such a manner as to ensure the protection of and to guarantee the rights of the child mentioned under paragraph (1).

Art. 23 – (1) The child has the right to freedom of expression.

(2) The child’s freedom to seek, to receive and to impart information of any kind, which aims at promoting his or her social, spiritual and moral welfare, his or her physical and mental health, in any form and by any means available, is inviolable.

(3) The parents or, if the case, other legal guardians of the child, the persons who are legally responsible for children, as well as persons who, through the nature of their positions, promote and ensure the observance of the rights of children must provide information, explanations and advice
according to the children’s age and degree of understanding, as well as allow them to express their own point of view, ideas and opinions.

(4) Parents may not restrict the right of the minor child to freedom of expression, except in the cases expressly stipulated by the law.

Art. 24 – (1) The child who has the capacity to discern has the right to freely express his or her opinion regarding any matter which involves him or her.
(2) The child has the right to be heard in any judicial or administrative procedure which involves him or her. The hearing of the child who has reached the age of 10 years old is mandatory. Nevertheless, the child who has not reached the age of 10 years old may also be heard, if the competent authority deems it necessary, in order to solve the case.
(3) The right to be heard grants to the child the possibility to request and receive any pertinent information, to be consulted, to express his or her opinion, and to be informed about the consequences which his or her opinion may generate, if observed, as well as about the consequences of any decision involving him or her.
(4) In all cases stipulated under paragraph (2), the child’s opinions will be taken into consideration, according to the age and degree of maturity of the child.
(5) Any child can request to be heard according to the provisions of paragraphs (2) and (3). If his or her request is denied, the competent authority will issue a motivated decision in this regard.
(6) The special legal provisions regarding the consent or the presence of the child in the procedures which involve him or her, as well as the provisions regarding the appointment of a curator, in case of conflict of interests, are and remain applicable.

Art. 25 – (1) The child has the right to freedom of thought, conscience and religion.
(2) According to their own convictions, the parents provide guidance to the child on choosing a religion, taking into account the opinion, age and degree of maturity of the child, without having the power to force him or her to join a certain religion or religious cult.
(3) The religion of the child who has reached the age of 14 years old may not be changed without his or her consent; the child who has reached the age of 16 years old has the right to choose a certain religion on his or her own.
(4) When the child is under a special protection measure, the persons who are legally responsible for him or her are forbidden to take any actions which may influence the child’s religious beliefs.

Art. 26 – (1) The child has the right to freedom of association, in formal and informal structures, as well as the right to freedom of peaceful assembly, within the limits stipulated by the law.
(2) The local public administration authorities, the education institutions and other competent public or private institutions take the necessary measures in order to ensure the full realization of the rights stipulated under paragraph (1).

Art. 27 – (1) The child belonging to an ethnic, religious or linguistic minority, has the right to have his or her own cultural life, to declare his or her ethnic and religious affiliation, to practice his or her religion, as well as the right to use his or her own language with other members of the community to which the child belongs.
(2) The National Council for Combating Discrimination ensures and monitors the full realization of the rights stipulated under paragraph (1).

Art. 28 – (1) The child has the right to be shown respect for his or her personality and individuality and may not be made subject to physical punishments or to other humiliating or degrading treatments.
(2) Disciplinary measures concerning the child can only be taken in accordance with the child’s dignity, and, under no circumstances are physical punishments allowed, or punishments which relate to the child’s physical and mental development or which may affect the child’s emotional status.

Art. 29 – (1) The child has the right to file complaints on his or her own regarding the violation of his or her fundamental rights.
(2) The child is informed with regard to his or her rights and on the ways to exercise these rights.

SECTION 2
The family environment and the alternative care

Art. 30 – (1) The child has the right to be brought up together with his or her parents.
(2) The parents must ensure, in the appropriate manner for the developing capacities of the child, the necessary guidance and advice that are needed in order to properly exercise the rights stipulated by the present law.
(3) The child’s parents have the right to receive information and specialized assistance that are necessary for upbringing, caring and educating the child.

Art. 31 – (1) Both parents are responsible for the upbringing of their children.
(2) The exercise of parental rights and the fulfillment of parental duties must take into account the best interests of the child, and secure the material and spiritual welfare of the child, especially by providing care, by maintaining personal relations with the child, by ensuring the upbringing, education and maintenance of the child, as well as by providing legal representation and administering the child’s patrimony.
(3) In the case of disagreements between the parents concerning the exercise of parental rights and the fulfillment of parental duties, after hearing both parents, the court of law rules in accordance with the best interests of the child.

Art. 32 – The child has the right to be brought up in an environment which would allow the child’s physical, mental, spiritual, moral and social development. For this purpose, the parents must:
a) supervise the child;
b) cooperate with the child and respect the child’s personal and private life and dignity;
c) inform the child on all acts and deeds which may affect him or her and take into account the child’s opinion;
d) undertake all the necessary measures for the realization of the rights of their children;
e) cooperate with natural and legal persons which are involved in childcare, education and child professional training.

Art. 33 – The child may not be separated from his or her parents, or by only one of the parents, against their will, except in special and limited cases stipulated by the law, under the reserve of judicial revision and only if this is required by the best interests of the child.

Art. 34 – (1) The public social security service will undertake all the necessary measures for the early identification of risk situations, which may determine the separation of the child from his or her parents, as well as for the prevention of abusive behaviors of the parents and family violence.
(2) Any separation of the child from his or her parents, as well as any restriction in exercising the parental rights must be preceded by the systematic granting of services and assistance stipulated by the law, with a special emphasis on adequately informing the parents, providing counseling, therapy and mediation for them, based on a service plan.

Art. 35 – (1) The service plan is drafted and enforced by the public social security service that is established at the level of cities and towns, as well as by the individuals involved in social security issues within the communal local councils in whose administrative and territorial range is located the child, as a result of evaluating the situation of the child and of his or her family.
(2) In Bucharest, the general department for social security and child protection drafts and enforces the plan stipulated under paragraph (1), at the level of each sector.
(3) The service plan is approved through a directive issued by the mayor.
(4) The service plan is aimed at preventing the separation of the child from his or her parents. To this end, the public social security service or, if the case, the general department for social security and child protection at the level of each Bucharest sector, support the access of the child and of his or her family to services and assistance focused on maintaining the child in the family.
(5) The service plan may result in a request for undertaking a special child protection measure filed by the general department for social security and child protection only if, after the services stipulated in this plan have been granted, it is noticed that maintaining the child together with his or her parents is not possible.

Art. 36 – (1) If there are sound reasons to suspect that the child’s life and security are endangered in the family, the public social security service or, if the case, the representatives of the general department for social security and child protection at the level of each sector have the right to visit the children at their residence and to gather information on how the children are being cared for, on the children’s health and physical development, education and professional training, and may grant, where needed, the necessary advice.
(2) If, following the visits stipulated under paragraph (1) it is noticed that the child’s physical, mental, spiritual, moral or social development is endangered, the public social security service must immediately notify the general department for social security and child protection, in view of undertaking the measures stipulated by the law.

(3) The general department for social security and child protection must refer the case to the court, in case it considers that the conditions required by the law regarding the partial or complete termination of the parental rights of one or both of the parents are met.

Art. 37 – (1) The general department for social security and child protection will undertake all necessary measures so that parents who have been deprived of parental rights, as well as those whose rights were restricted, may benefit from specialized assistance, in order to increase their capacity to care for their children, in view of re-gaining the exercise of parental rights.

(2) The parents who request the return of the exercise of parental rights benefit from free legal assistance, in accordance with the law.

Art. 38 – The court of law is the only competent authority which may issue a decree, taking into primary consideration the best interests of the child, concerning:

a) the person who exercises and fulfils the parental rights and duties, in case the child is deprived, either temporarily or permanently, of the protection of his or her parents;

b) the ways in which the parental right and duties are exercised and fulfilled;

c) the partial or complete termination of the exercise of parental rights;

d) the recovery of the exercise of parental rights.

Art. 39 – (1) Any child who is, either temporarily or definitively, deprived of the care of his or her parents, or who, in order to protect his or her interests, cannot be left in their care, has the right to alternative protection.

(2) The protection stipulated under paragraph (1) includes the establishment of the legal guardianship, the special protection measures stipulated under the present law, and the adoption. When choosing one of these solutions, the competent authority will appropriately take into account the need to ensure a certain continuity in the child’s education, as well as his or her ethnical, religious, cultural and linguistic background.

Art. 40 – (1) The legal guardianship is established when both parents are deceased, unknown, deprived of the exercise of parental rights or were enforced the penalty of denial of parental rights, placed under interdiction, declared dead or missing by a court of law, as well as when, upon the termination of the adoption, the court of law rules that this is in the best interests of the child.

(2) The legal guardianship is established in accordance with the law by the court of law in whose territorial range the child have the domicile or has been found.

Art. 41 – (1) The legal guardianship may be entrusted to natural persons or jointly to the husband and wife who have the domicile in Romania and who are in none of the incompatibility situations stipulated by the law.

(2) The natural person or the family who are to become legal guardians must be evaluated by the general department for social security and child protection with regard to the moral warrantees and the material conditions which they have to meet in order to receive a child in placement. The evaluation is conducted by the general department for social security and child protection in whose territorial range is located the domicile of the natural person or family, and the members of the child’s extended family are given priority.

Art. 42 – (1) The court of law gives priority in appointing as legal guardian, if no justified reasons are opposing this decision, a relative or a friend of the child’s family, who is capable of fulfilling this task.

(2) The natural person, or the couple, respectively, who are to become legal guardians, are appointed based on the presentation of the report concerning these persons made by the general department for social security and child protection. The proposal will be made taking into account the personal relations, the proximity of the domiciles, as well as the child’s opinion.

SECTION 3
The health and welfare of the child

Art. 43 - (1) The child has the right to enjoy the highest attainable standard of health and to benefit from the medical and rehabilitation services which are necessary in order to ensure the effective realization of this right.
(2) The child’s access to medical and rehabilitation services, as well as to medication which is adequate to his or her condition in case of illness, is guaranteed by the state, and the costs are covered by the National social health insurance fund and by the state budget.
(3) The specialized institutions of the central public administration, the local public administration authorities, as well as any other public or private healthcare institutions, must undertake, in accordance with the law, all the necessary measures in order to:
a) diminish infant mortality;
b) ensure and develop primary and community healthcare services;
c) prevent disease and malnutrition;
d) ensure healthcare services for the pregnant woman during the pre- and post-natal period, regardless of whether the person is or not registered in the social health insurance system;
e) inform the parents and the children on issues concerning child health and nutrition, including issues concerning the advantages of breastfeeding, hygiene and environmental sanitation;
f) develop actions and programs focusing on healthcare protection and the prevention of disease, on the assistance of parents and on education, as well as family planning services;
g) periodically verify the treatment received by children who were placed in order to receive care, protection or treatment;
h) ensure the confidentiality of the medical examination provided to the child, upon his or her request;
i) systematically conduct educational programs in education institutions, including programs aimed at the sexual education of children, in order to prevent sexually transmitted diseases and unwanted pregnancies in minor girls.
(4) The parents have the duty to request medical care, in order to ensure that the child has the best attainable health standard and to prevent situations which may endanger the life, growth and development of the child.
(5) In an exceptional situation, when the child’s life is in imminent danger or there is a risk of serious consequences with regard to the child’s health or physical integrity, the physician has the right to conduct those medical acts of immediate necessity for saving the child’s life, even without having the consent of the parents or of a person who is legally responsible for the child.
(6) The periodical visits of the specialized healthcare staff at the residence of pregnant women and children until they reach the age of one year old are mandatory, in order to protect the health of the mother and child, to provide healthcare education, to prevent child abandonment, child abuse or neglect.

Art. 44 – (1) The child has the right to a living standard which would enable his or her physical, mental, spiritual, moral and social development.
(2) The parents or, if the case, other legal representatives have the primary responsibility to ensure, as much as they possibly can, the best living conditions necessary for the raising and development of the children; the parents must provide accommodation for the children, as well as the necessary conditions for their raising, education, learning, and professional training.

Art. 45 – (1) The child has the right to receive social security and social insurances, according to the resources and the situation of the child and of the people who have responsibility for the maintenance of the child.
(2) In case the parents or the persons who, according to the law, have the responsibility to maintain the child, cannot meet, for reasons which are independent of their own will, the child’s minimal needs for housing, food, clothes and education, the state, through the competent public authorities, must provide them appropriate support, in the form of financial aid, in kind assistance, as well as other services, in accordance with the law.
(3) The parents must request to the competent authorities to grant them allowances, indemnities, financial or in kind assistance, as well as other facilities stipulated by the law for children or for families with children.
(4) The local public administration authorities must inform the parents and the children about the rights which they have, as well as on how they can be granted the social security and social insurance rights.
Art. 46 – (1) The disabled child has the right to special care, which is adapted to his or her needs.
(2) The disabled child has the right to education, rehabilitation, compensation, and integration, which are adapted to his or her own abilities, for their individual development.
(3) The special care must secure the physical, mental, spiritual, moral or social development of the disabled children. The special care is represented by support which is appropriate to the situation of the child and the parents, or, if the case, of others who are responsible for the child’s care, and which is granted free of charge, whenever this is possible, in order to facilitate the effective and non-discriminatory access of disabled children to education, professional training, medical healthcare, rehabilitation services, preparation for employment, leisure activities, as well as any other activities which may allow the child’s fullest possible social integration and individual development.
(4) The specialized institutions of the central public administration and the local public administration authorities must initiate programs and ensure the resources needed to develop services aiming at satisfying the needs of disabled children and of their families, in conditions which would guarantee their dignity, enable their autonomy and facilitate their active participation to community life.

SECTION 4

Education, leisure and cultural activities

Art. 47 – (1) The child has the right to receive an education which would allow him or her to develop his or her capacities and personality, in non-discriminatory conditions.
(2) The child’s parents have priority in choosing the type of education which the child is to receive, and must enroll the child in school, and ensure the child’s regular attendance of the classes.
(3) The child who has reached the age of 14 years old may request the approval of a court of law to change the type of education and professional training that he or she is receiving.

Art. 48 – (1) The Ministry of Education and Research, as a specialized institution of the central public authority, as well as the school inspectorates and the education institutions, as establishments of the local public administration, must undertake all measures that are necessary for:
a) facilitating the access to pre-school education and providing regular obligatory tax-free education for all children;
b) developing education programs for young parents, including education programs aimed at the prevention of family violence;
c) organizing special training courses for children who cannot meet the demands of the national curriculum, in order to prevent their early employment;
d) organizing special training courses for children who have dropped out of school, in order to re-integrate them in the national education system;
e) observing the child’s right to leisure and resting time, as well as the right to freely participate in cultural and artistic activities;
f) preventing school drop out for economic reasons, by undertaking active measures to provide social services within the school environment, such as food, stationery, transportation, and others.
(2) During the teaching and educational process, the child has the right to be treated with respect by the teachers, to be informed on his or her rights, as well as on the methods of exercising these rights. Physical punishments during the educational process are forbidden.
(3) The child himself or, if the case, represented or assisted by a person who is legally responsible for him or her, has the right to appeal against the evaluation criteria and results and to address the management of the education institution on this matter, in accordance with the law.
(4) The teachers have the duty to inform the public social security service or, if the case, the general department for social security and child protection about all cases of child mistreatment, abuse or neglect.

Art. 49 – (1) The child has the right to rest and leisure.
(2) The child must have sufficient time for rest and leisure, to engage freely in recreational activities appropriate to his or her age and to participate in the cultural, artistic and sports activities of the community. The public authorities must contribute to the provision of the conditions that are needed in exercising this right, in accordance with their responsibilities, in conditions of equality.
(3) The public authorities must provide, according to their responsibilities, sufficient and adequate playgrounds for the children, especially in the case of intensely populated areas.
CHAPTER III

The special protection of the child who is temporarily or definitively deprived of the protection of his or her parents

SECTION 1

Joint provisions

Art. 50 – The special child protection is made up by the all measures, assistance and services aimed at the care and development of the child who is deprived, either temporarily or definitively, of the protection of his or her parents, or of the child who, in view of protecting his or her best interests, cannot be placed in the care of his or her parents.

Art. 51 – (1) The child receives the special protection stipulated by the present law, until reaching the full capacity to exercise his or her rights.
(2) Upon the request of the youngster, which is expressed following acquirement of full capacity to exercise his or her rights, if the youngster is continuing his or her studies in the regular, mass education system, the special protection is granted, according to the law, for the entire duration of his or her studies, but without exceeding the age of 26 years old.
(3) The youngster who has acquired full capacity to exercise his or her rights and has benefited from a special protection measure, but who is not continuing his or her studies and does not have the opportunity to return to the family, being confronted with the risk of social exclusion, receives special protection upon request for a period of maximum 2 years, for the purpose of facilitating his or her social integration. In case proof is made of the fact that the youngster has been offered a job and / or accommodation and that he or she has successively turned the offer down or has been deprived of them by his or her own fault, the provisions of the current paragraph are no longer applicable.

Art. 52 – The special protection services are those listed under art. 108 - 110.

Art. 53 – (1) The special child protection measures are established and enforced based on the individualized protection plan.
(2) The plan stipulated under paragraph (1) is drafted and revised according to the methodological norms elaborated and approved by the National Authority for the Protection of the Rights of the Child.
(3) The special child protection measures for the child who has reached the age of 14 years old are established only with the child’s consent. In case the child refuses to give his or her consent, the protection measures are established only by the court of law which, under strongly motivated circumstances, may overlook the child’s refusal to express his or her consent for the proposed measure.

Art. 54 – (1) The general department for social security and child protection must draft the individualized protection plan immediately after receiving the request to enforce a special protection measure or immediately after the director of the general department for social security and child protection has decided on the emergency placement of the child.
(2) In the case of the child for whom a legal guardian has been appointed, the provisions of paragraph (1) are not applicable.
(3) Upon establishing the objectives of the individualized protection plan, special priority is given to the re-integration of the child in the family or, if this is not possible, the placement of the child in the extended family. The plan’s objectives are established by obligatorily consulting the parents and the members of the extended family who have been identified.
(4) The individualized protection plan may stipulate the placement of the child in a residential type of service, only if no legal guardianship could be established or no placement with the extended family, with a maternal assistant or with another person or family could be achieved, in accordance with the present law.

Art. 55 – The special child protection measures are:
   a) placement;
   b) emergency placement;
   c) specialized supervision.
Art. 56 – The beneficiaries of the special child protection measures established by the present law are:
   a) the child whose parents are deceased, unknown, deprived of the exercise of parental rights or have been enforced the penalty of denial of parental rights, placed under interdiction, declared dead or missing by a court of law and for whom no legal guardianship could be established;
   b) the child who, in view of protecting the his or her best interests, cannot be left in the care of the parents, for reasons for which the parents cannot be held accountable;
   c) the abused or neglected child;
   d) the foundling or the child who has been abandoned by the mother in a hospital ward;
   e) the child who has committed an act stipulated by the criminal law and who is not criminally liable.

Art. 57 – The parents, as well as the child who has reached the age of 14 years old have the right to appeal in a court of law the special child protection measures established by the present law, and they have the right to receive free legal assistance, in accordance with the law.

SECTION 2
Placement

Art. 58 – (1) The placement of the child represents a temporary special child protection measure, which, in accordance with the present law and by case, may be decided, as follows:
   a) with a person or family;
   b) with a maternal assistant;
   c) in a residential service, stipulated under art. 110, paragraph (2) and licensed in accordance with the law.
(2) The person or family who is legally responsible for the placed child must have residence in Romania and must be evaluated by the general department for social security and child protection with regard to the moral warrantees and the material conditions that have to be fulfilled, in order to receive a child in placement.

Art. 59 – Throughout the entire duration of the placement measure, the domicile of the child is the same with that of the person, family, maternal assistant or the residential service who is legally responsible for the child.

Art. 60 – (1) The placement of the child who has not reached the age of 2 years old may only be decided with the extended or substitute family and it is forbidden to place him or her in a residential service.
(2) As an exception to the provisions stipulated under paragraph (1), the placement in a residential service of the child who has not reached the age of 2 years old may only occur in the case in which the child has severe disability and is dependent on specialized residential care services.
(3) The following issues will be targeted upon establishing the placement measure:
   a) giving priority to the placement of the child in the extended or the substitute family;
   b) placing the siblings together;
   c) facilitating the parents’ opportunity to exercise the right to visit the child and to maintain personal relations with the child.

Art. 61 – (1) The placement measure is decided by the child protection commission, if the consent of the parents has been granted, for the situations stipulated under article 56, lines b) and e).
(2) The placement measure is decided by the court of law, upon the request of the general department for social security and child protection:
   a) for the child who is in the situation stipulated under article 56, line a), as well as for the child who is in the situation stipulated under art. 56, lines c) and d), if it is necessary to replace the emergency placement measure decided by the general department for social security and child protection;
   b) for the child who is in the situation stipulated under article 56, lines b) and e), when the consent of the parents or, if the case, of one of the parents has not been granted for enforcing this measure.

Art. 62 – (1) The parental rights and duties towards the child are maintained throughout the duration of the placement decided by the child protection commission.
(2) The parental rights and duties towards a child for whom a legal guardian could not be appointed and for whom the court of law has decided the placement measure are exercised and, respectively, fulfilled by the president of the county council, and by the Bucharest sector mayor, respectively.
(3) As an exception to the provisions stipulated under paragraph (2), the parents who have been deprived of their parental rights, as well as those who were enforced the penalty of interdiction of parental rights, still maintain the right to consent to the adoption of their child.
(4) The method of exercising the parental rights and fulfilling the parental duties regarding the person and the assets of the child who is in the situation stipulated under art. 56, lines c) and d) and art. 56, lines b) and e) is decided by the court of law.

Art. 63 – The child protection commission or, if the case, the court of law which has decided the placement of the child, will also determine the amount of the monthly contribution which the parents must make for the maintenance of the child, in accordance with the conditions stipulated by the Family Code. The amounts thus collected represent an income to the county budget and, respectively, to the budget of the Bucharest sector where the child is coming from.

SECTION 3
Emergency placement

Art. 64 – (1) The emergency placement of the child is a temporary special child protection measure, which is undertaken in the situation of the abused or neglected child, as well as in the situation of the foundling or of the child abandoned in healthcare institutions.
(2) The provisions stipulated under art. 58 - 60 are properly enforced.
(3) Throughout the entire duration of the emergency placement, the exercise of parental rights is suspended de jure, until the court of law rules on maintaining or replacing this measure and on the exercise of parental rights. Throughout the suspension period, the parental rights and duties towards the child are exercised and fulfilled respectively, by the person, family, maternal assistant or by the head of the residential service which has received the child in emergency placement, and those regarding the assets of the child are exercised and fulfilled, respectively, by the president of the county council or by the Bucharest sector mayor.

Art. 65 – (1) The emergency placement measure is decided by the director of the general department for social security and child protection from the administrative — territorial unit where the foundling or the child abandoned by the mother in a hospital ward or the abused or neglected child is located, in case there is no opposition from the representatives of the legal persons, or from the natural persons who take care of the respective child and ensure the child’s protection.
(2) The emergency placement measure is decided by the court in accordance with the provisions stipulated under art. 94, paragraph (3).

Art. 66 – (1) In the case of the emergency placement measure decided by the general department for social security and child protection, the department has the duty to inform the court of law within 48 hours from the date when this measure was decided.
(2) The court of law will analyze the reasons based on which the general department for social security and child protection adopted the measure and will rule on either maintaining the emergency placement or replacing it with the placement measure, on the establishment of the legal guardianship, or on the re-integration of the child in his or her family. The court of law must also rule on the exercise of parental rights.
(3) If the emergency placement is decided by the court, the court will rule in accordance with art. 94, paragraph (4).

SECTION 4
Specialized supervision

Art. 67 – (1) The specialized supervision measure is decided, in accordance with the present law, for the child who has committed a criminal act and who is not criminally liable.
(2) In case the parents or the legal guardian have granted their agreement, the specialized supervision measure is decided by the child protection commission, and in the absence of this agreement, by the court of law.
SECTION 5
Monitoring the enforcement of the special child protection measures

Art. 68 – (1) The circumstances which led to the establishment of the special child protection measures, which were decided by the child protection commission or by the court of law, must be verified on a quarterly basis by the general department for social security and child protection.
(2) In case the circumstances stipulated under paragraph (1) have changed, the general department for social security and child protection must immediately notify the child protection commission or, if the case, the court of law, in order to change or terminate the measure.
(3) The parents or the legal guardian of the child, as well as the child, have the right of notification stipulated under paragraph (2).

Art. 69 – (1) The general department for social security and child protection or, if the case, the authorized private institution, must monitor the way in which the special child protection measures are enforced, the development and the care provided to the child throughout the entire duration of the measure.
(2) In fulfilling the duty stipulated under paragraph (1) the general department for social security and child protection or, if the case, the authorized private institution drafts reports concerning the evolution of the child’s physical, mental, spiritual, moral or social development and the way in which the child is taken care of, either quarterly or every time there is a situation which requires this.
(3) If, based on the report drafted according to paragraph (2), it is noticed that there is a need to change or, if the case, to terminate the measure, the general department for social security and child protection must immediately notify the child protection commission or, if the case, the court of law.

Art. 70 – When the special child protection measures cease as a result of the re-integration of the child in his or her family, the public social security services which is established at the level of cities and towns, the persons who are involved in providing social security services within the communal local councils, as well as the general department for social security and child protection, in the case of the Bucharest sectors, in whose territorial range is located the residence or, if the case, the domicile of the parents, must monitor the evolution of the child’s development, as well as the way in which the parents are exercising their rights and fulfilling their duties towards the child. To this end, they draft monthly reports for a period of minimum 3 months.

Art. 71 – The child who was subject to a special child protection measure has the right to maintain personal relations with other persons, if these persons do not have a negative influence on his or her physical, mental, spiritual, moral or social development.

CHAPTER IV
The protection of refugee children and the protection of children in case of armed conflict

Art. 72 – (1) The children who request a refugee status, as well as those who have obtained this status, receive the protection and humanitarian assistance which are appropriate for the realization of their rights.
(2) The children referred to under paragraph (1) receive one of the forms of protection stipulated by the Government ordinance no. 102 / 2000, on the status and treatment of refugees in Romania, approved through Law no. 323 / 2001, with subsequent additions and changes.

Art. 73 – (1) In case the child who requests the refugee status is not accompanied by the parents or by another legal representative, the protection for the child’s interests during the procedure for granting the refugee status is provided by the general department for social security and child protection in whose administrative and territorial range is located the territorial institution of the Ministry of Administration and Internal Affairs where the petition will be filed.
(2) The petition for granting the refugee status to the child who is in the situation stipulated under paragraph (1) is analyzed with priority.
(3) In order to adequately protect the interests of the child referred to under paragraph (1), the general department for social security and child protection appoints a persons with a graduate degree in law or social work from its own staff or from the staff of an authorized private institution, who would protect
the rights of the child and would participate together with the child in the entire procedure for granting the refugee status.

4 In case it is noticed that the person appointed by the general department for social security and child protection fails to appropriately fulfill the duty to protect the interests of the child or shows ill faith in fulfilling this duty, the National Office for Refugees may request the general department for social security and child protection to replace this person.

Art. 74 – (1) Until a final and irreversible decision is reached for the petition to receive the refugee status, the accommodation of the children referred to under art. 73 is achieved by means of a residential service stipulated by the present law, which belongs either to the general department for social security and child protection or to an authorized private institution.

(2) Children who have reached the age of 16 years old may also be accommodated in the centers that are in the subordination of the National Office for Refugees.

(3) The children referred to under paragraph (1), who have been granted the refugee status, receive the special child protection measure for the child who is deprived of the protection of his or her parents, either temporarily or definitively, which is stipulated by the present law.

Art. 75 – (1) In case the petition of the child referred to under art. 72 to be granted the refugee status is denied through a final and irreversible court decision, the general department for social security and child protection informs the Authority for Foreigners and requests the court of law to decide on the placement of the child in a special child protection service.

(2) The placement measure lasts until the child returns to the residence country of his or her parents, or to the country where other members of the family, who are willing to take the child, have been identified.

Art. 76 – (1) The children who are affected by armed conflicts receive protection and assistance in accordance with the present law.

(2) In case of armed conflicts, the state institutions take the necessary measures in order to develop special mechanisms which are aimed at monitoring the measures adopted for protecting the child’s rights.

Art. 77 – No child will be used as a spy, guide or courier during armed conflicts.

Art. 78 – (1) In the case of an armed conflict, the National Authority for the Protection of the Rights of the Child, in cooperation with the Ministry of Administration and Internal Affairs, the Ministry of National Defense, as well as other institutions with specific responsibilities must initiate and implement strategies and programs, including at the family and community level, in order to ensure the discharge of children soldiers and to remedy the physical and psychological effects of the conflicts on the child and to promote the social re-integration of the children, respectively.

(2) The central public administration institutions referred to under paragraph (1), in cooperation with the National Agency for Employment and the Ministry of Education and Research will promote appropriate measures in order to:

a) educate in the spirit of understanding, solidarity and peace, as a general and continuous process in conflict prevention;

b) educate and prepare discharged children for an active and responsible social life.

Art. 79 – (1) In any county or sector of Bucharest, the president of the county council or, if the case, the mayor of the respective Bucharest sector must forward to the general department for social security and child protection, within 24 hours from the initiation of an armed conflict, a complete list of all children located on the territory of the respective administrative and territorial department, in view of monitoring their situation.

(2) The infrastructure which is aimed at the protection and promotion of the rights of the child will not be used for military purposes.

(3) In the case of evacuation missions conducted as a result armed conflicts, children will be given priority. The general department for social security and child protection, in cooperation with the civil protection service, will take the necessary measures in order to ensure the surveillance of children who are being evacuated by persons who can assume the responsibility of protecting and providing security for them. As often as possible, the members of the same family will be housed together.
CHAPTER V

The protection of the child who has committed a criminal act and is not criminally liable

Art. 80 – (1) One of the measures stipulated under art. 55, lines a) and c) will be undertaken for the child who has committed an act stipulated by the criminal law, and who is not criminally liable, based on a proposal submitted by the general department for social security and child protection in whose administrative-territorial range is located the child.
(2) When establishing one of the measures stipulated under art. 55, lines a) and c), the Child Protection Commission, in case the parents or the person who is legally responsible for the child have given their agreement, or, if the case, the court of law, in case this agreement is absent, will take into account the following:
   a) the conditions which facilitated the commitment of the act;
   b) the degree of social danger of the act committed;
   c) the environment in which the child has been raised and has lived;
   d) the risk that the child may commit a second offence stipulated by the criminal law;
   e) any other elements which may describe the situation of the child.

Art. 81 – (1) The specialized supervision measure is enforced by maintaining the child within his or her family, on condition of observing certain duties, such as:
   a) regularly attending school;
   b) using the day-care services;
   c) undergoing medical, counseling and psycho-therapy treatments;
   d) interdiction to go to certain places or to maintain relations with certain persons.
(2) In case it is not possible to maintain the child within the family, or when the child does not fulfill the duties established through the specialized supervision measure, the child protection commission or, if the case, the court of law, according to the distinctions stipulated under art. 80, paragraph (2), may decide the placement of the child in the extended or substitute family, as well as request that the child fulfils the duties stipulated under paragraph (1).

Art. 82 – In case the act stipulated by the criminal law, which was committed by the child who is not criminally liable, presents an increased risk of social danger, as well as in case when the child who was subject to the measures stipulated under art. 81, commits second offences, the child protection commission, or, if the case, the court of law may decide, for a determined period of time, the placement of the child in a specialized residential service.

Art. 83 – It is forbidden to publicize any information concerning a criminal act committed by the child who is not criminally liable, including personal data concerning the child.

Art. 84 – (1) Throughout the duration of the measures enforced upon the child who has committed criminal acts and who is not criminally liable, specialized services will be provided, in order to assist the children in the social re-integration process.
(2) The types of specialized services referred to under paragraph (1) as well as the standards concerning the method of providing these services are approved through a Government decision.

CHAPTER VI

The protection of the exploited child

Art. 85 – (1) The child has the right to be protected against any forms of violence, neglect, abuse or maltreatment.
(2) Any natural or legal person, as well as the child, can notify the authorities empowered by law to take appropriate measures, in order to protect the child against any forms of violence, including sexual violence, harm or physical or mental abuse, maltreatment or exploitation, abandonment or neglect.
(3) The staff of the public or private institutions who come into contact with the child through the nature of their profession and have suspicions concerning a potential case of child abuse, neglect or maltreatment, must urgently notify the general department for social security and child protection.

Art. 86 – (1) The child’s parents or, if the case, any other legal representative of the child, the public authorities and private institutions must take all the appropriate measures in order to facilitate the physical and mental rehabilitation and the social re-integration of any child who has been the victim of
any form of child neglect, exploitation or abuse, torture, cruel, inhuman or degrading punishments or treatments.

(2) The persons referred to under paragraph (1) will provide the necessary conditions so that the re-adjustment and re-integration of the child should have as primary consideration the child’s health, self-respect and dignity.

SECTION 1
The protection of the child against economic exploitation

Art. 87 – (1) The child has the right to be protected against exploitation and cannot be forced to perform any work with a potential risk and which is likely to compromise the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.

(2) Any practice through which a child is given away by one or both parents or by his / her legal representative, in exchange or not for a reward, with the purpose of exploiting the child or his / her work, is forbidden.

(3) In situations when school-age children avoid the educational process and conduct various types of activities in violation of the law, the education institutions must immediately notify the public social security service. In the event of such situations, the public social security service, together with the county school inspectorates and the other competent public institutions must undertake measures in view of the educational re-integration of the child.

(4) The Labor Inspection in cooperation with the National Authority for the Protection of the Rights of the Child must promote awareness and information campaigns targeted on:

a) the children – focusing on the protection measures they can receive and on the risks involved by economic exploitation;

b) the general public – which include parental education and training activities for the professionals who are working with and for children, in order to help them provide real protection for the children against economic exploitation;

c) the employers and potential employers.

SECTION 2
The protection of the child against the illegal use of drugs

Art. 88 – (1) The child has the right to be protected against the illegal use of drugs and psychotropic substances.

(2) It is forbidden to sell solvents to children, without the consent of the parent or of another legal representative.

(3) The National Anti-Drug Agency, in cooperation with the National Authority for the Protection of the Rights of the Child, and, if the case, with other central public administration authorities or specialized institutions, must take the appropriate measures in order to:

a) prevent the involvement of children in the illegally production and trafficking of these substances;

b) raise the public awareness and especially the awareness of children on this issue, including through the education system and, if the case, by introducing this topic in the school curriculum;

c) support the children and their families through counseling and guidance – of a confidential nature, if necessary – but also through the elaboration of policies and strategies which guarantee the physical and mental rehabilitation and the social re-integration of the drug addicted children, including by developing, for this purpose, methods of alternative intervention to the traditional psychiatric institutions;

d) further develop the data collection systems, in order to gather real data on the occurrence of the drug abuse in children, as well as on the involvement of children in the illegal production and trafficking of drugs; conduct an ongoing assessment of these situations, of the progress made, of the difficulties encountered, and of the future objectives, respectively;

e) develop a public information system which should lower the tolerance level on drug abuse and should help identify the first symptoms of illicit drug consumption, especially in the case of children.
(4) The institutions referred to under paragraph (3) will make sure that the children’s opinions are taken into account when elaborating the anti-drug strategies.

SECTION 3
The protection of the child against abuse or neglect

Art. 89 – (1) Child abuse means any voluntary action of a person who has a relation of responsibility, trust or authority towards the child, through which the life, the normal physical, mental, spiritual, moral and social development, the bodily integrity, and the physical and mental health of the child are endangered.
(2) Child neglect means the omission, either voluntary or involuntary, of a person who is responsible for upbringing, caring for and educating the child, to undertake any measure which is subordinated to this responsibility, and which results in endangerment of the physical, mental, spiritual, moral and social development, the bodily integrity and the physical and mental health of the child.

Art. 90 – It is forbidden to enforce physical punishments of any kind or to deprive the child of his or her rights, which may result in the endangerment of the life, the physical, mental, spiritual, moral and social development, the bodily integrity, and the physical and mental health of the child, both within the family, as well as in any institution which ensures the protection, care and education of children.

Art. 91 – (1) Any person who, through the nature of his or her profession, works directly with a child and has suspicions concerning the existence of a case of child abuse or neglect, must notify the public social security service or the general department for social security and child protection in whose territorial range was identified the respective case.
(2) For the notification of the cases of child abuse or neglect, at the level of each general department for social security and child protection, a “child telephone line” will be established, and the number should be widely publicized.

Art. 92 – In view of providing special protection for the abused or neglected child, the general department for social security and child protection shall:
  a) verify and provide a solution for all notifications concerning child abuse and neglect cases, including those coming from family social workers;
  b) provide the services stipulated under art. 107, which specialize in addressing the needs of children victims of abuse and neglect and their families.

Art. 93 – In order to verify the notifications concerning cases of child abuse and neglect, the representatives of the general department for social security and child protection have the right to gain access, according to the law, to the headquarters of the legal persons, as well as to the domicile of the natural persons who are legally responsible or provide child protection. In order to conduct these verifications, the police must support the representatives of the general department for social security and child protection.

Art. 94 – (1) The representatives of the legal persons, as well as the natural persons who are legally responsible or provide child protection must cooperate with the representatives of the general department for social security and child protection and offer them all necessary information for addressing the situations.
(2) In case when, following the verifications, the representatives of the general department for social security and child protection reach the conclusion that there are sound reasons to support the existence of an imminent dangerous situation for the child, as a result of child abuse and neglect, and they do not face any opposition from the persons referred to under paragraph (1), the director of the general department for social security and child protection will establish the emergency placement measure. The provisions stipulated under art. 58 - 60, art. 64, paragraph (3) and art. 66 are properly enforced.
(3) In case the persons referred to under paragraph (1) refuse or prevent in any way the representatives of the general department for social security and child protection to conduct the verifications, and it is established that there are sound reasons to support the existence of an imminent dangerous situation for the child, as a result of child abuse and neglect, the general department for social security and child protection notifies the court of law, requesting the issuance of a presidential ordinance for the emergency placement of the child with a person, family, maternal assistant or in a
residential service, which is licensed in accordance with the law. The provisions stipulated under art. 58 – 60 and art. 64, paragraph (3) are properly enforced.

(4) Within 48 hours from the date of executing the presidential ordinance through which the emergency placement measure was established, the general department for social security and child protection notifies the court of law, requesting it to issue a decree ruling on: the replacement of the emergency placement with a placement measure, the partial or complete termination of parental rights, as well as on the exercise of parental rights.

Art. 95 – (1) During the process mentioned under art. 94, paragraphs (3) and (4), the written statement of the child concerning the abuse or neglect situation to which he or she was subjected, may be administered ex-officio as evidence. The child’s statement may be recorded, according to the law, through technical audio-visual methods. The recordings are made obligatorily with the assistance of a psychologist.

(2) The child’s consent is mandatory for the recording of his or her statement.

(3) If the court of law deems necessary, it may subpoena the child in order to conduct a hearing. The hearing only takes place in the council chamber, in the presence of a psychologist and only subsequent to an initial preparation of the child in this regard.

Art. 96 – In case the child abuse or neglect were committed by persons who, based on a legal working contract or another type of contract, were providing the protection, upbringing, care and education of the child, the employers of these persons must notify immediately the criminal investigation authorities and must separate the respective persons from the children who are in their care.

Art. 97 – It is forbidden to employ a person against whom a final and irreversible court decree has been issued for intentionally committing a crime, in the public or private institutions, as well as in the public or private residential services, which provide the protection, upbringing, care or education of children.

SECTION 4

The protection of the child against kidnapping and any form of trafficking

Art. 98 – (1) The Ministry of Administration and Internal Affairs and the National Authority for the Protection of the Rights of the Child, in cooperation with the Ministry of Education and Research, will undertake the necessary steps in order to adopt all legal, administrative and educational measures that are destined to ensure the efficient protection against any forms of internal or international child trafficking, for any purpose or in any form, including by the child’s own parents.

(2) For this purpose, the public authorities referred to under paragraph (1) have the responsibility to elaborate a national strategy for the prevention and eradication of this phenomenon, including an internal mechanism for coordinating and monitoring the already accomplished activities.

SECTION 5

The protection of the child against other forms of exploitation

Art. 99 – (1) The child has the right to be protected against any form of exploitation.

(2) The public authorities and institutions, according to their responsibilities, adopt specific regulations and enforce adequate measures in order to prevent, among others:

- the illegal transfer and the failure of returning of the child;
- the conclusion of adoptions, either national or international, for any other purposes than the best interests of the child;
- sexual exploitation and sexual violence;
- the kidnapping and trafficking in children, for any purpose and in any form;
- the involvement of children in armed conflicts;
f) the forced development of children's abilities to the detriment of their harmonious physical and mental development;
g) the exploitation of the children by the media;
h) the exploitation of children as part of scientific researches or experiments.

CHAPTER VII
Institutions and services

SECTION 1
Central institutions

Art. 100 – The monitoring of the observance of the principles and rights established by the present law and by the UN Convention on the Rights of the Child, ratified by Romania through Law no. 18 / 1990, republished, as well as the coordination and control of the child rights protection and promotion activities, are conducted by the National Authority for the Protection of the Rights of the Child, as a specialized institution of the central public administration, with legal status, and which is subordinated to the Ministry of Labor, Social Solidarity and Family.

Art. 101 – The defense of the rights and liberties of the child in his or her relations with the public authorities, for the purpose of promoting and improving the condition of the child, is achieved through the Office of the Ombudsman.
SECTION 2
Local institutions and services

Art. 102 – The local public administration authorities must guarantee and promote the observance of the rights of the children in their administrative - territorial range, by preventing the child’s separation from his or her parents, as well as the special protection of the child who is deprived, either temporarily or definitively, of the care of his or her parents.

Art. 103 – (1) The local public administration authorities must involve the local community in the process of identifying the needs of the community and solving at the local level the social issues involving children.
(2) Consultative community structures can be created for this purpose, which may include, but which are not limited to, local businessmen, priests, teachers, doctors, local counselors and police officers. The role of these structures is both to solve concrete cases and to meet the global needs of the respective community.
(3) The mandate of the consultative community structures is established through documents issued by the local public administration authorities.
(4) The consultative community structures will benefit from social work and child protection training programs, in order to fulfill the role for which they have been created.

Art. 104 – (1) The child protection commission operates under the subordination of the county council, and, respectively, of the local councils of the Bucharest sectors, as the specialized institution of these authorities, without legal status, and having the following responsibilities:
   a) determining the degree of disability and the educational orientation of the child;
   b) making decisions, in accordance with the law, on the proposals regarding the establishment of special child protection measures;
   c) addressing the petitions concerning the issuance of the maternal assistant certificate;
   d) other responsibilities, as stipulated by the law.
(2) The organization and operating methodology of the child protection commission is regulated through a Government decision.

Art. 105 – (1) The specialized child protection public service, which operates under the subordination of the county councils and the local councils of the Bucharest sectors, respectively, as well as the public social security service which operates at the level of the counties and of the Bucharest sectors, are re-organized in order to create the general department for social security and child protection.
(2) The general department for social security and child protection is a public institution with legal status, established under the subordination of the county council, or of the local council of the Bucharest sectors respectively, which takes over the responsibilities of the public social security service at the level of the county, and of the public social security service at the level of the Bucharest sectors, respectively.
(3) The institution referred to under paragraph (2) has, in the field of child rights protection, the responsibilities stipulated by the present law, as well as by other legal acts that are currently enforced.
(4) The organizational structure, the number of persons in its staff and the financial support of the general department for social security and child protection is approved through a decision of the county council or of the local county of the Bucharest sectors, respectively, which had established them, in such a way as to ensure the appropriate achievement of their responsibilities, as well as the full realization and the effective exercise of the rights of the child.
(5) The responsibilities and the framework-regulation concerning the organization and operation of the general department for social security and child protection are approved through a Government decision, based on a proposal made by the Ministry of Labor, Social Solidarity and Family.

Art. 106 – (1) The public social security services organized at the levels of cities and towns, as well as the persons who are involved in providing social security services within the communal local councils, have the following responsibilities in the field of child protection:
   a) monitor and analyze the situation of the children located in their administrative - territorial range, as well as the enforcement of the rights of these children, by providing the centralization and synthesis of the relevant data and information;
   b) conduct the activity aimed at the prevention of the child’s separation from his or her family;
c) identify and evaluate the situations which call for services and / or financial assistance for the prevention of the child’s separation from his or her family;
d) draft the documentation which is necessary for providing services and / or financial assistance and grant these services and / or assistance, in accordance with the law;
e) offer counseling and information for families who provide maintenance for children, on their rights and duties, on the rights of the child and on the services available at the local level;
f) provide and monitor the enforcement of the prevention and eradication measures against alcohol and drug abuse, family violence, as well as delinquent behavior;
g) pay regular visits to the domiciles of families and children who benefit from services and financial assistance;
h) forward proposals to the mayor, in case it is necessary to undertake a special protection measure, in accordance with the law;
i) monitor the evolution of the child’s development, and the way in which the parents are exercising their rights and fulfilling their duties towards the child who has benefited from a special child protection measure, and was re-integrated in his or her family;
j) cooperate with the general department for social security and child protection in the filed of child protection, and provide it all requested information and data in this field.

(2) At the level of the Bucharest sectors, the responsibilities stipulated under paragraph (1) are carried out by the general department for social security and child protection.

Art. 107 – (1) In order to prevent the child’s separation from his or her parents, as well as in order to provide special protection for the child who has been separated, either temporarily or definitively, from his or her parents, the following types of services are organized and made operational:
   a) day-care services;
   b) family-type services;
   c) residential services

(2) The framework-regulation concerning the organization and operation of the services stipulated under paragraph (1) is approved through a Government decision.

Art. 108 – (1) The day-care services are those services which provide the maintenance, re-establishment and development of the capacities of the child and of his or her parents, in order to overcome situations which may determine the child’s separation from his or her family.

(2) Access to these services is made based on the service plan or, if the case, on the individualized protection plan, in accordance with the present law.

Art. 109 – The family-type services are those services which, at the domicile of a natural person or a family, provide the upbringing and care of the child who has been separated, either temporarily or definitively, from his or her parents, as a result of enforcing the placement measure, in accordance with the present law.

Art. 110 – (1) The residential services are those services which ensure the protection, upbringing and care of the child who has been separated, either temporarily or definitively, from his or her parents as a result of enforcing the placement measure, in accordance with the present law.

(2) Placement centers and emergency child call-in centers are part of this category of residential services.
(3) The maternal centers are also considered residential services.
(4) The residential services which belong to the public administration authorities are organized only within the structure of the general department for social security and child protection, as functional parts of these departments, with no legal status.
(5) The residential services are organized based on the family model and may have specialized characteristics, according to the needs of the placed children.

Art. 111 – (1) In order to ensure the prevention of the child’s separation from his or her family, the local councils of the cities, towns, communes and Bucharest sectors, must organize, either autonomously or in association, day-care services, according to the needs identified within the respective community.

(2) In case the local council does not identify enough financial and human resources to organize the services stipulated under paragraph (1), upon the local council’s request, the county council will provide the necessary funding for establishing these services. The local council will provide funding up to 50% of the operational expenses of these services, the quota and the total amount of these expenses are established on a yearly basis, through a decision of the county council.
Art. 112 – In order to ensure the special protection of the child who is deprived, either temporarily or definitively, of the protection of his or her parents, the county council and the local council of the Bucharest sectors respectively, must organize, either autonomously or in association, family-type and residential services, according to the needs identified at the level of their administrative and territorial unit. According to the evaluated needs of the placed children, the county council may also organize and develop day-care services.

CHAPTER VIII
Private institutions

Art. 113 – (1) The private institutions which may conduct activities aimed at the protection of the rights of the child and at providing special child protection are private legal persons, with non-patrimonial purpose, which are established and accredited in accordance with the law.
(2) In conducting the activities stipulated under paragraph (1), the private accredited institutions are subject to the public law status stipulated by the present law, as well as by the regulations through which this law is enforced.

Art. 114 – The private institutions which were legally established and accredited may set up, organize and develop services aimed at the prevention of the child’s separation from his or her family, as well as the special child protection services, which are stipulated under art. 107, only based on the license issued by the National Authority for the Protection of the Rights of the Child.

CHAPTER IX
The licensing and inspection of the services aimed at the prevention of the child’s separation from his or her family, as well as of the special protection services for the child who has been deprived, either temporarily or definitively, of the protection of his or her parents

Art. 115 – (1) The public authorities or the authorized private institutions may set up, organize and develop services aimed at the prevention of the child’s separation from his or her family, as well as special protection services for the child who has been deprived, either temporarily or definitively, of the protection of his or her parents, which are stipulated by the present law, only if they have obtained the operational license for the respective service, issued by the National Authority for the Protection of the Right of the Child.
(2) The operational license stipulated under paragraph (1) is granted based on the observance of the minimal obligatory standards established for the services aimed at the prevention of the child’s separation form his or her family, as well as for the special protection services of the child who has been deprived, either temporarily or definitively, of the protection of his or her parents. These standards are drafted by the National Authority for the Protection of the Rights of the Child and are approved through an order of the state secretary.

Art. 116 – The National Authority for the Protection of the Rights of the Child conducts periodical inspections which focus on the way in which the public authorities or the authorized private institutions are observing the standards stipulated under art. 110.

Art. 117 – The conditions and the procedure for granting, withdrawing, annulling or suspending the license stipulated under art. 115, as well as the conditions and procedure for conduction the inspections stipulated under art. 116, are established through a Government decision.

CHAPTER X
The funding sources of the child protection system

Art. 118 – (1) The prevention of the child’s separation from his or her family, as well as the special protection of the child who has been deprived, either temporarily or definitively, of the protection of his or her parents, is financed from the following sources:
   a) the local budget of the communes, towns and cities;
   b) the local budgets of the counties, or of the Bucharest sectors, respectively;
c) the state budget;
d) donations, sponsorships, and other forms of financial contributions, which are allowed by the law;

(2) The National Authority for the Protection of the Rights of the Child may provide financial support for programs of national interest for the protection and promotion of the rights of the child, from funds transferred from the state budget for this specific destination, from foreign refundable or non-refundable funds, as well as from other sources, in accordance with the law.

Art. 119 – (1) For each child for whom a placement measure has been enforced, a monthly placement allowance will be granted, amounting to 670,000 ROL, which is indexed through a Government decision. The child for whom legal guardianship was established also receives this allowance, in accordance with the law.
(2) The allowance is paid to the person or the representative of the family with whom the child has been placed, or to the legal guardian.
(3) The placement allowance is covered by the state budget through the budget of the Ministry of Labor, Social Solidarity and Family.

Art. 120 – The expenses entailed by the payment of wages or indemnities for maternal assistants, as well as those related to the enforcement of the provisions of Law no. 326 / 2003 on the rights of children and youngsters placed in the specialized public child protection services, the mothers sheltered in maternal centers, as well as children who have been entrusted or placed with professional maternal assistants, are covered by the county budget or by the budget of the Bucharest sector, respectively, and are administered by the general department for social security and child protection.

Art. 121 – (1) The mayors grant exceptional financial assistance, in case the family who is legally responsible for the child is temporarily facing financial problems, which are caused by an exceptional situation and which endangers the harmonious development of the child.
(2) The exceptional financial assistance is granted primarily to children whose families do not have the opportunity or capability to provide appropriate care for the child, or as a result of the need to cover some particular expenses aimed at preserving the personal relation of the child with his or her family.
(3) In each case, separately, the mayor decides on granting the exceptional financial assistance and the amount of this assistance, through a directive.

Art. 122 – The maximum amount, as well as the conditions for granting the exceptional financial assistance, are determined through a decision of the local council.

Art. 123 – The exceptional financial assistance may also be granted in kind, based on a directive issued by the mayor, primarily in the form of food, clothes, school books and stationery or school equipment, or it may cover the expenses related to transportation, procurement of prostheses, medicine, and other medical accessories.

CHAPTER XI
Special procedural rules

Art. 124 – (1) The cases stipulated by the present law concerning the establishment of the special protection measures, are decided by the second level court of law (tribunal) in whose territorial range the child’s domicile is located.
(2) If the domicile of the child is unknown, the competence to rule such cases is transferred to the second-level court in whose territorial and administrative range the child was found.

Art. 125 – (1) The cases stipulated under art. 119 are subject to speedy trials, and involve the subpoena of the child’s legal guardian, and of the general department for social security and child protection, as well as the mandatory participation of the prosecutor.
(2) The hearing of the child who has reached the age of 10 years old is mandatory and it is conducted in accordance with the provisions stipulated under art. 24, with the exception of the cases which concern the establishment of special child protection measures for the abused or neglected child; in such a case, the hearing of the child is conducted in accordance with the provisions stipulated under art. 95, paragraph (3).
(3) The intervals between the court sessions cannot exceed 10 days.
(4) The parties involved are legally subpoenaed, if the subpoena was served at least one day prior to the trial date.

Art. 126 – (1) The court decrees which rule upon the case are issued on the day when the court debates come to an end.
(2) In exceptional circumstances, the issuance of the court decree may be postponed for at most 2 days.

Art. 127 – (1) The court decree of the trial court is executory and final.
(2) The court decree is drafted and communicated to the parties involved within 10 days from the date it was issued.

Art. 128 – The deadline for the second appeal is of 10 days from the date when the court decree was communicated.

Art. 129 – The provisions of the present law on the procedure for addressing the cases concerning the establishment of the special protection measures are supplemented by the provisions of the Civil Procedure Code accordingly.

Art. 130 – In all cases which concern the enforcement of the present law, the general department for social security and child protection in the administrative-territorial area where the child resides or was found, drafts and presents to the court of law a report concerning the child, which will include information on:
   a) the personality, physical and mental condition of the child;
   b) the socio-medical and educational records of the child;
   c) the conditions in which the child was raised and in which he or she has lived;
   d) proposals concerning the person, family or residential service in which the child could be placed;
   e) any other information on the upbringing and education of the child, which may be used in ruling the case.
(2) The reintegration and supervision service from the courts of law will as well draft a report in all the cases regarding the establishment, replacement or termination of the special protection measures that are specified under the present law for the child who has committed a criminal act and is not criminally liable.

Art. 133 – The cases which are related to the enforcement of the present law are exempt from the judicial stamp tax and the judicial stamp.

CHAPTER XI
Liabilities and sanctions

Art. 132 – (1) Persuading or facilitating a minor to practice begging, or gaining any sort of advantage as a result of this activity of the minor child, is punished by 1 to 3 years in prison.
(2) Recruiting or forcing a minor to practice begging is punished by 1 to 5 years in prison.
(3) If the offence stipulated under paragraphs (1) or (2) is committed by a parent or by the person who is legally responsible for the child, the punishment is of 2 to 5 years in prison, for the offence stipulated under paragraph (1), and of 2 to 7 years in prison and the deprivation of certain rights for the offence stipulated under paragraph (2).

Art. 133 – The act committed by the parent or by the person who is legally responsible for the child, of using the child in order to repeatedly ask for charity from the public, by requesting either financial or material support, is punished by 1 to 5 years in prison and by deprivation of certain rights.

Art. 134 – (1) Failure to observe the duties stipulated under art. 36, paragraph (2), art. 48, paragraph (4) and art. 91, represents a serious misbehavior and is sanctioned in accordance with the law.
(2) The failure to observe the duty stipulated under art. 36, paragraph (2), art. 87, paragraph (3), thesis one, represents a misbehavior.

Art. 135 – (1) The following acts represent violations:
a) failure to observe the duty stipulated under art. 9, paragraph (1), within 30 days from the date of entry into force of the present law;

b) failure to observe the duty stipulated under art. 9, paragraph (2);

c) failure to observe the duty stipulated under art. 10, paragraphs (1) and (3);

d) failure to observe the duty stipulated under art. 11, paragraph (1);

e) failure to inform the police authorities on the result of the specific verifications concerning the identity of the mother, in accordance with the provisions stipulated under art. 11, paragraph (3);

f) failure of the public social security service to make birth recording statement, in accordance with the provisions stipulated under art. 11, paragraph (6);

g) failure to observe the duty stipulated under art. 11, paragraph (7);

h) failure to observe the duties stipulated under art. 13 and art. 18, paragraph (3);

i) failure to observe the provisions stipulated under art. 22, paragraphs (2) – (4), and under art. 83;

j) failure to observe the duty stipulated under art. 96.

(2) the violations stipulated under paragraph (1) are sanctioned as follows:

a) those stipulated under lines a), c), g) and h) with a fine of 1 to 3 million ROL;

b) the violation stipulated under line f), with a fine of 2 to 5 million ROL;

c) those stipulated under lines b) and d) and j) with a fine of 3 to 6 million ROL;

d) those stipulated under lines e) and i), with a fine of 5 to 15 million ROL.

(3) The violations are recorded and the fines are enforced by individuals specifically appointed for this assignment from among persons who have control responsibilities within:

a) the Ministry of Health, in the case of the violations stipulated under paragraph (1), lines a), c) and d);

b) the Ministry of Administration and Internal Affairs, in the case of the violations stipulated under paragraph (1), lines b), e), h) and i);

c) the National Authority for the Protection of the Rights of the Child, in the case of the violations stipulated under paragraph (1), line j);

d) the county council, or the local council of the Bucharest sector respectively, in the case of the violations stipulated under paragraph (1), lines f) and g).

Art. 136 – The provisions of Government Ordinance no. 2 / 2001 on the legal status of violations, approved, modified and completed through Law no. 180 / 2002, with subsequent changes are applicable in the case of the violations stipulated under art. 135.

CHAPTER XII
Final and transitory provisions

Art. 137 – Within 6 months from the date of enforcement of the present law, the general department for social security and child protection will re-evaluate the circumstances which led to the establishment of the protection measures ordered by the child protection commission, and, if the case, will request the court of law to establish legal guardianship or a special child protection measure, in accordance with the present law.

Art. 138 – The placement centers, the emergency call-in centers and the maternal centers organized in the framework of the former specialized child protection public services are re-organized through a decision of the county council, or of the local councils of the Bucharest sectors respectively, in the framework of the general department for social security and child protection, in the subordination of the county council, or of the local councils of the Bucharest sectors respectively, as functional components of these authorities, with no legal status.

Art. 139 – (1) The day-care services aimed at the prevention of situations that endanger the security and development of the child, which established by the county councils, as well as the staff within these services, are transferred to the local councils on whose territorial range they are operating.

(2) The specialized day-care services for the abused or neglected child, which are considered to be of county interest, are an exception to the provisions stipulated under paragraph (1).

(3) In case the services stipulated under paragraph (1) are part of a group of services which are also involved in residential child protection, namely the placement center, the emergency call-in center or
the maternal center, the transfer is completed only if it is possible to separate the staff and the patrimony.
(4) The local councils have the duty to maintain the destination and organizational chart of the staff of the services that were taken over.
(5) The transfer stipulated under paragraph (1) is conducted based on a protocol signed between the county council and the local council.

**Art. 140** – The teaching and auxiliary staff who was transferred in accordance with art. 46 from the Emergency Government Ordinance no. 26 / 1997 on the protection of the child in difficulty, republished, with subsequent changes and additions, and who, on the date of entry into force of the present law is employed under this status within the specialized child protection public services, maintains their status.

**Art. 141** – Within 30 days from the entry into force of the present law, the county council, or the local councils of the Bucharest sectors respectively, the Ministry of Health, the Ministry of Administration and Internal Affairs and the National Authority for the Protection of the Rights of the Child must appoint the individuals who will record the violations and enforce the sanction mentioned in the present chapter, from among the persons with control responsibilities.

**Art. 142** – (1) On the date of enforcement of the present law, the following legal acts are abrogated:
   a) art. 88 from the Family Code;
   b) the Emergency Government Ordinance no. 26 / 1997 on the protection of the child in difficulty, republished in the Romanian Official Gazette, Part I, no. 276 / July 24, 1998, with subsequent changes and additions, with the exception of art. 20;
   c) the Government Decision no. 604 / 1997 on the authorization criteria and procedures for private child protection institutions, published in the Romanian Official Gazette, Part I, no. 280 / October 16, 1997;
   e) line a), paragraph (2), art. 3 of the Framework-Regulation for organization and operation of the public social security service, approved through the Government Decision no. 90 / 2003, published in the Romanian Official Gazette, Part I, no. 81 / February 7, 2003, with subsequent changes.

(2) The provisions concerning the birth registration of the child who was abandoned by the mother in the hospital, from Law no. 119 / 1996 on documents concerning the civil status, published in the Romanian Official Gazette, Part I, no. 282 / November 11, 1996, with subsequent changes and additions, will be modified accordingly.
(3) Any other contrary provisions are abrogated on the date of entry into force of the present law.

**Art. 143** – (1) The initial training in the field of child protection is mandatory for all staff categories in the system, and for the individuals who have decision-making responsibilities concerning the child.
(2) Permanent education and lifelong professional training in the field of special child protection is provided for all staff categories in the system.
(3) The National Authority for the Protection of the Rights of the Child, together with the Ministry of Education and Research, the Ministry of Labor, Social Solidarity and Family as well as, according to the case, the other interested public or private institutions, will provide the initial and lifelong training of the staff who, in exercising their responsibilities, come across the protection and promotion of the rights of the child.

**Art. 144** – (1) The education, protection and nursing staff within the public and private institutions who come into contact with the child through the nature of their job, must undergo through a neuro-psychiatric evaluation at the time when they are employed.
(2) The staff mentioned under paragraph (1) is assessed on a yearly basis from a psychological point of view.
(3) The neuro-psychiatric evaluation reports and the psychological assessment reports are kept in the personal file of each staff member, according to the law.
Art. 145 – (1) The internal regulations of the legal persons which conduct child protection activities shall specifically mention the rules established in order to ensure the exercise of the rights and the fulfillment of duties by the children, according to their age, health and degree of maturity.
(2) These regulations shall be displayed in a visible place, enabling the access of children and their adequate information.

Art. 146 – The provisions of the current law are supplemented by other regulations concerning the rights of the child, including the provisions of the international conventions and treaties to which Romania is a state party.

Art. 147 – The elaboration of the legal acts which refer to any of the rights of the child stipulated under the current law is done only with the endorsement of the National Authority for the Protection of the Rights of the Child.

Art. 148 – (1) The present law comes into force on January 1, 2005, with the exception of the provisions stipulated under art. 17, paragraph (2), art. 19, paragraph (3), art. 84, paragraph (2), art. 104, paragraph (2), art. 105, paragraph (5), art. 107, paragraph (2) and art. 117, which come into force 3 days from the date when the present law is published in the Romanian Official Gazette, Part I.
(2) The procedures referring to the child’s return to the country, or to the identification of the parents or of the persons who are legally responsible for the child, as well as the public or private special child protection services, which have the competency to provide the protection of children who are aboard and who, for any reasons, are not accompanied by their parents or by any persons who is legally responsible for them, or are not under the legal supervision of any persons who are aboard, in the situation stipulated under art. 19, paragraph (3), are compiled by the National Authority for Child Protection and Adoption.
(3) The organization and operating methodology of the child protection commission, which is stipulated under art. 104, paragraph (2), are compiled by the National Authority for Child Protection and Adoption.
(4) The framework-regulation on the organization and operation of the services stipulated under art. 107, paragraph (2) is compiled by the National Authority for Child Protection and Adoption.
(5) The conditions and the procedure for granting, withdrawing, annulling or suspending the license stipulated under art. 115, as well as the conditions and procedure for conducting the inspections stipulated under art. 116, are compiled by the National Authority for Child Protection and Adoption.
(6) The procedures concerning the exercise of the child’s right to maintain personal relations and direct contact with the parents who reside abroad, which is stipulated under art. 17, paragraph (2), is compiled by the National Authority for Child Protection and Adoption together with the Ministry of Foreign Affairs.
(7) The type of specialized services, stipulated under art. 84, paragraph (2), which are ensured for the entire duration of the measures enforced upon the child who has committed criminal acts and who is not criminally liable, in order to assist the children in the process of re-integration into society, as well as the standards concerning the provision of these services are compiled by the National Authority for Child Protection and Adoption in cooperation with the Ministry of Justice.
(8) The responsibilities and the Framework-regulation on the organization and operation of the general department for social security and child protection, which are stipulated under art. 105, paragraph (5), are compiled by the Ministry of Labor, Social Solidarity and Family.

This law was adopted by the Parliament of Romania, with observance to the provisions stipulated under art. 75 and article 76, paragraph (1) of the Romanian Constitution, republished.

CHAIRMAN OF THE CHAMBER OF DEPUTIES
VALER DORNEANU

CHAIRMAN OF THE SENATE
NICOLAE VĂCĂROIU

No. 272.
MEMO ON STANDARDS OF CARE (SECONDARY LEGISLATION)

A. Minimum Standards of Care for Specialized Residential Services

This instrument, adopted in February 2004 by order of the Minister of Labour, Social Solidarity and Family and in force since January 2005, applies to facilities for children who commit crimes but who, being below 14 years of age, are presumed not to have the capacity to infringe the law. According to the Standards, the Special Residential Service for delinquent child is a form of institutional care that ensures that children are dealt with in a manner appropriate with their well-being, which is aimed to support the child to lead a responsible life and to reintegrate in society. Institutionalization of a child is the most severe sanction that can be imposed by the local Commissions on child protection in case of children which are below 14 who commit very serious crimes or commit crimes repetitively. The residential service is organized by local public services and/or by the private authorized organizations. The number of children that can reside in one center is maximum 20, with separate rooms for children up to 10 years old, children from 10 to 14 years old and children from 14 to 16 years old. The principles governing the standards are: to promote and respect the best interest of the child; multidisciplinary intervention, focused on child’s needs; anti-discriminatory treatment of the child; to encourage child participation, family and community involvement in the process of development of a positive behavior of children; inter-institutional co-operation for social reintegration of children.

The 31 standards of care, described separately in terms of definition of standard, expected results, implementation procedures and performance indicators, refer to the following:

1. Mission – each service must have a written mission statement and a guide for children which describe very clear: the organization and functioning of the residential center; the services available; the rights and obligations of children; practical information etc.
2. The relationship with local social services – each service must have a chart of organization of social services at county level which specifies the place of the residential service and the collaboration with other types of services available locally.
3. Admission in residential center – is permitted only on the basis of a decision taken by the local commission on child protection or the local county court (in case the family doesn’t agree with the decision of the commission). The procedure at admission is determined by each center and consists in an evaluation of the child’s needs and of the services to be provided in each case.
4. The Individualized Protection Plan (IPP) – is designed for each child and consists in special intervention programmes adapted to child’s needs related to: health, care, security, well-being, development, education, free time, physical and emotional needs, as well as maintaining contact with family, friends and relatives.
5. Contact with family and other persons important for the child – children must be encouraged to maintain contact with their family and other closed persons, except in case when such contact would harm or not be beneficial for the children.
6. Development of child’s social aptitudes – is one of the special intervention programmes of IPP, which must be developed for each child.
7. Implication in the life of local community – all children from the center must be involved in the social life of the community and, in the same time, the center must be proactive in attracting the members of community in the process of children’s social reintegration.
8. End of institutionalization – all children must benefit from the services provided during institutionalization, towards the end of this special measure children should be gradually prepared for release.
9. The characteristics of the residential center – each center must be located in an accessible place for the members of local community, must have an adequate size, natural light and good ventilation and should be well equipped, to ensure a proper environment for children which can facilitate their social reintegration.
10. Accommodation standards – each center must provide decent living and working conditions for children as well as for the personnel working at the center. In one bedroom maximum four
children should be accommodate. Each child must have his own bed, a drawer, a chair, a table and unlimited access to the bathroom. There will be special rooms to facilitate visits from the family and also space allocated for study and meals.

11. The hygienic standards – the number and quality of bathrooms and showers must be sufficient in each center, according to the number of institutionalized children.

12. Child nutrition – each center must provide the quantity and quality of food according to the age, needs and preferences of children. Each center should seek to involve the children in preparation and serving of food, meals time being considered a good opportunity for socialization and learning about social behavioral norms and rules on food hygiene.

13. Child involvement – opinions of children will be taken in consideration when decisions should be taken in relation to day by day activities and future of children. The daily program of institutionalized children must be carefully planned, involving the child, in order to develop their sense of normal life and punctuality.

14. Respect of private life and confidentiality – each center must ensure for children an atmosphere of safety, trust and respect during their institutionalization in order to facilitate their reintegration in society as law abiding members.

15. Complaints procedures and representation of children – each center must organize a system of receiving, registration and solving any administrative complaints related to the quality of services provided. Children, either directly, or through their parents or representatives should be informed about the special procedures and able to defend their rights.

16. Protection against abuse – each center should promote and apply measures to protect children against any form of intimidation, discrimination, maltreatment, abuse, neglect, exploitation and negligent treatment.

17. Health standards – each center shall ensure the necessary conditions for permanent identification and assessment of physical, emotional, and health problems for all children as well as methods of addressing these needs.

18. Educational programmes – each center must provide individual and group programs for children in order to stimulate the development of respect for social values, to be aware of his/her rights and social duties, to understand the consequences of breaking the social norms and national laws and to be prepared to lead a responsible life in the society.

19. The right of child to education – each center must ensure access of all children to primary/secondary education, in the public schools or inside the center. Children which dropped – out school and are illiterate must have access to special classes, in order to have the possibility of attending normal classes together with other children of their age.

20. Safety and security – each center must undertake all necessary measures to ensure a safe and secure environment for children and personnel.

21. Incidents – each center must inform immediately (in max. 24 h), in writing, the family or legal guardian of child and the public authorities in charge, whenever a special incident related to child protection has occurred.

22. Leaving the center without permission – each center should take all necessary measures to prevent children from leaving the center without prior permission. In case of absence of a child from the center, special procedures must be initiated such as: informing the parents, police, child protection authorities; evaluation of risks and reasons of leaving; readjustment of the Individualized Protection Plan etc.

23. Information accessible to children – each center must provide to all children information related to his/her situation, to disciplinary rules inside the center, to available methods of obtaining information and making complaints and any other information necessary for a child to adapt to the life in the center.

24. Protection of children - personnel of each center must be informed in writing about their duties in respect of the children rights in accordance to the United Nation Convention on the Rights of the Child. There will be special written procedures in each center to prevent, identify, signal, evaluate and solve any suspicion or accusation of child abuse. Children are encouraged to inform about any form of abuse from other children, from the personnel or from other people outside the center.

25. Recruitment of personnel – each center must recruit and employ staff which is specialized in working with children in conflict with the law and has no criminal record.
26. Number and structure of personnel – each center must have an adequate number and structure of staff according to the number of children, their needs, the individualized protection plans, to categories of services provided. The Romanian Labour code provides that the minimum ratio between adults and children should be 1:4. The categories of personnel necessary in any center are: personnel in charge with basic care and non-formal education; teachers; medical staff; managerial staff; security staff; social workers, psychologists.

27. Initial and on-going training of personnel – each center must have specialized staff in working with delinquent children. Each member of staff must be trained before starting work, training being provided by the local department of child protection. There will also be organized in-service training for at least 42 hours per year for each member of staff and minimum 20 hours initial training for volunteers. The manager of the center will benefit from at least 21 hours per year in service management training.

28. Staff supervision – each center should have an efficient system of supervision of human resources in order to ensure the quality of services provided.

29. Institutional plan – each center should develop an institutional plan which must contain, in principle: a) the role of the service; b) the mission statement; c) the principles; d) the institutional development objectives; e) the activities in the center; f) the clients and their special needs; g) human, financial and material resources available and needed; h) co-operation with other institutions and organizations.

30. Inter-institutional collaboration – each center should initiate and develop co-operation with organizations and institutions involved in social reintegration of children who commit crime, in prevention and reduction of delinquency among very young people. With the support of local authorities, the main partners to be involved are: local police inspectorate, local school inspectorate, labour force agency, as well as local NGOs.

31. Information and communication management – each center should have a good management system, so the information inside and outside the center is properly managed. Internal communication is facilitated by weekly staff meetings and existence of an information point in each center. Communication with family should be maintained and at least ones every three months there should be a written letter sent to the parents/family members/legal guardians of children to inform them on developments.
B. Minimum Standards for Day Centers

These standards, adopted in February 2004 by order of the Minister of Labour, Social Solidarity and Family and in force since January 2005, apply to Centers organized for supervision and social reintegration of children up to 18 years of age who commit crimes consists in 19 standards of care which are also described separately in terms of definition of standard, expected results, implementation procedures and performance indicators. According to the standards, the day centers are specialized services for delinquent children aimed to prevent institutionalization in special residential centers and to maintain the child in the family. The day centers offer support for education, supervision and social reintegration of children. The mission of a day center is to offer the necessary protection and assistance for children that they can fully assume responsibilities within the community, to prevent delinquency among children and to help them develop such abilities to be fully prepared to live an individual life in the society. The day centers are to be organized by local public services and/or by the private authorized organizations. The number of children allocated for one center is maximum 30. The children are divided in sub-categories related to their age, as follows: a) children up to 10 years of age; b) children from 10 to 14; c) children from 14-16, which are not criminal responsible (a medical expertise to state that they had no capacity to infringe the law); d) children from 14 -18, which are criminal responsible and already sentenced by a court with a community sentence with supervision or paroled. For the last category of children, according to the standards, the day centers must have a protocol signed together with the local probation service. The principles governing the activities of all day centers are identical with the ones stated for the residential care centers above.

The 19 standards of care for the day centers refer to the following:

1. Mission - each day center must have a written mission statement and a guide for children which describe very clear: the organization and functioning of the day center; the services available; the rights and obligations of children; practical information etc.
2. Location of the center – each day center must have a good location which is easily accessible to the community, sufficient financial and material resources in order to provide quality services to children.
3. Safety and security standards - each day center must undertake all necessary measures to ensure a safe and secure environment for children and personnel. There should be special rules for access in the center, for introducing dangerous and illicit objects in the center, for supervision of children during their stay in the center etc.
4. Admission in the day center - is permitted only on the basis of a decision taken by the local commission on child protection or the local county court (in case the family doesn’t agree with the decision of the commission and, also, in case of children who are over 14 years of age and criminal responsible). The procedure at admission consists in a risk assessment and an evaluation of the child’s needs and medical problems and of the services to be provided in each case.
5. Individualized protection plan (IPP) – each child must be evaluated and an IPP should be developed to be presented to the court/commission on child protection together with the pre-sentence report. The IPP must contain short, medium and long term objectives for each child, the activities to be developed, the timetable, the methods, the personnel in charge, the resources to be used and the way to evaluate/re-evaluate the programmes.
6. Development of child’s social aptitudes – is one of the special intervention programmes of IPP, which must be developed for each child.
7. Implication in the life of local community – all children from the center must be involved in the social life of the community and, in the same time, the center must be proactive in attracting the members of community in the process of children’s social reintegration.
8. End of measure – for children who are below 14, the commission on child protection must issue a document to revoke the measure. In case of children who are executing a community sentence or are in parole, the end of the measure is at the end of the court order. At this moment, there should be an evaluation report related to the risk assessment, which must contain also information on behavioral changes, needs identified and services provided, parent/legal guardian capacity to continue to supervise the child, recommendations for the future.
9. Educational programmes – each center must provide individual and group programs for children in order to stimulate the development of respect for social values, to be aware of his/her rights and social duties, to understand the consequences of breaking the social norms and national laws and to be prepared to lead a responsible life in the society.

10. The right of child to education – each center must ensure access of all children to primary/secondary education, in the public schools or inside the center. Children which dropped out school and are illiterate must have access to special classes, in order to have the possibility of attending normal classes together with other children of their age.

11. Health education – each child should have access to special educational programmes related to health, in order to be aware of any consequences which can occur due to alcohol and drug consume/addiction, smoking, unprotected sexual intercourse, junk food, lack of hygiene etc.

12. Parent counselling – each day center must organize workshops with parents related to child care and supervision. From the beginning, the case manager will determine the kind of workshops, duration and intensity of parent’s participation to the programmes. This will be part of the contract which the center will sign with the parents for each child. The day center should make the necessary efforts in order to support child’s family to have a good relationship with the children.

13. Recruitment, employment and the number of staff - each center must recruit and employ staff which is specialized in working with children in conflict with the law and has no criminal record. Each center must have an adequate number and structure of staff according to the number of children, their needs, the individualized protection plans, to categories of services provided. The Romanian Labour code provides that the minimum report between adults and children should be 1:4. The categories of personnel necessary in any center are: personnel in charge with basic care and non-formal education; teachers; medical staff; managerial staff; security staff; social workers, psychologists.

14. Initial and on-going training of personnel – each center must have specialized staff in working with delinquent children. Each member of staff must be trained before starting work, training being provided by the local department of child protection. There will also be organized in-service training for at least 42 hours per year for each member of staff and minimum 20 hours initial training for volunteers. The manager of the center will benefit from at least 21 hours per year in service management training.

15. Staff supervision – each center should have an efficient system of supervision of human resources in order to ensure the quality of services provided.

16. Institutional plan – each center should develop an institutional plan which must contain, in principle: a) the role of the service; b) the mission statement; c) the principles; d) the institutional development objectives; e) the activities in the center; f) the clients and their special needs; g) human, financial and material resources available and needed; h) co-operation with other institutions and organizations.

17. Inter-institutional collaboration – each center should initiate and develop co-operation with organizations and institutions involved in social reintegration of children who commit crime, in prevention and reduction of delinquency among very young people. With the support of local authorities, the main partners to be involved are: local police inspectorate, local school inspectorate, labour force agency, as well as local NGOs.

18. Information and communication management – each center should have a good management system, so the information inside and outside the center is properly managed. Internal communication is facilitated by weekly staff meetings and existence of an information point in each centre. Communication with family should be maintained and at least ones every three months there should be a written letter sent to the parents/family members/legal guardians of children to inform them on developments.

19. Human resources management – the manager of each day center must ensure that all personnel is qualified for the job, adequately trained, aware of his/her responsibilities and able to work in a team. The personnel corresponds to the number of children, their needs and difficulties which can occur in the daily activities of the center.
QUESTIONNAIRES USED TO EVALUATE IMPACT OF TRAINING AND MEMO ON RESPONSES TO THE QUESTIONNAIRES

A. Template of the questionnaire delivered to 50 judges who participated in the Summer School 2005 on Juvenile Justice

QUESTIONNAIRE
ON THE IMPACT OF JUVENILE JUSTICE TRAINING

UNICEF Romania in partnership with the National Institute of Magistrates is evaluating the training session called “Justice for Minors” organized as a Summer School in Sowata, 2005. The Questionnaire is anonymous, addressed to all trainees (50 judges) and the answers will be used for the evaluation report to UNICEF Regional Office for CEE/CIS related to the UNICEF’s contribution to Juvenile Justice Reform in Romania, Serbia, Montenegro and Tajikistan. Thank you for your support and understanding.

1. The Convention on the Rights of the Child provides that adolescents who are accused of an offence have the right to legal assistance before and during their trial.
   TRUE    FALSE

2. Adolescents who commit violent crimes like rape or homicide or who are repeat offenders can be sentenced as adults, according to the Convention on the Rights of the Child.
   TRUE    FALSE

3. Whenever appropriate and desirable, the judicial authorities should try to find measures for dealing with children alleged or accused as having infringed the penal law, without resorting to judicial proceedings, according to the Convention on the Rights of the Child.
   TRUE    FALSE

4. The child who has reached the age of 14 years old has the right to appeal to a court the special child measures established by the Law no. 272/2004 on the protection and promotion of the child rights, he/she having also the right to free legal assistance in the preparation and presentation of his/her defence.
   TRUE    FALSE

5. Every child who commits an offence can potentially be resocialized if he or she receives the right kind of assistance and opportunities.

   STRONGLY AGREE   DISAGREE
   AGREE             NO OPINION   DISAGREE STRONGLY

6. The penal measures and sanctions with deprivation of liberty of children are very much used by the judicial authorities due to the lack of other alternatives, like specialized social services available to children to ensure that they are dealt with in a manner appropriate to their social reintegration.

   STRONGLY AGREE   DISAGREE
   AGREE             NO OPINION   DISAGREE STRONGLY
7. The Romanian penal legislative framework regarding the system of sanctions available for children in conflict with the law is extremely rigid and punitive, the number and the kind of alternatives being not sufficient.

<table>
<thead>
<tr>
<th>STRONGLY AGREE</th>
<th>AGREE</th>
<th>NO OPINION</th>
<th>DISAGREE</th>
<th>DISAGREE STRONGLY</th>
</tr>
</thead>
</table>

8. The setting up of the new probation services at the county court level represents a positive experience in the process of juvenile justice reform, the activities of probation services being of real support to judges.

<table>
<thead>
<tr>
<th>STRONGLY AGREE</th>
<th>AGREE</th>
<th>NO OPINION</th>
<th>DISAGREE</th>
<th>DISAGREE STRONGLY</th>
</tr>
</thead>
</table>

9. There is not such a big difference between the treatment applied to children and the one applied to adult offenders, especially in the pre-trial and trial phases, so we can’t say that there is a special regime for children.

<table>
<thead>
<tr>
<th>STRONGLY AGREE</th>
<th>AGREE</th>
<th>NO OPINION</th>
<th>DISAGREE</th>
<th>DISAGREE STRONGLY</th>
</tr>
</thead>
</table>

10. The length of prison sentences which are available in cases of minors is very long, even when the minimum and maximum limits provided by the law are reduced to half comparing with the limits set by law for adult offenders.

<table>
<thead>
<tr>
<th>STRONGLY AGREE</th>
<th>AGREE</th>
<th>NO OPINION</th>
<th>DISAGREE</th>
<th>DISAGREE STRONGLY</th>
</tr>
</thead>
</table>

11. The amendments of Criminal Procedure Code brought by the Law 281/2003 have made some changes in the maximum duration of pre-trial arrest, but still cannot contribute to a decrease in the number of minors which are in pre-trial detention.

<table>
<thead>
<tr>
<th>STRONGLY AGREE</th>
<th>AGREE</th>
<th>NO OPINION</th>
<th>DISAGREE</th>
<th>DISAGREE STRONGLY</th>
</tr>
</thead>
</table>

12. Any judge or prosecutor which deals with children in conflict with the law should have a minimum training in juvenile justice matters.

<table>
<thead>
<tr>
<th>STRONGLY AGREE</th>
<th>AGREE</th>
<th>NO OPINION</th>
<th>DISAGREE</th>
<th>DISAGREE STRONGLY</th>
</tr>
</thead>
</table>

13. How useful was the training session for my current professional activity?

Please, indicate on the scale of 1 to 5 the degree of agreement/disagreement related to the following statements:

(Scale: 1=Strongly agree, 2=Agree, 3=No opinion, 4=Disagree, 5=Agree somewhat)

<table>
<thead>
<tr>
<th>The training session had an important impact to my current professional activity</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
</table>
14. Please, add any comment that might help the evaluators understand better your answers above, or any other comment which you consider relevant for the purpose of evaluation.

........................................................................................................................................
........................................................................................................................................
........................................................................................................................................
........................................................................................................................................
........................................................................................................................................
........................................................................................................................................
........................................................................................................................................
........................................................................................................................................
........................................................................................................................................

B. Template of the questionnaire delivered to the correctional staff trained in Iasi

UNICEF Romania in partnership with the National Authority for Child Protection is evaluating the training sessions organized in Iasi, Suceava and Piatra in 2005, mainly for specializing personnel from Targu Frumos residential center for institutionalized children below the age of criminal responsibility. The Questionnaire is anonymous, addressed to all trainees and the answers will be used for the evaluation report to UNICEF Regional Office for CEE/CIS related to the UNICEF’s contribution to Juvenile Justice Reform in Romania, Serbia, Montenegro and Tajikistan. Thank you for your support and understanding.

1. The Convention on the Rights of the Child provides that adolescents who are accused of an offence have the right to legal assistance before and during their trial.

   TRUE      FALSE

2. Adolescents who commit violent crimes like rape or homicide or who are repeat offenders can be sentenced as adults, according to the Convention on the Rights of the Child.

   TRUE      FALSE

3. Whenever appropriate and desirable, the judicial authorities should try to find measures for dealing with children alleged or accused as having infringed the penal law, without resorting to judicial proceedings, according to the Convention on the Rights of the Child.

   TRUE      FALSE

4. The child who has reached the age of 14 years old has the right to appeal to a court in case he/she is not satisfied with the special child measures applied to him/her, according to the Law no. 272/2004 on the protection and promotion of the child rights, he/she having also the right to free legal assistance in the preparation and presentation of his/her defence.

   TRUE      FALSE

5. Every child who commits an offence can potentially be resocialized if he or she receives the right kind of assistance and opportunities.

   STRONGLY AGREE       DISAGREE
   AGREE                NO OPINION   DISAGREE STRONGLY

6. The penal measures and sanctions with deprivation of liberty of children are very much used by the judicial authorities due to the lack of other alternatives, like specialized social services available to children to ensure that they are dealt with in a manner appropriate to their social reintegration.

   STRONGLY AGREE       DISAGREE
   AGREE                NO OPINION   DISAGREE STRONGLY

7. The Romanian legislative framework concerning the system of sanctions available in case of children who are below the minimum age of criminal responsibility establishes a variety of dispositions which can assist the children in their social reintegration.

   STRONGLY AGREE       DISAGREE
   AGREE                NO OPINION   DISAGREE STRONGLY

8. The setting up of the new probation services at the county court level represents a positive experience in the process of juvenile justice reform, and there is a strong co-operation between the local probation services and the local departments for child protection.
9. There is not such a big difference between the treatment applied to children and the one applied to adult offenders, especially in the pre-trial and trial phases, so we can’t say that there is a special regime for children.

10. The length of prison sentences which are available in cases of minors is very long, even when the minimum and maximum limits provided by the law are reduced to half comparing with the limits set by law for adult offenders.

11. The measure of specialized supervision of a child by his/her family which can be imposed by the Child Rights Commission for a child below 14 who committed a crime, is not an efficient measure because most of the families are not able to effectively supervise their children.

12. Any person who is in charge with working with a child who is alleged, accused or sentenced for committing a crime should have a minimum training in juvenile justice matters.

13. How useful was the training session for my current professional activity?
Please, indicate on the scale of 1 to 5 the degree of agreement/disagreement related to the following statements:

*(Scale: 1=Strongly agree, 2=Agree, 3=No opinion, 4=Disagree, 5=Agree somewhat)*

<table>
<thead>
<tr>
<th></th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
</tr>
</thead>
<tbody>
<tr>
<td>The training session had an important impact to my</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>current professional activity</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The training session was very well structured in terms of its</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>content</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The training session was very well structured in terms of</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>allocation of time</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The objectives were very well presented</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The methodology used was suited to the needs of</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>participants</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The training materials used were very interesting and useful</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The number and selection of participants (trainees) was</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>appropriate</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>The instructors presented the material effectively, encouraged</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>our participation and responded to our questions</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I am interested to participate again in a new training session</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>in juvenile justice area</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>My overall opinion on the course is very good.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

14. Please, add any comment that might help the evaluators understand better your answers above, or any other comment which you consider relevant for the purpose of evaluation.

........................................................................................................................................
........................................................................................................................................
........................................................................................................................................
........................................................................................................................................
........................................................................................................................................
........................................................................................................................................
........................................................................................................................................
........................................................................................................................................
C. Memo on responses to the questionnaires

Regrettably, replies to the questionnaire delivered to the judges have never been received by the evaluation team, despite continuous efforts (and support was provided also by UNICEF CO) made by the team.

One of the main objectives of UNICEF project in Romania was to develop the capacity of professionals in the area of justice for children, in using international relevant standards, in changing attitudes towards crime committed by juveniles and in using a more restorative approach of justice.

I. CATEGORIES OF PROFESSIONALS

Two categories of professionals have been the beneficiaries of capacity building activities, with the support of UNICEF Romania:

A. **First**, 50 judges from all over Romania participated in the Summer School 2005 (27 June – 1 July 2005, in Sovata, Romania) organized by the National Institute of Magistrates (NIM) in close collaboration with UNICEF Romania and IRZ (German Foundation for International Judicial Cooperation). All judges who attended this intensive training session are specialized in juvenile cases, dealing both with civil and criminal cases.

Summer Schools are organized by the NIM as part of the in-service training for judges and prosecutors from all over Romania. The Summer School 2005, for the first time, was focused on Justice for Minors, as the Ministry of Justice considers reform in this area as one of the key priorities for 2005-2007 (Source: Strategy for the reform of judiciary 2005-2007, Ministry of Justice).

The agenda for the five-day training in Sovata in 2005 consisted in lectures on following topics combined with workshops:

1. Special procedure in criminal cases involving offenders from 14 to 18 years old;
2. The reform of Juvenile Justice in Romania;
3. The techniques of hearing juvenile offenders;
4. Practical aspects regarding the reasonable time in sentencing juvenile offenders;
5. Juvenile Justice – educational measures and penal sanctions;
6. The sentencing framework for children in the Romanian criminal justice system compared with other international systems.
7. Correctional treatment applied to juvenile offenders;
8. Social reintegration and supervision of juvenile offenders. The probation services.
9. The statute of juvenile refugees.

In terms of relevance, the Summer School 2005 can be considered as a first step in specializing judges in the area of juvenile justice and a good start in developing a more specialized curriculum for the students at the National Institute for Magistrates as well as for the on-job training of judges and prosecutors.

B. **Second**, personnel (psychologists, social workers, teachers) working at new residential centre for children in Targu Frumos (N-E of Romania), together with other local professionals involved in the juvenile justice area (prosecutors, judges, police officers) participated in October 2005 in three intensive local training sessions. In total, 18 professionals have been trained. The objective of the training was to introduce methods of working with children below 14 (the age of criminal responsibility) which are institutionalized for committing serious crimes or repetitive crimes.

The residential centres for very young offenders (up to 14 years) are institutions subordinated to the National Authority for Child’s Rights. The centre in Targu Frumos was the first one to be established by the national authority according to the new legislative act on Child Protection, Law 272 adopted in 2004. The support of UNICEF Romania in setting up this new institution was essential, both in terms of renovation and necessary equipment, as well as training of the new staff employed at the centre.

After interview conducted with the Secretary of State of the National Authority for Child’s Rights, it resulted that there has been no evaluation of this project, of training and no real plans to
replicate it. Unfortunately, there is no strategy at the moment in terms of extending the project at national level and disseminating good practices from Targu Frumos. Still, the National Authority for Child’s Rights considers the project in Targu Frumos to be valuable and is convinced of the importance of specialized training and services for children in conflict with the law.

The Authority is in the process of reform in terms of development of professional capacity in all areas related to children, including justice. Plans of action include two main components: (a) development of skill standards for personnel and (b) specialized training curriculum to be developed and implemented unitary at the national level. The working group based at the Authority is assessing the needs of training, including the ones for the personnel working with children in conflict with the law. The curriculum used for training in Targu Frumos will be used as a model and completed according to the results of needs assessment. According to the new legislation, all personnel working in child protection area must be trained.

In conclusion, UNICEF Romania has contributed to the development of training in the area of juvenile justice of different kind of practitioners. The number of people is not significant to have an impact on how juvenile justice works in Romania, but such activities could be seen as pilot projects in terms of capacity building in the area. The National Institute of Magistrates is going to organize every summer a training for judges and prosecutors based on the 2005 “Justice for Minors” project. The National Authority for Child Rights is also going to use the experience of personnel training in Targu Frumos in developing a compulsory training system for all practitioners in child protection area, including specialized training for working with children in conflict with the law.

II. IMPACT OF TRAINING

In order to assess the impact of UNICEF activities on capacity building in the area of juvenile justice, we have prepared questionnaires for the participants in the two different training sessions. The evaluation of training can give a better picture of the extent to which UNICEF projects influenced an enhancement in professional capacity and accountabilities directly related to international minimum standards in the area of juvenile justice. These include crime prevention, the use and the length of deprivation of liberty, the use of diversion measures and restorative approaches. The evaluation of training aims also to find out to what extent there has been a contribution to the attitude of professionals towards young offenders.

Until present, only replies from the Iasi trainees have been received. There are only 12 replies (two thirds of participants), as during last year 6 of the total 18 trainees have left the job. The replies have been sent by the Iasi Department for Child Protection who mentioned that the 12 trainees include the following: one psychologist, one legal advisor, one social worker, specialized teachers, instructors and night supervisory staff.

The questionnaire consisted of 13 questions, intended to analyze different components of the impact of juvenile justice training after a period of one and a half year since the event took place.

The first four questions refer to the cognitive component and cover the most important and basic pieces of information which the training was intended to convey. There are questions related to the provisions of the Convention on the Rights of the Child (CRC), as well as to the national relevant legislative reform on child protection, Law 272/2004. It is difficult to state that the training provided has achieved good results in terms of acquiring new knowledge by the staff in Targu Frumos. All trainees with only one exception have the baseline knowledge of the Romanian legal framework on child rights. Regarding the most relevant international standard on the rights of the child, which is the CRC, the situation is different, two thirds of the repliers are not aware of the principles and stipulations of the Convention in terms of sentencing minors who commit crimes and almost half of them don’t know the provisions related to promotion of diversion measures (art.40 of CRC).

The next 8 questions are designed as statements which can reflect the attitudes and values of trainees critical to juvenile justice. The training was designed to promote attitudes needed for effective
reform and to combat those attitudes which might be an obstacle to the juvenile justice reform. The data shows the following:

- all trainees, without exception, have a positive attitude regarding the potential of re-socialization of every child who commits an offence and a strong agreement on the importance of compulsory training of all professionals involved in working with such children;
- there is a positive attitude among trainees, all of them, except one, having a good opinion about the role and importance of probation services and the co-operation at local level;
- most of the trainees (9 of them) agree that the judges’ attitude towards alternatives to imprisonment is very much affected by the lack of available social services on the local level. One trainee had no opinion on this and two disagree with the statement;
- the attitude towards the efficiency of the measure of specialized supervision of a child by his/her family is, in principle, negative, 8 trainees agree that the family is not able to effectively supervise their children, and 4 disagree, being in favor of this measure;
- the opinions of participants related to the sanctions available in case of minors are partly (7) in favor of the existing legislative framework and partly (5) consider that the re-socialization of children can suffer due to lack of alternative punishments;
- almost half of the trainees (5) consider that the treatment of minors in the pre-trial and trial phases is not significantly different from the one applied to adults. Two of them have no opinion and 5 disagree with this statement;
- finally, the attitude towards the length of the sentences is mixed, four of the trainees consider the prison sentences for minors too long, 5 have no opinion and 3 disagree.

The last question is looking at the opinion on the training activity itself, aiming to assess how useful the trainees considered the training session for their activity. The data shows that most of the trainees strongly agree or agree that:

- the training session had a considerable impact on the way they do their jobs, and the objectives were very well presented, only two have no opinion on that;
- the training session was very well structured in terms of its content and allocation of time;
- the training materials were very useful, the number and selection of participants was appropriate and the instructors presented the materials effectively, encouraged participation of trainees and responded to any questions;
- the methodology used was suited to the needs of participants, only two trainees having no opinion on that.

The overall opinion on the course is very good for more than half of the trainees and good for the rest. All trainees are very interested to participate in a new training session in juvenile justice area.
SERBIA

LIST OF PERSONS INTERVIEWED

UNICEF
- A-L. Svensson, Representative
- D. Vujacic-Richer, Juvenile Justice Project Officer
- J. Hrmic, juvenile justice consultant

Main governmental counterparts
- L. Pejakovic, Deputy Minister of Labour, Employment and Social Policy
- O. Zecevic, Chief of Department of prevention and juvenile delinquency, Criminal Police Directorate, Ministry of the Interior
- D. Stevanovic, Liaison Officer for International Cooperation, Juvenile Justice Division, Ministry of Interior
- N. Vujic, Director, Judiciary Training Centre
- S. AkSENTijevic, Governor of the Krusevac Correctional Institution for Juveniles and President of the Juvenile Justice Committee
- Z. Simonovic, Head of Medical Service of Juvenile Correctional Institution in Krusevac and Secretary of the Juvenile Justice Committee
- M. Jansa, Program Officer, Social Innovation Fund (SIF), Ministry of Labour, Employment and Social Policy

Main NGO counterparts
- I. Stevanovic, Program Coordinator, NGO Child Rights Center- Belgrade.
- N. Sataric, Manager, and Z. Nedeljkovic, psychologist, NGO Amity, Belgrade

Donor
- S. Nenadovic, Program coordinator, Development Programme Section, SIDA

International organizations
- A. Stojanovic, Local Project Coordinator, Council of Europe
- N. Novakovic and B. Redzic, Prison reform unit, OSCE
- I. Matijevic, Analyst, International Finance Corporation (World Bank Group) responsible for the Mediation Centre, Belgrade
- J. Thisse, Legal Cooperation Program, French Embassy

Others
- M. Liebmann, Victim-Offender Mediation trainer
- D. Ajdzekovic, Mayor of Krusevac

Law and policy reform focus group, Belgrade
- S. AkSENTijevic and Z. Simonovic, President and Secretary of the Juvenile Justice Committee
• S. Stojanovic Plavsic, Member of the National Assembly
• L. Pejakovic, Deputy Minister of Labour, Employment and Social Policy.
• T. Colin and M. Kalaba, Advisors, Ministry of Labour, Employment and Social Policy
• L. Knezevic-Tomasev, Head of Juvenile Section and L. Markovic, Psychologist, District Court, Belgrade
• S. Ivanovic, Head of Juvenile Section, District Prosecutor Office, Belgrade
• D. Stevanovic, Liaison Officer for International Cooperation, Ministry of Interior, Juvenile Justice Division
• Z. Gajic, Manager of the Institute of Social Policy and ex-manager of the Educational institution, Belgrade
• N. Sataric, Manager, Amity, Belgrade.
• I. Stevanovic, Program Coordinator, Child Rights Center-Belgrade.
• R. Ceperkovic, President of Serbian Association of Centres for Social Work
• V. Tesovic, Manager of the Educational institution, Belgrade

Alternative Community Based Care Focus group
• V. Despotovic, Head of Family and Marital Counselling Centre and Mediation Centre, CSW Belgrade and Manager of the Association of Mediators in Serbia
• T. Dzamonja, Head of Postgraduate Studies for Mediation at the Faculty of Political Science, Belgrade University
• V. Trbojevic and O. Veselinovic, Coordinator and Deputy Coordinator, Volunteer Group for Cognitive Behaviour Interventions with Children with Behavioural Problems, Belgrade University
• G. Ilic, Coordinator of the Diversion Scheme Project, Nis
• J. Nesic, Centre for Mediation, Nis
• T. Rajic Social Worker, Centre for Social Work, Pozarevac
• N. Sataric, Manager, Amity

Focus group in Juvenile Correctional Institution in Krusevac
• S. Aksentijevic, Governor
• Z. Simonovic, Head of Medical Service
• Z. Pavlovic, Coordinator of the Mediation Service
• G. Petrovic, Coordinator of the Creative-Coordination Group
• Z. Petrovic, the Chief of the Instruction Department
• Z. Stanisic, the Head of Security Service
• S. Stoijkovic, psychologist
• 4 residents, one girl and three boys (names withheld)

Focus Group, Educational institution, Belgrade
• V. Tesovic, Manager
• N. Sarac and Z. Gajic former acting-managers
• D. Rolovic, Head of Administrative Department
Focus group meeting in Krusevac municipality

- R. Jevtic, Manager, Centre for Social Work (CSW) and J. Milosavljevic, Head of the CSW Team for children with behavioural problems
- S. Bojkovic, psychologist and B. Kostic, social worker, Mobile Child Protection Team
- S. Dobrodolac, responsible for social policy in local government
- S. Zivic, Deputy District Prosecutor responsible for juvenile offenders

Focus group on VOM, Centre for Mediation, Nis

- G. Ilie, Manager, NGO Sigma Plus and Coordinator, Diversion Scheme Project
- L. Cvetanovic, Manager, V. Blagojevic, family counselor, J. Randjelovic, social worker and D. Jovanovic, staff, Centre for Social Work
- S. Milojev, psychologist and head of the working group for community participation; D. Vidosavljevic, educator and head of working group for youth, and S. Stojkovic, psychologist and member of working group on evaluation
- M. Stojiljkovic, B. Stojkovic and A. Strahinjic student volunteers
- Secondary school students (2 boys and 3 girls) participants in outreach activities (names withheld)

Focus group on diversion/alternative sentencing pilot project, Nis

- L. Cvetanovic, Manager, CSW
- R. Djordjevic, Head of Department for Children, Social and Primary Health Care.
- L. Stojiljkovic, social worker and S. Velickovic, Mobile Child Protection Team
- B. Timotijevic, police officer, chief of the unit for juvenile offenders

Focus group on diversion/alternative sentencing pilot project, Smederevo

- B. Atanackovic, psychiatrist and V. Emersic, social worker, Mobile Child Protection Team
- S. Milovanovic and S. Jovanovic, police officers
- M. Nadaskic, Manager, CSW
- L. Manic, Secondary School Teacher
LIST OF DOCUMENTS CONSULTED

Situation analysis

- Children in Conflict with the Law: Victims of the transition, Republic of Serbia Report, Carol Conragan, UNICEF, 2002

Legislation and secondary legislation

- Law on Juvenile Justice Offenders and Criminal Protection of Juveniles, 2004
- House Rules of the Reformatory for Juveniles in Krusevac (English traslation courtesy of the Council of Europe)

UNICEF documents

- Activities in Juvenile Justice from Inception October 2001 through April 2003: An internal review, Carol Conragan, UNICEF (undated)
- Annual Workplan 2006, UNICEF, Serbia
- Project Report, Development of the New Laws in accordance with the new Juvenile Justice Law, Child Rights Centre, Belgrade (undated)
- Relationship between problem analysis and project objectives, sub-projects strategic objectives, UNICEF, Belgrade, 2004
- Project Report, Serbian National Legislation and Child Rights (Reform in the area relevant to the implementation of the Convention on the Rights of the Child), Child Rights Centre, Belgrade (undated)
- Juvenile Justice system capacity development- Phase II, seminar implementation report: child rights and juvenile justice system, Child Rights Centre, Belgrade (undated)
- Project “The development of potential in the juvenile justice system”, a report on seminars, Child Rights Centre, Belgrade, 2004
- Rapid Risk Assessment Matrix for Children in Conflict with the Law and at Risk, 2005
- Guidelines on Strengths of the Child in Conflict with the Law and at Risk and his/her Social Environment, 2005
- Adolescent Survey Assessing Juveniles' Perceptions of the Quality of Programming at the juvenile Correctional Institution in Krusevac, 2005
- The Development of Potential in the Juvenile Justice System: A report on Seminars, Child Rights Centre Belgrade, 2004
- Seminar Implementation Report: Child rights and the juvenile justice system, Child Rights Centre Belgrade, 2005
- Penal Reform Strategy for Serbia, Ministry of Justice, Department for the Executions Penal Sanctions, 2005
- List of trainings organized by UNICEF for members of Mobile Teams (NGOs) and staff members of centres for social work (GO) for the period 2001 to 2006-12-14
- Annual Report on Joint Activities with UNICEF in 2005, Diversion Scheme Project, Sigma Plus Nis

**Other UN documents**
- Initial Report of the Federal Republic of Yugoslavia (Serbia and Montenegro) to the Committee on the Rights of the Child, CRC/C/8/Add.16, 19994

**Government documents**
- Plan of Action for Children, Republic of Serbia, Belgrade, 2004

**Other documents**
- Restorative Justice Training in Serbia, Marian Liebmann, Mediation Matters, Mediation UK
LAW ON JUVENILE CRIMINAL OFFENDERS AND THE CRIMINAL PROTECTION OF JUVENILES, 2005

THE LAW ON JUVENILE CRIMINAL OFFENDERS AND CRIMINAL PROTECTION OF JUVENILES

TABLE OF CONTENTS

Part One - BASIC PROVISIONS

Application of the Law (Article 1) 4
Exclusion of Criminal Sanctions Against Children (Article 2) 4
Age of Offender (Article 3) 4
Application of General Provisions of the Criminal Law (Article 4) 4

Part Two - CRIMINAL PROVISIONS ON JUVENILES

I. PROVISIONS OF SUBSTANTIVE CRIMINAL LAW

1. DIVERSION ORDERS

General Rules (Article 5) 5
Purpose of Diversion Orders (Article 6) 5
Type of Diversion Orders (Article 7) 5
Choice of Diversion Orders (Article 8) 5

SANCTIONS

1. Types of Criminal Sanctions (Article 9) 6
2. Purpose of Educational Measures and Juvenile Prison Sentence (Article 10) 6
3. Educational Measures

Types of Educational Measures (Article 11) 6
Choice of Educational Measure (Article 12) 7
Admonition by the Court (Article 13) 7
Alternative Sanctioning (Article 14) 8
Increased Supervision by Parent, Adoptive Parent or Guardian (Art. 15) 9
Increased Supervision in Foster Family (Article 16) 9
Increased Supervision by Guardianship Authority (Article 17) 10
Increased Supervision with Daily Attendance in Relevant Juvenile Rehabilitation and Educational Institution (Article 18) 10
Alternative Sanctioning with Increased Supervision Measures (Article 19) 10
Remand to an Educational Institution (Article 20) 11
Remand to a Correctional Institution (Article 21) 11
Probation on Remand to Educational or Correctional Institution (Article 22) 11
Remand to Special Institution for Medical Treatment and Acquiring Social Skills (Article 23) 12
Suspension of Enforcement and Substitution of the Ordered Educational Measure by Another (Article 24) 12
Reconsideration of Educational Measures (Article 25) 13
Ordering of Educational Measure for Joinder of Criminal Offences (Article 26) 13
Disclosing information on Ordered Educational Measures (Article 27) 13
4. Juvenile Prison Sentence
   Punishment of Elder Juveniles (Article 28) 14
   Juvenile Prison (Article 29) 14
   Determining the Length of Juvenile Prison Sentence (Article 30) 14
   Determining the Length of Juvenile Prison Sentence for Joiner of Offences (Article 31) 14
   Release on Probation from Juvenile Prison (Article 32) 15
   Limitations on Enforcement of Juvenile Prison Sentence (Article 33) 15
   Disclosing Information on Juvenile Prison Sentence from the Criminal Records (Article 34) 15
   Suspension of Educational Measure Due to Conviction to Juvenile Detention or Prison (Article 35) 15
   Effect of Educational Measures and Juvenile Prison Sentence (Article 36) 16
   Records on Ordered Educational Measures and Juvenile Prison Sentences (Article 37) 16
   Rehabilitation in Case of Juvenile Prison Sentence (Article 38) 16

5. Application of Security Measures
   Ordering Security Measures to Juveniles (Article 39) 17

6. Application of Provisions on Juveniles to Adults
   Ordering of Criminal Sanctions to Adults for Acts Committed as Juveniles (Article 40) 17
   Ordering of Educational Measures to Young Adults (Article 41) 17

II. JUDICIAL AUTHORITIES AND JUVENILE CRIMINAL PROCEEDINGS
   COMPETENT AUTHORITIES FOR ADJUDICATION
   (Article 42 through 45) 18

   JUVENILE CRIMINAL PROCEEDINGS
   General Provisions (Articles 46 through 56) 19
   Initiating of Proceedings (Articles 57 through 62) 19
   Preparatory Proceedings (Articles 63 through 72) 24
   Procedure before the Juvenile Court Bench (Articles 73 through 79) 24
   Legal Remedies (Articles 80 through 83) 29
   Court Supervision Over Enforcement of Measures (Article 84) 30
   Suspension of Enforcement and Varying of the Order on Educational Measures (Article 85) 31

III. APPLICATION OF DIVERSION ORDERS AND ENFORCEMENT OF CRIMINAL SANCTIONS

1. APPLICATION OF DIVERSION ORDERS (Article 86) 31
2. BASIC PROVISIONS ON ENFORCEMENT OF CRIMINAL SANCTIONS (Articles 87 through 97) 32
3. ENFORCEMENT OF EDUCATIONAL MEASURES

1. General Provisions (Articles 98 through 100) 34
2. Enforcement of Alternative Sanctioning Measures (Article 101) 35
3. Enforcement of Increased Supervision Measures 35
   Increased Supervision by Parent, Adoptive Parent or Guardian (Articles 102 through 104) 35
   Increased Supervision in Foster Family (Articles 105 through 108) 36
   Increased Supervision by Guardianship Authority (Articles 109 and 110) 37
   Increased Supervision with Daily Attendance in Relevant Juvenile
4. Enforcement of Institutional Measures
   Joint Provisions (Articles 113 through 119) 38
   Remand to Educational Institution (Articles 120 through 123) 40
   Remand to Correctional Facility (Articles 124 through 133) 41
   Remand to Special Institution for Medical Treatment and Acquiring Social Skills (Articles 134 through 136) 45

4. ENFORCEMENT OF JUVENILE PRISON SENTENCE
   (Articles 137 through 145) 46

5. SPECIAL PROVISIONS ON ENFORCEMENT OF SECURITY MEASURES (Article 146) 48

6. ASSISTANCE AFTER ENFORCEMENT OF INSTITUTIONAL EDUCATIONAL MEASURES AND JUVENILE PRISON
   (Articles 147 through 149) 48

Part Three - SPECIAL PROVISIONS ON PROTECTION OF JUVENILES AS VICTIMS IN CRIMINAL PROCEEDINGS (Articles 150 through 157) 49

Part Four – PENAL PROVISIONS (Article 158) 52

Part Five - TRANSITIONAL AND FINAL PROVISIONS
   (Articles 159 through 169) 52
THE LAW ON JUVENILE CRIMINAL OFFENDERS AND CRIMINAL PROTECTION OF JUVENILES

Part One

BASIC PROVISIONS

Application of the Law

Article 1

This Act shall contain provisions applicable to juvenile perpetrators of criminal offences (hereinafter: juveniles). Provisions of this Act shall relate to substantive criminal law, relevant implementing bodies, criminal proceedings and enforcement of criminal sanctions against these offenders.

Provisions of the Act shall accordingly apply to persons of legal age when tried for criminal offences committed as juveniles, when requirements set forth under this Act have been met, as well to persons who have committed a criminal offence as young adults.

The Act also includes particular provisions on protection of children and juveniles (hereinafter: minors) as victims in criminal proceedings.

Exclusion of Criminal Sanctions Against Children

Article 2

Neither criminal sanctions nor other measures provided under this Act may be pronounced or applied to a person under fourteen years of age at the time of commission of an unlawful act provided under law as a criminal offence.

Age of Offender

Article 3

A juvenile is a person who at the time of commission of the criminal offence has attained fourteen years of age and has not attained eighteen years of age.

A younger juvenile is a person who at the time of commission of the criminal offence has attained fourteen and is under sixteen years of age. An elder juvenile is a person who at the time of commission of the criminal offence has attained sixteen and is under eighteen years of age.

A young adult is a person who at the time of commission of the criminal offence has attained eighteen but has not reached twenty one years of age at the time of the trial, and who meets other conditions set forth by Article 41 of this Act.

Application of General Provisions of the Criminal Law

Article 4

Provisions of the Criminal Code, the Criminal Procedure Code, the Enforcement of Penal Sanctions Act and other general statutes shall apply only if not in contravention with this Act.
Part Two

CRIMINAL PROVISIONS ON JUVENILES

PROVISIONS OF SUBSTANTIVE CRIMINAL LAW

DIVERSION ORDERS

General Rules

Article 5

One or more diversion orders may be applied to a juvenile offender for criminal offences punishable by a fine or imprisonment of up to five years.

The relevant state prosecutor for juveniles or a Juvenile judge may apply a diversion order to a juvenile.

The requirements to apply a diversion order are: juvenile’s confession of a criminal offence and his attitude towards the offence and the injured party.

Purpose of Diversion Order

Article 6

The purpose of a diversion order is to avoid instituting criminal proceedings against a juvenile or to suspend proceedings and/or, by application of the diversion order, to influence proper development of a juvenile, enhance his personal responsibility in order to avoid a relapse into crime in future.

Types of Diversion Orders

Article 7

Diversion orders include:

Settlement with the injured party so that by compensating the damages, apology, work or otherwise, the detrimental consequences would be alleviated either in full or partly;

Regular attendance of classes or work;

Engagement, without remuneration, in the work of humanitarian organisations or community work (welfare, local or environmental);

Undergoing relevant check-ups and drug and alcohol treatment programmes;

Participation in individual or group therapy at suitable health institution or counselling centre.

Choice of Diversion Order

Article 8

In selecting the diversion order the competent state prosecutor for juveniles and Juvenile judge will have regard to the overall interest of the juvenile and the injured party, taking into account that application of one or more diversion orders does not interfere with the schooling or employment of the juvenile.
Duration of a diversion order may not exceed six months and may be substituted by another diversion order or revoked during the said period.

Choice and application of diversion order is done in conjunction with the juvenile’s parents, adoptive parent or guardian and competent guardianship authority.

Types of Criminal Sanctions

Article 9

Educational measures, juvenile detention and security measures, stipulated by Article 79 of the Criminal Code, may be pronounced to juvenile offenders, with the exception of restraint to be engaged in his occupation, business activities or duties.

Only educational measures may be pronounced to younger juveniles.

Educational measures and exceptionally juvenile prison may be pronounced to elder juveniles.

Under the terms of this Act security measures may be pronounced to juveniles.

Purpose of Educational Measures and Juvenile Prison Sentence

Article 10

Within the framework of the general purpose of penal sanctions (Article 4 of the CC) the purpose of criminal sanctions against juveniles is to influence the development and enhancement of personal responsibility of the juvenile, education and his proper personality growth through supervision, protection and assistance as well as by providing general and professional qualifications in order to ensure the juvenile’s re-socialisation into the community.

The purpose of juvenile detention is, in addition to objectives specified in paragraph 1 if this Article, to administer intensified influence on the juvenile offender not to commit criminal offences in the future, and as deterrent to other juveniles not to commit criminal offences.

3. Educational Measures

Types of Educational Measures

Article 11

Educational measures include:

Warning and guidance: Court admonition and alternative sanctioning;

Measures of increased supervision: increased supervision by parents, adoptive parent or guardian, increased supervision in foster family, increased supervision by guardianship authority, increased supervision with daily attendance in relevant rehabilitation and educational institution for juveniles;

Institutional measures: remand to rehabilitation institution, remand to correctional institution, committal to special institution for treatment and acquiring of social skills.

Admonition and guidance are pronounced when such measures are required to influence the character and behaviour of the juvenile.

Increased supervision measures are pronounced when education and development of a juvenile require measures of longer duration under relevant qualified supervision and assistance, without separation from the current environment.

Institutional educational measures are pronounced to a juvenile requiring rehabilitation, medical treatment and acquiring of social skills of longer duration with complete separation from his current
environment, aimed at increased influence on the juvenile. Institutional measures are pronounced as a last resort and may last, within the limits set forth under this Act, only as long as necessary to achieve the purpose of the educational measures.

Choice of Educational Measure

Article 12

In selecting the educational measure the Court shall particularly take under deliberation the age and maturity of the juvenile, other aspects of his/her character and degree of deviation in social behaviour, gravity of the offence, motives for committing the offence, living circumstances and environment of the juvenile, his/her behaviour following the commission of the offence, particularly whether he/she prevented or attempted to prevent occurrence of damaging results, compensated or attempted to compensate for the damage caused, whether the juvenile has any prior criminal or misdemeanour conviction, as well as all other circumstances of relevance for pronouncement of such measure that would best serve to achieve the purpose of educational measures.

Admonition by the Court

Article 13

Admonition by the Court is ordered if it may be concluded from the attitude of the juvenile to the committed offence and his readiness to refrain from committing criminal offences in the future, that an admonition is sufficient.

When pronouncing an admonition the Court shall point out to the juvenile the inadmissibility of his action and demonstrate that other sanctions may be pronounced in the event of re-offending.

Alternative Sanctioning

Article 14

The Court may order one or more alternative sanctioning measures to the juvenile if, according to the Court's assessment, relevant demands or bans are necessary to influence the juvenile and his behaviour.

The Court may order the juvenile:
1. To apologise to the injured party;
   To compensate for the damages caused, within his personal capacity;
   To regularly attend classes and work;
   To qualify for an occupation commensurate with his abilities and talents;
   To participate, without remuneration, in the work of humanitarian organisations or perform community work of social, local or environmental character;
   To involve in particular sports activities;
   To undergo relevant check-ups and drug and alcohol treatment programmes;
   To participate in individual or group therapy in relevant institution or counselling centres and to act in accordance with work programmes created for him in these institutions;
   To attend vocational training classes or to prepare for the exams in a designated field of study;
   Not to leave his place of permanent or temporary residence unless guardianship authority or the Court grants him special permission to leave;

When selecting particular alternative sanctions the Court shall particularly take into consideration that these conform to the character of the juvenile and his living circumstances, and/or will recognise his readiness to co-operate in their achievement;
Alternative sanctioning referred to in paragraph 2, item 3 and 4, and items 6 through 10 of this Article may be ordered for a duration of up to one year, with the proviso that while in force the Court may vary or suspend their enforcement;

Within the scope of requirements specified in paragraph 2, item 2 of this Article, the Court shall determine the amount and manner of compensating the damages through the work of the juvenile that may not exceed 60 hours during three months duration of this alternative sanction, but in such a way that will not interfere with schooling or employment of the juvenile.

Within the scope of requirement specified in paragraph 2, item 5 of this Article, the juvenile may work at most 120 hours during a period up to six months, which is the maximum duration of this alternative sanction, but such work may not interfere with his schooling or employment.

The Court shall supervise compliance with alternative sanctioning and may request a relevant report and opinion of the guardianship authority.

When ordering this educational measure, the Court shall warn the juvenile that in the event of failure to comply with one or more alternative sanctions, these may be substituted with another alternative sanction, i.e. an educational measure.

**Increased Supervision by Parent, Adoptive Parent or Guardian**

**Article 15**

The Court may order measures of increased supervision by parent, adoptive parent or guardian if the parents, adoptive parent or guardian are delinquent in providing necessary care and supervision of the juvenile, and are capable of providing such care and supervision and this may be reasonably expected of them.

This measure may last from a minimum of six months to a maximum of two years, and the Court may subsequently decide on its termination.

When the Court orders the measure specified in paragraph 1 of this Article, it shall issue the parents, adoptive parent or guardian necessary instructions and shall order particular duties to be undertaken for education of the juvenile, his medical treatment and elimination of harmful influences on him.

In ordering the measure specified in paragraph 1 of this Article, the Court shall stipulate that the guardianship authority monitors its enforcement and extends assistance to the parent, adoptive parent or guardian.

**Increased Supervision in a Foster Family**

**Article 16**

If the juvenile’s parent, adoptive parent or guardian is unable to exercise supervision over him or if this cannot be reasonably expected of them, the juvenile shall be placed in a foster family willing to accept him and that has the ability to exercise increased supervision over the juvenile.

In ordering this measure the Court shall stipulate that the guardianship authority inspects its enforcement and extends assistance to the foster family where the juvenile is placed.

The measure of increased supervision in a foster family may last for a minimum of six months and a maximum of two years, and the Court shall subsequently decide on its termination. Enforcement of this measure shall be suspended when the juvenile’s parents, adoptive parent or guardian acquire the capacity to exercise increased supervision or when pursuant to results achieved by the measure the need for increased supervision ceases.
Increased Supervision by Guardianship Authority

**Article 17**

If the juvenile’s parents, adoptive parent or guardian are unable to exercise increased supervision and placement in a foster family is unfeasible, the juvenile shall be placed under supervision of a welfare authority.

This measure may have duration of a minimum of six months to a maximum of two years and the Court may subsequently decide on its termination.

For the duration of this measure the juvenile remains with his parents or other persons caring for him and supporting him, and increased supervision shall be exercised by a particular official of the social guardianship authority or other qualified person appointed by the guardianship authority.

The guardianship authority shall take care of the juvenile’s education, his employment, separation from harmful environment, necessary medical treatment and consolidation of his living circumstances.

Increased Supervision with Daily Attendance in Relevant Juvenile Rehabilitation and Educational Institution

**Article 18**

The Court may order the educational measure of increased supervision with daily attendance in relevant juvenile rehabilitation and educational institution together with another relevant educational measure of increased supervision if assistance of qualified personnel from a specialised institution engaged in rehabilitation and education of juveniles is required.

This measure may last for a minimum of six months to a maximum of two years and the Court may subsequently decide on its termination.

For the duration of this measure the juvenile remains under care of his parents or other persons appointed to take care of the juvenile, and shall spend a certain period during the day in a juvenile rehabilitation and education institution, which should not interfere with his schooling or employment. Through adequate rehabilitation and education curricula such institution shall influence the future lifestyle and behaviour of the juvenile within the wider community. The guardianship authority shall supervise daily attendance.

Alternative Sanctioning Together with Increased Supervision Measures

**Article 19**

The Court may order one or more alternative sanctions referred to under Article 14, paragraph 2 hereof together with the educational measure of increased supervision.

Article 14, items 4, 5 and 6 hereof shall apply to duration of alternative sanctioning that may be ordered together with the measure of increased supervision, while the Court may amend or suspend the ordered measures during the said period.

When ordering the alternative sanctions the Court shall particularly inform the juvenile and his parents, adoptive parent or guardian that any breach of these sanctions may be substituted by another educational measure.
Remand to Educational Institution

Article 20

The Court shall order remand to an educational institution when a juvenile needs to be separated from the current environment and assistance and permanent supervision by qualified personnel have to be provided.

The juvenile is remanded to an educational institution for a minimum of six months and a maximum of two years, and every six months the Court shall reconsider whether grounds for suspension of enforcement of this measure or its substitution with another educational measure exist.

Remand to a Correctional Institution

Article 21

The Court shall order remand of a juvenile to a correctional institution when, in addition to separation from the current environment, increased supervision measures and specialised professional educational programmes have to be applied.

In deliberating whether to order this measure the Court shall particularly take into account the previous lifestyle of the juvenile, the degree of personal and behavioural deviation, the gravity and nature of the committed criminal offence and previous criminal or misdemeanour records of the juvenile.

The juvenile shall remain in the correctional institution for a minimum of six months and a maximum of four years, and every six months the Court shall reconsider whether grounds for suspension of enforcement of this measure or its substitution with another educational measure exist.

Probation on Remand to an Educational or Correctional Institution

Article 22

The Court may release on probation a juvenile who has spent a minimum of six months in an educational or correctional institution if according to success achieved in rehabilitation it may be reasonably expected that he will refrain from committing criminal offences in future and will conform to good behaviour in his future community.

For the duration of probation the Court may order an increased supervision measure with possible inclusion of one or more alternative sanctioning measures referred under Article 14 hereof.

Probation may have a maximum duration until expiry of the term of remand to educational or correctional institution if the Court has not previously suspended enforcement of the educational measure or substituted it by another.

If the juvenile commits a new criminal offence while on probation or if the ordered increased supervision measure does not achieve its objective or if the juvenile breaches the alternative sanctions ordered with the increased supervision measure, the Court may revoke probation. Time spent on probation shall not be calculated as time of statutory duration of the ordered educational measure.

Remand to a Special institution for Treatment and Acquiring of Social Skills

Article 23

Instead of remand to an educational or correctional institution, the Court may commit a juvenile with physical or mental disability to a special institution for medical treatment and acquiring of social skills.

This measure is pronounced instead of mandatory psychiatric treatment and confinement in a health institution (Article 81 of the CC of the Republic of Serbia), if confinement and treatment of a
juvenile may be provided in a special institution for medical treatment and acquiring of social skills and thus achieve the purpose of this security measure.

If the educational measure is ordered pursuant to paragraph 1 of this Article, the juvenile may remain in the institution for treatment and acquiring of social skills for a maximum of three years, and the Court shall reconsider the grounds for suspension of this measure or its substitution by another measure every six months.

If this measure is ordered instead of a security measure, the juvenile shall remain in the special institution for treatment and acquiring of social skills as long as necessary, and upon reaching twenty one years of age enforcement of the measure shall continue in an institution for enforcement of the security measure of mandatory treatment and confinement.

Suspension of Enforcement and Substitution of the Ordered Educational Measure by Another Educational Measure

Article 24

If following the disposition ordering a special requirement measure, increased supervision measure or institutional measure, circumstances arise that were not present or were not known at the time of disposition and which would significantly affect the choice of educational measure, or if the order cannot be enforced due to declining failure of the juvenile or his parents, adoptive parent or guardian to comply with the ordered measure or instructions of the enforcement authority, or if other circumstances arise provided by law which would have a bearing on the disposition, the Court may suspend enforcement or substitute the ordered measure by another measures of the same kind.

In addition to cases specified in paragraph 1 of this Article, enforcement of alternative sanctions, increased supervision measures or institutional measures may be suspended due to achieved progress in education, or may be substituted by another measure of the same kind that would better achieve the purpose of educational measures, provided that:

Enforcement of the measure of remand to an educational institution may not be suspended prior to expiry of a six month period, and until expiry of this period it may be substituted by the measure of increased supervision with daily attendance in relevant juvenile rehabilitation and educational institution, remand of juvenile to a correctional institution or special institution for treatment and acquiring of social skills;

Enforcement of the measure of remand to a correctional institution may not be suspended prior to expiry of a six month period, and until the aforesaid period expires it may be substituted by remand of juvenile to an educational institution or special institution for treatment and acquiring of social skills.

Reconsideration of Educational Measures

Article 25

If more than six months have passed from the effective date of the disposition ordering any alternative sanctioning measure or increased supervision measure, or if more than one year has passed from the effective date of the disposition ordering an institutional measure, and enforcement thereof has not commenced, the Court shall reconsider the need to enforce the ordered measure. The Court may decide to enforce, not to enforce or substitute the previously ordered measure by another measure.

Ordering of Educational Measure for Joinder of Criminal Offences

Article 26
If a juvenile commits a joinder of criminal offences and the Court decides to order educational measures, all offences shall be deliberated cumulatively and only one educational measure shall be ordered, except in cases stipulated by Article 19, paragraph 1 hereof.

The Court shall act accordingly if it determines post-factum that the juvenile has committed another criminal offence before or after ordering of the measure.

Disclosing of Information on Ordered Educational Measures

Article 27

Information on ordered educational measures may only be disclosed to the Court, the state prosecution and guardianship authority.

No information shall be disclosed on ordered educational measures relating to criminal offences punishable by a fine or imprisonment up to three years if the person to whom such information relates has reached twenty-one years of age.

4. Juvenile Prison Sentence

Punishment of Elder Juveniles

Article 28

An elder juvenile who committed a criminal offence punishable by imprisonment of over five years may be sentenced to juvenile prison if due to a high degree of guilt, the nature and gravity of the offence an educational measure would not be appropriate.

Juvenile Prison

Article 29

Juvenile detention may not last less than six months or more than five years and shall be pronounced in full years and months. Juvenile detention of up to ten years may be pronounced for criminal offences carrying a statutory punishment of twenty years imprisonment or more severe punishment or in case of joinder of at least two criminal offences punishable by more than ten years imprisonment.

Determining the Length of Juvenile Prison Sentence

Article 30

The Court shall determine the length of juvenile detention sentence within the constraints set forth under this Act, keeping in mind the purpose of juvenile detention and having regard to all circumstances affecting the length of sentence (Article 54 of the CC), and particularly the maturity of the juvenile and the time required for his education and for acquiring vocational skills.

The Court may not sentence an elder juvenile for a particular criminal offence to a term of juvenile prison exceeding the maximum penalty imposed by law for such offence, however, the Court is not bound to apply the lowest statutory punishment.

Determining the Length of Juvenile Prison Sentence for Joinder of Offences

Article 31
If an elder juvenile commits a joinder of several criminal offences and the determination of the Court is that each should be punished by a juvenile prison sentence, the Court shall at its discretion impose a single sentence for all offences within the constraints defined in Article 29 hereof.

If the Court finds that in joinder of criminal offences an elder juvenile should be punished for one of them and an educational measure ordered for the other criminal offences, the Court shall pronounce a single penalty of juvenile prison for joinder of all offences.

The Court shall also proceed in the manner set forth in paragraphs 1 - 4 of this Article in the event it determines post-factum that the convicted person committed another criminal offence prior to or after sentencing.

**Release on Probation From Juvenile Prison**

**Article 32**

The Court may release on probation a person sentenced to juvenile prison if that person has served one third of the sentence, but not before elapse of six months, if pursuant to achieved success in respect of enforcement it may be reasonably expected that he will be of good behaviour upon release and will refrain from committing criminal offences. The Court may order placing on probation subject to one of the measures of increased supervision and one or more relevant alternative sanctions specified in Article 14 hereof.

Relevant provisions of the Criminal Code and Article 144, paragraph 4 hereof shall accordingly apply to revoking of probation.

**Limitation of Enforcement of Juvenile Prison Sentence**

**Article 33**

A juvenile detention sentence may not be enforced if:

Ten years have passed from conviction to a term of juvenile detention exceeding five years;

Five years have passed from conviction to a term of juvenile detention exceeding three years;

Three years have passed from conviction to a term of juvenile detention up to three years.

**Disclosing Information on Juvenile Prison Sentences From the Criminal Records**

**Article 34**

Information on conviction to juvenile detention may not be disclosed to anyone, except in cases stipulated by Article 102 of the Criminal Code.

**Suspension of Educational Measure Due to Conviction to Juvenile Detention or Prison**

**Article 35**

If during an educational measure the Court convicts an elder juvenile to juvenile detention, the educational measure shall discontinue when the convicted person commences serving the sentence.

If during an educational measure the Court convicts a person of legal age to juvenile detention or prison term of minimum one year, the educational measure shall discontinue when the convicted person commences serving the sentence, and if the person is convicted to a term in juvenile detention or prison of lesser duration, the Court shall set forth in the verdict whether the educational measure shall continue or be suspended after release.
Effect of Educational measures and Juvenile Prison Sentence

Article 36

Educational measures and juvenile detention shall not ensue in legal consequences comprising ban on acquiring particular rights (Article 95 of the CC).

A person under enforcement of an institutional educational measure as well as a person serving a juvenile detention sentence may not for the duration thereof perform elective function in government bodies, bodies of territorial autonomy, local self-government, management bodies or other bodies of an enterprise or organisation conducting business with government property, and/or organisations entrusted by law to exercise particular public authority.

Records on Ordered Educational Measures and Juvenile Prisons Sentences

Article 37

The Court adjudicating in the first instance shall maintain records on ordered educational measures and juvenile detention sentences.

The manner of keeping records shall be defined by a separate act.

Rehabilitation in Case of Juvenile Prison Sentence

Article 38

Provisions on rehabilitation set forth by Articles 97-100 of the Criminal Code shall be applied accordingly to juveniles sentenced to juvenile prison.

5. Application of Security Measures

Ordering Security Measures to Juveniles

Article 39

Security measures may be ordered to juveniles if they are sentenced to educational measure or juvenile detention.

The security measure of mandatory treatment of alcoholics and the measure of mandatory treatment of drug addicts may not be ordered together with admonition and guidance measures.

The security measure of mandatory psychiatric treatment and confinement in a medical institution may be ordered separately.

6. Application of Juvenile Provisions to Adults

Ordering Criminal Sanctions to Adults for Acts Committed as Juveniles

Article 40

A person of legal age who is over twenty-one years may not be tried for a criminal offence committed as a younger juvenile.

A person of legal age who committed a criminal offence as a juvenile and who at time of trial is not yet twenty-one years old, may be ordered a relevant educational measure (alternative sanctioning measure, measure of increased supervision by guardianship authority or remand to correctional
institution), and under provisions specified in Article 28 hereof – remand to juvenile detention facility. In deliberating if or which of the above sanctions will be ordered, the Court shall regard all circumstances of the case, and particularly the gravity of the offence, time elapsed from its commission, character and behaviour of the offender as well as the purpose to be achieved by the sanction.

Notwithstanding the provisions of paragraph 2 of this Article, the Court may pronounce to a person of legal age who attained twenty-one years of age during trial, a prison sentence or suspended sentence. The prison sentence, in this case, shall have the same legal effects in respect of rehabilitation, erasing of conviction, limitations, parole and legal consequences as punishment by juvenile detention.

In addition to the ordered sanction, adults specified under paragraphs 2 and 3 of this Article may be ordered appropriate security measure under conditions stipulated by this Act.

Ordering Educational Measures to Young Adults

**Article 41**

The Court may pronounce to an offender who committed a criminal offence as an adult but at time of trial is under twenty-one years of age any of the alternative sanctions, the measure of increased supervision by guardianship authority or remand to correctional institution if, due to the character and circumstances under which the offence was committed, it may be expected that these educational measures will achieve the same purpose as punishment.

The Court may order, under terms set forth in this Act, any security measure to a young adult under educational measure.

**JUDICIAL AUTHORITIES AND JUVENILE CRIMINAL PROCEEDINGS**

1. COMPETENT AUTHORITIES FOR ADJUDICATION

**Article 42**

First instance proceedings against a juvenile are conducted before a Juvenile judge and Juvenile Court bench of the District Court.

The juvenile bench in the first instance Court shall comprise a Juvenile judge and two lay judges of different sex as a rule. The Juvenile judge presides the bench.

The Juvenile judge of the first instance Court conducts preparatory proceedings and performs other tasks in juvenile proceedings.

**Article 43**

The juvenile bench of the higher Court, comprised of three judges shall have second instance jurisdiction. It is established by work allocation schedule of that Court.

The juvenile bench in composition provided under paragraph 1 of this Article shall rule on appeals against the disposition of the juvenile bench of the first instance Court, on appeals against the decisions of the Juvenile Public Prosecutor and Juvenile judge in cases provided under this Act, and when disposition shall be made by a juvenile bench of a higher Court in cases set forth by this Act.

When the juvenile bench sits in trial it shall comprise two judges and three lay judges.

**Article 44**

A Juvenile judge and juvenile bench judges must be persons who have acquired special qualifications in the field of the rights of the child and juvenile delinquency.
Lay judges are elected from the ranks of teachers, professors, educators and other qualified persons experienced in work with children and youth.

**Article 45**

The Court on the territory of permanent residence of the juvenile shall have, as a rule, jurisdiction in proceedings against him, and if the juvenile does not have any, or has no known permanent residence, the Court of the juvenile's temporary residence will have jurisdiction. The proceedings against a juvenile with permanent address may be conducted before the Court of the juvenile's temporary residence or the Court competent on the territory where the criminal offence was committed and/or the Court competent on the territory of the institution for enforcement of criminal sanctions, where the juvenile is serving his sentence, if it is evident that the proceeding would be conducted more easily before such Court.

**JUVENILE CRIMINAL PROCEEDINGS**

**General provisions**

**Article 46**

The provisions of this Act shall apply in proceedings against persons under reasonable suspicion of committing a criminal offence as juveniles and who at the time of commencement of proceedings have not reached twenty-one years of age.

Provisions of Articles 48 through 50, 53 through 56, Articles 64 and 66, Article 68, paragraph 1 and Articles 75 and 76 hereof shall apply in proceedings against a young adult if, prior to commencement of the main hearing and based on character examination of such person, it is determined that an educational measure specified in Article 41 hereof may be ordered.

**Article 47**

If the Juvenile Public Prosecutor determines that the person against whom criminal charges have been filed or the injured party filed a motion for initiating proceedings, is under fourteen years of age at the time of commission of the criminal act, he shall reject criminal charges or the motion of the injured party, and shall deliver decision on rejection to the guardianship authority for further action within its purview.

If the Court determines during the proceeding that at the time of commission of the criminal offence the juvenile was under fourteen years of age, criminal proceedings shall be discontinued and relevant disposition delivered to the guardianship authority for further action within their purview.

**Article 48**

A juvenile may not be tried *in absentia*.

When undertaking actions in presence of the juvenile, and particularly during his questioning, participants in the proceeding are required to exercise due care having regard to maturity, other personal traits and protection of privacy of the juvenile, so that the conducting of criminal proceedings would not have a detrimental effect to his development.

**Article 49**

A juvenile shall have defence counsel during the first hearing and throughout the proceedings.

If the juvenile, his legal representative or relatives fail to retain counsel, such counsel shall be appointed *ex officio* by the Juvenile judge.

Counsel for the juvenile may only be an attorney with special qualification in the field of the rights of the child and juvenile delinquency.
Article 50

No one may be released from duty to testify on circumstances required to evaluate the maturity of a juvenile, assess his character and his living circumstances.

Article 51

If a minor participated in the commission of a criminal offence together with an adult, he shall be tried separately under provisions of this Act.

Proceedings against a juvenile may be joined with proceedings against an adult and conducted in accordance with general provisions of the Criminal Procedure Code only if joinder of proceedings is necessary by reason of comprehensive clarification of the subject matter. An order to that effect shall be passed by the juvenile Court bench of the District Court. This order may not be appealed.

When joined proceedings are conducted for both juvenile and adult offenders, provisions of Articles 48-50, 53-56, 64, 66, 68, paragraph 1, 75 and 76 hereof shall always be applied to juveniles in determination of issues at the trial related to the juvenile, as well as Articles 78 and 79, including other provisions of this Act if not in contravention with conducting joined proceedings.

Article 52

When there are reasonable grounds to suspect that a person has committed a criminal offence as a juvenile, and some other offence as an adult, a single proceeding shall be conducted, as a rule, before a bench adjudicating juveniles, if such person at time of initiation of the trial has not reached twenty-one years of age.

Article 53

In juvenile proceedings, in addition to the powers explicitly provided under this Act, the guardianship authority shall be entitled to be informed about the course of the proceedings and to make suggestions during proceedings and indicate facts and evidence of importance for appropriate disposition.

The Juvenile Public Prosecutor shall notify the relevant guardianship authority of any proceedings instituted against a juvenile.

If the Juvenile Public Prosecutor fails to notify the relevant guardianship authority of proceedings instituted against a juvenile, it shall be done so by the Juvenile judge who shall append with the report a copy of the Juvenile Public Prosecutor's request for preliminary proceedings, in terms of Article 64 hereof.

Article 54

A juvenile is summoned through his parents and/or legal guardian, unless this is unfeasible due to need for exigent action or other circumstances.

The order to bring in terms of Article 135 of the Criminal Procedure Code is exercised against the juvenile by law enforcement officer in civilian clothes, with regard to do so in an unobtrusive manner.

Orders and other submissions are delivered to the juvenile pursuant to provisions of Article 162 of the Criminal Procedure Code, under the proviso that submissions may not be delivered to a juvenile by posting them on the Court notice board, nor shall provisions of Article 158 paragraph 2 of the Criminal Procedure Code be applicable.

Article 55

No publication of the course of juvenile criminal proceedings or the disposition of such proceedings will be allowed without permission of the Court.
Only that part of the proceedings and/or that part of the disposition may be published for which a permission exists, but in such cases the name of the juvenile or other data identifying the juvenile may not be stated.

**Article 56**

Bodies involved in juvenile proceedings and any other body or institution requested to supply information, reports or opinions shall do so without delay in order to conclude the proceedings speedily.

**Initiating of Proceedings**

**Article 57**

Criminal proceedings against a juvenile are instituted for all criminal offences only at the motion of the Juvenile Public Prosecutor with special qualifications in the field of the rights of the child and juvenile delinquency.

Criminal offences prosecuted at the motion or private suit may be instituted if the injured party files a motion to prosecute with the competent Juvenile Public Prosecutor within the deadline provided in Article 53 of the Criminal Procedure Code.

If the Juvenile Public Prosecutor does not file a request to institute proceedings against a juvenile, he shall so notify the injured party within eight days. The injured party may not undertake criminal prosecution but is entitled, within eight days of receiving the notification from the Juvenile Public Prosecutor, and if not notified then within three months from the day criminal charges or the motion specified in paragraph 2 of this Article were rejected, to request that the juvenile Court bench of a higher Court rules on initiating of proceedings.

**Article 58**

For criminal offences punishable by up to five years imprisonment or a fine, the Juvenile Public Prosecutor may decide not to press charges although evidence exists giving rise to reasonable suspicion that the juvenile had committed a criminal offence, if in his opinion it would not be appropriate to prosecute the juvenile due to the nature of the criminal offence and circumstances under which it was committed, his previous living circumstances and personal characteristics. On order to determine these circumstances the Juvenile Public Prosecutor may request information from the juvenile’s parents, adoptive parent or guardian, other persons or institutions and, when necessary, may summon these persons and the juvenile to directly give information. He may request the opinion of the guardianship authority on the purpose to be served by prosecuting the juvenile, and may delegate collection of such information to a professional (social worker, psychologist, pedagogue, specialist pedagogue etc) if there is any with the Public Prosecution Office.

If the decision referred to in paragraph 1 of this Article requires examination of personal characteristics of the juvenile, the Juvenile Public Prosecutor may, in agreement with the guardianship authority, remand the juvenile to an institution for examination of character, to a youth home or educational institution, for up to thirty days.

During enforcement of penalty or educational measure, the Juvenile Public Prosecutor may decide not to press charges for another criminal offence committed by the juvenile, if due to the gravity of such offence as well as the sentence or educational measure being served, the conducting of proceedings and the pronouncing of a criminal sanction for that offence would serve no purpose.

When in cases specified in paragraphs 1 and 3 of this Article, the Juvenile Public Prosecutor assesses that it is not pertinent to initiate proceedings against the juvenile, he shall so notify within eight days from the day of receipt of the information*, explaining the reasons, the guardianship authority and the injured party, who may, within eight days, request the juvenile Court bench of a higher Court to rule on institution of proceedings in terms of Article 57, paragraph 3 hereof. The injured party and the guardianship authority may file such request within three months from the date of rejecting criminal
charges and/or the motion of the injured party to initiate proceedings, if not notified of the decision not to initiate proceedings. The Juvenile Public Prosecutor shall also notify the law enforcement authority of the decision not to initiate proceedings, if such authority had filed criminal charges.

* Intemex note – most likely meaning: “When in cases provided under paragraph 1 and 3 of this Article, the Juvenile Public Prosecutor assesses that it is not pertinent to initiate proceedings against the juvenile, he shall notify the guardianship authority and the injured party about it, explaining the reasons for doing so; the guardianship authority and the injured party may, within eight days from receiving this notification, request from the juvenile bench of the higher Court to decide on initiating proceedings in view of Article 57, paragraph 3 hereof.”

**Article 59**

Disposition in cases specified in Article 57, paragraph 3 and Article 58, paragraph 4 hereof shall be made by the juvenile Court bench of a higher Court sitting in session after obtaining the case file from the Juvenile Public Prosecutor. The Juvenile Public Prosecutor shall be invited to attend the session.

The juvenile Court bench may decide not to initiate proceedings or to initiate proceedings before a Juvenile judge. The decision of the juvenile Court bench may not be appealed.

When the bench decides to institute proceedings against the juvenile before the Juvenile judge, the Juvenile Public Prosecutor shall have to participate in such proceedings.

**Article 60**

In obtaining information from a juvenile the law enforcement officer shall proceed in terms of Article 226, paragraphs 1, 3, 4, 5, 6 and 10 of the Criminal Procedure Code, and shall do so in the presence of the juvenile’s parents, adoptive parent or guardian. Information is collected by a juvenile police officer. A juvenile police officer is a person who has acquired special skills in the field of the rights of the child and juvenile delinquency.

**Article 61**

A juvenile may not be detained in terms of Article 229 of the Criminal Procedure Code.

**Article 62**

The Juvenile Public Prosecutor may subject the decision not to prosecute specified in paragraph 58, paragraph 1 hereof, to consent of the juvenile and his parents, adoptive parent or guardian, as well as readiness of the juvenile to accept one or more diversion orders specified in Article 7, paragraph 1 through 3 hereof.

In selecting particular diversion orders, the Juvenile Public Prosecutor shall take particular regard of their congruence with the character of the juvenile and circumstances under which he is living, taking into account his readiness to co-operate in their implementation.

Enforcement of diversion order referred to under Article 7, paragraph 1 hereof requires agreement of the injured party.

If the juvenile fully complies with the accepted diversion order, which shall be reported by the guardianship authority, the Juvenile Public Prosecutor issues a decision on rejecting criminal charges and/or the motion of the injured party to initiate proceedings.

The Juvenile Public Prosecutor may reject charges and/or motion of the injured party to institute proceedings against the juvenile also if the juvenile complies in part with the accepted diversion order when in his deliberation, due to the nature of the criminal offence and circumstances of its commission, the previous behaviour of the juvenile, his character and reasons for failure to fully comply with the ordered recommendation, it would not be pertinent.
If the juvenile fails to comply with the accepted diversion orders or complies only partially to a degree that does justify the initiating of proceedings, the Juvenile Public Prosecutor files a motion with the Juvenile judge of the competent Court to initiate preparatory proceedings.

The Juvenile Public Prosecutor shall notify the injured party of rejecting of the criminal charges and/or the motion of the injured party who shall not be entitled to request initiating of proceedings. When a juvenile makes full restitution of damages resulting from the criminal offence, the injured party shall not be entitled to exercise his property claim, and if damages were compensated in part, the injured party may exercise his property claim in Court action.

**Preparatory Proceeding**

**Article 63**

The Juvenile Public Prosecutor files a motion to initiate preparatory proceedings with the Juvenile judge of the competent Court. If the Juvenile judge disagrees with the motion, he shall request a relevant decision from the juvenile Court bench of a superior Court.

A Juvenile judge may delegate a law enforcement authority with enforcement of a search warrant for premises and temporary seizure of objects as provided under the Criminal Procedure Code.

**Article 64**

In preparatory proceedings against the juvenile, in addition to facts relating to the criminal offence, the Court shall particularly determine the age of the juvenile, facts necessary for evaluation of his maturity, his living environment and circumstances, and other relevant facts relating to his character and behaviour.

The juvenile’s parents, adoptive parent or guardian and other persons who may offer relevant information will be questioned to determine these circumstances. The Juvenile judge may delegate the collecting of this information to a qualified associate of the Court (social worker, psychologist, pedagogue, special pedagogue etc) if any.

In circumstances specified in paragraph 1 of this Article the Court shall always obtain the opinion of the guardianship authority, and when an institutional educational measure had been ordered to a juvenile, it shall obtain a report from the institution on the results of enforcement of the ordered measure.

When the state of health, degree of maturity and other aspects of the juvenile's character require examination of Court expert witnesses, this examination shall be carried out by medical practitioners, psychologist or pedagogues. Such examinations of a juvenile may be carried out in a health or other institution.

**Article 65**

The Juvenile judge alone decides on the manner of conducting particular actions, having regard to provisions of this Act and the Criminal Procedure Code to a degree ensuring the rights of the accused to defence, the rights of the injured party and collecting of evidence required for deliberation.

Questioning of the juvenile during preparatory proceedings must be attended by the Juvenile Public Prosecutor, juvenile defence counsel and the juvenile’s parent, adoptive parent or guardian. If necessary, these persons shall attend other actions during preparatory proceedings. The Juvenile judge may order the juvenile to retreat when particular actions are undertaken.

The Juvenile judge may exclude the attendance of parents, adoptive parent or guardian if such decision is in the interest of the juvenile.

Questioning of the juvenile, when appropriate, shall be conducted with the assistance of a psychologist, pedagogue or other professional. The Juvenile judge may allow attendance of the guardianship authority representative in preparatory proceedings. If such person is in attendance, he may put motions and direct questions to the person being questioned.

**Article 66**
During preparatory proceedings the Juvenile judge may remand a juvenile to a home, educational or similar institution, under supervision of a guardianship authority or placement in foster family on temporary basis (hereinafter: temporary placement measure) if this is necessary to separate the juvenile from his current environment or to provide assistance, supervision, protection or accommodation for the juvenile.

The decision referred to under paragraph 1 may be appealed within twenty four hours by the juvenile, parent, adoptive parent or guardian, defence counsel and Juvenile Public Prosecutor. The appeal shall not stay enforcement of the decision.

The costs of accommodation of the juvenile are payable in advance from budgetary funds and comprise part of the costs of criminal proceedings.

Article 67

Exceptionally, the Juvenile judge may remand the juvenile to detention when grounds exist specified under Article 142, paragraph 2 of the Criminal Procedure Code, if the purpose for ordering detention cannot be achieved by temporary placement measure specified in Article 66, paragraph 1 of hereof.

Time spent in detention, as well as any other deprivation of liberty, shall be counted as an integral part of the ordered educational measure of remand to an educational institution, correctional facility and juvenile prison pursuant to Article 63 of the Criminal Code.

On grounds of the detention order issued by the Juvenile judge, detention in preparatory proceedings may not exceed one month.

The juvenile Court bench of the same Court may, on justifiable grounds, extend detention for a maximum of one more month.

Following the conclusion of preparatory proceedings and from the moment of filing a motion for pronouncing of criminal sanction, detention of an elder juvenile may not exceed six months, and four months for a younger juvenile.

From the moment of ordering an educational measure of remand to a correctional facility, and pronouncing a juvenile prison sentence, detention of a juvenile may not exceed six months.

In cases of extended detention under paragraphs 5 and 6 of this Article, the juvenile bench is required to review once a month whether grounds for detention exist, and to pronounce a decision on either suspending or extending the detention.

Provision of Article 146 of the Criminal Procedure Code shall accordingly apply to all other issues relating to juvenile detention.

Article 68

A juvenile shall be held in detention separately from adults. Exceptionally, a Juvenile judge may order a juvenile to be remanded in detention together with an adult, who would not have a detrimental effect on him, while in the opposite case, juvenile solitude would last longer, and would be harmful to his personal development.

A Juvenile judge shall have the same competencies in respect of detained juveniles as provided under the Criminal Procedure Code to an investigative judge in respect of adult detainees, but shall have particular regard for the character and needs of every juvenile detainee.

Article 69

After investigating all circumstances relating to commission of the criminal offence, maturity and other factors related to the personal and living circumstances of the juvenile, the Juvenile judge shall deliver the case file to the competent Juvenile Public Prosecutor who may, within eight days, move to supplement the preparatory proceedings or file an explained recommendation to the juvenile Court bench to pronounce criminal sanction.

The recommendation of the Juvenile Public Prosecutor shall include: the full name of the juvenile, his age, description title and legal designation of the offence, evidence proving that the juvenile
has committed a criminal offence, explanation which should include evaluation of the apparent maturity of the juvenile, personal characteristics and a recommendation to pronounce criminal sanctions against the juvenile.

Article 70

If during preparatory proceedings or upon conclusion thereof the Juvenile Public Prosecutor finds that there are no grounds to prosecute the juvenile or that there are grounds specified in Article 58, paragraph 1 and 3 hereof, he shall submit a motion to the Juvenile judge to discontinue proceedings. The Juvenile Public Prosecutor shall also notify the guardianship authority of the decision to discontinue proceedings which shall, in the event of disagreement with the motion of the Juvenile Public Prosecutor, accordingly notify the Juvenile judge within eight days from the day of receiving the notification of the Juvenile Public Prosecutor. 

If the Juvenile judge disagrees with the motion of the Juvenile Public Prosecutor he shall request, within three days, a relevant ruling from the juvenile Court bench of a higher Court. The juvenile Court bench shall issue its decision upon questioning of the relevant Juvenile Public Prosecutor. The Juvenile judge shall also apply the same procedure when only the guardianship authority disagrees with the motion of the Juvenile Public Prosecutor.

Provision of Article 59, paragraph 3 hereof shall apply also when the juvenile Court bench fails to sustain the motion of the Juvenile Public Prosecutor to discontinue proceedings.

The juvenile Court bench may rule to issue the decision to discontinue proceedings against a juvenile in accordance with provision of Article 71 hereof.

Article 71

The Juvenile Public Prosecutor may file a motion to discontinue proceedings against a juvenile subject to the juvenile’s acceptance of one or more diversion orders specified in Article 7, paragraph 1, items 1 through 3 hereof.

If the Juvenile judge disagrees with the motion of the Juvenile Public Prosecutor, the juvenile Court bench shall take decision within eight days. The juvenile Court bench may rule to discontinue proceedings against the juvenile if it determines the ordering of diversion orders specified in Article 7 hereof inappropriate, and may take a decision in terms of paragraph 3 of this Article. When the juvenile Court bench orders one or more diversion orders specified in Article 7, paragraph 1, items 1 through 5 hereof, supervision of enforcement thereof shall be entrusted to the guardianship authority.

If a Juvenile judge sustains the motion of the Juvenile Public Prosecutor, he shall order the juvenile to comply with one or more diversion orders specified in Article 7 hereof, having regard of their suitability in respect of the juvenile’s personal and living circumstances, taking into account the readiness of the juvenile to participate in the implementation of diversion orders.

Agreement of the injured party for enforcement of diversion order specified in Article 7, paragraph 1, item 1 hereof is mandatory.

If a juvenile fully complies with the ordered diversion orders, as substantiated by a report submitted by the guardianship authority, the Juvenile judge shall issue a decision on discontinuation of proceedings.

If the juvenile fails to comply with ordered diversion order or complies only in part, but to a degree that does justify continuance of proceedings, the Juvenile judge shall accordingly inform the Juvenile Public Prosecutor who shall, within eight days of receiving the notification, file an explained motion in terms of Article 69 hereof. If the Public Prosecutor finds that no grounds exist for further proceedings against the juvenile he shall apply provision of Article 70 hereof.

The Court shall notify the injured party of discontinuation of the proceedings, who shall not be entitled to move to initiate proceedings.

If the juvenile has made full restitution of damages resulting from the criminal offence, the injured party shall not be entitled to realise their property claim, and if damages were compensated only in part, the injured party may realise their property claim in civil action.
Article 72

A Juvenile judge shall notify the President of the Court every month of the juvenile cases that are not disposed of and of reasons why particular cases are still under proceedings. The President of the Court shall undertake measures to accelerate the proceedings.

Proceedings Before the Juvenile Court Bench

Article 73

On receiving the motion of the Juvenile Public Prosecutor to pronounce criminal sanction, the Juvenile judge schedules a sitting of the bench or the main hearing.

A juvenile prison sentence and institutional measures may be pronounced only after conclusion of the main hearing. Other educational measures may be ordered by sitting of the bench.

Sitting of the bench may order holding of the main hearing.

The juvenile, his parents, adoptive parent or guardian, Juvenile Public Prosecutor, defence counsel and guardianship authority representative shall be summoned to attend the sitting of the bench. There will be mandatory attendance of the Juvenile Public Prosecutor, defence counsel and guardianship authority representative at this sitting. If the Juvenile Public Prosecutor or defence counsel fail to justify their absence from the sitting of the bench, the President shall accordingly inform the directly superior Public Prosecutor and/or the relevant bar association.

The Juvenile judge shall inform the juvenile of the educational measure ordered at the sitting of the bench.

Article 74

When the juvenile Court bench adjudicates on the basis of the main hearing, provisions of the Criminal Procedure Code on preparations for the main hearing, on the management of the main hearing, on adjournment and discontinuance of the main hearing, on the record of the hearing and the course of main hearing shall accordingly apply, but the Court may derogate from these rules if their application in the specific case is deemed inappropriate.

In addition to persons specified in Article 285 of the Criminal Procedure Code, juvenile’s parents, adoptive parent or guardian and guardianship authority shall be summoned to the main hearing.

Attendance of the Juvenile Public Prosecutor, the juvenile defence counsel and guardianship authority representative at the main hearing, in addition to the juvenile, is mandatory. If the Juvenile Public Prosecutor or defence counsel fail to justify their absence from the main hearing, the President of the bench shall accordingly inform directly superior Public Prosecutor and/or the relevant bar association.

Provisions of the Criminal Procedure Code on amending and expanding charges shall apply in proceedings against a juvenile, but the juvenile Court bench shall have competence to reach a disposition based on finding of fact at the main hearing even without a motion from the Juvenile Public Prosecutor.

Article 75

The public shall always be excluded from trials of a juvenile.

The bench may allow persons engaged in education and protection of juveniles or suppression of juvenile delinquency to attend the main hearing.

The bench may order all or certain persons to leave the main hearing, except for the Juvenile Public Prosecutor, defence counsel and guardianship authority representative.

During the presentation of particular evidence or statements of the parties, the bench may order the juvenile to leave the Courtroom.

Article 76
The President of the bench or the Juvenile Court bench may order during the trial a temporary placement measure in terms of Article 66 hereof, and may revoke a previous order.

Article 77

The Juvenile judge shall schedule the main hearing or sitting of the bench within eight days of receiving the motion of the Juvenile Public Prosecutor. The Juvenile judge requires approval of the President of the Court for any extension of this period.

The main hearing may be adjourned or discontinued only exceptionally. The Juvenile judge shall notify the President of the Court of any adjournment or suspension of the main hearing, stating reasons for adjournment and/or suspension.

The Juvenile judge is required within eight days from the day of publication of the decision concluding the proceedings, to draft the verdict and/or decision in writing.

Article 78

The juvenile Court bench shall not be bound by the motion of the Juvenile Public Prosecutor in deliberations of whether to order punishment or educational measures to a juvenile.

The bench shall by decision discontinue proceedings in cases when the Court, pursuant to Article 354, items 2 and 3 of the Criminal Procedure Code brings a verdict rejecting the charges or acquitting the accused of the charges in terms of Article 355 of the Criminal Procedure Code, as well as when in deliberation of the Court it would be inappropriate to order either punishment or an educational measure to the juvenile.

The bench shall issue a decision also when ordering an educational measure to the juvenile. Only the ordered measure will be stated in the pronouncement of this decision and will not pronounce the juvenile guilty for the criminal offence he is charged with. The explanation of the decision will state the description of the offence and circumstances justifying ordering of the educational measure.

The disposion pronouncing juvenile prison sentence for the juvenile shall be composed in the form provided under Article 356 of the Criminal Procedure Code.

Article 79

The Court may order the juvenile to pay the cost of criminal proceedings and to make restitution in respect of a property claim only if the Court has pronounced punishment. If an educational measure has been ordered, or the proceedings have been discontinued, costs of the proceedings will be compensated by the budget, and the injured party will be directed to realise a property claim by civil action.

If a juvenile has income or property, the Court may order him to pay the cost of proceedings and fulfil compensation claims even when ordering an educational measure, i.e. when the juvenile bench finds that neither a juvenile prison sentence nor an educational measure would serve the purpose.

Legal Remedies

Article 80

The juvenile imprisonment sentence, a decision ordering an educational measure and decision to discontinue proceedings specified in Article 78, paragraph 2 hereof may be appealed by all persons entitled to appeal the verdict in terms of Article 364 of the Civil Procedure Code within eight days from the date of receiving the verdict and/or decision.

An appeal against the decision ordering an educational measure enforced in a detention facility and/or an institution shall stay enforcement of the decision if the Court, in agreement with the juvenile’s parents and following questioning of the juvenile, does not decide otherwise.
The juvenile shall be summoned to attend the sitting of the second instance bench only if the president of the bench or the bench finds his attendance useful.

**Article 81**

A second instance bench may overturn the first instance decision by pronouncing a more severe measure to the juvenile only if so moved in the appeal.

If the first instance decision does not pronounce a juvenile prison sentence or institution measure, the second instance bench may pronounce such punishment and/or measure only after holding a hearing. A longer juvenile prison or a stronger institutional measure than pronounced in the first instance decision may also be ordered by the sitting of the second instance bench.

**Article 82**

The motion for protection of legality may be filed both when the decision of the Court violates the law, and in cases when punishment or educational measure has been improperly pronounced against the juvenile.

**Article 83**

The provisions on retrial when proceedings are concluded by final judgement shall accordingly apply to retrial when proceedings are concluded by final decision ordering an educational measure.

**Court Supervision over Enforcement of Measures**

**Article 84**

A Juvenile judge of the Court ordering an educational measure and the Juvenile Public Prosecutor are required to follow-up the results of enforcement of the educational measure by visiting juveniles remanded in the detention facility or institution where the measure is enforced, and by direct inspection and review of reports during enforcement of the ordered educational measure.

The competent guardianship authority shall every six months submit to the Court and the Juvenile Public Prosecutor a report on the course of enforcement of other educational measures, and the Juvenile judge may request such report in shorter time periods. The Juvenile judge may order the drafting of such report by a particular qualified Court assistant (social worker, psychologist, pedagogue, special pedagogue etc), if any.

The management of the detention facility and/or institution where the educational measure is enforced shall every six months submit a report to the Juvenile judge adjudicating in first instance and the Juvenile Public Prosecutor on the results of enforcement of the measure, and the Juvenile judge may request such report in shorter time periods.

**Suspension of Enforcement and Varying the Order on Educational Measure**

**Article 85**

When conditions provided under this Act have been met to vary the order on educational measure in force, the relevant decision shall be made by the first instance Court ordering the educational measure if the Court so determines as necessary, or at the application of the Juvenile Public Prosecutor, the juvenile, his parents, adoptive parent or guardian, superintendent of the detention facility or institution or the guardianship authority entrusted with supervision of the juvenile.

Prior to issuing a decision the Court shall question the Juvenile Public Prosecutor, the juvenile, parents, adoptive parent or guardian or other persons and shall obtain necessary reports from the
detention facility or institution where the measure is enforced, and/or from the guardianship authority or other bodies and institutions.

The provisions of paragraphs 1 and 2 of this Article shall also apply to the decision on suspension of enforcement of the educational measure and release on probation specified in Article 22 hereof.

Decisions to suspend, vary the educational measure or release on probation are issued by the juvenile Court bench specified in paragraph 1 of this Article.

The juvenile and his parents, adoptive parent or guardian, the Juvenile Public Prosecutor, defence counsel and the representative of the guardianship authority or the detention facility or institution where the educational measure is enforced shall be summoned to the sitting of the bench and their attendance is mandatory.

APPLICATION OF DIVERSION ORDERS AND ENFORCEMENT OF CRIMINAL SANCTIONS

1. APPLICATION OF DIVERSION ORDERS

Article 86

A separate by-law shall govern the application of diversion orders referred to under Article 7 hereof.

2. BASIC PROVISIONS ON ENFORCEMENT OF CRIMINAL SANCTIONS

Article 87

The provisions on enforcement of criminal sanctions shall apply to juvenile and adult offenders sentenced to an educational measure or juvenile prison and to persons who reach legal age during enforcement of these sanctions.

Article 88

Juveniles under enforcement of criminal sanctions are equal regardless of race, colour, sex, religion, political or other opinion, national, ethnic or social origin, property, birth or other status of the juvenile, his parents, adoptive parent or guardian, as well as other forms of dissimilitude.

Article 89

During enforcement of criminal sanctions the juvenile should be treated in a manner proportionate to his age, apparent maturity and other personal circumstances, with respect to the dignity of the juvenile, encouraging his overall growth and participation in his own re-socialisation, adhering to contemporary pedagogical, psychological and penological skills and experience.

A juvenile shall be provided with facilities to acquire primary and secondary vocational education and qualifications, and enabled to freely express and practise his religious beliefs and practices.

Article 90

Juveniles undergoing an institutional educational measure or juvenile prison sentence shall be subjected at least once a year to a full medical examination by a proper health institution.

At least twice a year a report shall be made on the psychological state of the juvenile and shall be submitted to the Juvenile judge of the first instance Court exercising supervision and/or inspecting enforcement of criminal sanction referred to in paragraph 1 of this Article.

Article 91
A disciplinary measure of solitary confinement may not be ordered to a juvenile.

Article 92

No firearms shall be allowed within the facility or institution where institutional educational measures or juvenile prison sentences are served.

Article 93

Enforcement of educational measures and juvenile prison sentences is based on an individualised programme of treatment of the juvenile that is adapted to his character and is in accordance with contemporary achievements of science, pedagogy and penology practice.

Individualised programmes are compiled on basis of comprehensive understanding of the maturity and other personal characteristics of the juvenile, his age, education level, previous life and behaviour within the social context, form of behavioural deviation, type of criminal offence and circumstances of its commission.

Individualised programmes particularly determine: the maturity of the juvenile, other personal characteristics, feasibility of inclusion into an educational or vocational programme, use and organisation of leisure time, work with the juvenile’s parents, adoptive parent or guardian and other family members, as well as other forms of psycho-social, pedagogic and penology impact on the juvenile.

Article 94

The cost of enforcement of criminal sanctions against the juvenile shall be provided by the budget.

The juvenile’s parent, adoptive parent or guardian and/or other person is required by law to support the juvenile, and a juvenile having an income or property, when possible, is liable for part of the cost of enforcement of alternative sanctions, increased supervision in a foster family, increased supervision with daily attendance in a relevant rehabilitation and an educational institution, remand to an educational institution, remand to a correctional facility and a juvenile prison.

The liability for costs of persons referred under paragraph 2 of this Article shall be decided by the sentencing Court of first instance at the recommendation of the Juvenile Public Prosecutor and/or the guardianship authority. If this decision requires extensive investigation of financial status of persons specified in paragraph 2 of this Article, the Court shall first pronounce a decision on criminal sanction, and shall subsequently continue proceedings on determination on the amount of contribution, and shall issue a separate decision accordingly.

Article 95

At the application of a persons specified in Article 94, paragraph 2 hereof, and/or the application of the guardianship authority, foster family, detention facility or institution where the criminal sanction is enforced, the juvenile Court bench of the Court adjudicating in the first instance may by separate decision vary the order on contribution towards the cost of accommodation and meals of the juvenile in a detention facility or institution, and/or costs arising from enforcement of diversion measures, increased supervision in a foster family or increased supervision with daily attendance in a relevant juvenile rehabilitation and educational institution.

The liability of persons specified in Article 94, paragraph 2 hereof to compensate for expenses of enforcement of criminal sanctions shall last, in respect of such persons, for the duration of their obligation under law to support the juvenile, and in respect of the juvenile – as long as he is able to bear the costs of enforcement of the criminal sanction.

Article 96
When during enforcement of criminal sanction the Juvenile judge determines that facts and circumstances exist indicating the need to undertake measures for protection of the rights of the juvenile, he shall so inform the competent guardianship authority where the juvenile has permanent or temporary residence.

Article 97

A juvenile who considers to be deprived of certain rights or that these rights are violated, and that other unlawful actions or irregularities have been committed during enforcement of institutional educational measure or juvenile prison sentence, is entitled to file a complaint with the superintendent of the detention facility or institution where such criminal sanction is enforced.

In respect of the complaint the superintendent of the detention facility or institution where the educational measure or juvenile prison sentence is enforced shall, within three days, issue a written decision rejecting the complaint as groundless or finding it fully or partially justified in which case exigent relevant measures shall be undertaken to rectify the committed violations or depriving the juvenile of his rights, and/or other unlawful actions or irregularities. The decision shall contain the instruction on legal remedy.

The juvenile may appeal the superintendent’s decision within eight days with the juvenile Court bench of the first instance Court exercising supervision over enforcement of the educational measure and/or the juvenile Court bench of the adjudicating first instance Court which pronounced the juvenile prison sentence.

3. ENFORCEMENT OF EDUCATIONAL MEASURES


Article 98

An educational measure is enforced after a decision ordering that such measure becomes final, unless otherwise provided under this Act.

The guardianship authority shall have competence to enforce educational measures, unless otherwise provided under this Act.

Article 99

Supervision over enforcement and inspection of enforcement of educational measure is exercised by the Juvenile judge of the Court adjudicating in the first instance.

The first instance Court is required to, pursuant to Court Rules of Procedure, maintain a Record of Control of enforcement of educational measures and keep documents of monitoring and control of their enforcement in accordance with the Rules passed by the Minister of Justice.

Article 100

The Juvenile judge and Juvenile Public Prosecutor shall at least once a year undertake direct supervision and inspection of enforcement of educational measures.

Reports on the course and results of enforcement of these educational measures shall be obtained and delivered in terms of Article 84, paragraph 2 and 3 hereof.

2. Enforcement of Alternative Sanctioning Measures
**Article 101**

The Juvenile judge of the Court adjudicating in the first instance shall supervise enforcement of alternative sanctioning measures specified in Article 14, paragraph 2 hereof.

Upon request of the Juvenile judge specified under paragraph 1 of this Article, competent guardianship authority is required to submit a report on the course and results of enforcement of the ordered alternative sanctioning measure.

The Juvenile judge may delegate drafting of the report referred to in paragraph 2 of this Article to a qualified associate (Article 64, paragraph 2 hereof).

Enforcement of alternative sanctioning measure specified in Article 14 hereof shall be governed by separate by-law.

**3. Enforcement of Increased Supervision Measures**

**Increased Supervision by Parents, Adoptive Parent or Guardian**

**Article 102**

Enforcement of an educational measure of increased supervision by parents, adoptive parent or guardian shall commence as of the day the Court decision ordering the educational measure is delivered to the juvenile's parents, adoptive parent or guardian.

**Article 103**

A juvenile’s parent, adoptive parent or guardian are obliged to discharge the orders and instructions of the Juvenile judge of the Court adjudicating in the first instance and to enable the competent guardianship authority to inspect enforcement of the educational measure and accept the offered assistance aimed at its enforcement.

The Juvenile judge adjudicating in the first instance of this Article shall adjudicate in any dispute arising between the juvenile’s parents, adoptive parent or guardian and the guardianship authority.

**Article 104**

A juvenile’s parent, adoptive parent or guardian and/or the guardianship authority shall notify the Court adjudicating in the first instance on the course and results of enforcement of educational measure within deadlines specified in Article 84, paragraph 2 hereof.

The guardianship authority shall promptly notify the Court of the reasons impeding enforcement of the measure.

**Increased Supervision in a Foster Family**

**Article 105**

The educational measure of increased supervision in a foster family is enforced in a family determined by the Court adjudicating in the first instance, and at the recommendation of the guardianship authority to exercise increased supervision over the juvenile.

On receiving the final Court order, previously delivered to the juvenile, the competent guardianship authority directs the juvenile to a family determined by the Court order.

**Article 106**

The competent guardianship authority and the foster family hosting the juvenile, conclude a contract in writing setting out their mutual rights and obligations.
The foster family shall enable the competent guardianship authority to inspect enforcement of the educational measure and shall accept offered assistance aimed at realising the purpose of the educational measure.

For the duration of this educational measure the juvenile shall keep in touch with his family unless the Court supervising and controlling enforcement of the educational measure does not decide otherwise at the recommendation of the guardianship authority.

**Article 107**

The Court adjudicating in the first instance proceedings in which the educational measure of increased supervision in a foster family was ordered may *ex officio*, or at the recommendation of the Juvenile Public Prosecutor or the guardianship authority, order removal of the juvenile to another foster family if the circumstances in the initial foster family alter to a degree impeding enforcement of the educational measure.

**Article 108**

Provisions of this Act governing enforcement of increased supervision by parents, adoptive parent or guardian shall accordingly apply to enforcement of the educational measure of increased supervision by a foster family.

**Increased Supervision by Guardianship Authority**

**Article 109**

Enforcement of the educational measure of increased supervision by a guardianship authority shall be under the competence of the guardianship authority of the juvenile’s permanent or temporary residence at the time the decision ordering the educational measures became final.

The guardianship authority shall upon receiving the final decision ordering the educational measure appoint an official of the guardianship authority or other professional to enforce the measure and shall so promptly notify the Juvenile judge of the first instance Court.

**Article 110**

A professional entrusted with enforcement of the educational measure shall draw up a programme of work with the juvenile in accordance with instructions of the Court and the competent guardianship authority.

Government authorities, rehabilitation, educational and other institutions are obliged to extend assistance to the professional enforcing this educational measure, and the parent, adoptive parent or guardian shall inform the professional of circumstances that hinder enforcement of the measure.

In all other aspects of enforcement of the educational measure of increased supervision by a guardianship authority, provisions governing enforcement of educational measure of increased supervision by parents, adoptive parent or guardian shall accordingly apply.

**Increased Supervision with Daily Attendance in Relevant Juvenile Rehabilitation and Educational Institution**

**Article 111**

The guardianship authority of competent jurisdiction pursuant to the juvenile’s permanent or temporary residence at the time the decision ordering the measure of increased supervision with daily attendance in relevant juvenile rehabilitation and education institution became final, shall have competence for enforcement of this educational measure.
The guardianship authority shall determine the institution specified in paragraph 1 of this Article and shall be responsible for enforcement of daily attendance of the juvenile in that institution.

Article II2

Daily attendance may not exceed four hours during a working day over a period determined under Article 18, paragraph 2 hereof.

The juvenile shall remain with his parent, adoptive parent or guardian during enforcement of this measure and shall continue to attend school or go to work.

A Work Record shall be kept on daily attendance. A report on the course and results of daily attendance of a juvenile shall be submitted to the Juvenile judge adjudicating in the first instance Court, Juvenile Public Prosecutor, and the guardianship authority by the institution where the daily attendance of the juvenile is enforced, upon its termination and, when necessary, during enforcement of the measure.

Provisions of this Act governing enforcement of the educational measure of increased supervision by parents, adoptive parent or guardian shall accordingly apply to enforcement of the educational measure of increased supervision with daily attendance in relevant juvenile rehabilitation and educational institution.

4. Enforcement of Institutional Educational Measures

Joint Provisions

Article II3

Institutional educational measures are enforced in an educational institution, correctional facility and special juvenile institutions for the treatment and acquiring of social skills.

Article II4

If the Court adjudicating in the first instance does not have jurisdiction for enforcement of an institutional educational measure, it shall deliver the final decision together with the Birth certificate, document or proof of schooling or vocational training to date, medical report, record of previous criminal offences, conducted proceedings and reports of the guardianship authority, to the enforcement authority within three days from the day the decision became final.

The authority receiving the decision for enforcement shall commence with enforcement of the criminal sanction within three days from the day of receiving the decision and documents specified in paragraph 1 of this Article.

Article II5

The Juvenile judge of the Court adjudicating in the first instance and the competent Juvenile Public Prosecutor shall at least twice a year visit the juvenile remanded in a facility for enforcement of institutional educational measures where, in direct contact with the juvenile and the professionals engaged in enforcement of the educational measure and through inspection of relevant documents, they shall determine the lawfulness and correctness of treatment and evaluate the achievement in educational and proper growth of the juvenile’s personality.

The persons referred under paragraph 1 of this Article shall promptly notify the bodies and institutions in charge of supervision of enforcement of educational measures, and the facility and/or institution where the educational measure is enforced, of any noticed irregularities and other observations.

Following notification of the Juvenile judge and/or the Juvenile Public Prosecutor the bodies and institutions in charge of professional supervision as well as the management of the institution or facility where the educational measure is served, shall promptly institute relevant investigations and undertake measures to rectify the unlawfulness and irregularities and shall accordingly inform the Juvenile judge, and the Juvenile Public Prosecutor specified under paragraph 1 of this Article.
Article II6

At the application of the juvenile, his parent, adoptive parent or guardian or at the recommendation of the competent guardianship authority, enforcement of institutional educational measure may be postponed on justifiable grounds.

The juvenile Court bench of the Court adjudicating in the first instance shall decide on postponement within three days of receiving the application.

The first instance decision may be appealed with a higher Court within three days of receiving the decision, by the juvenile, his parents, adoptive parent or guardian.

The juvenile Court bench of the higher Court shall decide on the appeal within three days of receiving the appeal.

The application and recommendation specified in paragraph 1 and the appeal specified in paragraph 3 of this Article shall stay enforcement of the institutional measure.

If it is the determination of the first instance Court in repeated rejection of the application to postpone enforcement that the right to application is being abused, it shall rule that the appeal shall not stay enforcement of institutional measure.

Article II7

At the application of the juvenile, his parent, adoptive parent or guardian, at the recommendation of the competent guardianship authority or superintendent of the facility or institution where the educational measure is enforced, the Court adjudicating in the first instance may on justifiable grounds suspend enforcement of the educational measure.

Suspension of enforcement of an institutional measure shall be allowed pursuant to application of the Juvenile Public Prosecutor if a motion for protection of legality has been filed against the decision ordering such measure.

Persons specified under paragraph 1 of this Article may appeal against the decision of the first instance Court to the juvenile bench of the higher Court within three days following the receipt of the decision. Decision on the appeal shall be brought within three days after its receipt.

Suspension of enforcement of an institutional educational measure may not exceed three months except in case of illness of the juvenile when it may last longer.

Time of enforcement suspension shall not be calculated in the duration of the measure.

Article II8

In all other respects, provisions of the Law on enforcement of penal sanctions governing postponement of enforcement and suspension of enforcement of prison sentence for criminal offences committed shall accordingly apply to the postponement and suspension of institutional measure.

Article II9

A juvenile is discharged from serving an educational measure after expiry of the longest statutory duration of the measure or when the Court orders the revocation of its enforcement, substitution of the ordered educational measure by another or release on probation.

The juvenile Court bench of the Court adjudicating in the first sentence shall decide, at the application of the juvenile on release on probation in respect of educational measures of remand to an educational institution or correctional facility.

When a juvenile is in the finishing grade of school or at the end of his vocational training and discharge from the facility or institution where the measure is enforced would prevent completion of schooling or vocational training, the facility or institution may at the application of the juvenile enable him to complete schooling or vocational training. In such cases provisions of Article 120, paragraph 4 and Article 124, paragraph 4 hereof shall not apply to the juvenile.

Remand to Educational Institution
**Article 120**

The institutional measure of remand to an educational institution is enforced in an institution providing accommodation and rehabilitation, health, educational, sports and other development needs of a juvenile.

A juvenile to whom this educational measure is ordered shall have the same rights and duties as other juveniles in the educational institution, but shall be afforded particular attention in treatment in a manner that would not separate him from the others in daily activities of the institution.

Only the superintendent, rehabilitation, education and other professional involved in enforcement of the educational measure shall be informed that the juvenile is under an educational measure.

A person remanded to an educational institution may stay there until attaining twenty-one years of age.

**Article 121**

The guardianship authority of competent jurisdiction pursuant to permanent or temporary residence of the juvenile at the time the order on an educational measure became final shall appoint the person required to bring the juvenile to the educational institution.

The educational institution notifies the Court on admission of the juvenile and of the day when educational measure enforcement started.

**Article 122**

If enforcement of the educational measure cannot commence or continue due to the juvenile’s refusal or escape, the guardianship authority and/or superintendent of the educational facility shall accordingly inform the relevant law enforcement officer that shall escort the juvenile to the rehabilitation institution.

The manner of escorting may not violate the juvenile’s dignity.

**Article 123**

On justifiable grounds at the application of a juvenile, the juvenile’s parents, adoptive parent or guardian or at the recommendation of the institution where the educational measure is being enforced and/or recommendation of the competent guardianship authority, the Court may order transfer of the juvenile to another educational institution.

**Remand to a Correctional Facility**

**Article 124**

The educational measure of remand to a correctional facility is enforced in the correctional facility.

The educational measure of remand to a correctional facility ordered to a female person is enforced in the women’s ward of the correctional facility.

A person of legal age to whom the educational measure specified in paragraph 1 of this Article is ordered and the juvenile who attains legal age in the correctional facility during enforcement of this measure shall be accommodated in a separate ward of the correctional facility.

A person to whom remand to a correctional facility has been ordered may remain there until attaining twenty three years of age.

**Article 125**

The Court adjudicating in the first instance shall have powers to remand the juvenile to a correctional facility. A juvenile shall be given a minimum of eight and a maximum of fifteen days to prepare.
A detained juvenile is remanded to a correctional facility by the Court specified in paragraph 1 of this Article on whose territory is the seat of the institution where the juvenile is detained.

The Court remanding a juvenile for enforcement of the educational measure delivers to the correctional facility the final decision of the ordered measure with documents specified in Article 114, paragraph 1 hereof.

**Article 126**

The Court adjudicating in the first instance shall instruct in writing a juvenile who is not detained to appear for enforcement of the ordered educational measure or shall instruct the juvenile’s parent, adoptive parent or guardian to bring the juvenile in on a particular date to the correctional facility.

The Court referred to in paragraph 1 of this Article notifies the correctional facility of the date when the juvenile has to report and delivers with this notice the final decision ordering the educational measure with information on the juvenile collected during the proceedings specified in Article 114, paragraph 1 hereof.

If the juvenile fails to comply with the instruction of the Court to report to the correctional facility, the Court orders that he be escorted, and if the juvenile is in hiding or has escaped, the Court orders the issuing of an all-points bulletin.

In case of the juvenile’s escape from a correctional facility the superintendent of the facility orders the issuing of an all-points bulletin.

**Article 127**

On admission of a juvenile to a correctional facility first his identity is determined, followed by a medical examination and examination of personal characteristics in a special ward of the correctional facility to determine the programme of treatment. This examination may not exceed thirty days.

A qualified team of the correctional facility shall draw up an individualised programme of treatment of the juvenile.

Following the examinations specified in paragraph 1 of this Article the juvenile is assigned to an educational group formed according to age, apparent maturity and other personal characteristics of the juvenile, the set programme of treatment, and aimed at applying the same type of educational procedures and impact. The educational group shall have not more than ten juveniles and a separate instructor.

**Article 128**

A juvenile under enforcement of an educational measure of remand to a correctional facility has the following rights:

- To be provided with underwear, civilian clothing and footwear appropriate to the time of the year and local climate conditions provided by the correctional facility;
- Nutrition that is balanced, hygienically and medically suited to his age, and that shall keep him in good health and strength and enable normal mental and physical development;
- Minimum three meals a day with total calorie value of minimum 14,600 joules;
- Minimum three hours per day recreation during his leisure time, in fresh air and outside closed premises;
- To participate in organised cultural, sports and other appropriate activities outside the correctional facility;
- To prerequisites facilitating physical training and sports;
- To attend classes outside the correctional facility if the correctional facility has not organised education of particular type or degree and if so justified by achievement in the juvenile’s rehabilitation and education to date, if this would not be detrimental to enforcement of the educational measure;
- Unlimited number of parcels whose weight and content are set out in the act on house rules;
- Weekly visit by parent, adoptive parent, guardian, spouse, the common-law partner, adoptee, children and other lineal relatives and relatives in lateral line to fourth degree of sanguinity;
- To spend up to three hours in private with a spouse or common-law partner once a month, in a separate room specially designated for that purpose within the correctional institution;
To have visits twice a month by other persons who do not interfere with enforcement of the educational measure, where the superintendent of the facility may ban visits of these persons;
To work in the correctional facility, according to his abilities and without interfering with his obligation to attend classes. A juvenile not attending classes shall have working hours pursuant to general regulations. A juvenile may be engaged outside of working hours for a maximum of two hours per day in cleaning and other daily chores in the correctional facility;
To be compensated for work and have rewards for special achievements in work, whose minimum and maximum amounts shall be determined by the Head of the Institutional Sanctioning Directorate of the Ministry of Justice, and the right to dispose freely with half of the remuneration and rewards, while the remainder is deposited to a savings account and the superintendent may, exceptionally, grant the juvenile right to dispose with the whole remuneration;
To daily and weekly leisure time pursuant to general regulations;
To annual leave between eighteen and thirty days to be used outside or inside the correctional facility, where the duration thereof, manner of and place of use of leave is determined by the superintendent at the recommendation of the instructor;
To health care outside of the correctional facility if the facility cannot provide adequate medical treatment. Time spent for treatment in a relevant medical institution is calculated as time spent for the educational measure.

**Article 129**

The superintendent of the correctional facility may grant the following benefits to a juvenile of good behaviour and dedicated to work:
- Extended visiting privileges;
- Liberty in visiting the town;
- Visits to sports, cultural and other suitable events outside the correctional facility;
- Visits to family, relatives or other close persons on weekends and holidays;
- Leave from the correctional facility up to fifteen days.

Extended visiting privileges include more frequent visits of persons specified in Article 128, item 11 hereof.

The superintendent may grant other benefits to the juvenile that favourably impact on the enforcement of an educational measure.

**Article 130**

The following disciplinary measures may be ordered to a juvenile for violation of provisions of the Act relating to rules of behaviour in the correctional facility, house rules and work discipline, duties in respect of the programme of treatment and orders of authorised persons:

1. Admonition;
2. Withdrawing of granted privileges;
3. Removal to separate premises;

Disciplinary measure of withdrawal of granted privileges and removal to separate premises may be ordered cumulatively.

A juvenile to whom a disciplinary measure of removal to separate premises is ordered may not use privileges specified in Article 129 hereof for fifteen days following termination of the disciplinary measure.

The disciplinary measure of removal to separate premises may not exceed seven days and in joinder of disciplinary offences, the disciplinary measure of removal to separate premises may not exceed fifteen days.

If the purpose of a disciplinary measure may be achieved without enforcement of the measure, the enforcement of disciplinary measure of removal to separate premises and withdrawal of granted privileges may be deferred on probation up to three months. Probation of enforcement of disciplinary measure may be revoked if during the period of probation in respect of enforcement a new withdrawal of privileges is ordered to a juvenile or removal to separate premises. Removal to separate premises is
ordered for a maximum of ten days if withdrawal of privileges is imposed for the latter infringement, and when removal to separate premises is ordered for the subsequent infringement - such removal to separate premises may not exceed fifteen days.

The disciplinary measure of removal to separate premises is a measure comprising continuous stay of two or more juveniles in a separate room.

During enforcement of the separation measure the juvenile shall have right to spend a minimum of two hours outside the closed premises, in fresh air.

During enforcement of the measure of removal to separate premises the juvenile shall be visited on a daily basis by a doctor and instructor and at least every three days by the superintendent of the facility.

During enforcement of the measure of removal to separate premises a juvenile shall have access to textbooks and other literature that has no harmful effect on his education.

Article 131

The provisions of the Law on enforcement of penal sanctions governing disciplinary punishment of persons serving a prison sentence for a criminal offence shall accordingly apply to conditions for ordering disciplinary measures, disciplinary proceedings and enforcement of disciplinary measures against juveniles.

Article 132

Force and means of restraint may be applied to a juvenile in a correctional facility only exceptionally and only when necessary to prevent physical attack on an official, other juvenile or self-infliction of injury.

Firearms may be exceptionally used against a juvenile only if by other means of force or restraint the life of a juvenile or other person cannot be protected in the event of a direct attack.

Article 133

Specific provisions on enforcement of the educational measure of remand to a correctional facility are contained in separate House Rules.

Remand to Special Institution for Medical Treatment and Acquiring Social Skills

Article 134

A juvenile with mental and physical handicap or mental disorder to whom the measure of remand to a special institution for treatment and acquiring of social skills is ordered shall be remanded to a relevant institution where he shall be entitled to the same rights as other juveniles remanded to that institution.

A juvenile to whom the order of remand to a special institution for treatment and acquiring social skills is pronounced instead of the security measure of mandatory psychiatric treatment and confinement in a medical institution is remanded to a special institution for treatment and acquiring of social skills for juveniles if safeguarding and treatment may be provided in such institution and thus achieve the purpose of that security measure.

Article 135
Remand of the juvenile to a special institution for treatment and acquiring of social skills is done by the guardianship authority of the juvenile's permanent or temporary residence at the time when the decision ordering the educational measure became final.

The guardianship authority specified in paragraph 1 of this Article shall promptly notify the Court of jurisdiction for enforcement of this educational measure, and the law enforcement authority when the enforcement of the measure cannot commence due to refusal or escape of the juvenile.

The juvenile is brought under escort of medical staff.

The manner of bringing and escorting may not violate the dignity of the juvenile.

Article 136

The special institution for treatment and acquiring of social skills of juveniles furnishes reports in terms of Article 84, paragraph 3 hereof on the results of enforcement of the measure, and when the juvenile attains majority it shall particularly notify the competent first instance Juvenile judge and the Juvenile Public Prosecutor in respect of the health of the juvenile.

4. ENFORCEMENT OF JUVENILE PRISON SENTENCE

Article 137

A juvenile prison sentence is enforced in a juvenile correctional facility.

The convicted persons serve the juvenile prison sentence, together, as a rule, and shall be separated only if so required by reason of health of the convicted person or the need to ensure security and maintaining of order and discipline in the correctional facility.

A juvenile prison sentence ordered to female persons is enforced in separate women’s ward of the correctional facility.

Juveniles are remanded to serve a juvenile prison sentence in accordance with the deployment act of the Ministry of Justice.

Adult persons sentenced to juvenile prison are accommodated in a special ward of the facility, as well as juveniles who attain majority while serving a juvenile prison sentence.

Article 138

While serving the sentence convicted juveniles are provided with: education, professional and vocational qualification for a vocation according to their abilities, predilection and education and work to date, in accordance with the facilities available in the correctional institution. Treatment of convicted juveniles is based on participation in educational and useful work engagements with corresponding remuneration, fostering and encouraging links between the juvenile and society outside the facility by letters, telephone conversation, receiving visits, leave etc, as well as participation in sports, cultural, arts, entertainment activities and providing the possibility to practise religious needs.

Qualified persons implementing treatment programmes of juveniles shall possess special skills in pedagogy, psychiatry and penology.

Article 139

Persons sentenced to juvenile prison may remain in a juvenile correctional facility until they attain twenty-three years and if at such time they have not served their sentence they shall be transferred to correctional facilities where adults serve sentences for criminal offences.

Exceptionally, a person sentenced to juvenile prison may remain in a juvenile correctional facility after attaining twenty-three years if so required to complete schooling or vocational or professional education, or if the remaining part of the sentence does not exceed six months, but in no case after attaining twenty five years of age.

Article 140
A convicted person serving a juvenile prison sentence is entitled to protection of the Court in respect of measures and decisions of the superintendent of the correctional facility where he is serving the sentence.

The application of the persons convicted to juvenile prison sentence for protection of the Court in respect of measures and decisions specified above, shall be decided by the juvenile Court bench of the Court adjudicating in the first instance.

Article 141

Working hours of the person convicted to juvenile prison sentence are determined so as to enable education and vocational training, leaving sufficient time for physical training, cultural-arts activities, religious needs and leisure.

Article 142

The superintendent of the facility where the juvenile prison sentence is enforced may grant, in addition to privileges specified in Article 128 hereof, to a person of exemplary conduct and dedication in studying and work, leave to visit parents, adoptive parent, guardian, spouse, common-law partner, children, adoptee, siblings or other close persons.

Leave referred to in paragraph 1 of this Article may be granted twice a year and may last up to fourteen days each, and shall be granted, as a rule, during the period when no classes are conducted.

A person convicted to a juvenile prison sentence may not be restricted in correspondence with parents, adoptive parent, guardian, spouse, common-law partner, children, adoptee, siblings.

Article 143

A person serving a juvenile prison sentence shall be allowed to spend a minimum of three hours daily, during time of leisure, outside of closed premises, in the open.

Article 144

The juvenile Court bench adjudicating in the first instance shall decide on release on probation of a person convicted to juvenile prison.

The juvenile Court bench decides on probation on the basis of the application of the juvenile.

Prior to taking a decision, the president of the juvenile Court bench shall, when appropriate, question the juvenile, his parents, officials of the guardianship authority and other persons and obtain the opinion of the correctional facility in respect of justifiability of release on probation. Questioning of the juvenile is mandatory if probation is considered after two-thirds of sentence served, unless the juvenile Court bench, on the basis of available documents, assesses that conditions for release on probation have been met.

Revocation of probation, when conditions for doing so have been met, shall be decided by the Court issuing the decision on release on probation, after hearing the Juvenile Public Prosecutor and the juvenile.

Article 145

Provisions of this Act governing remand and admittance of the juvenile, deferment and suspension of enforcement, allocation to educational groups, nourishment, right to visits, physical exercise, regular education and disciplinary punishment of juveniles in a correctional facility shall accordingly apply to enforcement of a juvenile prison sentence.

In all other respects the provisions of the Law on execution of penal sanctions governing enforcement of prison sanctions for criminal offences shall accordingly apply to execution of juvenile prison sentence.
5. **SPECIAL PROVISIONS ON ENFORCEMENT OF SECURITY MEASURES**

   **Article 146**

   The security measure of mandatory psychiatric treatment and care in a health institution when conditions of Article 23, paragraph 2 hereof are not met is enforced in a separate juvenile ward of the health institution.

   Enforcement of the security measure of mandatory psychiatric treatment and remand in a health institution, mandatory treatment of alcoholics and mandatory treatment of drug addicts is adjusted to the age and character of the juvenile.

   **ASSISTANCE AFTER ENFORCEMENT OF INSTITUTIONAL MEASURES AND JUVENILE PRISON SENTENCE**

   **Article 147**

   For the duration of the institutional measure and juvenile prison sentence the competent guardianship authority shall maintain constant contact with the juvenile, his family and institution in which the juvenile is remanded, in order to better prepare the juvenile and his family for his return to the former social environment and inclusion in social activities.

   An institution or facility in which the juvenile is serving his juvenile prison sentence are required to notify at least three months in advance of the scheduled leave of the juvenile, his parents, adoptive parent, guardian, and/or close relatives with whom the juvenile used to live, as well as the competent guardianship authority, and suggest measures for accepting the juvenile on his return.

   **Article 148**

   A parent, adoptive parent or guardian, and/or close relative with whom the juvenile used to live before serving his institutional measure or juvenile prison sentence, is required to notify the competent guardianship authority about the juvenile's return to his family.

   Competent guardianship authority is required to provide necessary assistance to the juvenile, after he has served criminal sanction under paragraph 1 of this Article.

   **Article 149**

   The competent guardianship authority shall on release of the juvenile from serving of his institutional measure or juvenile prison sentence take special care of a juvenile without parents and of a juvenile whose family and material circumstances are in disorder.

   This care shall particularly include accommodation, nourishment, provision of clothing, medical treatment, assistance in settling family circumstance, finalising vocational training and employment of the juvenile.

   **Part Three**

   **SPECIAL PROVISIONS ON PROTECTION OF MINORS AS VICTIMS IN CRIMINAL PROCEEDINGS**

   **Article 150**
A bench, presided by a judge with special skills in the field of the rights of the child, and criminal protection of juveniles, shall try adult offenders for the following criminal offences committed against minors, set forth by the Criminal Code:

- Murder (Article 114)
- Inducement to suicide and assistance in suicide (Article 119)
- Grievous bodily harm (Article 121)
- Abduction (Article 134)
- Rape (Article 178)
- Sexual assault of a defenceless person (Article 179)
- Sexual assault of a child (Article 180)
- Sexual assault by misconduct in office (Article 181)
- Indecent assault (Article 182)
- Procuration and facilitating sexual intercourse (Article 183)
- Mediation in prostitution (Article 184)
- Display of pornographic material and pornographic abuse of children (Article 185)
- Common-law marriage with a juvenile (Article 190)
- Capture of a minor (Article 191)
- Altering family status (Article 192)
- Neglect and abuse of a minor (Article 193)
- Family violence (Article 194)
- Withholding financial support (Article 195)
- Incest (Article 197)
- Burglary (Article 205)
- Robbery (Article 206)
- Extortion (Article 214)
- Facilitation of the use of narcotics (Article 247)
- War crime against civilians (Article 372)
- Slave trade (Article 388)
- Child trafficking for adoption (Article 389)
- Slavery and transport in slavery (Article 389)

The state prosecutor with special skills in the field of the rights of the child and in criminal protection of minors, shall initiate proceedings against adult perpetrators of other criminal offences stipulated by the Criminal Code, in compliance with the provisions of this section of the Act, if in his opinion it is necessary to do so for the purpose of protecting the personality of minors as victims in criminal proceedings.

**Article 151**

Criminal proceedings against perpetrators of criminal offences specified in Article 150 hereof are conducted in accordance with provisions of the Criminal Procedure Code.

An investigation is conducted by an investigative judge with special skills in the field of the rights of the child, and criminal protection of minors.

Specialised members of the police authorities with special skills in the field of the rights of the child and criminal protection of minors shall participate in the investigation of criminal offences prejudicial to minors, when particular activities are delegated to these authorities.

**Article 152**

When conducting proceedings for criminal offences committed against juveniles, the state prosecutor, investigative judge and judges of the bench shall treat the victim with care, having regard to his age, character, education and living circumstances, particularly endeavouring to avoid all possible prejudicial consequences of the proceedings on his character and development. Questioning of a child or juvenile shall be conducted with the assistance of psychologist, pedagogue or other qualified person.
If a juvenile is questioned as a witness who is victim of a criminal offence specified in Article 150 hereof, the questioning may be conducted at most twice, and exceptionally more if necessary to achieve the purpose of criminal proceedings. If the juvenile is questioned more than twice, the judge shall particularly have regard for the protection of personality and development of the juvenile.

If, due to the nature of the criminal offence and the juvenile’s character the judge considers it necessary, he shall order questioning of the juvenile with the aid of technical devices for transmitting of image and sound, and the questioning shall be conducted without presence of the parties and other participants in the proceedings in the room where the witness is located, so that parties and persons entitled to ask question may do so through the judge, psychologist, pedagogue, social worker or other qualified person.

Juveniles may be questioned as witness-victims in their apartment or other premises and/or authorised institution – organisation that is professionally qualified for questioning of minors. In questioning of the witness-victim, the authorities referred to in paragraph 1 of this Article may order application of measures under paragraph 3 of this Article.

When a juvenile has been questioned in cases specified in paragraphs 2, 3 and 4 of this Article, the record of his testimony shall always be read at the main hearing or a recording of the questioning heard.

**Article 153**

If a juvenile is questioned as a witness, who due to the nature of the criminal offence, consequences or other circumstances is particularly vulnerable or is in a particularly difficult mental state, confrontation between him and the defendant is prohibited.

**Article 154**

A juvenile who is a victim shall have a legal representative from the first questioning of the defendant.

If the juvenile does not have a legal representative, he shall be appointed by the President of the Court from the ranks of attorneys with special skills in the field of the rights of the child and criminal and legal protection of juveniles. The costs of representation shall be borne by the Court budget.

**Article 155**

If recognition of the defendant is done by a juvenile who is a victim, the Court shall proceed with particular care and shall conduct such recognition in all phases of the proceedings in a manner that completely prevents the defendant from seeing the juvenile.

**Article 156**

The provisions of the Criminal Procedure Code shall accordingly apply to jurisdiction and composition of the Court adjudicating adult perpetrators of criminal offences against juveniles unless in contravention with provisions of this Act.

**Article 157**

Criminal proceedings for offences specified in Article 150 hereof is summary.
**Part Four**

**PENAL PROVISIONS**

**Article 158**

A parent, adoptive parent or guardian or other persons exercising care of a juvenile may be fined up to thirty thousand CSD or punished with up to thirty days imprisonment:

if without justification fails to act in accordance with the order of the Court adjudicating in the first instance or instructions of a professional appointed by the guardianship authority directly in charge of enforcement of an educational measure and exercising supervision over the juvenile and enforcement of the educational measure;

if without justifiable reason fails to act in accordance with the order of a Court or decision of the guardianship authority obligating such person to bring the juvenile on a set date to an institution or facility for enforcement of the institutional educational measure (Articles 120 and 125 hereof);

The superintendent of the facility or institution who without justification fails to admit a juvenile remanded by a competent authority shall be fined up to fifty thousand CSD. The same punishment shall apply also to a superintendent of a facility or institution who releases without the order of the competent Court a juvenile serving an institutional educational measure.

**Part Five**

**TRANSITIONAL AND FINAL PROVISIONS**

**Article 158**

An educational measure of remand to a juvenile disciplinary centre that has become final prior to coming into force of this Act shall be substituted by an educational measure of increased supervision by parents, adoptive parent or guardian with daily attendance in relevant juvenile rehabilitation and education institution.

An educational measure of increased supervision by parents, adoptive parent or guardian, increased supervision in a foster family and increased supervision by guardianship authority that has become final prior to coming into force of this Act may not last longer than stipulated by this Act.

An educational measure of remand to an educational institution, remand to a correctional facility and remand to special institution for treatment of juveniles and acquiring social skills that has become final prior to coming into force of this Act may not last longer than stipulated by this Act.

**Article 160**

A juvenile prison sentence that has become final prior to coming into force of this Act of longer duration than may be ordered pursuant to provision of Article 29 hereof, shall be pronounced in accordance with provisions hereof.

**Article 161**

Provision of Article 38 of this Act on rehabilitation of offenders convicted to juvenile prison shall also apply to persons convicted prior to coming into force of this Act, unless rehabilitation is already in force.

**Article 162**
Criminal proceedings for offences under provisions of Article 150 of this Act, committed against juveniles, instituted prior to coming into force thereof shall continue pursuant to this Act, unless otherwise specified herein.

If prior to coming into force of this Act a decision was passed in cases under the jurisdiction of this Act which provides for a legal remedy pursuant to the Criminal Procedure Code, and such decision has not been delivered to persons entitled to legal remedy or if the legal remedy has been filed but not ruled upon, in respect of legal remedy and procedure pursuant to legal remedy provisions of the Criminal Procedure Code shall apply.

**Article 163**

If a deadline was running in cases under jurisdiction of this Act on the day of its coming into force, such deadline shall be computed pursuant to provisions of this Act, unless the deadline set under current legislation was longer.

**Article 164**

Cases where proceedings against a juvenile have commenced but no first instance decision has been passed shall be taken over by a Court under whose jurisdiction are such cases in accordance with provisions of this Act, within thirty days from the day of commencement of application of this Act.

If due to legal remedy a case is referred for re-trial and adjudication, such case shall be relinquished to a Court of competent jurisdiction under this Act.

**Article 165**

The acquisition of special skills and advanced professional education of persons engaged in the field of the rights of the child, juvenile delinquency and criminal protection of juveniles shall be under the purview of the Judicial Training Centre in co-operation with the relevant ministries of the Republic of Serbia Government, scientific institutions, professional and expert associations and non-governmental organisations. The Centre organises regular professional seminars, skills check-up and other forms of supplementary professional advanced training and permanent education of judges for minors, Juvenile Public Prosecutors, judges and prosecutors acting in criminal matters for criminal offences specified under Article 150 of this Act, police officers, professionals of social welfare agencies, institutions and facilities for execution of institutional sanctions, lawyers and other qualified persons. The Judicial Training Center issues adequate certificates on the tests performed and professional training.

**Article 166**

The ministry of Justice and the Supreme Court of the Republic of Serbia shall establish a Council for monitoring and promoting the work of bodies engaged in criminal proceedings and enforcement of juvenile criminal sanctions involving juveniles, and shall issue Rules on its work not later than six months from the day this Act comes into force.

Members of the Council are appointed from the ranks of distinguished judges, prosecutors, police officers, lawyers, professionals of institutions and facilities for enforcement of institutional sanctions and social welfare agencies, who have over an extended period worked or are working on criminal cases involving juveniles, as well as individuals who are recognised experts in the field of juvenile delinquency and criminal protection of juveniles.

The Council shall submit to the Ministry of Justice and the Supreme Court of the Republic of Serbia initiatives, recommendations, opinions and analysis relating to juvenile delinquency and criminal protection of children and juveniles, their treatment pursuant to provisions of this Act.

**Article 167**

By-law in terms of Article 86 hereof shall be passed by the Minister of Justice in cooperation with the Minister of Labour, Employment and Social Affairs, and the Republic Prosecutor.
By-law in terms of Article 101, paragraph 4 hereof shall be passed by the Minister of Justice in cooperation with the Minister of Labour, Employment and Social Affairs.

By-law in terms of Article 37, paragraph 2 and Article 99, paragraph 2 hereof shall be passed by the Minister of Justice.

By-laws specified under paragraphs 1, 2 and 3 of this Article will be passed within six months from the date this Act comes into force.

Separate Rules and/or house rules, containing specific provisions on enforcement of educational measures of remand to a correctional facility and juvenile prison, shall be issued by the Minister of Justice upon the suggestion of superintendents of juvenile educational institutions and correctional facilities, within six months from the day this Act comes into force.

Article 168

On the day this Act comes into force, provisions of Chapter XXIX (Proceedings with juveniles) of the Criminal Procedure Code become null and void (Official Gazette of SRY No. 70/01 and 68/02, Official Gazette of RS, No. 58/04).

Article 169

This Act shall come into force on January 1st, 2006.
HOUSE RULES OF THE REFORMATORY FOR JUVENILES IN KRUSEVAC
(SECONDARY LEGISLATION)

DRAFT – translated by Council of Europe

Pursuant to Article 167, paragraph 5 of the Juvenile Offenders and Juvenile Justice Act ("Official Gazette of the RS", no. 85/05) the minister of justice passes:

HOUSE RULES
OF THE REFORMATORY FOR JUVENILES
IN KRUSEVAC

I. PRINCIPAL PROVISIONS

Article 1

The House Rules of the Reformatory in Krusevac (hereinafter "the Rules") govern rights and duties, organisation of work, daily activities and manner of treatment of persons of male and female sex (hereinafter "juveniles") under enforcement of the corrective measure of commitment to Reformatory (hereinafter "institution"), unless otherwise provided under separate rules.

In the institution corrective-rehabilitation orders are implemented in respect of the juvenile under enforcement of the corrective measure of commitment to a reformatory, as well as mediation between juveniles.

Article 2

On admittance to the institution the juvenile is informed in appropriate manner with the content of these Rules and shall receive a copy in a language he understands or speaks.

Article 3

Pursuant to the needs of the juvenile the following programs are organised in the institution:

1) juveniles' admission program;
2) corrective program (general treatment program and intensive treatment program);
3) program of collaboration with the juvenile's family and welfare authority;
4) education program;
5) professional orientation and vocational skills program;
6) health program;
7) cultural-entertainment and sports-recreational programs;
8) mediation program;
9) release program.

Other programs are implemented in the institution in accordance with the needs and interest of juveniles and capacities of the institution.

Treatment program realisation is evaluated descriptively, numerically and by category /classification/ and thereby the status of juvenile is determined.

The warden issues Instructions regulating the content, procedure and validation of program realisation.

Article 4
Assignment of juveniles to wards is done by sex and age of juvenile, personal characteristics, program objective and need for its realisation, in accordance with the needs and interests of the juvenile, degree of required security and capacities of the institution.

The institution has five accommodation units - wards wherein the juveniles are accommodated, as follows:

1) admission ward, wherein the program of admission of juvenile is implemented;
2) general ward, wherein the general treatment program is realised;
3) intensive work ward, wherein the intensive treatment program is implemented;
4) release ward, wherein the program of release of juvenile is implemented;
5) female ward wherein, as a rule, all programs related to female juveniles are realised.

The institution has a separate accommodation unit - ward for male inmates under pronouncement of the measure of commitment to a reformatory and persons who reached legal age during enforcement of this measure.

The institution may have also other communities established pursuant to specific need and interests of juveniles.

Article 5

The warden decides on assignment of juveniles to specific programs, accommodation units - wards and education groups, at the recommendation of the professional team for classification and monitoring program realisation.

The professional team for classification and monitoring program realisation for juveniles comprises of one representative each from the admission ward, education service, training and employment service, school, guard service and corrective training officer of the education group - reporting officer.

The warden, at the recommendation of this professional team, defines an individual treatment program for a juvenile.

II. ADMISSION AND ASSIGNMENT OF JUVENILE

Admission of Juvenile

Article 6

A juvenile is admitted to the institution on basis of final and enforceable court decision pronouncing the corrective measure of commitment to a reformatory.

A juvenile may be admitted to the institution before the decision becomes final only when so stipulated by law.

At admission a determination is made whether data on the personality of the juvenile and other documents provided under Article 114, paragraph 1 of the Juvenile Offenders and Juvenile Justice Act (hereinafter "Juveniles Act") are attached with the decision.
Article 7

During working hours a juvenile is admitted by registry officer and after working hours by the duty officer of the guard service.

At admission of juvenile an officer of the guard service, who is of same sex as the juvenile, shall search the person and effects of the juvenile and shall make a record thereof which is placed in the personal file of the juvenile.

Article 8

At admission a juvenile's identity is established relative to the decision on corrective measure, enforcement order, order to bring or all-points bulletin, personal identification documents or other documents, if any.

Exceptionally, identification may be performed also on basis of statement by officials escorting the juvenile and who confirm his identity, and an official note shall be made thereof signed by such persons.

Procedure of Admission of a Juvenile

Article 9

A new arrival is recorded in the register, and the admission department opens a personal file for him. The juvenile is fingerprinted and photographed by a competent officer, observing the juvenile's person and dignity.

A medical doctor examines a juvenile on admission and findings on his medical condition are entered in his medical file.

If a juvenile is admitted after working hours, as well as on Sunday or holiday, he shall be accommodated in a separate room of the admission ward and activities specified in paragraphs 1 and 2 of this Article shall be conducted on the first subsequent work day.

The institution is required to enable the juvenile to notify immediately upon admission, in an appropriate manner, his parents, adoptive parent, guardian or other person under whose care he/she is.

A juvenile is informed of the manner of communication, i.e. correspondence, visits, telephone privileges, receiving parcels, remittances and other mail.

The registry officer notifies the court adjudicating in first instance, parent, adoptive parent or guardian, relevant welfare centre, police directorate and/or police station of previous permanent or temporary residence of juvenile, of the date and time of admission to the institution wherefrom commencement of enforcement of corrective measure is calculated. He shall, concurrently, request data on the personality of the juvenile and documents from relevant organs, if not forwarded.

Temporary confiscation of objects

Article 10

On admission a juvenile's money shall be temporarily confiscated and denomination and serial number of bills noted on record, as well as valuables, objects suitable for self-infliction of injury, assault or escape, mobile phone, as well as other objects that may compromise security in the institution.
A record is made of temporarily confiscated objects a copy of which is placed in the juvenile's personal file, a second copy in the institution's deposit, and the juvenile is issued a receipt for temporarily confiscated objects.

Article 11

Temporarily confiscated objects are stored in the institution and safeguarded from damage. They shall be under care of an authorised official in charge of the juveniles' depository.

Money and valuables are kept in a safe or other secure place.

Items subject to spoiling in the opinion of the medical officer or of suspect origin are confiscated and destroyed on record and the juvenile is issued a receipt thereof.

III. STAY OF JUVENILE IN THE ADMISSION WARD

Article 12

On admittance a juvenile is assigned to the admission ward where he may remain up to thirty days.

The juvenile shall be subjected to measures of hygiene immediately upon admission, such as washing and haircut, after which the juvenile is issued with clothes, footwear, underwear and bed linen.

At the recommendation of the doctor or other medical officer clothes and effects brought by the juvenile shall be disinfected.

A juvenile may retain personal clothing, items for personal hygiene, writing implements, as well as books, family photographs, sports clothes and footwear, food not subject to spoiling, musical instruments and equipment suitable by their characteristics for keeping in the institution, wristwatch and other items important to the juvenile's development, orthopaedic aids and medicines approved by the doctor.

Article 13

During the juvenile's stay in the admission ward the professional team, on basis of received and obtained documents and direct interaction with the juvenile and his parents, adoptive parent or guardian, performs a multifaceted assessment from psychological, pedagogic, social, medical, criminological, security and other relevant aspect.

The admission ward's professional team comprises a psychologist, specialist pedagogue - pedagogue and social worker.

The team involves, as appropriate, also a doctor, vocational teacher, educator, guard service officer and other persons directly involved in realisation of the juvenile's treatment program.

Based on determined results a single report is compiled on the juvenile. This report contains an explanation of juvenile's behaviour to date, recommendation of an individually tailored treatment program and preliminary post-release program.

The admission ward's report is forwarded to the warden, professional team specified in Article 5 hereof and the institution's archive.

The educator of the corrective training group informs the juvenile and his parents, adoptive parent or guardian with the individually tailored treatment program.

Article 14
From the moment of admission to the institution the juvenile shall have at disposal all necessary information on the substance of the program, schedule, time and place where mandatory daily and periodic activities take place, content of current educational, rehabilitation-corrective, occupational and recreational programs, as well as the content of the program of current organised leisure activities.

A juvenile must have access to fundamental legal acts, such as the Constitution of the Republic of Serbia, Convention on the Rights of the Child, European Convention on Protection of Human Rights and Fundamental Freedoms, Juveniles Act, Criminal Code, Criminal Procedure Code, Law on Enforcement of Penal Sanctions, Rules on Disciplinary Offences, Measures and Procedures towards Convicted Persons and other legal acts issued by the Head of Prison Administration (hereinafter "Head of Administration") and the warden of the institution.

IV. RIGHTS AND DUTIES OF A JUVENILE

Article 15

Juveniles enjoy all rights guaranteed by the Constitution, laws and ratified international treaties.

Juveniles temporarily or permanently deprived of parental care as well as juveniles with refugee status and persons with learning disabilities shall enjoy special protection and assistance.

Accommodation of Juvenile

Article 16

Juveniles are entitled to accommodation conforming to health, hygiene and spatial requirements and local climate conditions.

A juvenile has the right and duty to maintain personal hygiene and hygiene of premises wherein he stays and works.

An appropriate number of juveniles shall be designated for maintenance of premises, pursuant to a sequence drawn up by the educator of the corrective training group.

A juvenile is entitled to spend a minimum of three hours a day in the exercise yard.

Clothing and Footwear

Article 17

A juvenile is entitled to free clothing, footwear and underwear, appropriate to climate conditions, as follows:

1. one winter and one summer set of clothes, issued for maximum one-year period;
2. pyjamas and underwear, issued for maximum six-month period;
3. socks, as necessary;
4. one pair of winter and two pairs of summer shoes, issued for maximum one-year period;
5. winter jacket, issued for maximum two-year period;
6. sports equipment, issued for maximum one-year period;
7. work clothes, issued for maximum six-month period;
8. Transport bag or backpack, as necessary.
The warden may, due to exigencies of work or other needs, allow procurement of special work and other equipment, in accordance with regulations in force.

Article 18

Juveniles may, by permission of the warden, wear also their own clothes.
Juveniles are required to be properly dressed at all times and care for and maintain their clothes and footwear.
If a juvenile disposes of or deliberately destroys issued clothes, footwear or underwear, the educator shall take a statement from the juvenile and make a relevant report, while damages are compensated in accordance with regulations in force.

Nutrition and Supply

Article 19

A juvenile is entitled to nutrition suited to his age dietetically, hygienically and medically.
A juvenile is provided with three meals a day with energy value of minimum 14,600 joules.
The quality and energy value of food is checked once a month by a relevant medical institution.
Juveniles receive food according to a menu set for fifteen to thirty days in advance and which is publicly displayed.
Juveniles working seven hours a day and/or five hours on hard labour receive an augmented diet.
Ill juveniles receive a special diet determined by the doctor.

Article 20

At food distribution and during meals the juveniles shall behave properly and maintain cleanliness of the premises. Control of distribution and duration of meal is conducted by the institution's duty officer and, when appropriate, by an appointed juvenile - orderly.
Prior to distribution of food the doctor or other medical officer checks the quality of food. A separate record is kept on conducted quality control of food.
The institution's doctor or other medical officer controls the hygiene of premises and equipment for food preparation and orders necessary measures to rectify noted deficiencies and shall record his remarks in a special ledger, and if necessary requests engagement of a specialised medical institution to rectify the noted deficiencies.
Kitchen staff and juveniles working in the kitchen are subject to medical examination in accordance with general regulations. These persons must be issued with prescribed clothes.

Article 21

The institution has a shop - commissary where juveniles may buy foodstuff and other products for personal needs.
The officer in charge of juvenile issues acquires once a week permissible items needed by juveniles.
Correspondence

Article 22

A juvenile is guaranteed unlimited right to correspondence. No one may open the envelope of a letter unless there is reasonable suspicion that it contains psychoactive substances or other hazardous substances that may compromise implementing of the corrective measure or compromise security in the institution. In such cases the envelope is opened in the presence of the juvenile and educator of the corrective training group, and any controlled or hazardous substances that are found are confiscated. If there are reasonable grounds to suspect that a criminal offence was committed by above actions, an internal affairs organ is notified promptly.

Article 23

Letters are received and sent through the institution. A juvenile bears the cost of sending letters and other mail, and if for justifiable reasons he does not have funds to pay postal services, he may be allowed to send mail at the expense of the institution.

Telephone Calls

Article 24

A juvenile is entitled to daily telephone his parents, adoptive parent or guardian at his expense and during leisure time, depending on the objective capacities of the institution. At the request of a juvenile without sufficient the warden may allow use of telephone at cost of institution, pursuant to material/technical capacities. The warden may allow the juvenile, at his request, also to telephone other persons and receive calls, if in the interest of realisation of the treatment program. Telephone calls are made according to predetermined daily schedule of total duration, as a rule, up to ten minutes.

Article 25

Telephone calls, as a rule, are not monitored. Exceptionally, by decision of the warden, a person he designates may monitor a juvenile’s calls if particular circumstances indicate that such surveillance is evidently necessary in order to prevent preparation or commitment of criminal offence or occurrence of other threat to security of persons and property.

Visits

Article 26

A juvenile is entitled to weekly visit from parents, adoptive parent, guardian, spouse, common law partner, children and other lineal relatives, and in lateral line up to fourth degree of kinship.
Total number of juvenile's visitors referred in paragraph 1 of this Article cannot exceed three in one visit.

A juvenile is entitled to visits twice a month by other persons who do not interfere with implementation of the corrective measure. The opinion of the relevant social/welfare centre may be requested in respect of visits of other persons.

If estimated that some of the persons referred to in paragraph 3 of this Article impact negatively on the juvenile, the warden shall at recommendation of the educator of the corrective training group ban such visits. The warden shall ban such visits also when he assesses that the visit may have detrimental effect on realisation of the purpose of corrective measure - commitment to reformatory.

Persons visiting the juvenile during enforcement of corrective measure are recorded in the juvenile's file of visitors.

**Article 27**

A juvenile may receive visits every day from 13.00 to 14.00 hours and on weekends from 11.00 to 16.00 hours. Duration of visit may be extended by permission of the officer in charge of visits on a particular day.

A visit may be monitored if suspected that the visitor negatively impacts the juvenile. Controlled visits are conducted in the presence of the educator of the corrective training group, guard service officer or other staff member of the institution. The warden or person he authorises decides on controlled visits.

Visits to juveniles take place in separate premises for visitors at the institution's reception.

Visits to juveniles in the admission ward and intensive treatment ward may be organised under supervision of staff member in a separately allocated room.

The warden stipulates in the Instructions on treatment of juveniles specific procedures, manner of realisation and control of visits.

Purpose-oriented visits at invitation of relevant staff, aimed at involvement of family as well as other organised visits to the institution take place at appointed times, pursuant to a separate protocol.

**Article 28**

If a juvenile or his visitor abuses the visit by uncivil or unseemly behaviour, forbidden deeds and actions or otherwise compromises the purpose of the corrective measure, staff on duty shall terminate the visit and notify the warden and submit a written explanation for terminating the visit.

**Article 29**

A juvenile is entitled to once a month, and more frequently by permission of the warden, spend a minimum of three hours alone with spouse or other person with whom the minor is in common law marriage. This visit takes place in a separate room of the institution.

During enforcement of disciplinary measure of isolation to separate room, a juvenile is not entitled to receive such visits.

**Article 30**

Defence counsel may visit a juvenile; i.e. attorney or other person called by the juvenile for granting power of attorney.
Communication with persons referred in paragraph 1 of this Article may only be supervised by observation and not also by listening.

Receiving Parcels

Article 31

A juvenile is entitled to receive unlimited number of parcels through the mail or during visits. Weight of individual parcels may not exceed ten kilograms.

A parcel may not contain cigarettes, soft drinks and food in glass containers, alcohol, psychoactive substances and other substances hazardous to health.

Prohibited items are returned to sender at juvenile's expense, handed back to the visitor or placed in the juvenile's deposit.

Inspection of parcels is conducted by an authorised officer of the guard service in the presence of the educator of the corrective training group, and when necessary of the medical officer.

Foodstuff that has spoiled or whose use would present a health hazard for the juvenile shall be destroyed on record.

If during inspection of a parcel objects are found that may be used for self-infliction of injury, attack or escape, shall be temporarily confiscated and placed into the deposit, and a separate record made thereof.

Receiving Remittances

Article 32

A juvenile may receive unlimited sums of money by remittance. Money brought at reporting to the institution and money received is placed in the juvenile's deposit and the educator of the corrective training group administers its proper spending.

Money brought by the juvenile from leave or received at visits is handed over to the duty supervisor of the guard service who shall promptly place the money in deposit and accordingly notify the educator of the corrective training group.

The maximum amount at disposal of the juvenile during a week or retained by him is determined by the warden.

If a sum exceeding the permissible amount is found on the juvenile, acquired legally, the excess amount shall be appropriated and returned to the juvenile's deposit. If it is determined that the money is acquired illegally, it shall be confiscated and used to improve the juveniles' standard of living in the institution.

The warden, at recommendation of the educator of the corrective training group, may allow payments exceeding the amount at free disposal, for justifiable reasons.

Work of the Juvenile and Labour Rights

Article 33

A juvenile has the right and duty to work in the institution.

The purpose of work is for the juvenile acquire, retain and enhance his working abilities, work ethic and skills and to obtain income.
A juvenile must be safeguarded from economic exploitation and performing of work tasks that could be hazardous to his health, physical, mental, moral and social development, as well as tasks impeding his schooling.

A juvenile's work is organised and performed in the institution, the institution's workshops, economic unit and outside the institution within the local community.

Work time of juveniles attending classes is three to four hours per workday, and for juveniles not involved in classes - up to seven hours. Workdays are five days a week while Sunday is always a day off. Saturday, as a rule, is a non-working day. Exceptionally, Saturday may be a workday; however, a juvenile shall be entitled to use another day off in lieu of Saturday.

Outside working hours juveniles may be engaged at maximum for two hours on cleaning and other daily tasks in the institution.

Article 34

During vocational training a juvenile is required to ear protective clothing and footwear under direct care and control of the instructor.

At vocational training and fabrication juveniles are required to:
1) regularly attend and participate in vocational training and fabrication;
2) receive, properly use and maintain tools, equipment and materials, according to directions of the instructor;
3) perform educational and fabrication tasks aimed at enhanced acquiring of vocational skills for which they are training;
4) properly care for tools, equipment and installations entrusted to them in training and fabrication, and to maintain order in their working environment;
5) respect and co-operate with the instructors.

Compensation for work and other financial entitlements

Article 35

A juvenile is entitled to compensation for work. Monthly amount of compensation may not be less than 20% of the minimum wage in the Republic of Serbia.

Payment of work compensation is effected once a week into the deposit.

Maximum amount of compensation and rewards is determined by the act of the Head of Prison Administration.

Article 36

There are the following forms of financial entitlements in the institution:
1) compensation for work;
2) subsidy for essential expenses;
3) awards for the Day of the institution, Labour Day - 1 May and school patron saint's day - St Sava;
4) financial assistance and providing travel expenses when going off on furlough, use of annual leave outside the institution or at release of juvenile from the institution.

Every juvenile shall receive compensation for work or entitlements for essential expenses.
Juveniles derelict in performing work tasks, as well as juveniles who failed to participate in fabrication without their fault, receive no compensation for work but may be granted entitlements to cover essential expenses.

One half of the money accruing from compensation is at free disposal of the juvenile, while the other half is deposited in savings to be handed over to the juvenile at release from the institution.

The educator together with the juvenile decides the manner of spending of monies at free disposal.

Funds at free disposal of the juvenile are paid out, as a rule, once a week.

Article 37

Entitlements for covering essential expenses is given to juveniles who due to justifiable reasons are not engaged in fabrication in the institution and on other work tasks during set work time.

The educator of the corrective training group makes a list of juveniles eligible for this entitlement.

Unification of recommendations, harmonising of criteria and drawing up of lists for all juveniles is done by the head of corrective training service pursuant to Instructions on valuation of work and commitment of juveniles in realisation of the program, and approved by the warden or person he authorises.

The warden defines the monthly entitlement for covering essential expenses.

Article 38

A juvenile receives special awards for achieved results in work, education, sports and cultural activities, behaviour etc, and requirements for awarding are specified by the Instructions referred in Article 37, paragraph 3 hereof.

Awards to juveniles are given in kind or means complying with corrective criteria, as well as award leave.

A juvenile shall be given, in addition to the award, a letter of commendation.

Awards to juveniles, except in cases specified in Article 36 hereof, are also given on other occasions when deemed appropriate and justified.

Article 39

A juvenile shall be given at release from the institution or when going on leave financial assistance whose amount is determined depending on the juvenile's needs and abilities of the institution.

Financial assistance is given to a juvenile at the recommendation of the educator of the corrective training group, and approved by the warden.

Article 40

A juvenile's rewards and emoluments are determined in proportion of individual contribution to the quality and result of work, utilisation of work time and means of work, as well as invested effort and commitment to becoming proficient in particular vocation.

The warden may for justifiable reasons allow the juvenile to use the whole reward or emolument.
Juvenile's Performance Assessment

Article 41

Juvenile's performance assessment is specified by Instructions referred to in Article 37, paragraph 3 hereof.

The instructor of the juvenile's work group gives performance assessment.

When work is performed under supervision of an expert employed part-time on a special service agreement or other legal basis, who instructs the juvenile and monitors his effort, the assessment on degree of attained qualification, work quality and results is given by such person.

Right to Rest

Article 42

A juvenile is entitled to daily and weekly rest and annual leave pursuant to general regulations and provisions of these Rules.

A juvenile is entitled to weekly rest of minimum duration of 48 hours continuously, except in cases provided in Article 33, paragraph 5 hereof.

A juvenile is entitled to annual holiday of 18 to 30 days.

Length, manner and place of use of annual holiday, in respect of dedication to work, achieved results and behaviour of the juvenile, is decided by the warden at recommendation of the educator of the corrective training group, in accordance with the Instructions referred to in Article 37, paragraph 3 hereof.

Medical protection

Article 43

A juvenile is entitled to free medical protection which, as a rule, is realised in the institution, infirmary or in-patient clinic for treatment of juveniles, except when treatment should be conducted in the Special Prison Hospital or other appropriate medical institution.

A juvenile is entitled to be informed with the findings on his medical condition, and with the contents of his medical file, except in cases provided under general medical regulations.

A juvenile must have access to services of a dentist.

The institution's doctor is obligated to notify the warden and educator of the corrective training group of any serious illness or serious injury sustained by the juvenile.

In emergency, if the institution's doctor is absent, a juvenile is promptly taken by the security service to the emergency service of the Medical Centre in Krusevac.

The juvenile's parents, adoptive parent, guardian, spouse or other person with whom the juvenile is in common law marriage, if any - or other lineal relations of the juvenile or lateral relations to fourth degree of kinship shall be immediately notified of serious deterioration of health and risk to life of juvenile or his referral to the Special Prison Hospital or other appropriate medical institution.

The institution shall notify the juvenile judge of the court adjudicating in first instance, as well as the relevant social welfare service of circumstances specified in paragraphs 5 and 6 of this Article.
Article 44

At the request of juvenile or persons referred to in Article 43, paragraph 6 hereof, the warden may allow a specialist examination of the juvenile which may be attended also by the institution's doctor even when he has not ordered such examination.

Cost of specialist examination is borne by the juvenile, unless the warden decides otherwise.

Article 45

A juvenile is entitled to health protection and medical services in accordance with general medical standards.

A juvenile is entitled to be informed of his medical condition and educated in use of basic knowledge on health and nutrition aiming at overcoming traditional practises harmful to health.

A juvenile is entitled to be involved in health programs, such as: family planning, preservation of reproductive health, advantages of breast-feeding, hygiene, environmental cleanliness, spreading of contagious disease, consequences of risky life-style, accident prevention, extending first aid etc.

A juvenile shall undergo a full medical examination at least once a year.

A juvenile is entitled to free of charge standard orthopaedic and other aids that are necessary according to doctor's opinion for his treatment and recuperation.

Article 46

During medical treatment a juvenile is required to fully adhere to instructions of the doctor and other medical staff.

If a juvenile endangers his health or life of others by refusing food or medical treatment, necessary medical measures shall be applied without his consent as determined by the doctor in accordance with general rules and regulations of medical practise, and notification of persons specified in Article 43, paragraph 6 hereof.

The relevant juvenile judge shall also be notified of circumstances referred to in paragraph 2 of this Article.

Article 47

When a doctor or other medical staff concludes that physical or mental health of a juvenile could be compromised through continued incarceration, rejection of food or for other reasons related to deprivation of freedom, he shall accordingly notify the warden without delay who should undertake necessary measures and promptly forward appropriate notification to the juvenile judge of the court adjudicating in first instance.

On basis of substantiated recommendation submitted in writing to the warden by relevant medical specialist (general practitioner, psychiatrist, clinical psychologist or psychotherapist), a juvenile may be released on medical grounds from work and other duties. The warden takes the decision on the latter.

Article 48
A juvenile shall bathe minimum twice a week, and more frequently when necessary, particularly taking into account hygiene needs of female juveniles.
A juvenile is required to regularly shave and have a haircut, i.e. to keep his/her hair tidy. Shaving and haircut is done in the institution's barber's and hairdresser shop.

Article 49

Smoking is not allowed in dormitories, living rooms, dining room and workshops. Special smoking areas shall be designated within the institution.

Information

Article 50

A juvenile is entitled to use daily press and periodicals. A juvenile shall also inform himself through radio and TV programmes and the public address system of the institution. A juvenile may use books from the library in accordance with the library rules. A juvenile is free to read books, magazines and other printed material he acquires on his own, except the materials which instigate racial, religious, gender and national discrimination or disseminate other socially unacceptable ideas.

Education and Vocational Training

Article 51

The institution includes a school for primary education of adults. Juveniles who failed to complete primary school shall enroll in the appropriate form and attend the classes according to the curriculum for primary education of adults.

The institution provides vocational training to juveniles who completed primary school.

If the institution does not provide particular course or educational level, the warden may allow a juvenile to attend part-time school outside of the institution, if this does not interfere with the enforcement of corrective measure.

In order to provide general education and vocational training to juveniles, the institution organizes lectures, training, courses and other forms of education and training, and above all courses which allow juveniles to acquire knowledge and skills necessary for a profession or vocation which are deficient in the labour market.

Article 52

Juveniles are assigned to educational groups depending on their interests and aspirations, psychophysical characteristics, predilections and the existing possibilities of the institution, and an assessment of employment possibilities after the completion of corrective measure. A juvenile shall be allowed to attend two or more training courses if their number, complexity and requirements do not affect successful completion of general education and vocational training and realisation of individual treatment programme.
Article 53

Vocational training is carried out in the economic units and workshops, the institution’s kitchen and other suitable facilities, according to a prescribed curriculum.

If a juvenile meets the requirements determined by the Instruction referred to under article 27, para 5 hereof, and conditions are met, training may be carried out outside of the institution.

For the purpose of vocational training and work, juveniles are assigned to programme work groups.

Juveniles who are in the opinion of competent instructors qualified for independent work are treated as assistant instructors and their rights, duties, responsibilities and remuneration for work are separately defined pursuant to article 37, para 3 of the present Rules.

The instructor shall write a report on the commitment, behaviour and achievements in vocational training of a juvenile and submit it to the educator of the corrective training group.

Article 54

After the completion of the corrective measure, a juvenile is issued certificates of education and vocational training, which must not indicate that he acquired education or skills during the enforcement of a corrective measure.

Education and skills acquired in a penal-correctional institution comply with the standards prescribed for the national educational system.

Social, Cultural and Sport Activities

Article 55

Social and cultural activities of juveniles are organized through the library and public address system, radio and TV programmes, watching of films and theatre plays and participation in various workshops in and outside the institution.

Means for activities referred to in para 1 of this article are provided by the institution commensurate to its financial capacity.

For the sake of mental and physical development, and especially bearing in mind the age of juveniles, various sport and recreational activities are organized in the institution.

Organised and free social, sport, recreational and cultural activities are suited to the needs of juveniles and the possibilities of the institution.
More specific provisions on the activities referred to in previous paragraph are found in the Instruction referred to under article 37, para 3 of these Rules.

**Special Leave**

**Article 56**

Upon the request of a juvenile, the warden may allow him special leave lasting up to ten days:

1) In case of death of a member of the immediate family;
2) In case of wedding or birth of child;

Upon the proposal of the educator of the corrective training group or upon the request of a juvenile, the warden may allow him special leave lasting up to seven days, in order to:

1) Visit an ill member of the immediate family;
2) Take an exam outside of the institution;
3) Perform important and pressing tasks.

**Basic Duties of Juveniles**

**Article 57**

Juveniles shall abide by law and comply with these Rules and other acts governing the rights and duties of juveniles, which are passed by the Head of Prison Administration and the warden.

A juvenile shall carry out an order of the warden, and instructions and orders of the staff, unless the order or instruction does not concern commission of criminal offence or other clearly unlawful act.

**Article 58**

A juvenile shall observe good order and discipline, be considerate with others and respect their rights and freedoms, and especially the right to work, rest, movement, security, personal calm, health, honour and other fundamental human rights.

A juvenile is not entitled to purchase and sell clothing, shoes and other things in the institution, except with an explicit permission of the educator of the corrective training group.

A juvenile who sustained offence or damage through an act of another juvenile shall refrain from an attempt to demand personal satisfaction. In such case, a juvenile shall take his case to the educator of the corrective training group who shall, when conditions are met, direct the juvenile to mediation for the purpose of settlement with the person who caused an offence or damage.

**Article 59**

Juveniles shall greet the staff and other persons with a polite greeting appropriate to the time of the day.
A juvenile shall introduce himself with by his first name, and as a rule, address the staff with “sir”.

A juvenile shall stand while greeting, except during meals, if he is in the workshop, dormitory or sick-room.

Article 60

When going out of the institution or using a privilege, a juvenile shall be appropriately dressed, have a regular ticket if traveling or money for the travel costs and other documentation which proves his identity and the reason for traveling and leaving the institution.

While traveling from the institution to his destination and also while on award or special leave, a juvenile shall comply with his itinerary, deadlines for his obligations and tasks, time, place and manner of reporting to certain persons, restriction to meet certain persons or visit certain places as well as other set conditions, and in particular the time of his return to the institution.

Protection of Juvenile's Rights

Article 61

Protection of a juvenile who thinks that he has been deprived of certain rights or that his rights have been violated or that other illegalities or irregularities occurred during the enforcement of corrective measure is ensured pursuant to article 97 of the Juvenile Justice Act.

Special Privileges for Juveniles

Article 62

A juvenile who conducts himself properly and is dedicated to work or distinguishes himself by voluntary or humanitarian work, may be granted one or more special privileges, upon the proposal of the educator of the corrective training group and the opinion of the professional team for assignment and monitoring of the realization of the treatment programme, as well as upon the proposal of other juveniles, pursuant to the Instruction referred to under article 37, para 3 of these Rules. The privileges are as follows:

1) extended right to visits, i.e. an increased number of visits and persons who may visit a juvenile and longer visits;
2) extended right to dispose with money;
3) extended right to take part in sport and recreational programmes in the institution and the local community;
4) organized activities outside of the institution;
5) organized visits to sport, cultural, art and other events outside the institution;
6) visits to family, relatives or other close persons for a set number of hours on weekends and holidays;
7) visits to town lasting for a set number of hours;
8) one-day excursions to see cultural, historical or religious monuments;
9) participation in sport events outside the institution escorted with a staff member or on one's own;
10) individual visits to town escorted by a staff member;
11) receiving of visits outside the institution;
12) weekend leave;
13) organized camping, winter or summer holidays;
14) award leave up to ten days;
15) special award leave up to ten or twenty days.

Search of Juveniles, Rooms and Juvenile's Belongings

Article 63

If there is reasonable doubt that a juvenile has on his person or in his room or in personal belongings an amount of money larger than he is entitled to possess, or objects that he is not allowed to keep, or arms, dangerous tools or other things which are a threat for the security of the institution, authorized staff shall search the juvenile, his room or personal belongings.

A juvenile may be searched only by a staff member of the same sex. When searching the rooms, special care shall be taken to keep the order. When inspecting juvenile's personal belongings, it shall be done in a manner avoiding unnecessary damage.

If money or things which are being sought are found, the money and things shall be temporarily confiscated on record and the juvenile is issued an appropriate receipt.

The temporarily confiscated money and objects which the juvenile may possess after the completion of the corrective measure shall be placed in deposit and handed to the juvenile upon the completion of the measure. Objects which are related to the commission of criminal offence or may represent evidence in criminal proceedings shall be handed to police authorities, which is stated in a record.

If the money or objects found are not related to a criminal offence or do not constitute evidence in a criminal proceeding and are not owned by the juvenile, they shall be handed to the owner if known, and if the owner is unknown such things shall be placed in the deposit of the institution. If the owner does not present himself within three months of placing the things in the deposit, the money and objects shall be used for the needs of all juveniles while in the institution.

If the objects found are of general danger and are not appropriate for use within the institution, and they are not related to a criminal offence or evidence in a criminal proceeding, they shall be destroyed and a record shall be made thereof.

Daily Activities

Article 64

Juveniles shall observe the daily schedule of activities such as getting up, meals, rest, work, classes and going to bed, personal hygiene and hygiene of rooms, as well as other daily activities which are more specifically defined in the Instruction referred to under Article 27, para 5 hereof.
V. DISCIPLINARY AND MATERIAL RESPONSIBILITY OF A JUVENILE

Grounds for Disciplinary Punishment

Article 65

A juvenile may be punished with a disciplinary measure specified under article 130 of the Juvenile Justice Act due to serious or minor disciplinary offences provided for in these Rules.

If a disciplinary offence is also a criminal offence, the criminal offence covers the disciplinary offence.

If a disciplinary measure has already been enforced against a juvenile for a disciplinary offence which is also a criminal offence, this shall not prevent instituting of criminal proceedings if general statutory requirements are met.

Disciplinary Offences

Article 66

Disciplinary offences are breaches of:

1) the rules on confinement in a penal-correctional institution for juveniles;
2) the house rules;
3) the rules on rights and duties under an individual treatment programme;
4) the orders of authorized staff.

Article 67

Disciplinary offences are serious and minor disciplinary offences.

Minor disciplinary offences are as follows:
1) endangering and interfering with other person’s work or leisure activities;
2) leaving without permission the area or workshop where a juvenile performs certain programme activities;
3) taking of tools and other material out of the work place;
4) sale and purchase of clothing, shoes, medicines and other things;
5) preparation of meals, drinks or food outside the area designated for such purpose;
6) making a tattoo or piercing to oneself or another person in the institution;
7) threatening or damaging of property;
8) damaging of the institution;
9) unauthorized use and entry in the official premises of the institution;
10) minor abuse of granted privileges;
11) possession of banned things;
12) indecent and rude behaviour which disrupts living and working in the institution;
13) production of banned things;
14) smoking outside smoking areas;
15) negligence of work duties;
16) refusal to fulfill an order issued by an authorized officer;
17) unauthorized use of things;
18) admitting an unauthorized person to certain part of the institution;
19) offensive treatment of another concerning any personal trait;
20) misinformation about facts which are relevant for realizing a right.
Serious offences are as follows:

1) escape or attempted escape from the institution;
2) instigation to riot or escape;
3) preparation of riot or escape;
4) absence without leave;
5) violence towards another person;
6) production, possession or use of dangerous things;
7) making or bringing into the institution of means useful for attack, escape or commission of a criminal offence;
8) preventing access of an authorized person or person visiting the institution with authorization to any part of the institution;
9) serious threatening, damaging or destruction of property;
10) refusal to carry out a legal order of an authorized person which resulted or could have resulted in a serious consequence;
11) willful or negligent threatening of other's health;
12) production, possession or use of intoxicating or psychoactive substances;
13) gross negligence of personal hygiene;
14) gambling or playing games of chance;
15) deliberate threatening of one's own health with a view to become incapable for work;
16) refusal to undergo medical examination or measures for prevention of an epidemic;
17) instigating of a person deprived of liberty to commit a serious disciplinary offence;
18) negligence of work duty which resulted or could have resulted in a serious consequence;
19) instructing of other person or oneself on how to commit a criminal offence based on one's own of other's experience;
20) serious abuse of privileges granted under article 146 hereof;
21) repetition of minor disciplinary offences.

Disciplinary Measures

Article 68

A juvenile who commits a disciplinary offence shall be subject to the following disciplinary measures:

1) caution;
2) withdrawal of a privilege;
3) isolation in a separate room.

The disciplinary measures under 2) and 3) may be ordered cumulatively.

Article 69

Caution is pronounced if it is necessary to caution a juvenile or point to unacceptable behaviour.

Article 70

Withdrawal of a privilege granted under article 129 of the Juvenile Justice Act is ordered as a separate measure where a caution cannot achieve the purpose of disciplinary measure.

Article 71

Isolation in a separate room is ordered strictly for serious disciplinary offences. This measure shall not exceed seven days.
In case of a joinder of disciplinary offences referred to in para 1 of this article, the measure of isolation in a separate room may last up to fifteen days.

Article 72

Isolation in a separate room is a measure by which one or two juveniles are ordered to continuously stay in a separate room.

Isolation in a separate room is carried out under special conditions within the intensive treatment ward upon an order and under the supervision of competent staff.

Prior to the implementation of this measure, the authorised officer of the guard service shall search a juvenile and confiscate psychoactive and other dangerous substances or things which can obstruct the implementation of a corrective measure; objects suitable for self-injury, attack, escape or threatening of safety in the institution if the juvenile obtained such things in the meantime.

During the enforcement of this measure, a juvenile shall be in the open air at least two hours a day.

The doctor and educator of the corrective training group shall visit the juvenile every day, and the warden every third day at least.

Article 73

The room must have at least six metres of area and fifteen meters of cubic space per juvenile. It must be ventilated, with enough daylight and artificial light, heating adequate for climatic conditions, beds with enough bedding, a table and chairs. A juvenile must have access to drinking water and toilet at any time.

Article 74

During isolation in a separate room, a juvenile shall have access to handbooks and other reading materials which will not have a negative influence on his rehabilitation.

Article 75

During isolation in a separate room, a juvenile is entitled to file petitions to protect their rights pursuant to these Rules.

Article 76

A juvenile who was imposed the measure of isolation in a separate room shall not use privileges specified under article 129 of the Juvenile Justice Act for fifteen days after the end of the measure.

Article 77

Before the beginning of the measure, a juvenile shall undergo medical examination in order to establish their mental and physical capacity to endure the measure.

If the examination finds that a juvenile is not capable to endure the measure, the enforcement shall be postponed.

The measure shall be discontinued if the doctor finds that further implementation could threaten physical or mental health of the juvenile.

Article 78
If the disciplinary measure of isolation in a separate room may not be implemented because there are no conditions to place two or more juveniles in a separate room, the measure shall be delayed until conditions are met, unless the statute of limitations expires.

The measure shall also be delayed if juveniles may not be placed in the same room due to security reasons.

Article 79

Where the purpose of the disciplinary measure of isolation in a separate room and denial of privileges may be achieved without the enforcement of such measure, its imposition may be delayed for three months in case of a minor disciplinary offence, and in case of a serious one only if the juvenile admits the offence, takes responsibility and agrees to settlement procedure.

The delay may be revoked if a juvenile is ordered a new measure of isolation in a separate room or the measure of denial of privileges within the duration of the delay.

Where withdrawal of privileges is ordered for a subsequent offence, the measure of isolation in a separate room shall be imposed pursuant to the provisions on joinder as a single measure lasting up to ten days.

Where isolation in a separate room is ordered for a subsequent offence, the measure of isolation in a separate room shall be imposed pursuant to the provisions on joinder as a single measure lasting up to fifteen days.

Disciplinary Procedure

Article 80

All disciplinary procedures against a juvenile must comply with formal guarantees and be duly recorded.

Disciplinary procedure for minor offences is conducted and concluded by a decision of the warden or a person designated by him, following the proposal of the head of the rehabilitation/corrective service.

Disciplinary procedure for serious disciplinary offences is conducted and concluded by a disciplinary committee, following the proposal of the head of the rehabilitation/corrective service. An opinion of the professional team referred to under article 5 hereof is obtained prior to instituting disciplinary proceedings specified in paras 2 and 3 of this article.

Article 81

When the warden finds out about a serious disciplinary offence, or during the disciplinary procedure, he may order the juvenile to be separated from other juveniles up to 24 hours for security reasons.

The time spent in separation shall be included into the disciplinary measure of isolation in a separate room.

Article 82

If the person who files the motion for disciplinary procedure establishes that there is reasonable suspicion that a juvenile committed a serious or minor offence, but due to the nature of the offence, circumstances under which it was committed, personality of the juvenile, his relationship with the injured and the offence, as well as his readiness not to repeat disciplinary offences, it would be inappropriate to conduct disciplinary procedure, he shall withheld the motion.

The decision to withhold the motion with an explanation is submitted to the warden, the person who pressed charges, the injured party and the professional team referred to in article 5 hereof.
Article 83

If during the enforcement of a disciplinary measure the juvenile commits a new offence or a previous one is uncovered which was not punished with a disciplinary measure, the head of rehabilitation/corrective service shall not file a new motion if he thinks that imposition of a new disciplinary measure for a new or previous offence would not be appropriate.

Article 84

A juvenile shall, upon the proposal of the educator of the corrective training group, select a staff member of the institution who will provide them legal aid.

When undertaking actions towards a juvenile in a disciplinary procedure, and in particular, during hearing, the persons who take part in the procedure shall act tactfully, bearing in mind the maturity, sensitivity and personal characteristics of the juvenile.

The person referred to in para 1 of this article must be present during the first questioning of the juvenile by the person who filed the motion.

Article 85

The person who filed the motion, educator of the corrective training group, the juvenile and the staff who will provide legal aid are obliged to attend the disciplinary procedure hearing.

Other persons may also attend the hearing if the president of the disciplinary committee, the warden or a person designated by him decides so.

As a rule, the hearing is closed to the public, and the president of the disciplinary committee or warden, i.e. the person designated by him, may allow persons other than those specified under para 1 of this article to be present.

Article 86

A juvenile may file an appeal against the decision upon disciplinary measure within three days of the delivery of the decision.

An appeal does not result in a stay of execution.

The Head of Prison Administration shall decide upon the appeal within three days.

Material Responsibility of a Juvenile

Article 87

The provisions of the Law on the Enforcement of Penal Sanctions shall apply to material responsibility of a juvenile mutatis mutandis.

Application of the Provisions from Rules on Disciplinary Offences, Measures and Procedure and the Juvenile Justice Act

Article 88
Provisions of the Rules on Disciplinary Offences, Measures and Procedure and of the Juvenile Justice Act shall apply mutatis mutandis to all issues concerning disciplinary offences and procedure against a juvenile which are not regulated by special provisions of the present Rules and which are of relevance for their application.

Means of Coercion

Article 89

Means of coercion and restraint may in exceptional situations be used against a juvenile, if necessary to prevent an assault on a staff member, another juvenile or a self-injury or if a juvenile has fire arms or cold steel on his person or when all other methods were exhausted or proved inefficient.

Fire arms and cold steel may exceptionally be used only if other means of coercion and restraint may not protect the life of a juvenile or other person in case of an assault.

An official note is made each time the means referred to in paras 1 and 2 of this article are used.

The official note referred to in para 3 of this article shall be sent to the juvenile judge of the court which tried at first instance, the minister in charge of the judiciary and Head of Prison Administration.

VI. SUSPENSION AND DISCONTINUATION OF ENFORCEMENT OF CORRECTIVE MEASURE AND RELEASE ON PAROLE

Suspension of Enforcement

Article 90

Except in cases referred to under articles 48, 58 and 59 and related to article 118 of the Law on Enforcement of Penal Sanctions, if it is reasonably expected that it will not negatively affect the process of rehabilitation, the warden may, in exceptional cases and upon the recommendation of the educator of the corrective training group and the opinion of the professional team referred to under article 5 hereof, and in accordance with the Instruction specified in article 27, para 5 hereof, propose to the court which tried the juvenile at first instance, to suspend the enforcement of the measure if a juvenile needs to:

1) help a sick member of the immediate family;
2) help an infirm, incapable and destitute parent, adoptive parent or foster parent, or other persons who looked after the juvenile;
3) undergo a long health treatment or rehabilitation in a specialised institution under special conditions;
4) complete schooling.

The time of suspension is not calculated in the duration of the corrective measure.

Discontinuation of Enforcement

Article 91

A recommendation to discontinue the enforcement of a corrective measure in accordance with the Instruction referred to under article 27, para 5 hereof may be made to the court
which tried the juvenile at first instance, if the educator of the corrective training group, upon the opinion of the professional team referred to in article 5 hereof, and in cooperation with the juvenile, his parents or persons who looked after the juvenile and the competent welfare institution, assesses that the individual treatment achieved sufficient results and that it is in the best interest of the juvenile, as well as that the community the juvenile is returning to is ready to accept him.

The warden shall make a final decision on the recommendation referred to in para 1 of this article.

If the court accepts a recommendation to discontinue enforcement, a juvenile shall prior to release undergo a medical examination, and the finding shall be entered into the juvenile’s file.

If a juvenile is unable to travel due to illness, he shall be placed in the nearest suitable medical institution, following the recommendation of the doctor and the approval of the warden.

The costs of treatment for the first thirty days shall be borne by the institution.

Article 92

When released from the institution, a juvenile:

1) is given back the things and valuables which were safeguarded in the institution, and he returns the things he has been using in the institution;
2) is paid the savings and money he received during juvenile imprisonment;
3) is provided with money for transportation to his place of residence, and if necessary and upon the proposal of the educator of the corrective training group a one-off cash allowance;
4) if a juvenile does not have his own clothing or possibility to acquire it, the institution shall provide him with underwear, clothing and shoes free of charge.

After a juvenile completes the formalities provided by these Rules, the warden shall receive the juvenile and the head of rehabilitation service shall have final conversation with the juvenile and hand him the release form, certificate or diploma of completed education, certificate of vocational training and other documents.

Release on Parole

Article 93

For a juvenile who spent at least six months in the institution and who, due to the achievement of treatment programme, can be expected not to re-offend and to be a law-abiding citizen after joining the community, the educator of the corrective training group may, upon the opinion of the professional team referred to in article 5 hereof, launch an initiative for release on parole.

When launching the initiative pursuant to the Instruction specified under article 27, para 5 hereof, the educator of the corrective training group shall especially take into account the achievements in treatment programme, education and vocational training, possibilities for reintegration, such as potential employment, continuation of treatment, psychosocial and
material family circumstances, and also possible negative influence of the immediate and wider environment, an assessment of security concerns and other relevant circumstances.

The recommendation to the court which tried the juvenile at first instance is made by the warden.

VII. FINAL PROVISIONS

Article 94

The cases which are not regulated by these Rules shall be governed by the provisions of the Juvenile Justice Act, Criminal Code, Criminal Procedure Code, Law on the Execution of Penal Sanctions, ratified international agreements, or provisions of the rules and other acts passed by the Head of Prison Administration and the warden.

Article 95

These Rules shall come into force eight days after being published in the Official Gazette of the Republic of Serbia.

Minister of Justice

Zoran Stojković
TAJIKISTAN

LIST OF PERSONS INTERVIEWED

UNICEF

- F. Lutfulloev, Child Protection Programme Officer UNICEF

Main governmental counterparts

- H. Mavlonova, Deputy of Prime Minister
- M. Habibulaeva, Deputy Chairperson, Council of Judges’ Training Center for Judges
- R. Samieva, Deputy Head of Sino district, Hukumat of Sino district
- G. Sharipova, Deputy Minister of Justice
- H. Yamakova, Head of the Department on Legislation, Ministry of Justice
- A. Kaharov, Deputy Minister of Interior
- S. Ashurov, Deputy Minister of Labor and Social Protection
- N. Alimov, Department Head, Vocational Schools, Ministry of Labor and Social Protection
- A. Karamshoev, Director, Special Vocational School
- A. Hydoidodov – Director, Special School

Main non-governmental counterparts

- T. Jalovov, Coordinator, Nasli Navras diversion/alternative sentencing project
  Coordinator, Minerva diversion/alternative sentencing project
- J. Hickey, M. Baldwin and M. Karimova, Director and Staff of Child Rights Project

Others

- G. Wright, Trainer, Children’s Legal Centre UK
- R. Ziganshin, Save the Children
- P. Foroughi, Human Dimension Officer, OSCE
- L. Vazirova, Deputy Minister of State Secrets, former Secretary of Commission on Minors
- S. Niyatbekov, Project Manager, Access to Justice and Judicial Reform, Swiss Agency for Development and Cooperation
- A. Inomov, NGO ‘Open Doors’
- L. Martsisyan, Director, NGO Helping Hand, Khujand
- G. Mirzaeva, Director, NGO “Modar”

Focus group meeting in Khujand (Northern Tajikistan)

- O. Turokhlov, Coordinator, NGO “Childhood” Khujand
- S. Murotjon, Coordinator, Hukumat Bobojon Gafurov (north)
LIST OF DOCUMENTS CONSULTED

Situation analysis
- Children who are in Conflict with the Law: Report of the Expert Group, 2005

Legislation and secondary legislation
- Regulations of the Commission on Child Protection under the Government of Republic of Tajikistan, Protocol No.1, 11 October 2001

UNICEF documents (including proposals and reports of counterparts)
- Child Protection Annual Report 2005
- Child Protection Strategic Paper for 2006
- Diversion Scheme Project in Sino district: Report for May 2005
- Special School: Options for Reform, UNICEF/Children’s Legal Centre (UK), (undated)
- Reforming the Special Educational School: Establishing a multi-purpose centre (undated)
- Special Vocational School: options and recommendations for change,
- Children’s Legal Centre and UNICEF, Sept. 2005
- A review of the function and capacity of the inspection of minors department within the Ministry of Interior, (undated)
- Report on juvenile justice training seminar for police and other agencies
- dealing with children who are in conflict with the law, Dushanbe, Monday 12 July to Friday 16 July 2004
- Report on the visit of the training consultant, Children’s Legal Centre
- University of Essex, to Tajikistan from Friday 6 October to Thursday 12 October 2006
- LOGFRAME TAJIKISTAN COUNTRY PROGRAMME 2005-2009, SOCIAL POLICY REFORM & CHILD PROTECTION
- Annual report, UNICEF Tajikistan, 2006

Other UN documents
- Initial Report of Tajikistan to the Committee on the Rights of the Child, UN doc. CRC/C/28/Add.14, 1998

Governmental documents
- Resolution of the National Roundtable on Juvenile Justice 15 December 2006
- Draft Periodic Report of Tajikistan to the Committee on the Rights of the Child (undated)
- Draft report of the State Statistical Agency on juvenile justice to Innocenti Research Centre
MEMO ON THE COMPETENCE OF THE COMMISSIONS ON MINORS

The competence of administrative bodies over young children who have committed acts recognized as offences: a memo prepared by DRN consultant Dan O’Donnell at the request of UNICEF Tajikistan

The question of what human rights principles are applicable to children who commit acts that are defined as offences but are too young to be prosecuted as juvenile offenders is somewhat complicated. The starting point of any analysis is the third paragraph of Article 40 of the CRC, which provides:

States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

The legislation of most countries does establish an age below which children cannot be accused of an offence. This age is often referred to by the somewhat misleading as the ‘minimum age of criminal responsibility’. For the sake of simplicity, this memo refers to children below this age as ‘young children’. In the countries that have such legislation, the age ranges from as low as 7 to the mid-teens. The Committee on the Rights of the Child has repeatedly urged Parties to the CRC to raise this age to at least 12 years of age. The legislation of a significant number of countries also recognizes an intermediary age group, where children may be prosecuted as juveniles or may be found too young to prosecute, depending on circumstances such as the nature of the crime, prior offences and their ‘maturity’ or ability to understand the nature or consequences of the acts committed.

No matter what the minimum age for adjudication is, the question that must be answered is how the authorities should deal with children who commit acts punishable under the criminal law but who are too young to be prosecuted. It is common around the world for the cases of such children to be referred to administrative bodies that have competence to impose a range of measures designed to help prevent the recurrence of such conduct, including the removal of the child from his or her home and placement in a specialized residential facility. The bodies that have this power are often the same ones that have competence over other social problems involving children, such as abuse, exploitation and neglect. Indeed the facilities to which young children who commit criminal acts may be sent are often the same facilities to which children who are victims of abuse, neglect and exploitation are sent. In the former Soviet Union, and some other countries whose law had Soviet influence, this competence was vested in ‘Commissions on Minors’, inter-sectoral bodies linked to local government whose members include representatives of the police, prosecutors, schools and social protection agencies.

Although Article 40 of the CRC says nothing about what should be done with young children who commit criminal acts, Article 9 provides part of the answer. The first paragraph of Article 9 of the CRC provides in part:

---

318 The term can be misleading, because in some languages and legal systems similar terms are used to refer to the age at which a person can be prosecuted as an adult.
319 When a young child commits an act that is punishable under the criminal law, it is inaccurate to say that he or she has committed an offence, because a person cannot commit an offence unless he or she has legal capacity to do so.
320 Art.7.1 of the CRC; see also Art.8
States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.

This rule applies to any proceeding which lead to a decision that a child shall be separated from his or her parents, whether it is based on the conduct of the child, including participation in acts recognized as offences, or conduct affecting the child, such as abuse, exploitation or neglect. Decisions by administrative bodies such as the Commission on Minors to separate young children who have committed such acts from their parents would comply with Article 9.1 only if the decision can be appealed to a court or, arguably, if the parents agree with the decision.\(^{321}\)

The CRC allows a body like the Commission on Minors to consider the situation of young children who commit criminal acts and impose measures such as participation in counseling or after-school programmes that do not involve separation of the child from his or her family. The Commission may even decide that the most appropriate measure is to place a child in a foster home or specialized residential facility, but a decision of this kind must be reviewable by a court.

A law adopted by Romania in 2004 establishes just such a procedure. Article 67(1) of Law 272/2004 on the protection and promotion of the rights of the child provides that a decision of the child protection commission to place a young child who has committed a criminal act in a residential facility must be reviewed by a court, unless the parents agree with the decision of the commission.

The first paragraph of Article 9 also establishes two other requirements: that the hearing and decision must be “in accordance with applicable law and procedures” and that a child shall not be separated from his or her parents unless this is “necessary for the best interests of the child.” The latter is often referred to as the “last resort” rule, and means that children shall not be removed from their family – whether because of their conduct or the conduct of their parents – unless no other solution would resolve the threat to the child’s safety and wholesome development. The requirement that the decision must be taken ‘in accordance with applicable law and procedure’ means that the law must clearly state the circumstances in may justify a decision to separate a child from his or her family, and that the procedures prescribed by the national law must be followed.

Since the child is not accused of an offence, the rules of due process set forth in the second paragraph of Article 40 are not strictly applicable. However, even the Commission is not a court and the child is not accused of an offence, the basic principles of due process must be respected. The child must have the right to be heard.\(^{322}\) The second provisions of the third paragraph of Article 40 of the CRC – the provision that follows the one encouraging states to establish a minimum age for the adjudication of juvenile offenders – provides that is is desirable to handle cases involving children who may have committed criminal acts without a trial “providing that human rights and legal safeguards are fully respected.” Although the purpose of this provision is to encourage diversion of children old enough to be prosecuted as juvenile offenders, the idea that human rights and legal safeguards should be respected even when a child is not brought to trial is certainly no less relevant when cases involving younger children are handled by non-judicial authorities who have the power to separate them from their parents and deprive them of liberty. The Beijing Rules, which inspired Article 40 of the CRC\(^{323}\) and which also recognize the importance of protecting the “basis rights” of all children accused of an offence\(^{324}\), provide that “Efforts shall be made to extend the principles embodied in the Rules to all juveniles who are dealt with in welfare and care

\(^{321}\) The text of paragraph 1 of Article 9 is ambiguous, but seems to imply that the various safeguards and requirements are obligatory only if the parents do not agree with removal of the child from their care.

\(^{322}\) Article 9.2 and 12.2.

\(^{323}\) The Beijing Rules, or UN Rules on the Administration of Juvenile Justice, are cited in the Preamble of the CRC.

\(^{324}\) See Rule 2.3(a)
proceedings. Consequently, although the formalities that must be respected in judicial procedures may be out of place, the Commission should apply basic rules of due process in an appropriate fashion. For instance, the child should be informed in advance of the acts he or she is accused of and the source of the information relied upon by the Commission, should not be presumed to be ‘guilty’ or coerced into admitting that he or she is responsible for such acts, should be informed of the nature of the proceeding and possible outcomes, and should have an opportunity to present his or her side of the story with the assistance of an independent advisor or spokesperson. All this, of course, in addition to the last resort principle and the principle that the best interests of the child must be a main consideration in all decisions and proceedings affecting a child.

Since the decision to place a child in a residential facility affects one of the most basic rights of a child – the right to be cared for by his parents and the right to identity – it may well be appropriate to make review of any decision by a Commission on Minors to remove a child who has committed a criminal act from his or her family automatic, instead of placing the burden on the parents of child to request review. There is always an advantage to having an decision reviewed by an independent authority when the consequences are important, and judges are the most appropriate authorities to review the Commission’s compliance with due process and application of principles such as the last resort and best interests of the child, especially given the training on child rights that they are now receiving.

325 Rule 3.2
OTHER DOCUMENTS CONSULTED

- Understanding Results-Based Programme Planning and Management, UNICEF, 2005
- Basic Principles on the use of restorative justice programmes in criminal justice, UN ECOSOC Res.2002/12
- Recommendation R(99)19 of the Committee of Ministers of the Council of Europe concerning mediation in penal matters
- Committee on the Rights of the Child, General Comment No. 10 on The Administration of Juvenile Justice, UN doc. CRC/C/GC/10, Feb. 2007