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Note on the Assessment Mission

The assessment mission took place from 27 March to 8 April 2011. The team was composed of Dan O’Donnell, international consultant, and Bakai Albanov, national consultant. Support was provided by Elena Zaichenko of UNICEF Kyrgyzstan.

Meetings were held with a Member of Parliament, a judge, the Deputy Ombudsman and head of the Ombudsman’s child rights unit, the provost of the Police Academy, the head and other representatives of the juvenile police, a detective, a criminal investigator, two prosecutors, a representative of the Supreme Court, two representatives of the State Service for the Execution of Punishment (i.e., prison and probation service) and representatives of the National Statistical Committee.

The assessment team also met with the members of a working group that is drafting a revised version of the Children’s Code, the head of the police reform programme of the Organization for Security and Co-operation in Europe (OSCE), and representatives of three NGOs: ‘Insan Generation’ and the ‘Legal Centre’ in Bishkek, and ‘Ulybka’ (Smile) in Osh.

The assessment team visited the juvenile prison and the juvenile pretrial detention centre in Voznesenovskaya, a unit for juveniles at the women’s prison in Stepnoye, the confinement facility located in police headquarters in Bishkek, the ‘special school’ for children with antisocial or criminal behaviour in Belovodskoe, the closed centre for street children operated by the juvenile police in Bishkek, and the open centre for street and homeless children and a youth centre both operated by the Bishkek municipal government. The team also visited a community-based diversion/prevention programme in Batken (south-west Kyrgyzstan), the Department for the Protection of Children in the city of Osh (southern Kyrgyzstan), a school in Osh and a vocational training school in Batken.

A debriefing for authorities and NGOs met during the mission was cancelled for security reasons.

The lists of persons interviewed and documents consulted are attached (see Annexes 2 and 3).

Background


The population is 5.5 million, of which 36 per cent is under age 18.1 In 2006, the government reported that 67 per cent of the population was ethnic Kyrgyz. The largest minorities at the time were Uzbeks (14 per cent) and Russians (10 per cent).2 Kyrgyzstan is one of the poorest countries in Central Asia, with a per capita Gross National Income of US$ 2,200.3 In 2005, 43 per cent of the population lived in poverty.4

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4 Ibid. (As defined by the national poverty line.)
The first Constitution of the Kyrgyz Republic was adopted in 1993; the Constitution now in force was adopted in 2010. Article 36 of the new Constitution recognizes the right of every child to the living conditions “necessary for his/her physical, mental, spiritual, moral and social development.”\(^5\) A Criminal Code was adopted in 1997 and a Code of Criminal Procedure was adopted in 1999.\(^6\) The Minors’ Rights (Protection and Defence) Act, intended to implement the Convention on the Rights of the Child, was enacted in 1999.\(^7\) In 2006, it was replaced by a Children’s Code, which came into force 1 January 2007.\(^8\) International treaties in force for Kyrgyzstan form part of the domestic legal system.\(^9\)

Kyrgyzstan is a unitary State, divided for administrative purposes into seven provinces and the capital, Bishkek, whose status is the equivalent to that of a province. The provinces are divided into 40 districts. Larger cities, such as Osh, Jalal-Abad and Kara-Balta, have municipal governments. The national legislature, Jogorku Kengesh, is unicameral.

The political situation has been unstable in recent years. In 2005, the president who had been in power since independence was forced to resign by public demonstrations, an event known as the ‘tulip revolution’. In 2010, demonstrations constrained the president elected in 2005 to flee the country after an outbreak of ethnic violence in Osh, which led to hundreds of deaths and the displacement of some 375,000 persons.\(^10\)

Information provided by the National Statistical Committee to the TransMONEE project indicates that offending by juveniles increased significantly immediately after independence, but began to fall in 1993.\(^11\) In 2009, the number of reported offences attributed to juveniles was 846, i.e., 36 per cent below the number in 1990 and 51 per cent below the number in 1992.\(^12\) The number of juvenile offenders is approximately 44 per cent higher than the number of offences committed by juveniles.\(^13\) The number of juvenile offenders has declined as well, from 1,713 in 2000 to 1,190 in 2009.\(^14\)

In 2010, there was a sharp increase in the number of offences committed by juveniles, although the number of juvenile offenders decreased.\(^15\) The reasons for this are unknown.

Kyrgyzstan became a Party to the Convention on the Rights of the Child in 1994. It submitted its initial report on the implementation of the Convention to the Committee on the Rights of the Child (‘the Committee’) in 1999, its second periodic report in 2002, and a combined third and fourth periodic report in 2006.\(^16\)
After examining Kyrgyzstan’s second report, the Committee expressed concern at the absence of specific procedures and courts to deal separately with juvenile offenders, the lack of access by parents, doctors and lawyers to arrested juveniles, the length of pretrial detention, the harshness of sentences that may be imposed on juveniles, the lack of vocational training or rehabilitation programmes for juvenile prisoners, and the detention of juveniles, in particular girls, with adults. It recommended that work on the development of a juvenile justice system be expedited and, in particular,

- pretrial detention should be used only in exceptional cases, and access of detainees to relatives, doctors and lawyers should be guaranteed;
- separate ‘detention facilities’ for juveniles should be established;
- the mandate of the Commission on Children’s Affairs should be reviewed with the purpose of removing its punitive functions; and
- the Akzakal (Elders’) Courts should fully apply the principles and provisions of the Convention on the Rights of the Child when dealing with ‘children in conflict with the law’.

**Executive Summary**

Offending by juveniles increased significantly immediately after independence, but began to fall in 1993. In 2009, the number of reported offences attributed to juveniles was 36 per cent below the number in 1990 and 51 per cent below the number in 1992. The number of reported offenders has decreased by more than 30 per cent during the last decade.

Kyrgyzstan became a Party to the Convention on the Rights of the Child in 1994. The Committee on the Rights of the Child has examined two reports by Kyrgyzstan, in 2000 and 2004, and on both occasions has indicated that the law and practice concerning juvenile justice are not in full compliance with international standards.

The legal framework for juvenile justice consists mainly of the Criminal Code, adopted in 1997, and the Code of Criminal Procedure and the Criminal Execution Code, adopted in 1999. A package of amendments adopted in 2007 and known as the ‘Law on Humanization’ has led to significant improvements, including a decrease in the number of prison sentences imposed on juveniles and an increase in the number of cases closed because the offender has compensated the victim.
The Minors’ Rights (Protection and Defence) Act, enacted in 1999, was replaced by a Children’s Code, which came into force 1 January 2007.\textsuperscript{23}

The political situation has been unstable in recent years. In 2005, the president was forced to resign in an event known as the ‘tulip revolution’. In 2010, demonstrations constrained the president elected in 2005 to flee the country after an outbreak of ethnic violence, which led to hundreds of deaths and the displacement of some 375,000 persons.

In 2001, the government adopted the ‘New Generation’ State Programme for the Realization of Children’s Rights.\textsuperscript{24} A significant number of the objectives concerning juvenile justice have been achieved. The Inter-Agency Action Plan for the Reform of the Child Protection System and Development of Public Social Services 2009–2010 also contained many objectives regarding juvenile justice, most of which had not been achieved by the end of 2010. The establishment of a body to coordinate the activities of the ministries and other entities involved in juvenile justice is one of the goals that have not been met.

In 2005, the National Statistical Committee published a special report on crime covering the years 2000–2004, which contains valuable information on juvenile justice. A second report covering the years 2005–2009 is in preparation. A manual on juvenile justice, published in 2010, is being used to train the police, judges, prosecutors and attorneys.

The juvenile police have responsibility for the prevention of offending. They register thousands of children annually. Efforts have begun to develop their capacity to provide assistance to children at risk and their families. In 2007, a national Department for the Protection of Children was created and, in 2008, Family and Child Support Departments were established under local governments. Shortly after the assessment mission, a decree was adopted incorporating them into a new Ministry of Social Protection. At the end of 2007, the special vocational school for juvenile offenders was closed in response to criticisms of conditions and the treatment of students.

The Ombudsman and the Office of the Prosecutor General both have a mandate to monitor the treatment of juveniles by the police and in the correctional system. The Ombudsman does not play an effective role in protecting the rights of children in contact with the juvenile justice system, however.

In many respects, the law in force complies with international standards. Positive features include:

- the presence of a lawyer is required during interrogation;
- interrogation may not exceed two 2-hour sessions per day;
- a medical examination is required on admission to any detention facility;
- the minimum age for prosecution is in harmony with the recommendations of the Committee on the Rights of the Child;
- in principle, only juveniles accused of a serious crime may be detained before trial or sentenced to prison;
- only judges may order detention before trial;
- a case may be closed if an offender compensates the victim, provided the offence is not a serious one;
- the maximum sentence that may be imposed on a convicted juvenile has been reduced to 10 years; and
- limits to the duration of proceedings are in harmony with the right to be tried without delay.

\textsuperscript{23} Children’s Code, Law No. 151 of 7 August 2006.

\textsuperscript{24} Government Decision No. 431 of 14 August 2001.
Some provisions of the law are not compatible with international standards, however. Suspects may be detained for 48 hours before being presented to a judge; exceptions can be made to the principle that juveniles may not be detained for minor offences; proceedings involving accused juveniles are normally held in open court; and solitary confinement can be used to discipline juvenile prisoners. A law on juvenile justice was drafted, but has not been presented to Parliament.

Some significant programmatic initiatives have been taken. A community-based diversion/prevention centre, which opened in 2009 in Batken, a poor rural community, reportedly has had a positive impact on the prevention of offending and reoffending. In the capital, an open rehabilitation centre for street and homeless children operated by the municipal government provides valuable psychosocial services to children at risk and their families, as well as services that help prevent pretrial detention.

In the women’s prison, a separate facility for adolescent prisoners was opened in 2010. The infrastructure of the juvenile prison is being renovated gradually, and efforts are being made to prevent peer violence and exploitation. In 2011, a police department specialized in the investigation of crimes committed by juveniles was established.

Civil society makes valuable contributions to juvenile justice. One NGO provides psychosocial assistance to juveniles serving prison sentences; another extended psychosocial support to children in the closed centre for street children operated by the juvenile police in Osh prior to its destruction in 2010. NGOs also impart specialized legal advice to juvenile suspects and defendants and operate a successful mediation pilot project.

Practices that are incompatible with the rights of children also exist. The most urgent are the substandard conditions in the juvenile pretrial detention centre and the police jail where juveniles are detained in the capital. Psychological pressure is applied to juvenile suspects, and there are allegations that torture is used. Juveniles accused of less serious offences are detained before trial if their families are unable or unwilling to provide adequate supervision. The capacity of the Family and Child Support Departments to give psychosocial assistance to children at risk is very limited. There is no programme to support prisoners returning to the community. The system of designating specific judges to handle juvenile cases broke down when more than half the judges in the country were dismissed in 2010. The police may confine children in centres for the adaptation and rehabilitation of minors for 30 days without a court order.

The recommendations made by the assessment team include:

-  Priority should be given to humanizing conditions in the juvenile pretrial detention centre and the police facilities where juveniles are confined temporarily, and delays in transferring juvenile suspects from police jails to the juvenile pretrial detention centre should be eliminated.
-  The length of time that children may be kept in police custody before being presented to a judge should be reduced to 24 hours in order to minimize exposure to psychological pressure.
-  The Ombudsman should make greater efforts to monitor conditions in facilities where children are deprived of their liberty and to develop a confidential, child-friendly and effective mechanism to receive complaints from children.

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25 In 2004, the Committee on the Rights of the Child expressed concern “at the fact that juveniles, in particular girls, are being detained with adults.” See CRC/C/15/Add.244, supra, para. 66. The assessment team found no evidence of the detention of juveniles with adults in any of the facilities visited but, of course, this does not necessarily mean that all contact has been eliminated in all facilities throughout the country.

26 The only exception is a new NGO programme that provides limited follow-up during the first six months after release, described below in the section on the juvenile prison.
• The functions of the centres for the adaptation and rehabilitation of minors should be reviewed and, if there are valid reasons for maintaining them as closed facilities, the criteria and procedures for placement should be brought into compliance with international standards regarding deprivation of liberty.

• The residential area of the juvenile prison should be renovated and separate units should be established for different categories of prisoners in order to reduce the risk of abuse and exploitation as well as to facilitate rehabilitation.

• A programme of support to the social reintegration of juvenile offenders released from prison should be developed.

• Methodologies of rehabilitation based on the assessment of the needs of individual prisoners and groups of prisoners should be developed.

• Strict standards should be adopted for the recruitment of professionals.

• A programme for the prevention of abuse and exploitation of children in their homes and the provision of psychosocial assistance to families where such problems exist should be developed, taking into account the experience of the Bishkek municipal rehabilitation centre for street and homeless children.

• Efforts should be made to expand the practice of entrusting social agencies with the responsibility of supervising juveniles from ‘unfortunate’ families accused of a minor offence, taking into account the experience of the Bishkek municipal rehabilitation centre for street and homeless children.

• Centres for prevention and psychological support to children in conflict with the law should be established in other cities and regions, based on the experience of the centre in Batken.

• A survey of the children’s experiences regarding juvenile justice should be carried out, and the effectiveness of programmes or measures for the rehabilitation of offenders and the prevention of offending or reoffending should be monitored.

• A plan should be developed for the establishment of juvenile or children’s courts or the appointment of specialized juvenile judges, and especially selected and trained prosecutors.

• Consideration should be given to developing a juvenile justice coordination mechanism that includes civil society and local or municipal programmes as well as the relevant ministries and other national entities.

• The indicators on juvenile justice used by different bodies should be reviewed to ensure consistency and fill existing gaps; consideration should also be given to increasing the amount of data published annually.
PART I. The Process of Juvenile Justice Reform

1. Policies and strategies

In 2001, the government adopted the ‘New Generation’ State Programme for the Realization of Children’s Rights. The action plan for the implementation of this programme emphasized prevention, in particular through support to families. It has been revised four times, most recently in 2006. An annex to the plan called, *inter alia*, for the following:

- the drafting of a chapter on juvenile justice based on the Convention on the Rights of the Child for inclusion in the Children’s Code;
- access of accused juveniles to free legal assistance;
- protection from torture and other cruel, inhuman and degrading treatment/punishment;
- non-custodial sanctions and reduction of the maximum duration of deprivation of liberty;
- dissemination of information on child rights, including instructions on making complaints, in closed institutions for children and juvenile offenders;
- improved conditions in closed institutions for children and juvenile offenders;
- access by outsiders to closed institutions for children and juvenile offenders;
- dissemination of information on child rights to children, parents and law enforcement personnel;
- supervision of compliance with laws governing juveniles under investigation and establishment of an effective system for monitoring juvenile detention centres;
- creation of a special school, a special vocational school and a separate correctional facility for female juvenile offenders; and
- separation of the juvenile police from the Ministry of Interior’s Department of Public Security.

Despite poverty and political instability, many of these objectives have been substantially achieved: a law on juvenile justice was drafted (although it has not yet been adopted); juvenile suspects and accused juveniles have access to legal assistance; safeguards against torture and abuse have been introduced (although there is disagreement about their effectiveness); the maximum duration of prison sentences has been reduced from 15 years to 10 years; an NGO provides psychosocial services in the juvenile prison, and the Office of the Prosecutor General has adopted a decision on regular supervision of the juvenile prison and similar facilities in the light of national as well as international standards.

The development of juvenile justice has been identified as a priority by national development plans. The Country Development Strategy for 2007–2010 called for “the humanization of punishments in regard of juvenile offenders,” and the Inter-Agency Action Plan for the Reform of the Child Protection System and Development of Public Social Services 2009–2010 called for action to reduce offending and increase the number of ‘children in conflict with the law’ benefiting from social rehabilitation services.

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30 The reason for this was the perception that, as part of this Department, juvenile police were sometimes called on to undertake other responsibilities, to the detriment of their ability to concentrate on work with juveniles.
The Inter-Agency Action Plan, which was adopted by the government in July 2009, contained a component on juvenile justice. It had ten objectives:

- establishment of a National Coordination Council on Juvenile Justice;
- creation of a database on offending by juveniles;
- development of mediation;
- development of a comprehensive programme for the prevention of offending;
- training of judges, prosecutors, police, social workers, prison staff etc.;
- creation of ‘alternative special institutions’ in each region;
- development of assistance for offenders released from prison;
- separation of juvenile offenders from adults in the women’s prison and of first offenders from repeat offenders in the juvenile prison;
- reforms in court buildings to prevent contact between juveniles and adult defendants; and
- creation of special rooms for the interrogation of juvenile suspects in police stations.

All of these objectives were pertinent, and some of the aims of other sectors of the Action Plan were also very relevant to the prevention of offending. Few of the objectives regarding juvenile justice were attained by the end of 2010, however. The main exception is the establishment of a separate unit for female juvenile offenders. Some progress was made towards other goals, such as training and the development of mediation. The violence, which erupted in April 2010, and the ensuing political crisis and change of government obviously had negative consequences for the implementation of the Action Plan. Some of the objectives, such as the development of a comprehensive programme for the prevention of offending, were too ambitious to be realized in the short period of less than two years, even in the best of circumstances. It is no doubt significant that the Action Plan did not estimate the cost of implementing the activities described therein. In addition, some indicators, such as those on training, were defined in terms so general that it is difficult to use them to measure the degree of success.

2. Law reform

At independence, the treatment of juvenile suspects, accused juveniles and juvenile prisoners was governed primarily by the Criminal Code, the Code of Criminal Procedure and the Criminal Execution Code. Juvenile justice is still based mainly on these Codes, although the Codes in force at independence were replaced by new Codes adopted in 1997 and 1999. A law on the rights of children, the Minors’ Rights (Protection and Defence) Act, was adopted in 1999. The new Code of Criminal Procedure made some improvements to the rights of juveniles, such as limiting the questioning of juveniles to two 2-hour sessions per day and requiring the presence of the juvenile’s parents during questioning.

Efforts to reform the legislation concerning juvenile justice began anew in 2005, in the context of the drafting of a Children’s Code to replace the 1999 Minors’ Rights (Protection and Defence) Act. A chapter on juvenile justice was drafted, but only two of its articles were included in the Children’s Code when it was adopted in 2006. They provide:

Article 47. Definition and the principles of juvenile justice

1. The system of actions in regard of children conflicting with the law between the age of 14 and 18 years that includes the issues of jurisdiction and social rehabilitation is regulated by corresponding criminal and criminal procedural legislation of the Kyrgyz Republic.

2. Juvenile justice is based on the following principles:

- any measures taken with respect to children in conflict with the law should be limited to those having the least possible impact on their rights and freedoms;
- development of the child’s dignity and sense of significance;
- reintegration of the child into society; and
- consideration of the child’s needs in realization of his constructive role in the life of society.

Article 48. Guarantees of the rights of children deprived of liberty

1. The bodies of state authority and local self-government take measures to ensure that no child would be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

2. In accordance with the generally recognized rules of international law, custody... and deprivation of liberty can be imposed on children only as a matter of last resort.

Instead, a Working Group was created in 2006 by Presidential Decree to draft amendments to the Criminal Code, the Code of Criminal Procedure and secondary legislation. It prepared a package of amendments to the Criminal Code and Code of Criminal Procedure known as the ‘Law on Humanization’, which was adopted in 2007 and led to substantial improvements in the sections of those codes concerning juveniles. They include:

- prosecutors were deprived of authority to order detention before trial;
- prison sentences were eliminated for juveniles convicted of minor offences and juveniles under age 16 convicted of crimes of medium gravity;
- prison sentences for juveniles aged 14–15 years convicted of serious or very serious offences were reduced to one half of the sentences that could be imposed on adults;
- the maximum prison sentence for juveniles was reduced from 15 years to 10 years;
- additional non-custodial sentences, including restrictions of liberty and community service, were recognized;
- the part of a prison sentence that must be served before a juvenile is eligible for early release was reduced; and
- the provision allowing offenders to be exempted from criminal liability when the victim has been compensated was extended from minor crimes to crimes of medium gravity.

These changes, together with the training of judges in child rights, have contributed to a significant decrease in the number of prison sentences imposed on juveniles, from 178 in 2005 to 35 at the time of the assessment mission. The number of cases closed because the offender has compensated the victim increased by 700 per cent between 2006 and 2010.

32 So-called ‘by-laws’.

33 This applies to the minimum sentence for serious or very serious crimes. For example, the minimum sentence for murder, for an adult or older juvenile, is eight years and the maximum is fifteen years; the minimum sentence for a 14- or 15-year-old convicted of murder is now four years, and the maximum is ten years (see below). In general, serious crimes are punishable by sentences of more than five years but less than ten years, and very serious crimes are punishable by sentences of more than ten years, including life imprisonment. See Criminal Code, Articles 12–13.

34 National Statistical Committee. (The figures refer to the population of the juvenile prison for boys only; data on girls serving prison sentences are not available.)
In 2006, a new Working Group was created to prepare a new law on juvenile justice. The draft was completed and submitted to the Presidency in 2009. It was not presented to Parliament, however, because the Presidency considered juvenile justice to be so closely related to child protection that it would be better to give priority to the preparation of new legislation on child protection and the establishment of community-based social services. This was the situation when the government was forced from power in June 2010. In November of the same year, the Minister of Justice formed a new Working Group, with a mandate to review the Children’s Code. The Group, now working under a Parliamentary Committee, has decided to include a chapter on juvenile justice in the revised version of the Code it is drafting.

The overall impact of law reform has been mixed. The reforms made in 2007 had a very positive impact, although they have not resolved all the problems; but the priority given from 2007 until recently to the process of law reform has not been successful, and has slowed progress in addressing other important issues.

3. Administrative reform/restructuring

Some significant changes in the role of various institutions have taken place as part of restructuring.

Responsibility for operating prisons and pretrial detention centres or ‘isolators’ (known by the Russian acronym ‘SIZO’) was transferred from the Ministry of Interior to the Ministry of Justice in 2002, leading to a number of improvements. In 2009, responsibility for operating both types of facilities was entrusted to an independent body called the State Service for the Execution of Punishment.

At the end of 2007, the special vocational school for juvenile offenders was closed in response to criticisms by NGOs of conditions and the treatment of students.

In 2011, the Ministry of Interior established a special police department for investigating crimes committed by juveniles.

The 2006 Children’s Code created a Department for the Protection of Children within the State Agency on Sport and Youth Affairs. This Department was later transferred to the Ministry of Labour, Employment and Migration. The Department still exists, but responsibility for providing services on the local level was transferred to the Family and Child Support Departments created as part of local and municipal governments in 2008, to replace the Guardianship Councils. Some observers consider that this made it more difficult to ensure the adequate funding of services and led to the hiring of unqualified child protection staff.

A few days after the assessment mission, the Department for the Protection of Children was transferred from the Ministry of Labour, Employment and Migration to a newly established Ministry of Social Protection, and responsibility for providing services was transferred from local and municipal governments to local departments of the Ministry of Social Protection.
4. Allocation of resources

The assessment team has no specific information about funds allocated for programmes and services related to juvenile justice. According to many of the sources interviewed, various services lack the resources needed to fulfil their responsibilities adequately. There was wide agreement at the time of the assessment mission that the Family and Child Support Departments were short of the qualified staff necessary to provide effective psychosocial support to children and families at risk. Scarcity of resources appears to be the reason that renovation of the juvenile prison is proceeding at a slow pace, and that it is difficult to recruit qualified, experienced professionals to work in the prison. The juvenile police complain that they do not have sufficient officers for their preventive work in schools.

There are some exceptions, however. Conditions in the municipal rehabilitation centre for street and homeless children are good, and the staff seems qualified and competent. The decision of the local governments to assume responsibility for the centre for prevention and psychological support to children in conflict with the law in Batken is another positive sign.

The shortage of funds is not the only factor limiting the capacity of relevant services. Political favouritism and similar considerations influence hiring and the allocation of resources. The change of government in 2010 reportedly led to the dismissal of more than half the judges in the country. In addition, changes in the law and practice that create the potential for savings sometimes are not taken into account. The large number of cases dismissed by courts, for example, appears to be a waste of judicial resources, which is due in part to inflexible prosecutorial policies. The number of juveniles accused of minor offences detained before trial because of poverty and poor parental supervision is another example.

5. Training and capacity-building

A 10-day course on social work and juvenile justice, which took place in the year 2000, was one of the first events to introduce the concept of juvenile justice in Kyrgyzstan. Some of those who took part in this activity went on to become active participants in the development of juvenile justice.

During 2008–2010, ‘Insan Generation’, a national NGO, organized eight 2- to 3-day training activities for juvenile police, criminal investigators and prosecutors. These activities were organized as part of a pilot project intended to increase diversion and alternative sentencing. The NGO has also organized training for mediators.

A group of national experts prepared a manual on juvenile justice for use in training the police, judges, prosecutors and attorneys. It was tested in a three-day course, which took place in 2009, and was published in 2010 in Kyrgyz and Russian. It includes chapters on the concept of juvenile justice, international standards on juvenile justice, social and psychological aspects of juvenile justice, restorative justice, the role of government and other bodies in the administration of juvenile justice, the liability of juveniles according to criminal legislation and the exemption of juveniles from criminal liability and punishment. The manual is designed for participatory training, and the aims include the development of appropriate attitudes and skills, in addition to imparting knowledge. A ‘pocket book’ based on the manual was prepared as well. A training needs evaluation conducted shortly after the assessment mission found that users of the manual felt the need for additional training materials on issues including prevention, the treatment of younger children and girls involved in criminal activity, and the rehabilitation and reintegration of offenders.


61 The manual also includes a part on training methods intended for trainers.
A course on juvenile justice has been included into the entry-level curriculum of the Police Academy, but no course has been incorporated into the curriculum of the Police School, which trains patrolmen and juvenile police. The training centre for prosecutors has integrated juvenile justice into subjects like criminal procedure, devoting six hours to it. Courses on juvenile justice have not yet been included into the curriculum of the training centres for judges, training programmes of the State Service for the Execution of Punishment, or training programmes for the relevant staff of the Ministry of Education.

OSCE supports ad hoc training activities on juvenile justice, in particular for the police. In 2010, a large conference on the prevention of offending was organized for the juvenile police. Another is planned for 2011.

6. Accountability

The Office of the Prosecutor General has primary responsibility for supervising the treatment of juvenile prisoners and suspects who come into contact with the law enforcement system. In May 2000, the Procurator-General issued an order designed to reinforce the supervision of legal norms related to juveniles, including the relevant provisions of the Convention on the Rights of the Child and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules). The special prosecutor in charge of prisons appeared to be very committed to improving conditions in the juvenile prison and had arranged for the construction of a mosque. Unfortunately, efforts were unsuccessful to obtain data on the caseload related to alleged violations of the rights of children in the context of juvenile justice.

The Office of the Ombudsman (Akiykatchy) was established in 2002, and given constitutional status in 2010. It is not accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, however. The Ombudsman is appointed by Parliament and makes an annual report to it. It has competence to examine complaints and refer them to the responsible authorities. There are offices in each of the six provinces, and specialized departments, including one on child protection and another on the rights of prisoners. The head of the Department for the Protection of Children indicated that few complaints are received from children, and none concerning human rights violations related to juvenile justice. The Deputy Ombudsman stated that she or her staff visited the juvenile prison three times in 2010, but made no recommendations. At present, there is no evidence that the Ombudsman plays an effective role in protecting the rights of children in contact with the juvenile justice system.

7. Coordination

No entity coordinates the activities of the ministries and other official bodies involved in matters related to juvenile justice.

8. Data and research

The police, prosecutors, courts and prison system compile data on juveniles, but much of these data are not published. The Supreme Court prepares a quarterly Bulletin that contains some information on the work of the courts. Data on cases implicating juveniles – such as the number of cases involving

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42 Second periodic report of Kyrgyzstan, CRC/C/104/Add.4, supra, para. 7.
43 Constitution (2010), Article 108.
juveniles considered, the number dismissed, the number returned to the prosecutor, the number of acquittals and convictions, and the nature of the sentences imposed – are included occasionally. The Bulletin has been published since 1991, but has very limited circulation.

The Statistical Yearbook published by the National Statistical Committee contains data on crime disaggregated by the status of the offender (i.e., juvenile or adult). In 2005, it published the first of a series of special reports on crime covering the years 2000–2004, with valuable information on:

- the number of crimes committed by juveniles, disaggregated by the offences committed;
- the number of juvenile offenders, disaggregated by the offences committed;
- the number of juvenile offenders, disaggregated by sex, age group, educational/employment status, recidivism, and circumstances in which the offence was committed (alone or in a group, under the influence of drugs or under the influence of alcohol);
- the number of children involved in criminal activity while too young to be prosecuted;
- the number of convicted juveniles, disaggregated by offence;
- the number of convicted juveniles prosecuted, disaggregated by sex and age group, social status (neither working nor attending school), recidivism, and the circumstances of the offence (drug use, alcohol use, alone, in group, with adult); and
- the sentences imposed on convicted juveniles, including the length of prison sentences.

A second report covering the years 2005–2009 was in preparation at the time of the assessment mission. The National Statistical Committee shared some of the data with the assessment team.

The National Statistical Committee also provides data on juvenile justice to the TransMONEE project. The database contains information on offences by juveniles from 1989 to 2008 and data on homicides by juveniles from 2000 to 2008, but it does not include any data on juveniles deprived of their liberty.45

Research

In 2010, the ‘Legal Centre’, an NGO, carried out a survey of the population of the juvenile prison that documented the crimes for which prisoners had been convicted, disaggregated by place of residence and conviction. The study also recorded prior offences, level of education and ethnicity of the prisoners. Unfortunately, these data were not disaggregated by the age of the juveniles at the time of offending. It nevertheless represents an important first step towards a better understanding of recidivism, and sentencing.

PART II. The Juvenile Justice System in Kyrgyzstan

1. Prevention

Prevention of offending falls mainly under the responsibility of the juvenile police and the local Family and Child Support Departments.46 Schools also cooperate in prevention.

The Family and Child Support Departments were created in 2008 as part of local and municipal governments. At the time of the assessment mission, the staff of most Departments was small, which made it difficult for them to cover remote villages. (As indicated above, shortly after the assessment mission the process of transforming these Departments into Family and Child Support Offices of a newly established Ministry of Social Protection began.) Some observers expressed concern about the appointment of unqualified staff for political reasons.

The Departments may refer cases of children at risk to the Commissions on Children’s Affairs, which provide support to needy families.47 In cases of extreme neglect or abuse, they may request the court to deprive parents of parental responsibility and place the child in a residential facility.48

There are 417 juvenile police inspectors, whose main responsibility is the prevention of offending. Each police station assigns officers to this duty. In principle, juvenile police inspectors must be graduates of the Police Academy or have a university degree in education or law.49 The assessment mission was informed that, in 2010, nearly half had a university degree in law; almost one third had a university degree in another area; and the rest were graduates of the Police Academy with a prior degree from a technical school. According to various sources, the position has little prestige, and many juvenile officers are not highly motivated. To reduce turnover, in 2009, the Ministry of Interior adopted a requirement that officers assigned to this function must serve for three years.

The juvenile police carry out two main activities. One is to visit schools and give students talks on the risks of criminal activity; the other is to supervise ‘registered’ children. Children may be registered by the police because of antisocial behaviour or because they have committed an offence while too young to be prosecuted.50 Supervision does not involve any particular form of assistance, and appears to be intended to deter offending through fear of the legal consequences. The approach taken by juvenile inspectors varies from one police station to another, however. A few are more proactive and creative, reaching out to adolescents through sports and community improvement activities (e.g., renovating parks). In 2010, the juvenile police registered 3,229 juveniles, including 1,215 juveniles under age 14.

Traditionally, the role of schools in secondary prevention consisted mainly in maintaining a ‘register’ or record of children with antisocial behaviour and providing them with increased supervision or attention.51 It was also a step towards registration with the police and, as such, it intended to encourage good behaviour through fear of police registration.

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46 Sometimes translated as ‘Family and Child Support Offices’.
47 In some cases, the Commission seeks a ‘private sponsor’ (e.g., local business) willing to provide food or clothing.
48 Children’s Code, Article 16.
49 The heads of some police stations reportedly have hired university graduates with degrees in other areas.
50 The Law on Delinquency Prevention of 25 June 2005 provides that the juvenile police shall register (record) juveniles who have committed crimes or offences and juveniles whose antisocial action indicates the likelihood of future commission of illegal actions.
51 This term is widely used in Kyrgyzstan to refer to families suffering from acute poverty and other social problems, such as absent parents (including children of migrant workers) or alcoholism.
In 2010, the position of ‘social pedagogues’ has been added to the staff of schools throughout Kyrgyzstan. Their functions include the promotion of ethnic tolerance and harmony and the prevention of bullying. At least some of them are not newly hired, but staff who previously occupied other positions in their schools and who have undergone minimal special training for their new function. Some schools have also added psychologists to their staff.

Programmes within schools, which identify children with behaviour and psychological or social problems that interfere with their education, can make a valuable contribution to the prevention of offending, although their objectives normally are, and should be, broader. The addition of social pedagogues and in some cases psychologists to the staff of schools is a positive step. However, the limited information available to the assessment team suggests that the methodologies employed do not reflect the current state of knowledge in child psychology and psychopathology. Further training is needed.

A pilot project aiming to reduce violence in schools and the communities in which they are located began shortly after the assessment mission. It is based on a study on the prevalence of violence in schools carried out in 2010 and focuses largely on peer violence, mediation, the peaceful resolution of conflicts and the establishment of referral networks to provide both victims and offenders with access to psychosocial services.

2. The parameters of juvenile justice

Persons aged 16–18 years at the time of an offence may be prosecuted as juveniles for any offence recognized by the Criminal Code.\(^{52}\) Persons aged 14–15 years may be prosecuted as juveniles for 23 categories of offences, including murder, assault, kidnapping, rape, theft, arson, terrorism, aggravated hooliganism, and drug offences, including possession.\(^{53}\) This is similar to the legislation of other former Soviet countries and complies with the recommendation of the Committee on the Rights of the Child that the minimum age limit for prosecution should be at least 12 years of age.\(^{54}\)

3. Police, the apprehension of suspects and the investigation of offences

Juvenile police, as indicated above, are responsible for the prevention of offending, but until recently not for the investigation of crimes committed by juveniles. A special department in charge of this task was created in February 2011.\(^{55}\) It consists of a small team in the headquarters of the Ministry of Interior and one designated officer in each police station – approximately 87 designated officers throughout the country. The headquarters of this specialized criminal investigation unit has three rooms, which have been set aside for questioning juveniles and, more generally, for receiving juveniles who wish to talk with them.\(^{56}\) The assessment team was informed that two district police offices have set aside special rooms for interrogating juveniles. In reality, this simply means that detectives interview juveniles in their office rather than an interrogation room.

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\(^{52}\) Criminal Code, Article 18(1).

\(^{53}\) Ibid., Article 18(2).

\(^{54}\) Committee on the Rights of the Child, Children’s rights in juvenile justice, General Comment No. 10, CRC/C/GC/10, 2007, para. 32. (In para. 30, the Committee expresses reservations about legal systems that have two minimum ages, but its concern appears to be limited to countries where courts must evaluate the maturity of individuals whose age falls between the lower and upper thresholds.)

\(^{55}\) Its name is translated as Department on fighting against criminality among juveniles.

\(^{56}\) Examples mentioned during the visit of the assessment team include adolescents who were present during the commission of crimes by peers or may have been involved in a minor way, and are afraid of the consequences.
The law contains a number of safeguards designed to prevent torture and abuse of suspects and detainees, including some specifically applicable to juveniles. Article 10(2) of the Code of Criminal Procedure prohibits “Threats, violence and other illegal actions” in the course of interrogation and legal proceedings, and Article 11(2) points out, “No participant of criminal proceedings shall suffer violence or shall be treated in a cruel or humiliating way.” Article 6(3) stipulates that evidence obtained in violation of the criminal procedure law may not be used. Further protection is provided by Article 12(5), which specifies that no one may be convicted on the basis of a confession alone, without collaborating evidence.57

The police may detain suspects without a court order for 48 hours.58 A suspect is entitled to the services of a defence attorney as from the moment he/she is detained or interrogated.59 Juveniles may not be interrogated for more than four hours per day, nor more than two hours without interruption.60 The presence of a teacher or psychologist during interrogation is mandatory when the suspect or accused is under age 16 or mentally retarded, and discretionary for other juveniles.61

Detainees must undergo a medical examination upon admission to a jail or pretrial detention centre (lit.: temporary detention or investigative isolation ward) and whenever he/she or a representative complains of physical assault by an investigator.62

Some of the sources interviewed considered such precautions to be relatively effective in preventing physical violence by the police, but the use of psychological pressure is common; according to other sources, some police officers use methods of torture that leave no traces, in particular suffocation with a plastic bag. The assessment team has no mandate to investigate these allegations, but it does believe that greater efforts are needed to determine whether such abuse continues and how common it is.

4. The preliminary investigation and detention before trial

The grounds for detaining a juvenile suspect during the investigative stage of proceedings and trial are the same for juveniles and adults: “serious grounds to think that the accused will escape,” interfere with the investigation or trial, or continue criminal activity.63 In accordance with Article 114 of the Code of Criminal Procedure, juveniles may be detained only in exceptional cases when the accused has been involved in grave crimes “repeatedly” or is charged with the commission of a “particularly aggravated” crime.64 However, a number of sources informed the assessment team that juveniles accused of minor crimes are detained before trial if they are homeless or come from a home where supervision is weak. This appears to be authorized by Article 110(1) of the Code, which allows juveniles charged with less serious offences to be detained before trial if they have no permanent residence.

57 As amended by Law No.111 of 8 August 2004.
59 Ibid., Article 44(3). (Some provisions of English translations of the law appear to indicate that parents may replace defence attorneys, but they are inaccurate; their role is to assist in the defence of their children, not to assume the role of lawyer.)
60 Ibid., Article 395(1).
61 Ibid., Article 396.
62 Ibid., Article 42 (as amended in 2004 and 2007).
63 Ibid., Article 102.
64 Ibid., Article 114 (as amended in 2004).
Only judges have authority to order detention, and the accused (and his/her parents, in the case of juveniles) has a right to be present at the hearing.\(^\text{65}\) In principle, detention orders are valid for two months, but this may be extended for up to one year in complicated cases.\(^\text{66}\) Since cases involving juveniles are rarely complicated, detention for more than two or three months reportedly is rare in practice. Between 2005 and 2010, the percentage of juveniles prosecuted who were detained before trial fell by one third, from 27 per cent to below 20 per cent.

Ensuring the participation in legal proceedings of homeless children and children from ‘unfortunate’ families where parental supervision is weak is no doubt a challenge. However, although it is logical to take the home situation of an accused person into account in determining whether detention before trial is necessary, ordering children from poor and broken homes to be detained while awaiting trial for less serious offences seems inappropriate and disproportionate when, in principle, the law does not authorize the detention of juveniles accused of such offences.

This is especially true considering that only grave offences may be punished with a prison sentence.\(^\text{67}\) Although the reason for imposing the measure may be legitimate, in the circumstances the deprivation of liberty for an offence that is not grave resembles punishment before trial and, indeed, the imposition of a punishment harsher than the one that could be imposed if the accused were convicted.

In international human rights law, a measure can be discriminatory even though the intention is legitimate, if its consequences are disproportionate to the need for the measure.\(^\text{68}\) This is particularly true when the measure affects a social group such as children from ‘unfortunate’ families. Consequently, all possible measures must be taken to avoid the detention before trial of children accused of less serious offences on the grounds of their family situation.

Article 108 of the Code of Criminal Procedure allows “representatives of special children’s agencies” and “other trustworthy persons” to make an undertaking to ensure good behaviour of an accused juvenile and his/her appearance in legal proceedings. Traditionally, such undertakings were made with regard to children living in orphanages and similar institutions by the heads of such facilities. The Bishkek municipal rehabilitation centre for street and homeless children, an open facility, also now makes such undertakings. Finding ways to extend this practice to the rest of the country would help avoid the detention of poor children accused of minor offences. Other measures, which may deserve consideration in the development of a plan to eliminate the detention of children from ‘unfortunate’ families accused of minor offences, include ensuring that cases are resolved quickly and diversion is used whenever appropriate.

**The pretrial detention centre for juveniles**

The assessment team made a short visit to the pretrial detention centre for juveniles located within the perimeter of the juvenile prison complex (see below). It has a capacity for 73 persons. Detainees are kept in cells about 3x6 metres containing two bunk beds, with a small concrete structure serving as a table, on which bowls and spoons were located. The doors are solid metal. They remain closed most of the day. There is a small window in the wall that opens into an outdoor corridor and allows

\(^{65}\) Ibid., Article 110.

\(^{66}\) Ibid., Article 111(1)–(3).

\(^{67}\) As indicated below, prison sentences cannot be imposed on juveniles convicted of a minor offence, or juveniles under age 16 convicted of an offence of medium gravity.

no view. There is one television set for each four cells, so the occupants of any given cell are able to watch television every fourth day. Detainees normally remain in their cell 22 hours per day, and spend the remaining two hours in a cell with no roof – the standard facility for outdoor ‘exercise’ in the former Soviet Union. One of these exercise rooms is larger and one of the walls is somewhat lower than the others, offering a view of some foliage. No equipment was present in the exercise areas, but the staff stated that detainees are given a ball to play with during exercise period. The staff confirmed the information provided by other sources, to the effect that detention before and during trial normally lasts one or two months.

**The confinement facility in Bishkek police headquarters**

The assessment team visited a jail (lit.: isolator of temporary confinement) located in police headquarters, in Bishkek. It has a capacity for 60 persons. At the time of the visit, the population was 42. The purpose of the facility is to hold suspects during the 48-hour period that police may deprive of liberty without a court order. If pretrial detention is ordered, the accused is transferred to a pretrial detention facility. However, since the pretrial detention centre for juveniles is located approximately one hour from the capital, the jail is also used to detain juveniles brought to the capital for questioning during the investigative stage of proceedings and during trial. In addition, when pretrial detention is ordered, a juvenile may be kept in this facility ‘for a few days while documents are collected’ before transfer to the specialized juvenile pretrial detention centre.

The confinement facility consists mainly of a corridor with cells on both sides. It also contains an office and two rooms where detainees may meet with their lawyer or be questioned by an investigator. The cells are 15 square metres. Some have three beds, and others, five. There is a rudimentary toilet, two cement pillars serving as table and chair, and a window that allows light to enter but does not let detainees see outside the cell. The doors are solid metal. The walls of the unoccupied cell shown to the assessment team were filthy. There is no exercise yard.

The team was informed that 36 juveniles were admitted to this facility in 2010. Some were confined here for as long as seven to ten days. When juveniles are transferred to this facility temporarily, in practice they are only there at night, because they spend the day either in court or in a police station where they are interrogated. The assessment team was unable to verify these statements independently. The policy is to avoid confining juveniles in the same cells as adults. Conditions in the facility are such that, unless a juvenile was placed in a cell with adults, he would have no contact with adult detainees. (The same would be true for women.) Nevertheless, the size and condition of the cells and the lack of any recreational facilities violate international standards regardless of whether there is any contact between juveniles and adults. The confinement of juveniles in this facility for a week or more, well beyond the 48-hour limit, in order to complete the process of compiling documentation is completely unacceptable.

**5. Diversion**

The Beijing Rules defines diversion as the discretion of police or prosecutors to dispose of cases of juveniles involved in criminal conduct without recourse to formal legal proceedings or trial.\(^69\) It may, but does not necessarily, involve a voluntary agreement by the offender to participate in community service, to pay reparations or to take part in a community-based programme to prevent reoffending.\(^70\)

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\(^70\) Ibid., Rule 11.3 and 11.4
Article 83 of the Criminal Code, on “Informal correctional measures,” provides that juvenile first offenders accused of a petty or “less serious” offence may be exempted from criminal liability if “correction” would be possible through the application of “coercive educational measures.”

It appears, however, that this Article is applied only after adjudication, in which case it is not diversion.

Article 65 of the Code of Criminal Procedure stipulates that any offender, juvenile or adult, may be exempted from criminal responsibility when he/she or the act committed no longer represents a danger to society due to some change in circumstances, and Article 66 that this may be done when the offender and victim have reached an agreement leading to compensation of the victim. In both cases, this measure is limited to petty and less serious crimes. The decision is made by the court or the prosecutor, or an investigator, with approval by the prosecutor. The accused and the victim must be informed “of their right to hold discussions over compensation for harm and settlement by way of a settlement procedure via a mediator.”

Article 65 is rarely applied in practice, but Article 66 is applied frequently. In most cases, it is applied after the trial has begun. The number of cases closed during trial has increased from 64 in 2006 to 468 in 2010. Fifty-two cases were closed before trial in 2010.

Until recently, mediators did not exist and arrangements concerning compensation were made by the attorneys of the parties and/or the prosecutor. In 2008, the NGO ‘Insan Generation’ began to provide mediation in two districts, under a pilot project supported by UNICEF. Mediation was offered in 119 juvenile cases that arose during a two-year period, resulting in the dismissal of cases against 57 juveniles.

Article 66-1, added to the Code of Criminal Procedure in 2007, is somewhat broader. It provides that a first offender who admits his/her participation in a crime may be exempted from criminal responsibility if, in all the circumstances, the act or the offender “poses no serious threat to society or if the perpetrator compensates for the material damage or losses he has caused” and a “public organization, working team or educational institution where he worked or studied at the time when he committed the crime” requests the court to exempt the offender from criminal liability and agrees to assume responsibility for the offender’s good conduct for a period of one year. If the offender does not comply with the measures imposed, they may be revoked and he/she may be prosecuted. The adoption of this provision is a positive step, because it is not limited to minor offences. Unfortunately, it is seldom, if ever, applied.

The situation with regard to diversion is ambiguous. The disposition authorized by Article 65 of the Code of Criminal Procedure could be considered diversion if applied before or at the beginning of criminal proceedings, but it reportedly is not applied at all. In contrast, Article 66 is applied frequently, but there is a question as to whether it should be considered diversion. In principle, diversion should be at the discretion of a police officer or prosecutor – or perhaps a judge at the beginning of proceedings – that should have authority to divert a case because he/she considers prosecution unnecessary or undesirable. However, a case can be disposed of only if the victim agrees to accept

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71 See also Criminal Code, Article 86.1.
72 Code of Criminal Procedure, Articles 401 and 32(1).
73 Ibid., Article 29(1)1.
74 Ibid., Article 29(1)2.
75 Data provided to UNICEF by the National Statistical Committee.
76 Data on juvenile criminality for 2009–2010 provided by the Ministry of Interior.
77 Code of Criminal Procedure, Article 83(4).
compensation or reparation. Even if a prosecutor believes that prosecution would serve no useful purpose or be counterproductive, Article 66 may not apply unless the victim agrees.\textsuperscript{78}

It may be that these considerations have limited practical importance. The law clearly authorizes diversion, although most cases tend to be disposed of by a measure that is similar but not identical to diversion. Perhaps this practice reflects the importance of the compensation of victims by the offender in Central Asian culture. In the final analysis, the value of disposing of cases by compensation of the victim without adjudication depends mainly on the way it is perceived by victims and juvenile offenders. This has not been documented.

\textit{‘Tayanach’ centre for prevention and psychological support to children in conflict with the law}

On 29 March 2011, the assessment team visited the centre for prevention and psychological support to children in conflict with the law located in the municipality of Batken (south-west Kyrgyzstan), a poor agricultural community with a population of some 23,000.\textsuperscript{79} It was opened in April 2009, two years prior to the assessment mission.

The centre provides after-school services to children aged 12–18 years. Most are offenders referred by the police.\textsuperscript{80} Some are friends of the offenders admitted to the centre, and some are homeless or neglected children placed by an outreach worker. Children from the neighbourhood also attend spontaneously to participate in activities such as using the centre’s computer. In other words, the primary function of the centre is diversion, and the secondary function is prevention of offending by supporting children at risk.

The centre had four staff at the time of the assessment mission: a director, a psychologist, a social pedagogue and a social worker who provides outreach, especially in remote villages.\textsuperscript{81} Activities include help with homework, art therapy, reading, computer use and occasional cultural activities. The psychologist and social pedagogue also ‘work with’ parents, whenever possible. A psychosocial assessment and a medical examination are done upon entrance into the programme, and a social worker visits the child’s home to evaluate the environment. The staff meet to discuss the child’s case on admission and once the child is about to be released. Children participate five days per week, for a period between three months and one year.

At the time of the visit, 15 children were participating in this programme. Seven were aged 12–14 years, and eight were aged 14–18 years; ten were offenders and five were not; and two were girls. All of the offenders had committed either theft or hooliganism.

The staff indicated that 56 children had participated during the last two years and that, to date, none had reoffended. A municipal juvenile police officer informed the assessment team that she considered the centre ‘very helpful’. The centre was funded by UNICEF for a two-year trial period, and is now funded jointly by local governments. There are plans to open a similar centre in Jalal-Abad province (southern Kyrgyzstan).

The assessment team believes that, although the services provided by this centre are unsophisticated, it is a good example of a community-based diversion/prevention programme, especially given the high success rate reported.

\textsuperscript{78} This does not apply to Article 66-1, because compensation is one possible reason for disposing of the case without trial but, as indicated above, this Article reportedly is not applied in practice.


\textsuperscript{80} The legal basis for this appears to be Articles 65 or 66 of the Code of Criminal Procedure.

\textsuperscript{81} During the two-year pilot period, when it was financed by UNICEF, it had a staff of seven.
6. The adjudication of juveniles

The right to treatment that takes into account the child’s age

Article 392 of the Code of Criminal Procedure provides that the age, living conditions and upbringing of a juvenile shall be taken into account in legal proceedings. The Committee on the Rights of the Child has recommended,

...States parties establish juvenile courts either as separate units or as part of existing regional/district courts. Where that is not immediately feasible for practical reasons, the States parties should ensure the appointment of specialized judges or magistrates for dealing with cases of juvenile justice.82

Early in 2009, the Supreme Court designated certain judges to handle all cases involving juvenile offenders arising in four courts in the capital and eight or nine courts in Chui. Training was provided to the designated juvenile judges by the Supreme Court. This arrangement collapsed after the events of 2010, when more than half the judges in the country were dismissed and the caseload of criminal courts increased significantly due to persons charged with offences linked to the uprising or committed under the previous government.

General principles

The Code of Criminal Procedure adopted in 1999 incorporates international human rights standards directly into criminal procedure. Article 10 provides, “All state agencies and officials involved in criminal proceedings shall respect individuals and secure their rights, freedoms, and dignities,” and Article 6(1) expressly obliges investigators, prosecutors and judges to respect international human rights standards.

Article 15 of the Code recognizes the principle of innocence;83 Article 16, the principle of equality before the law; Article 17, the independence of judges; Article 18, the equality of the prosecution and defence and the impartiality of the court; Article 19(2), the principle of legality and the equality of parties and judicial impartiality; and Article 20, in general terms, the right to a defence. Article 30 reaffirms that “criminal cases shall be heard only by a legal, independent, competent and impartial court.”

Confidentiality of proceedings

The right to privacy of an accused juvenile must be respected at all stages of legal proceedings, according to the Convention on the Rights of the Child and the Beijing Rules. The Committee on the Rights of the Child recommends that “all States parties introduce the rule that court and other hearings of a child in conflict with the law be conducted behind closed doors.”84 However, Article 22 of the Code of Criminal Procedure recognizes the opposite principle, namely, that judicial proceedings in criminal cases shall be open to the public. The failure to make an exception for juvenile proceedings is incompatible with international standards.

The right to be present during proceedings

The Code of Criminal Procedure recognizes the right of juvenile defendants to be present at trial, as well as at certain pretrial hearings (see above). The court may decide to exclude a juvenile from

82 General Comment No. 10, CRC/C/GC/10, supra, para. 93.
83 See also Code of Criminal Procedure, Article 18(8).
84 Convention on the Rights of the Child, Article 40.2(b)(vii); The Beijing Rules, Rule 8.1; and General Comment No. 10, CRC/C/GC/10, supra, para. 66.
the courtroom while “circumstances which may have a negative impact on him” are considered. If this is done, when the juvenile returns the presiding judge must inform the juvenile of what happened during his/her absence and shall give him/her the opportunity to ask questions to those interrogated in his/her absence. This rule seems to strike a good balance between the obligation to protect the best interests of the juvenile, in particular the right to be protected from information that may be harmful to his/her emotional well-being, and the defendant’s right to be heard and participate in the proceeding.

The right to be represented by an attorney

The Convention on the Rights of the Child recognizes the right of children accused of an offence to legal or other appropriate assistance in the preparation and presentation of their defence. In Kyrgyzstan, the participation of a defence attorney is mandatory in criminal proceedings concerning juvenile suspects and accused juveniles. If a juvenile does not have an attorney, the authorities must appoint one, who will be paid a fee from public funds.

Some NGOs have begun to provide specialized legal services to juvenile suspects and accused juveniles. The ‘Legal Centre’, for example, assisted 17 juveniles in 2008–2009. In many of these cases, a psychosocial background report was prepared by ‘Insan Generation’, another NGO participating in a pilot project supported by UNICEF. This provision of specialized legal services to some accused juveniles is a positive development, although the number of juveniles assisted by this NGO represents less than 1 per cent of those tried during this two-year period.

The right to be tried without delay

The Convention on the Rights of the Child provides that legal proceedings against juveniles accused of a crime must be concluded “without delay.” The Committee on the Rights of the Child interprets this to mean that the time between accusation and a final decision should not exceed six months.

The Code of Criminal Procedure provides,

- the investigative stage of proceedings should not exceed two months;  
- a trial must begin within 14 days of the decision to proceed to trial;  
- trials must be completed within one month, or two months if the crime is grave;  
- appeals must be heard within 30 days after the appeal is filed.

These time limits apply whether the accused is a juvenile or an adult. In principle, they are in harmony with the Committee’s interpretation of the right to be tried without delay. These periods are flexible, however, and the limits for both stages of proceedings may be extended for certain reasons.

No data on the duration of legal proceedings exist, but sources interviewed indicated that juvenile cases are almost always resolved in less than six months.

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85 Code of Criminal Procedure, Article 399.
86 Convention on the Rights of the Child, Article 40.2(b)(ii).
87 Code of Criminal Procedure, Article 46(4).
88 Convention on the Rights of the Child, Article 40.2(b)(iii).
89 General Comment No. 10, CRC/C/GC/10, supra, para. 83.
90 Code of Criminal Procedure, Article 166(1) (one month for a minor offence).
91 Ibid., Article 252(1).
92 Ibid., Article 252(2).
93 Ibid., Article 342(2).
94 Ibid., Article 166(3) to (5), and Articles 252(3), 250 and 265.
7. Sentencing and other dispositions

The Criminal Code recognizes the ‘last resort’ principle in an Article applicable to juveniles and adults alike:

[The] sentence imposed on the person that committed [a] crime shall be fair, necessary and sufficient to treat such person and prevent new crimes. [A] sentence in the form of imprisonment may only be imposed if its purpose cannot be achieved by another, milder sentence provided for by appropriate article of the Special Part hereof.\(^{95}\)

Article 79(1) of the Criminal Code adds, “In addition to circumstances provided for in Article 53 hereof, imposition of sentence to a juvenile offender shall be based on consideration of factors such as living conditions, education, mental development, other personal peculiarities, as well as influence of older persons.”

During the years 2000–2004, the percentage of convicted juveniles given prison sentences ranged from 61 per cent to 72 per cent.\(^{96}\) Since 2006, the percentage of convicted juveniles given prison sentences has fallen significantly, fluctuating between 30 per cent in 2007 and 38 per cent in 2010.\(^{97}\) This is due in part to the changes in the legislation introduced in 2007 concerning sentencing (see above). Other factors, such as the training of judges, also no doubt contributed to this development, but the causes of the changes in sentencing have not been analysed.

Alternative, non-custodial sentences and measures

Five non-custodial sentences may be imposed on convicted juveniles: fines, apology and compensation for damages, “restricted liberty,” community service (lit.: ‘public work’), and correctional work.\(^{98}\) Community service is from 40 to 240 hours in duration, and is limited to two hours per day for offenders under age 16 and four hours per day for offenders aged 16–18 years.\(^{99}\) Fines may be imposed only on offenders aged 16 years or older.\(^{100}\) Correctional work, which means withholding of part of the offender’s earnings, may be applied for a period of up to one year.\(^{101}\) ‘Restricted liberty’ may be imposed for a period of one to three years.\(^{102}\)

The number of these sentences has fallen in recent years, but the percentage of non-custodial sentences has increased from less than 1 per cent in 2006 and 2007 to 12 per cent or 13 per cent in 2010.\(^{103}\) Since the legal reforms in 2007, the use of fines has decreased, and the use of ‘restriction of liberty’ has grown. (Data on suspended sentences are supplied below.)

In addition, if a juvenile is convicted of petty or “less severe” offence and the court considers he/she may be “corrected” without imposition of “criminal punishment,” it may decide to “exempt

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\(^{95}\) Criminal Code, Article 53(2).

\(^{96}\) National Statistical Committee, citing the Judicial Department.

\(^{97}\) Data provided to the assessment team by the National Statistical Committee.

\(^{98}\) Criminal Code, Article 78.

\(^{99}\) Ibid., Article 80 (2007).

\(^{100}\) Ibid., Article 80-1. (This restriction is curious, given that the law expressly recognizes that a fine may be imposed on juveniles who have no income, in which case it may be paid by their parents.)

\(^{101}\) Ibid., Article 80-2 (2007).

\(^{102}\) Ibid., Article 80-3 (2007).

\(^{103}\) Data of the National Statistical Committee and Judicial Department differ somewhat, but both confirm the trends described here.
from penalty” and impose “coercive educational measures” instead of a sentence. These measures
are: a warning, supervision and restrictions/obligations. A case may also be disposed of in this
way if the court concludes that an offender’s level of development prevented him/her from fully
realizing the implications of the criminal act. The court may revert this decision and impose a
sentence if the juvenile “regularly fails to comply” with the educational measure. Responsibility for
the supervision of educational measures lies with the Commission on Children’s Affairs.

In the same circumstances, a court may also decide to release a convicted juvenile from the
obligation to serve a sentence and instead place the offender in a special educational facility. Since placement in such a facility involves a deprivation of liberty, this disposition is non-custodial and consequently is described further in the section on the special school, below.

Custodial sentences and measures

Prison sentences may not be imposed on juvenile first offenders convicted of a petty crime, or first
offenders convicted under age 16 of a “less serious crime” (i.e., one punishable by a sentence of less
than five years of imprisonment). When a juvenile under age 16 is convicted of a grave or especially
grave offence, the minimum sentence provided by the Criminal Code for that crime is reduced by
half. For example, a 15-year-old convicted of murder, a crime that normally carries a sentence of
eight to fifteen years, could receive a sentence of four to ten years of imprisonment.

The maximum sentence that may be imposed on a juvenile convicted of a “particularly severe crime,”
or for multiple offences, is ten years. The maximum sentence was fifteen years when the Code was
adopted in 1998, and the Committee on the Rights of the Child had expressed concern that such
sentences were too long. It was amended in 2007. The maximum sentence for other categories of
offences is one year for “petty crimes” (as compared to two years for an adult), two years for “less
serious crimes” (as compared to five for an adult), and five for “serious offences” (as compared to
ten for an adult).

104 Code of Criminal Procedure, Article 401.
105 Criminal Code, Article 85(1).
106 Ibid., Article 86(3).
107 Ibid., Article 401(2).
108 Ibid., Article 401(1).
109 Ibid., Article 402.
110 Ibid., Article 86(1). (This conclusion is to be based on the personality of the offender, the nature of the act and any other
relevant circumstances.)
111 Criminal Code, Article 82(3) and (4). (“Petty crimes” are those punishable by a prison sentence of less than two years,
and “less serious crimes” are those punishable by a prison sentence of less than five years. Articles 9–11.)
112 Ibid., Article 82(8).
113 Ibid., Article 82(4).
114 Concluding Observations of the second periodic report of Kyrgyzstan, CRC/C/15/Add.244, supra, para. 66.
115 Criminal Code, Article 82(1)–(3) (2007).
The percentage of convicted juveniles given prison sentences has fallen in recent years, from an average of 67 per cent during the years 2000–2004 to 32 per cent in 2009 and 37 per cent in 2010. The population of the juvenile prison at the time of the assessment mission was 35 persons, as compared to 178 in 2005.

There is an apparent discrepancy between the (still) relatively large number of convicted juveniles given prison sentences and the small population of the juvenile prison. In 2010, for example, 184 juveniles were given prison sentences, yet the population of the juvenile prison in December 2010 was 42 persons, and the number of persons released from the juvenile prison during the year was 31. Efforts to discover the explanations for this discrepancy were unsuccessful.

A survey of the population of the juvenile prison in December 2010 found that 40 per cent were serving sentences for crimes of violence (three for homicide or attempted homicide; three for assault; six for rape or sexual violence; and two for robbery with violence) and 49 per cent had a prior conviction. All the prisoners serving sentences for non-violent crimes had been sentenced for some form of theft, except one convicted of a drug offence. All the prior convictions were for theft, and only one prisoner serving a sentence for a crime of violence had a prior conviction. Thus, although the data do not indicate clearly that all the prisoners serving sentences for property crimes were repeat offenders, the results appear to be fairly consistent with the principle that custodial sentences should be imposed only for violent offences or repeated commission of other serious offences.

There is another disposition that results in deprivation of liberty, although it is not a sentence: if a juvenile is convicted of a less serious offence and the court determines that the purpose of a sentence could be met without the imposition of a sentence, an order placing the offender in an educational or educational-medical facility may be made. The period of placement may not exceed the duration of a sentence for the same offence. This disposition is not used in practice, however, and the only offenders placed in the special school are those too young to be prosecuted.

**Conditional sentences and probation**

Strictly speaking, conditional sentences involve the imposition of a prison sentence, but since the obligation to serve the sentence is suspended, from the offender’s perspective it can be considered an alternative sentence. According to Article 63 of the Criminal Code, if a court concludes, taking into account the crime committed, the personality of the offender and other circumstances, that a convicted person may be rehabilitated without serving a sentence, it may decide to suspend application of the sentence for a period of probation from one to three years. This Article, which applies to juveniles and adults alike, is not applicable to offenders convicted of especially serious crimes. Supervision is the responsibility of the State Service for the Execution of Punishment, with the assistance of the police. If the offender completes the probation period successfully,

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116 National Statistical Committee. (A total of 3,711 prison sentences were imposed from 2000 to 2004 out of a total of 5,557 sentences.)

117 Ibid.

118 See The Beijing Rules, Rule 17.1(c).

119 Criminal Code, Article 85(2).

120 It should be noted that, if the juvenile is a first offender under age 16, this provision authorizes deprivation of liberty although the offender is not eligible for a prison sentence (see Article 82(3) and (4)).

121 Criminal Code, Article 63(1) and (2).
the court may decide to cancel the record of conviction.\textsuperscript{122} The measure may be revoked if an offender systematically violates the terms of probation or commits a new offence.\textsuperscript{123}

Recent data indicate that more than half of all sentences imposed on juveniles are conditional sentences: 59 per cent in 2009 and 51 per cent in 2010.

8. Juvenile correctional facilities

The State Service for the Execution of Punishment operates eleven prisons, six pretrial detention centres and fifteen semi-open facilities. One of the prisons is a facility for juveniles located in the village of Voznesenosvka, 70 kilometres from the capital. It is for boys only. A separate unit for juveniles detained before trial is located within the perimeter of this facility. Female juvenile offenders are held in the women’s prison in Stepnoye, the only correctional facility for women in Kyrgyzstan.

Prison officers are trained by an academy operated by the State Service for the Execution of Punishment, and those who work at the juvenile facility undergo specialized training. The Service has received international assistance from the European Union, OSCE, UNDP, and others. Assistance has focused on material conditions, respect for human rights and law reform. The NGO ‘Insan Generation’ is presently developing standards for the treatment of juvenile prisoners, in cooperation with the Service and the support of UNICEF.

The juvenile prison

On 5 April 2011, the assessment team visited the juvenile colony for convicted boys, located in Voznesenosvka, about one hour’s drive from the capital. The prison is located in a semi-rural area, with a view of the Tien Shan Mountains. The facility, which also comprises a separate pretrial detention centre for boys, is large. It is surrounded by a wall and, outside the wall, two wire fences. The juvenile prison proper consists of some six buildings constructed during the 1960s. One is in ruins, one holds dormitories, another accommodates classrooms and, yet another, the kitchen and cafeteria and the medical unit. A football pitch occupies the area between the main buildings. Vocational workshops are located on the other side of the pretrial detention centre.\textsuperscript{124} One building contained a prayer room with prayer rugs and religious images. A small mosque was in the process of construction. There is also a large room for legal hearings. In the building in which the entrance to the compound is located, there are also punishment cells and a few rooms similar to hotel rooms for family members visiting prisoners.

The grounds contain some trees and flowerbeds but, with the exception of the football pitch, the overall aspect was of dilapidation.

The buildings are being renovated gradually. The school and the medical centre, which consists of two rooms for treatment, a dentist’s office and two bedrooms for ill prisoners, are clean and well furnished. The kitchen and cafeteria also appeared clean and in good repair. The ‘rehabilitation’ room where the social worker and psychologist work is large and clean, and decorated with photos of activities.

In contrast, the building holding dormitories is in bad need of renovation. There are two large dormitories, each with about 20 bunk beds and a toilet and sink. There are no decorations, and no

\textsuperscript{122} Ibid., Article 64(1).

\textsuperscript{123} Ibid., Article 64(3)-(4).

\textsuperscript{124} The assessment team was unable to visit the workshops because they were not at use and the keys were not readily available.
other furniture. Personal effects are kept in cheap storage bags. The doors are solid, and there are no windows allowing a view outside. Off the corridor between the two dormitories is an office where guards are present 24 hours per day. At the end of the corridor is a room containing some unused furniture and a barbell and metal bench for weight training.

The prison has a capacity for 150 persons. At the time of the visit, the population was 35. The low number of prisoners at the time of the assessment mission was due, in part, to an amnesty of juvenile prisoners in 2008, and another amnesty that benefited some juveniles in 2010. Earlier in the decade, the population had reached 198 persons.\textsuperscript{125}

The State Service for the Execution of Punishment provided the assessment team with the following table on the juvenile prison population and the juveniles confined in the women’s prison:

<table>
<thead>
<tr>
<th>Year</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Juvenile prison population</td>
<td>178</td>
<td>82</td>
<td>99</td>
<td>55</td>
<td>51</td>
<td>49</td>
<td>35</td>
</tr>
<tr>
<td>Juveniles confined in women’s prison</td>
<td>n/a</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>3</td>
<td>2</td>
<td>2</td>
</tr>
</tbody>
</table>

Juvenile prisoners with good behaviour may stay until age 21, with the approval of a court. At the time of the visit, there were three prisoners aged 18–20 years. Prisoners attend school in the morning or afternoon, and participate in vocational training during the other half-day. There are seven teachers from the Ministry of Education, in addition to sports instructors (football, volleyball and basketball) and vocational training specialists (welding, carpentry and other building skills). Prisoners are not required to work, except for minor tasks such as cleaning their dormitories. Voluntary paid labour is not available. Prisoners may visit the library in their free time, but the collection of books is small and old. Religious groups visit the prison. An NGO organizes activities such as concerts and theatre in which prisoners participate actively and provides psychosocial services as well as training in life skills. The administration believes that their mission is to prevent reoffending. Former criminals who have become successful in business occasionally visit and talk with the prisoners. A social worker was added to the staff two years ago. Her work includes contacting prisoners’ families six months before release and advising NGOs that help the released prisoners return home. The Deputy Director of the prison informed the assessment team that the authorities provide little or no assistance to released prisoners.

There was wide agreement amongst sources interviewed that many juveniles given prison sentences continue to commit crimes as adults, but there are no studies on recidivism and the factors associated positively or negatively with continued offending after release.

The position of psychologist was added in 2010, and a student of psychology was employed. She indicated that one of her main tasks is to prevent conflict between prisoners. No particular tools are used by the staff to evaluate the mental health of prisoners, but in her opinion none of them had psychological disorders. The assessment team subsequently learned that she was dismissed a few weeks after its visit, for violating the rights of a prisoner.

In 2011, three psychologists employed by the NGO ‘Insan Generation’ began to provide services to prisoners during the last six months of their sentence, preparing them to return to their families or

\textsuperscript{125} Combined third and fourth periodic report of Kyrgyzstan, CRC/C/KGZ/3-4, supra, Table 13.
ASSESSMENT OF JUVENILE JUSTICE REFORM ACHIEVEMENTS IN KYRGYZSTAN

the community. Psychological profiles are completed and therapy is provided individually or in groups, as appropriate, twice a week. ‘Insan Generation’ follows up on the reintegration through monthly visits, or phone calls, depending on where the released prisoner lives, during six months. The NGO, which also operates a victim-offender mediation programme, would like to extend mediation to the juvenile prison in order to reduce the risk of reprisals when prisoners are released.

Prisoners have the right to receive visits from family members twice a month – one 3-hour visit and one 3-day visit. The facility contains some small, clean but Spartan apartments for visiting families. Only four families visit, however, although most of the prisoners are from the capital area.

The only disciplinary measures available are warnings and confinement in a ‘disciplinary room’ (i.e., solitary confinement). This cell was approximately 10 square metres, with a steel bed frame, a rudimentary toilet, a solid metal door and a translucent window that does not allow the prisoner to see outside. One prisoner had been confined in this cell earlier in the year, for seven days, for trying to organize a strike. Solitary confinement violates international standards on the rights of juvenile prisoners.

Independent sources indicated that violence and exploitation amongst prisoners, including sexual abuse, have been a serious problem in the prison. However, the prosecutor responsible for monitoring this prison informed the assessment team that no crimes had been committed by prisoners during the 18 months prior to the visit. The staff of the medical unit also stated that it had been more than a year since any injury requiring medical treatment had been reported. The administration has requested funding to renovate and restructure the residential part of the facility in order to house dangerous and less dangerous prisoners in separate buildings. The assessment team believes that the direction of the prison is committed to eliminating peer violence and exploitation, although it does not have enough information from impartial sources to form an opinion as to how successful efforts to do so have been to date. It does, however, support the proposal to establish different regimes within the prison and to modify the physical infrastructure so as to accommodate them and ensure the physical safety of younger and more vulnerable prisoners.

The women’s prison

Juvenile girls given prison sentences serve their sentence in the women’s prison in Stepnoye. The prison was built in 1962, and has a capacity for 430 persons. At the time of the visit, the population was 293 adults and 2 girls, both 17 years of age.

A small building formerly used to isolate prisoners with tuberculosis was converted into a unit for juvenile prisoners towards the end of 2010. The building, which resembles a small one-floor house, has three bedrooms, a living or activity room, a kitchen and a bathroom. The two prisoners shared a bedroom, which had two separate beds, a desk and chair, a cabinet, a window with curtains and air conditioning. The activity room contained a sofa, two stuffed chairs, a table and a large, new television set.

The unit was surrounded by a small yard and wire fence. There is no school in the prison, either for women or adolescents. The girls have access to vocational training (hairdressing, sewing and making traditional handicrafts). An NGO also visits the unit periodically to help with rehabilitation. The girls may participate in sports, in which they have contact with selected adult prisoners under supervision of the staff. They also may participate in occasional cultural activities, such as concerts, under supervision.

126 See United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), Rule No. 67, which equates solitary confinement with cruel and inhumane treatment, and General Comment No. 10, CRC/C/GC/10, supra, para. 89.
The Director of the juvenile unit considered that the separation of juveniles from adult prisoners is beneficial, because some of the women were hardened criminals and had a negative influence on the attitudes of the adolescents. She also stated that most adolescent girls who serve sentences return to prison, either as juveniles or adults, and expressed the opinion that rehabilitation was unlikely.

Both of the girls serving sentences at the time of the visit had been convicted of theft. One had served only four months, and the other had served approximately 18 months. The new prisoner receives visits from her family. The staff had requested parole on behalf of the prisoner who had served more time, but it was denied because her mother had not been located.

**Parole**

A juvenile serving a prison sentence may be released on parole if he/she has demonstrated “excellent conduct and honest attitude to labour and learning,” after serving from one quarter to one half of the sentence, depending on the nature of the offence and prior record. The minimum time that must be served is less than that required of adult prisoners.

In addition, a sentence may be replaced by a more lenient sentence if a juvenile offender has demonstrated “exemplary conduct and conscientious approach to work or training.” In particular, a sentence of imprisonment may be replaced by a non-custodial sentence, after part of the original sentence has been served. Data provided by the National Statistical Committee indicate that, from 2006 to 2010, less than 4 per cent of juveniles released from prison served their whole sentence; 94 per cent were released on parole.

**Post-release assistance**

Released juvenile prisoners receive no effective assistance from any public agency, not even transportation to their home.

**9. Underage offenders**

Data on the number of children involved in criminal activity while too young to be prosecuted are available for the years 2000–2004. The number varies from a high of 527 children in the year 2000 to a low of 144 cases in 2002. The average was 353 cases per year, or 21 per cent of the total number of juveniles involved in criminal activity during these years. More recent data indicate that the number of underage offenders has increased, to 559 in 2009 and 540 in 2010.

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127 There was only one when the unit opened.
128 This prisoner had been sexually abused by her father and brother(s).
129 Criminal Code, Article 87.
130 Ibid., Article 69. (For example, a juvenile must serve one third of the sentence for a serious crime, while an adult must serve one half.)
131 Ibid., Article 87(1).
132 Ibid., Article 88(3). (The portion that must be served varies from one fifth to one third, depending on the gravity of the crime.)
133 In Kyrgyzstan, this term is used to refer to juvenile offenders; it is used here, in accordance with the practice of the UNICEF Regional Office, to refer to children below the minimum age for prosecution as a juvenile.
134 Criminality and conviction of juveniles, in Criminality and law and order in the Kyrgyz Republic 2000–2004, National Statistical Committee, Bishkek, 2005, pp. 20–25. NB: The term ‘too young to be prosecuted’ or ‘under the age of criminal responsibility’, used in Kyrgyzstan, includes all persons under age 14 and children aged 14–15 years who have committed certain crimes. (See the section on ‘parameters of juvenile justice’, above.)
135 These figures do not include administrative offences.
136 Data on juvenile criminality for 2009–2010 provided to the assessment team by the Ministry of Interior.
Responsibility for children who become involved in criminal activity while too young to be prosecuted as juveniles lies mainly with the juvenile police and the Commissions on Children’s Affairs. ‘Registration’ by the juvenile police is intended to prevent offending as well as reoffending, and consequently has been described in the section on prevention, above.

The functions of the Commissions on Children’s Affairs – formerly Commissions on Minors’ Affairs – are defined in the Children’s Code that entered into force in 2007 and the regulations adopted the following year. The Commissions are composed of representatives of the local government, the juvenile police, the Department of Education, the Department of Health and the Family and Child Support Departments, as well as civil society, under the municipal and district governments in the larger cities. They have authority to place children in the special school, either because of involvement in criminal activities or for other reasons, subject to the right of appeal to a court.

Some community-based programmes established in recent years provide services to underage offenders, as well as some older juvenile offenders and children at risk. They include the open municipal rehabilitation centre for street and homeless children in Bishkek and the centre for prevention and psychological support to children in conflict with the law in Batken. Such programmes are welcome steps towards filling a vital gap in the provision of preventive services to children who become involved in criminal activity while too young to come within the juvenile justice system as such. Anecdotal evidence suggests that these services have a favourable impact. The benefits of these initiatives for the diverse groups of children and families assisted have not yet been independently documented and evaluated, however.

The special school

There is only one ‘special school’ in Kyrgyzstan, for boys aged 11–14 years ‘in need of special educational treatment’. It is located in the village of Belovodskoe, about 40 kilometres from the capital. Built in 1964, it has a capacity for 100 persons.

The population at the time of the visit was 55. Placement is made by Commissions on Children’s Affairs. Most of the population at the time of the visit had been placed for truancy (28 boys) or vagrancy, i.e., running away from home (20 boys). Only seven had been admitted for the commission of an offence: five for theft, one for substance abuse and one for extorting money from another child. Fourteen of the boys were orphans, 26 were from single-parent families and 15 were classified as ‘social orphans’, i.e., abandoned or severely neglected. Although the school is intended for children under age 14, once placed they can remain until age 16 if they have not completed grade 9.

The school has a staff of 30, including 21 professionals: twelve teachers, six monitors (house parents), a psychologist, a principal or head teacher and the Director.

Students may not leave the school without ‘special permission’. When a student runs away, the police are notified. Most of the children who are not orphans receive visits from their families. If the parents request permission to take the child out of the school it is granted. During a recent holiday, 29 juveniles were given permission to visit their families for one week. All returned. They also may make phone calls to their families. According to the relevant regulations, students may not be allowed to leave the facility without supervision, but in practice the administration gives them permission to participate in clubs in the community, such as a dancing club and wrestling club, for two or three hours at a time without an escort.

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138 Ibid., Article 16.2–16.3.

139 Ibid., Article 16.4 and 16.6.
There is a ‘disciplinary room’, but the Director stated that disciplinary problems being minor it is not used. No child has been injured since he was appointed director, more than two years ago.

The school consists of a building for classrooms, a building holding dormitories, an administrative building and a warehouse. There are about 10 classrooms in the school building. The team visited a classroom where geography and biology are taught, which was equipped with topographical models, maps and potted plants. In the residential building there were 10 or more dormitories, each containing four to five bunk beds. There are wardrobes in every bedroom, posters on the wall and curtains on the windows.

The grounds comprise a football pitch and gardens. The Director believes it is important to teach the students how to earn a living, and to this end a project to raise and sell trees and ornamental plants has begun. The intention is not only that students learn how to grow plants, but also how to operate a business.

Students were observed involved in unstructured recreational activities in different parts of the grounds. The relationship between the staff and students seemed informal and friendly.

Some students return home upon reaching age 14 or completing grade 9. Those who do not are assisted in entering a residential vocational school, either in Bishkek or elsewhere, with the consent of their parents or guardians.

The Bishkek municipal rehabilitation centre for street and homeless children

The rehabilitation centre for street and homeless children in Bishkek was opened in 2003 and has a capacity for 70 persons. At the time of the visit, 72 children were in residence. It receives boys and girls aged 3–17 years. In the centre, they are separated into five age groups.140

Some children enter the centre at their own initiative; others are placed by the Family and Child Support Department of the local government. The centre also receives children without parental care accused of an offence who would otherwise be confined in a pretrial facility, and children without parental care sentenced to probation. In addition, the staff sometimes participates directly in discussions between victims and offenders with a view to persuading the victim to drop charges in exchange for the offender’s agreement to accept supervision and treatment by the centre.

The services provided by the centre include medical, social and psychological assistance. The staff rejects what they call the Soviet approach to psychology and have developed their own tools for evaluating the psychological and social needs of children who enter their care. Another important aspect of their methodology is to work with parents as well as children, whenever possible. When children are accused of an offence, the centre arranges for legal assistance to be provided by one of the two NGOs that cooperate with it, and prepares psychosocial reports for consideration by the court. Their aim is to prevent children from being separated from their families, and assist children and their parents in overcoming problems that could lead to the institutionalization of children or the disintegration of the family.

The centre is located in a relatively large complex. The main building holds five large dormitories, classrooms and recreational rooms for children of different age groups. The dormitories are large but crowded, with 15 to 26 beds in a room, some single beds and some bunk beds as well as cabinets for children to keep their belongings. At least some dormitories contained a television and musical...

140 Younger children are placed in the centre if they have been left without parental care or if their parents have been deprived of custody by a court.
instruments. They were clean and pleasantly decorated with materials appropriate to the age of the children. Rooms for younger children contained stuffed animals.

The playrooms were well equipped with toys. A recreational room contained a sound system, a television, a piano and a fish tank. The grounds included a playground, tables and benches, and a pen with some chickens. A puppy is also in residence. The atmosphere in the centre was informal and lively. Boys and girls were playing together, and parents were visiting. The staff appeared to have a good rapport with the children.

10. Centres for the adaptation and rehabilitation of minors

The Ministry of Interior operates centres for the adaptation and rehabilitation of minors, formerly known as ‘transit centres’. Their main purpose is to house homeless children aged 3–18 years while their needs are evaluated and a permanent solution is found. Children are placed by the juvenile police; no other administrative or judicial authority is involved. Placement is not based on consent and residents are not allowed to leave at will, so it amounts to a deprivation of liberty.\(^\text{141}\) Children do not attend school while in the centre. Formally, they may not be held more than 30 days, but the assessment team was informed that, in practice, they are confined for as long as six months.\(^\text{142}\)

The assessment team visited a centre in Bishkek, and also interviewed the staff of the NGO ‘Smile’ that worked in the centre in Osh in the context of a project on trafficking of persons, from 2007 until it was destroyed in 2010. It had a staff of three social workers: one lawyer and two social pedagogues. Most children placed in the centre had run away from home due to physical abuse, exploitative labour or sexual abuse, according to this organization. Nevertheless, the practice of the centre was to return children to their families as soon as they could be located. In 2010, 680 children were placed in the Osh centre: 8 were under age 7; 225 were aged 8–13 years; 258 were aged 14–15 years; 117 were aged 16-17 years; and 12 were over age 17.\(^\text{143}\) The vast majority – 619 children – were returned to their families, six were placed in an orphanage, four in a vocational school, four were returned to families abroad, four were transferred to the centre in the capital and two to the ‘special school’ for children with antisocial or criminal behaviour (see above).

In some cases, the centre would keep the children for a longer period while the staff made efforts to persuade parents to change their treatment of the child. (This is why children were confined for more than the legal limit of 30 days.) The NGO also monitored for a period of three months some children who returned to their homes and, in some cases, provided legal assistance. They estimated that such efforts were successful in only 3–4 per cent of cases. After children ran away from home three or four times, the case would be remitted to the Commission on Children’s Affairs, which could terminate parental responsibility and place the child in a facility for abandoned children.

\(^{141}\) Rule 11(b) of the Havana Rules defines deprivation of liberty as “any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.”

\(^{142}\) This information concerns the centre in Osh (see below).

\(^{143}\) These figures include some children admitted more than once.
PART III. UNICEF’s Support to Juvenile Justice Reform

Strategy

The UNICEF Country Office has not adopted an express strategy concerning the development of a juvenile justice system that meets both international standards and the needs of Kyrgyzstan society. Consequently, this part of the report examines the strategy implicit in the activities supported by UNICEF in recent years.

In 1999, an assessment of child protection issues in Central Asia carried out by an international consultant on behalf of the UNICEF Regional Office for CEE/CIS identified several issues concerning juvenile justice in Kyrgyzstan. Unfortunately, the assessment team was unable to learn what influence UNICEF may have had in the preparation or implementation of the ‘New Generation’ State Programme for the Realization of Children’s Rights adopted by the government in 2001 (see the section on policy, above). The information available is too scarce to reconstruct the strategy implicit in activities prior to 2004.

In 2004, the international consultant who carried out the 1999 assessment of child protection issues in Central Asia returned to prepare an assessment of juvenile justice. His report concluded that avoiding the detention of juvenile suspects in police stations and reducing the use and length of prison sentences were urgent issues. The report also recommended that priority be given, inter alia, to adopting a coherent statement of the aims of juvenile justice, reviewing the use of the police facilities for street children, evaluating disciplinary practices in the juvenile prison, and finding a solution to the problem of adolescent girls serving sentences in the women’s prison. Other recommendations included improving data collection on juvenile justice, reducing the separation of offenders from their families and communities, assessing the role of the Commissions on Children’s Affairs and the juvenile police in prevention, and strengthening restorative justice.

The 2004 assessment had some influence on the UNICEF Country Programme 2005–2010, which called for the reform of the legislative, administrative and institutional frameworks for children in conflict with the law, the promotion of restorative justice and the training of judges. However, the political turmoil and the resulting change of government in 2005 brought into focus political and constitutional reform. The new government turned its attention to children’s issues in 2006 with the drafting and adoption of the Children’s Code. A Working Group on law reform was established and important amendments to the legislation concerning juvenile justice were adopted in 2007. In general, emphasis was placed on law reform during the first half of the UNICEF Country Programme, although efforts to adopt new legislation after 2007 – notably the drafting of a law on juvenile justice – did not bear fruit.

In 2008, UNICEF and the Ministry of Justice signed a Protocol on Mutual Understanding and Cooperation on questions of juvenile justice that called, inter alia, for capacity-building, the establishment of community-based diversion programmes and the improvement of conditions in closed facilities for juveniles, in particular pretrial detention centres.
In June 2009, another international consultant prepared a ‘Juvenile Justice Plan’ that asked for:

- the creation of national and local coordinating bodies;
- more comprehensive data collection and the publication of an annual report containing data on juvenile justice;
- the training of judges, prosecutors, police, staff of juvenile correctional and detention facilities, defence attorneys and child protection/social workers; and
- the development of pilot diversion and restorative justice projects.\(^{150}\)

This document was taken into account in the preparation of the juvenile justice component of the Inter-Agency Action Plan for the Reform of the Child Protection System 2009–2010, adopted shortly after the consultant’s plan was prepared. The Inter-Agency Plan was more comprehensive, however (see the section on policy, above).

The Juvenile Justice Plan was expressly based on the presumption that the package of draft amendments to the legislative framework of juvenile justice would be enacted. Approximately one year later the government was overthrown, and this has not yet happened. The Plan was brief (less than eight pages) and, although the components on data and training were somewhat detailed, it contained no specific aims or indicators regarding implementation, nor a time frame for implementation. It was not comprehensive, and does not appear to be based on a sound understanding of juvenile justice in Kyrgyzstan. For example, serious issues concerning conditions in detention facilities and the juvenile prison are only addressed in the component on training. The recommendations regarding data collection were not based on an analysis of data already being published at the time, and the emphasis on diversion and restorative justice did not take into account the large number of cases that are not prosecuted because the offender and his/her family compensate the victim.

Although the Juvenile Justice Plan presumed that the package of legislative amendments would be adopted, implementation did not depend on their entry into force. Some training was provided, but the fact that much of it took place in 2009 suggests that it was arranged before the Plan was prepared. Similarly, one pilot community-based diversion project was established in 2009, a few months before the Plan was prepared. No coordinating body has been created, and there have been no major changes in data collection since the Plan was drafted. A community-based diversion project subsequently began in the capital, but this was called for in the 2008 agreement between UNICEF and the Ministry of Justice. In short, the Plan appears to have had little impact. This was no doubt due in part to the change in government, which may have been difficult to anticipate, but it was also due in part to the limitations of the document itself.

UNICEF also prepared in 2009 a fundraising proposal designed to obtain resources to support the implementation of the juvenile justice component of the Inter-Agency Action Plan, to promote law reform and training, and to develop models for prevention, diversion, mediation and probation. This proposal was not funded, but UNICEF nevertheless began to implement such activities with resources from the child protection budget and modest supplementary contributions from the Regional Office for CEE/CIS and National Committees.

Some results were achieved, in particular by a pilot project in the capital that combined mediation with legal and social assistance to juvenile suspects and accused juveniles. Other goals, such as the adoption of a new juvenile justice law or the creation of a new databank, were not. The year 2009 nevertheless marked a turning point, when encouraging law reform became part of a broader approach, which included pilot projects and greater emphasis on training.

In 2010, UNICEF began to support the reform of the correctional facilities for juveniles, financing the establishment of a separate unit for juveniles in the women’s prison and strengthening the educational programme in the juvenile prison. At the time of the assessment mission, plans were being developed to help build a comprehensive data collection and management system.

The present UNICEF strategy appears to be fairly well suited to the needs and circumstances of Kyrgyzstan, although there are risks and challenges that potentially could affect the outcome. Taking to scale pilot projects such as the Batken project, the open municipal rehabilitation centre for street and homeless children in Bishkek and the social-legal assistance/mediation project is one of the most important challenges. It remains unclear whether this can be done without further law reform, and whether the issues that have stalled law reform for the last several years can be overcome.

Expanding the capacity to provide targeted preventive services for children and families at greatest risk is another challenge, especially given the limited financial and human resources available.

The lack of reliable information about the treatment of juveniles deprived of their liberty, excessive reliance on detention before trial and substandard conditions in detention facilities are major issues that still do not receive the priority they deserve. Although training and advocacy have had an effect, it remains to be seen whether there is sufficient political commitment to deal with these vital but sensitive issues. Furthermore, while there have been significant improvements in the prison conditions and in the treatment of juvenile prisoners, the important and challenging issues of rehabilitation, prevention of reoffending and assistance in reintegration to the community are not yet being addressed.

Research on the experiences and views of children would be of great value in confronting some of these issues, such as the treatment of juveniles deprived of their liberty. Research on the factors that increase or decrease the risk of offending and recidivism is needed as well. Although research is sometimes seen as a luxury in low-income countries, without it, it is difficult to ensure that the limited resources available are invested in services and programmes that are effective.

Finally, the experience of other countries suggests that intersectoral bodies, which serve as a forum to discuss policy issues, monitor developments and coordinate activities, can help build the consensus and momentum that contribute to successfully face challenges like these and continue the lengthy process of strengthening juvenile justice.

**Evaluation**

With the exception of the draft law on juvenile justice and the draft training manual, which were commented on by international experts, none of the activities concerning juvenile justice supported by UNICEF since 2004 have been evaluated independently.\(^{151}\) This is understandable, given the nature, scope and recentness of the relevant activities. However, some of them – such as training and mediation – are reaching the point when independent evaluation of their impact would be appropriate.

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\(^{151}\) The 2011 training needs assessment collected some views on gaps in existing training materials and programmes, but did not evaluate the impact of the training provided.
PART IV. Conclusions and Recommendations

POSITIVE DEVELOPMENTS

1. The minimum age for prosecution or ‘criminal responsibility’ is compatible with the recommendations of the Committee on the Rights of the Child, and no one may be prosecuted as an adult for offences committed while under the age of 18 years.

2. The maximum sentence that may be imposed on a convicted juvenile has been reduced to five years of imprisonment for a serious offence, and 10 years for an especially serious offence.

3. The government recognizes the need to adopt new legislation on juvenile justice. It also sees the importance of new legislation in the broader context of protecting the right of juveniles who are victims of crime or witnesses, strengthening programmes and services designed to prevent, inter alia, offending, and ensuring the complementarity of and cooperation between the child protection and the juvenile justice systems.

4. In most of the relevant ministries and public institutions, there are some key officials with a good understanding of and commitment to the rights of children with regard to juvenile justice.

5. A training manual on juvenile justice that includes participatory training methods and aims to develop skills and appropriate values as well as knowledge has been prepared, tested, evaluated and published. Training in juvenile justice has been incorporated into the curricula of the Police Academy and the training centre for prosecutors.

6. The role of civil society in providing services and in helping to develop law and policy is recognized and appreciated by the relevant authorities. Human rights organizations operate freely and issues concerning law enforcement and the administration of justice are discussed openly.

7. The community-based diversion/prevention centre piloted in Batken is a positive experience, especially given the results; the decision of the local governments to assume joint responsibility for financing it seems to indicate that it is sustainable.

8. The Bishkek open municipal rehabilitation centre for street and homeless children provides valuable assistance to children at risk and their families, in addition to participating in legal proceedings concerning accused juveniles and services to children given alternative sentences such as probation or compulsory educational measures.

9. The ‘special school’ for underage offenders and other boys ‘in need of special educational treatment’ appears to provide a supportive environment; efforts are made to facilitate and encourage contact between students and their families. In practice, the students are allowed to participate in activities in the community.

10. The addition of social pedagogues to the staff of schools is a positive step towards the realization of the potential role of schools in the prevention of offending. The decision to launch a pilot programme to prevent violence in schools is a positive development as well.

11. The law contains important safeguards against the abuse of juvenile suspects and detainees. A special unit of detectives (lit.: criminal police) is responsible for investigating crimes committed by children. There appears to be a commitment on the part of the police to combating the exploitation of juveniles for the commission of crimes by adult criminal groups.
12. The participation of a defence attorney during the interrogation of juveniles and legal proceedings concerning accused juveniles is mandatory, and the law provides for the appointment of a defence attorney and for the compensation of appointed attorneys with public funds. In addition, some NGOs have begun to provide specialized legal defence services or combined legal and psychosocial services to accused juveniles.

13. The law gives prosecutors discretion to divert cases involving minor crimes or to simply decide to 'exempt from criminal responsibility', especially when there is an agreement to compensate the victim.

14. In practice, the duration of the investigative stage of proceedings involving accused juveniles is limited to two months.

15. The administration of the juvenile prison appears to believe in the mission of rehabilitating prisoners, and the positions of psychologist and social worker have been added to its staff. Part of the infrastructure has been renovated and is in good condition. There is a well-equipped school and class size is small. NGOs visit the prison to assist in counselling and other activities; there is a prayer room (for Muslim prisoners); and a mosque is being built.

16. A separate unit for juvenile prisoners was established in the women’s prison in 2010. Material conditions in this new unit are very good. The policy of allowing some contact between juvenile prisoners and selected adult prisoners, under staff supervision, is an appropriate response to the need to protect juvenile prisoners while avoiding excessive isolation.

17. The National Statistical Committee publishes every five years a report on crime, which includes valuable information on offending by juveniles. The quarterly Bulletin of the Supreme Court occasionally contains data on cases involving juvenile offenders.

CHALLENGES

1. There is no specific national mechanism to coordinate the activities of the different bodies involved in juvenile justice.

2. Political instability and changes in the personnel of ministries, courts and other public bodies on all levels have delayed the process of developing the juvenile justice system and undermined the effectiveness of advocacy and training carried out in recent years. Political criteria sometimes prevail over professional criteria in the appointment or hiring of public officials and employees.

3. The training manual published in 2010 does not cover prevention, the treatment of girls and younger children, and rehabilitation/reinsertion. Juvenile justice is presently not part of the curricula of the Police School or the judicial training centre.

4. Many children leave home and are exposed to a greater risk of offending because of abuse and exploitation by their parents or guardians, but support to families is largely limited to material assistance.

5. The social pedagogues who have been added to the staff of schools are not required to have special professional qualifications and there is no clearly defined methodology for reducing violence and exploitation in schools, nor for identifying and assisting children manifesting behaviour or personality characteristics associated with a higher risk of offending.
6. Various sources report that police often resort to psychological pressure during the interrogation of juvenile suspects, and some sources allege that police sometimes use methods of physical abuse that do not cause physical injury (suffocation by placing a bag over the head of a suspect). Police may detain juveniles for 48 hours without a court order, which contributes to psychological pressure incompatible with the rights of the child.

7. The practice of detaining juveniles accused of less serious offences before trial because of poor parental supervision does not comply with the ‘last resort’ principle and might be considered discrimination.

8. The abuse and exploitation of juvenile prisoners by other prisoners within the juvenile prison have been a problem in the past. The present administration of the juvenile prison seems committed to preventing such practices, but the extent to which they have been eliminated is unknown.

9. The part of the juvenile prison in which prisoners live is in need of renovation.

10. There is no programme to assist offenders released from prison, which increases the risk of reoffending.

11. Physical conditions in the pretrial detention centre (‘SIZO’) for juveniles and the police jail in which juveniles are confined in Bishkek are inhumane, and far worse than conditions in the juvenile prison. The detention of juveniles in a small cell for 22 hours a day and the limited possibilities for use of time outside the cell, and the confinement of juveniles in the police jail in Bishkek for a week or more without outdoor exercise also violate international standards.

12. No survey has been carried out of the experiences of juveniles in police custody, detention, prison, probation, the special school, the centre for the adaptation and rehabilitation of minors, the rehabilitation centre for street and homeless children or the centre for prevention and psychological support to children in conflict with the law.

13. Recidivism is a serious problem, but almost no research has been conducted on recidivism and the reasons some offenders continue to commit offences while others do not.

14. The data on juvenile justice published by the Office of the Supreme Court are fragmentary and have limited circulation. The data released by the National Statistical Committee are published with considerable delay. Data compiled by other agencies, such as the Judicial Department, are not published.

15. There are no specialized juvenile courts, and the specially designated judges appointed in some courts in 2009 are no longer functioning. Although judges have discretion to hear cases against juveniles in closed session, the law does not recognize the principle that all proceedings in juvenile cases should be closed to the public.

16. Police and prosecutors are reluctant to drop charges or divert cases to community-based programmes when the statutory criteria for exercising their discretion to do so are met.

17. Legislation allows children to be placed in centres for the adaptation and rehabilitation of minors for up to 30 days by decision of the police. In practice, such orders are sometimes re-imposed when the 30-day limit is reached. Since placement involves a deprivation of liberty, confinement for such a long period without due process is not compatible with international standards.
Furthermore, children should not be deprived of the right to education for periods of up to six months, which reportedly was the practice in the centre in Osh.

18. The Ombudsman has not paid sufficient attention to the human rights of children in contact with the juvenile justice system, in particular situations involving serious violations of international standards such as the conditions of confinement in pretrial detention centres.

RECOMMENDATIONS

1. Documenting the experiences and views of children
A survey of the experiences of children who come into contact with the juvenile justice system should be carried out by an independent research group, in cooperation with the relevant authorities, to document the actual impact of the relevant programmes and institutions on children.

2. Data
The indicators used by different ministries and other bodies to compile data on juvenile justice should be reviewed to ensure that they are consistent and generate all the information needed to develop policies and plans and to monitor the functioning of juvenile justice. The data published annually should be reviewed with a view to ensuring greater transparency and encouraging the participation of civil society in juvenile justice.

3. Human resources
Stricter standards should be adopted for the recruitment of professionals working in the various parts of the juvenile justice system and for positions involving assistance to children at risk.

4. Coordination
Consideration should be given to developing a mechanism for coordinating activities related to the prevention of offending by juveniles and juvenile justice that includes civil society and local or municipal authorities or, at least, an annual forum for the discussion of these issues.

5. Training
Additional training materials should be developed to address the gaps in existing materials identified by the 2011 training needs assessment. Training should be incorporated into the curricula of the Police School, the judicial training centre and the programmes for other professionals working in the prevention of offending and reoffending.

6. Community-based prevention and diversion
Priority should be given to developing a programme for the prevention of abuse and exploitation of children in their homes, and the provision of psychosocial assistance to families where such problems exist, taking into account the experience of the Bishkek municipal rehabilitation centre for street and homeless children.

Additional centres for prevention and psychological support to children in conflict with the law should be established in other cities and regions, based on the experience of the centre in Batken.

7. Centres for the adaptation and rehabilitation of minors
The functions of the centres for the adaptation and rehabilitation of minors should be reviewed and, if there are valid reasons for maintaining them as closed facilities, the criteria and procedures for
placement should be brought into compliance with international standards regarding the deprivation of liberty.

8. Specialized courts, judges and prosecutors

A study should be undertaken of the need for juvenile courts (i.e., the number of cases requiring prosecution, disaggregated by locality) as well as the need for judicial intervention in other civil and criminal cases involving children (e.g., crimes against children, removal of parental authority). The experience of other countries having juvenile courts, children’s courts and especially designated judges and prosecutors should be looked at closely, with a view to determining the most appropriate steps to be taken in order to ensure that children accused of an offence (as well as other children involved in legal proceedings) enjoy the right to prompt resolution of their cases in an atmosphere that bears in mind their age, rights and special needs.

The development of specialized courts or designation of specialized judges should be accompanied by the appointment of specialized prosecutors, duly trained and selected for their commitment to ensuring justice for children.

9. Police custody

The maximum length of time that children may be kept in police custody without being presented to a judge should be reduced from 48 hours to 24 hours, in order to minimize exposure to psychological pressure and to comply with the Committee on the Rights of the Child’s interpretation of the Convention on the Rights of the Child.

10. Pretrial detention

Efforts should be made to expand the practice of entrusting social agencies with the responsibility of supervising juveniles from ‘unfortunate families’ accused of a minor offence, taking into account the experience of the Bishkek municipal rehabilitation centre for street and homeless children.

Priority should go to humanizing conditions in the pretrial detention centre for juveniles and the jail where juveniles are detained for shorter periods; consideration should also be given to eliminating the practice of transferring detainees from the juvenile detention centre to the jail in Bishkek for interviews with investigators.

11. Security in the juvenile prison

The residential area of the juvenile prison should be renovated and separate units should be established for different categories of prisoners to reduce the risk of abuse and exploitation, as proposed by the prison administration. Separate units could also be used to facilitate the introduction of varied regimes as part of the strategy and methodology of rehabilitation.

12. Rehabilitation of convicted juveniles

The State Service for the Execution of Punishment should be provided with assistance in the development of rehabilitation methodologies based on the assessment of the needs of individual prisoners, as well as programmes adapted to the requirements of groups of prisoners having distinctive characteristics and needs.

13. Support to reintegration into the community

Priority should be given to the development of an appropriate programme of support for the social reintegration of juvenile offenders released from the prison.
14. Documenting the effectiveness of prevention and rehabilitation programmes

The effectiveness of programmes or measures for the rehabilitation of offenders and prevention of offending or reoffending should be monitored. Consideration should be given to carrying out a longitudinal study of the lives of juveniles who have experienced different measures (prison, probation, diversion etc.) to provide a scientific basis for the analysis of the impact and effectiveness of these measures for different kinds of offenders.

15. Monitoring the rights of children

The Ombudsman should make greater efforts to monitor conditions in facilities where children are deprived of liberty, and to develop a confidential, child-friendly and effective mechanism to receive complaints from children whose rights have been violated.
Annex 1. Data collection and analysis

This annex has two parts. The first compares the data available with international and regional indicators, and in some cases summarizes recent data. The second concerns the availability of data relevant to certain other significant indicators.

1. National data collection system and international and regional indicators

(a) Crimes committed by juvenile offenders

The TransMONEE matrix defines this indicator as “the number of crimes committed by or with the participation of persons aged 14–17” (offending by juveniles). The UNODC-UNICEF Manual does not include this indicator.

The TransMONEE matrix calls for this indicator to be disaggregated by the kind of crime (i.e., violent, property or other), but the TransMONEE database only contains a table on the total number of offences by juveniles, without disaggregation by the nature of the offence, and a table on the number of homicides committed by juveniles. The National Statistical Committee has provided data on offences by juveniles for every year since independence, and on homicides committed by juveniles since the year 2000.

Since the year 2000, the National Statistical Committee also publishes data provided by the Ministry of Interior on crimes committed by or with the participation of juveniles. These data are disaggregated by 13 categories of offences, including murder, rape, heavy bodily injury, hooliganism, drug possession and eight property offences.

Data on offences by juveniles during the last decade show an increase of 94 per cent between 2001 and 2002 (from 1,008 to 1,954) followed by a steady decline until the year 2007 (760 offences) and another increase, of 39 per cent, between 2007 and 2010. Despite this recent increase, the number of reported offences by juveniles in 2010 (1,059) was 46 per cent below the number in the peak year (2002) and 14 per cent below the number in the year 2000.

(b) Children arrested/in conflict with the law/registered offenders

The term ‘arrest’ is defined by the UNODC-UNICEF Manual as “placed in custody by the police... or other security forces because of actual, perceived or alleged conflict with the law.” “Conflict with the law” is, in turn, defined as having “committed or [being] accused of having committed an offence,” although the definition adds that, “Depending on the local context,” the term may also mean “children dealt with by the juvenile justice or adult criminal justice system for reason of being considered to be in danger by virtue of their behaviour or the environment in which they live.”

The TransMONEE database had no indicator on this issue until 2011, when a table on the number of ‘registered juvenile offenders’ was added.

The National Statistical Committee publishes two kinds of data related to these indicators. One is ‘juveniles delivered to police stations’. This data is disaggregated by five categories: juveniles

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154 See TransMONEE 2011 Database, supra.
suspected of committing an offence; children too young to be prosecuted suspected of participation in acts defined as an offence; children or adolescents suspected of involvement in an administrative offence; juveniles found drinking alcohol in public; and drug use. The number of juveniles ‘delivered to police stations’ is much larger than the total number of children in these categories, however. For example, in 2004, 11,051 juveniles were ‘delivered to police stations’, but the total of juveniles suspected of participation in a crime (1,035), underage children suspected of participation in criminal activity (284), children or adolescents suspected of involvement in an administrative offence (947) and children or adolescents found drinking alcohol in public (77) was 2,343, less than one quarter of those ‘delivered’ to police stations. In other words, the data do not indicate the reason that 8,708 children were delivered to a police station.

The reports of the National Statistical Committee on juvenile justice include data on “juveniles [who have] committed crimes”, i.e., children above the minimum age for prosecution identified as suspected participants in offences registered by the police. These data are disaggregated by age (14–15 years; 16–17 years), sex, recidivism, student status or unemployed, whether the crime was committed by a group, and whether it was committed under the influence of alcohol or drugs. The number of reported juvenile offenders fell by 20 per cent between the years 2000 and 2001 (from 1,713 to 1,370). Since 2001, the number of offenders has fluctuated less than the number of offences, between a high of 1,311 in 2002 and a low of 1,143 in 2004.

Another kind of data related to this indicator – juveniles admitted to jails – was included in the most recent report to the Committee on the Rights of the Child (see table below).

<table>
<thead>
<tr>
<th>Year</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Juveniles jailed</td>
<td>582</td>
<td>603</td>
<td>724</td>
<td>709</td>
<td>768</td>
<td>715</td>
<td>623</td>
<td>567</td>
</tr>
</tbody>
</table>

(c) Children in detention

The UNODC-UNICEF Manual describes this indicator as “children detained in pretrial, pre-sentence and post-sentencing [sic] in any type of facility (including police custody)” at any specific date.

The TransMONEE database contains a table entitled “Number of juveniles placed in correctional/educational/punitive institutions at the end of the year.” The TransMONEE glossary does not refer to this terminology, but does provide a definition of ‘deprivation of liberty’, namely, “A child is deprived of liberty where he or she is placed in any form of detention or imprisonment in a public or private setting, from which the child is not permitted, by order of any competent authority, to leave at will.” It is not known whether these two concepts are intended to be interchangeable. This is of particular relevance to detention before trial, which meets the definition of deprivation of liberty but normally would not be considered placement in a correctional, punitive or educational institution.

Data published by the National Statistical Committee for the years 2000–2004 include data on juveniles in prison, but not on juveniles in pretrial detention, so the total number of accused or convicted juveniles deprived of liberty during this period is unknown.

(d) Children in pretrial or pre-sentence detention

The TransMONEE matrix defines this indicator as “the number of children who are placed in pretrial detention during the year.” The UNODC-UNICEF Manual describes this indicator as including children

155 Combined third and fourth periodic report of Kyrgyzstan, CRC/C/KGZ/3-4, supra, Table 8.
156 Manual for the measurement of juvenile justice indicators, supra, p. 11.
deprived of liberty while awaiting trial and convicted juveniles awaiting sentencing, but not those who are sentenced and awaiting the outcome of an appeal.

The next report on crime covering the years 2005–2009 to be published by the National Statistical Committee is expected to include data on the population of the pretrial centre for juveniles on the first day of the year. Information provided to the assessment team indicates a significant decrease, from 62 in 2006 to 30 on 1 January 2011.

The same report is also expected to contain data on the number of juveniles placed in pretrial detention during the year. This figure has fallen from 342 in 2005 to 228 in 2010. The percentage of accused juveniles detained before trial also has fallen, from approximately 30 per cent to 20 per cent.

(e) Duration of pretrial detention
No data on this indicator are published in Kyrgyzstan.

(f) Child deaths in detention
No data on this indicator are published in Kyrgyzstan.

(g) Separation from adults
The UNODC-UNICEF Manual defines this indicator as “the percentage of children in detention not wholly separated from” adult prisoners. The TransMONEE project does not include this indicator.

No data on this indicator, as such, are published in Kyrgyzstan. In principle, all juveniles detained before trial are detained separately from adults. However, data on the number of juveniles in police custody, which may well involve contact with adults, are not published.

The population of the juvenile prison, which is for boys only, includes young adults serving sentences imposed for offences committed while juveniles. Since they are not segregated from prisoners under age 18, the entire juvenile population of the juvenile prison is confined together with adult prisoners.

Data on juvenile offenders serving sentences in the women’s prison during the years 2005–2009 will be included in the forthcoming report of the National Statistical Committee. The numbers are small, ranging from one to three persons. It is not known how many of them were still under age 18 at the time the population was counted.

(h) Contact with parents and family
The UNODC-UNICEF Manual defines this indicator as “the percentage of children in detention who have been visited by, or visited, parents or guardian or an adult family member during the last three months.”

No data on this indicator are published in Kyrgyzstan.

(i) Convictions
In 2011, tables on “juveniles sentenced for criminal activity: number of convicted boys” and “juveniles sentenced for criminal activity: number of convicted girls” were added to the TransMONEE database.

The number of juveniles convicted of an offence has been published by the National Statistical Committee since the year 2000. The data are disaggregated by the same 13 categories of crime mentioned above. They are also disaggregated by sex, age (14–15 years; 16–17 years), student/employment status,
whether the crime was committed by a group, whether it was committed under the influence of alcohol or drugs, prior record of offending and place where the offence occurred.

While the number of offences reportedly committed by juveniles and the number of reported juvenile offenders have fluctuated greatly during the last decade, the number of juveniles convicted of an offence has declined more steadily, from 1,314 in 2000 to 358 in 2010 – a drop of 73 per cent.

(j) Custodial sentences

The UNODC-UNICEF Manual defines this indicator as “the percentage of sentenced children who receive a custodial sentence,” i.e., one of confinement to an open, semi-open or closed facility.

The number and percentage of convicted juveniles sentenced to deprivation of liberty are published by the National Statistical Committee since the year 2000, on the basis of information provided by the judiciary. Over the last decade, the percentage has fallen from approximately 60–70 per cent during the first half of the decade to around half during the years 2006–2010. The number of convicted juveniles given a prison sentence has fallen by more than two thirds between the years 2005 (663) and 2010 (184).

Data on prison sentences are disaggregated by the length of the sentence imposed. Seven categories are used: one year or less; 1–2 years; 3–5 years; 6–8 years; 9–10 years; 11–15 years; and 16–30 years. Data for 2004, the most recent year for which information has been published, indicate that 85 per cent of all prison sentences imposed on juveniles were for five years or less, and less than 3 per cent were for nine years or more.

It is difficult to reconcile the number of juveniles given prison sentences with the population of the juvenile prison, as the table below shows:

<table>
<thead>
<tr>
<th>Year</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prison sentences</td>
<td>663</td>
<td>458</td>
<td>375</td>
<td>307</td>
<td>204</td>
<td>184</td>
<td>n/a</td>
</tr>
<tr>
<td>Juvenile prison population 1 January</td>
<td>178</td>
<td>82</td>
<td>99</td>
<td>55</td>
<td>51</td>
<td>49</td>
<td>35</td>
</tr>
</tbody>
</table>

There are many possible explanations, including the imposition of short sentences, frequent use of early release, confinement of offenders over age 18 at the time of conviction in adult prisons and release of juveniles who at the time of conviction had been in pretrial detention for a period equivalent to the length of the sentence. It may also be that the number of prison sentences includes the conditional sentences. Efforts to obtain an explanation of this discrepancy were unsuccessful. This is unfortunate, as ignorance of the explanation seriously limits our understanding of how the system works.

(k) Alternative sentences

The TransMONEE matrix requests information on the kind of sentence imposed on convicted juveniles. The 12 categories used are: committal to a penal institution; committal to an educational/correctional institution; pre-sentence diversion; formal warning/conditional discharge; apology; fine/financial compensation; community service or corrective labour; supervision order; probation order; postponement of sentencing; release from sentencing; and other. The language used in this definition is misleading, because some of these dispositions – e.g., pre-sentence diversion, postponement of sentencing – obviously are not sentences.
Data on sentencing published by the National Statistical Committee include, in addition to data on prison sentences, data on conditional sentences, fines, public service and, since 2005, apology with compensation of damage, withholding of wages (lit.: correctional labour), restriction of liberty and ‘other’. Data on sentencing do not include data on educational measures imposed after trial. Information on this disposition is not published.

The data indicate that the most common ‘alternative’ sentence by far is the conditional sentence. Since 2006, the percentage of sentenced juveniles given a conditional sentence has ranged between 35 per cent and 49 per cent – up from 18 per cent in 2005.

(l) Pre-sentence diversion

The UNODC-UNICEF Manual defines this indicator as “the percentage of children diverted or sentenced who enter a pre-sentence diversion scheme,” adding that it is intended to measure “the number of children diverted before reaching a formal hearing.” This is somewhat confusing, and the Manual recognizes that what constitutes diversion “will need to be identified in the local context.”

Data to be published in the forthcoming report of the National Statistical Committee include the number of juveniles not prosecuted because they were ‘released from criminal responsibility’. The number of cases disposed of in this way before trial increased from 17 in 2005 to 60 in 2010, i.e., 5 per cent of cases that could have been prosecuted.

A much larger number of cases are dismissed for this reason once trial has begun, but before sentencing. In 2010, for example, 467 cases were dismissed during trial, almost half of those prosecuted (48 per cent). This is a very large increase compared to 2005, when only 6 per cent of cases prosecuted were dismissed during trial.

(m) Aftercare

This indicator is defined as “the percentage of children released from detention receiving aftercare.” There is a problem with the way this indicator is defined, because aftercare programmes are generally considered important for offenders released from custodial facilities after serving a sentence, not those released from pretrial detention.

No data on this indicator are published in Kyrgyzstan.

2. Other relevant data and information

Recidivism

Two kinds of data on recidivism are published in Kyrgyzstan. Data on reported offenders compiled by the Ministry of Interior are disaggregated, inter alia, by whether the reported offender ‘committed [a] crime before’. The definition used (e.g., whether based on previously being reported offender or prior conviction or admission of a crime, whether limited to involvement in crime before reaching the minimum age for prosecution is taken into account or not) is unknown. Be that as it may, the percentage of repeat offenders amongst reported offenders is rather small – less than 4 per cent in 2004.

157 Hearings often occur before trial begins, which means that diversion before any hearing takes place would be only part of “pre-sentence diversion”. And it is unclear why the percentage of offenders diverted should be calculated with reference to the number diverted or sentenced, rather than the number accused or prosecuted. In addition, diversion can consist of a mere warning, without entry into a programme.
Data on convicted juveniles are also disaggregated by prior offending, and a distinction is made between convicted juveniles having a prior conviction and those who were not prosecuted or whose conviction had been sealed. Data for the years 2005–2009 were not yet available at the time this report was finalized, but data for the years 2000–2004 indicated that almost all convicted offenders had a prior offence (99–100 per cent).

The survey of the juvenile prison population carried out in 2010 by an NGO found that 46 per cent of juveniles had prior convictions, all for theft.

**Ethnicity**

None of the data on offending by juveniles and juvenile justice published in Kyrgyzstan are disaggregated by ethnicity.

The survey of the juvenile prison population carried out in 2010 found that 37 per cent were Kyrgyz, 34 per cent Russian and 26 per cent Uzbek. Russians and Uzbeks (10 per cent and 14 per cent of the general population) appear to be over-represented, while Kyrgyz (67 per cent of the general population) are under-represented.

**Juveniles prosecuted**

Data on the number of juveniles prosecuted have been published since the year 2000.

The percentage of juveniles prosecuted who are convicted has decreased substantially, from 72 per cent in 2005 to 32 per cent in 2010. This is due to the increasing number (and percentage) of cases dismissed (see above).

**Begging and vagrancy**

No data on this indicator are published in Kyrgyzstan.

**Data on children registered**

Data are published on juveniles ‘registered’ by the police. There has been no substantial change in the number of juveniles registered by the police during the years 2005–2010, with the number fluctuating between a high of 3,686 in 2007 and a low of 3,229 in 2010. Data for the years 2005–2009 on juveniles brought to police stations because of involvement in an administrative offence were not available at the time this report was finalized. Data for the years 2000–2004 indicated a decline of 13 per cent in this indicator.
Annex 2. List of persons interviewed

**Government**

G. Skripkina, Member of Parliament and Chair, Committee on constitutional legislation, public administration, legitimacy and self-governance

G. Kalieva, Deputy Head, Administrative Department, Supreme Court

R. Nurmatov, Judge, Leninskiy district court

I. Kerimkulov, Head, Legal and International Cooperation Department, State Service for the Execution of Punishment, Ministry of Justice

K. Beishekeev, Deputy Head, Juvenile Colony No. 14

N. Jumakanova, Deputy Head, Women’s Colony

T. Borombaeva, Deputy Ombudsman

N. Duishenov, Head, Unit on Children’s Rights, Ombudsman

N. Tolegabylov, Deputy Chairman, National Statistical Committee

G. Sulaimanova, Deputy Head, Social Statistical Department, National Statistical Committee

A. Djorobekova, Provost, Police Academy

A. Nurmamatov, Head, Department on Fighting Criminality among Juveniles, General Office of Criminal Police, Ministry of Interior

M. Kartonov, Senior Inspector, Inspectorate of Minors’ Affairs, Ministry of Interior

A. Kamalov, Director, Centre for the Adaptation and Rehabilitation of Minors, Bishkek

O. Anarbekov, Head, Bishkek city police station jail

K. Mukambetkaliev, Head, Inspectorate of Minors’ Affairs, Oktyabr’skiy district police station

N. Arzymatova, investigator, Oktyabr’skiy district police station

K. Mamakeev, Head, Office on Supervision of Penitentiary Institutions, Office of the Prosecutor General

A. Bit-Avragim, Senior Prosecutor, Department of Supervision of Legislation, Office of the Prosecutor General

E. Alymbaev, Director, Special School, Ministry of Education

A. Petrushevskiy, Director, Rehabilitation Centre for Street and Homeless Children, Bishkek City Municipal Administration

L. Sherieva, Head, Family and Child Support Department, Osh

N. Zakirov, Secretary, Commission on Children’s Affairs, Osh

K. Artykov, Senior Inspector, Juvenile Police, Osh

S. Ivanova, social pedagogue, School No. 16, Osh

K. Rejapova, Director, Tayanach Centre for Prevention and Psychological Support to Children in Conflict with the Law, Batken
M. Salihova, Head, Family and Child Support Department, A. Otkurov, lead specialist, Family and Child Support Department, Batken

A. Raimkulov, Director, Professional Lyceum No. 57, Batken

M. Usenova, Senior Inspector, Juvenile Police, Batken

UNICEF

R. Berrada, Deputy Representative
E. Zaichenko, Child Protection Officer

Other international agencies

T. Viikmaa, Community Policing Advisor, Organization for Security and Co-operation in Europe (OSCE)

Civil Society

G. Sheishekeeva, Director, ‘Legal Centre’, Bishkek

G. Bekembaeva, Director, ‘Insan Generation’, Bishkek

E. Umarova, Director, ‘Ulybka’ (Smile), Osh

Focus group

G. S. Sheishekeeva, M. Mambetov, E. Khoroshman, N. Tashpaeva, and G. Kulikova, members of the Working Group drafting the revised version of the Children’s Code
Annex 3. List of documents consulted

Legislation
Constitution of the Kyrgyz Republic, 2010
Criminal Code, Law No. 68 of 1 October 1997
Code of Criminal Procedure, Law No. 62 of 30 June 1999
Criminal Execution Code, Law No. 142 of 13 December 1999
Law on Delinquency Prevention, Law No. 82 of 25 June 2005
Minors’ Rights (Protection and Defence) Act No. 126 of 22 November 1999 [repealed by the Children’s Code]
Children’s Code, Law No. 151 of 7 August 2006

Government documents
Combined third and fourth periodic report of Kyrgyzstan submitted to the Committee on the Rights of the Child under Article 44 of the Convention, published in 2011 as United Nations document CRC/C/KGZ/3-4
Criminality and conviction of juveniles, in Criminality and law and order in the Kyrgyz Republic 2000–2004, National Statistical Committee, Bishkek, 2005
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