



ASSESSMENT OF JUVENILE JUSTICE REFORM ACHIEVEMENTS IN TURKEY

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at the request of the UNICEF Regional Office for CEE/CIS.

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**UNICEF Regional Office for Central
and Eastern Europe/Commonwealth of Independent States**

July 2009

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Note on the Assessment Mission

The assessment mission took place from 18 to 31 October 2008. The team consisted of Dan O'Donnell, international consultant, and Seda Akco, national consultant. Support was provided by Bürge Akbulut and Feyza Ulubatli of UNICEF Turkey. The mission visited Ankara, Istanbul and Kocaeli.

The assessment team interviewed representatives of the Ministry of Justice's Law, Prison, Probation and Training Departments, the Ministry of Interior, the Social Services and Child Protection Agency and the Turkish Statistical Institute. The team also met with two members of the Parliamentary Working Group on Child Rights, the Director of the Justice Academy, the President of the National Bar Association, members of the Child Rights Commission of the Ankara Bar Association, representatives of two NGOs, a professor of law and a professor of forensic medicine, as well as representatives of the European Union and the British Council.

Visits were made to a juvenile court, a police station, an open juvenile correctional facility, the juvenile section of a pretrial detention facility and a centre for underage offenders.

The last day of the mission, the assessment team debriefed the UNICEF Representative and staff. The lists of persons interviewed and documents consulted are attached (see Annexes 2 and 3).

Background

The Turkish Republic was established in 1923, at the end of the Ottoman Empire. It is a democratic, secular, social and unitary State, divided into 81 provinces.¹ The present Constitution was adopted in 1982.

The population is nearly 75 million, of which one third is under age 18.² The population is 69 per cent urban.³ An estimated 1.3 million Turks live abroad.

Since 2001, the Turkish economy has been one of the strongest in the world. In 2007, the Gross Domestic Product (GDP) per capita was US\$ 12,993.⁴ Some 19 per cent of the population live in poverty.⁵

Turkey became a party to the Convention on the Rights of the Child in 1994, and the Convention became part of the domestic law in January 1995.⁶ Responsibility for monitoring implementation of the Convention lies with the General Directorate of the Social Services and Child Protection Agency, which, however, has not established a mechanism for this purpose. A National Plan of Action on Children covering the decade 2005–2015 exists, but contains no plans or goals regarding juvenile offending or juvenile justice. The Social Services and Child Protection Agency is also responsible for supervising the implementation of the Plan.

¹ Constitution, Article 2; United Nations, Core document forming part of the reports of States parties: Republic of Turkey, International Human Rights Instruments, HRI/CORE/1/Add.116, 2001, para. 13.

² United Nations Children's Fund, *The State of the World's Children 2009*, UNICEF, New York, 2009, Table 1.

³ *Ibid.*, Table 6.

⁴ See <http://webnet.oecd.org/wbos> accessed 20 May 2009.

⁵ See <http://turkstat.gov.tr> accessed 20 May 2009.

⁶ Law No. 4058 of 09 December 1994; published in Official Gazette No. 22184 of 27 January 1995.

Turkey had a weak juvenile justice system at the time it became a party to the Convention on the Rights of the Child. This system was strengthened considerably in 2005 by the adoption of new legislation, expansion of the network of juvenile courts and other reforms.⁷ Efforts to improve the system have been encouraged by efforts to qualify for entry into the European Union, and by the response to Turkey's first report to the Committee on the Rights of the Child. Turkey's initial report on the implementation of the Convention on the Rights of the Child was prepared in 1999 and examined by the Committee on the Rights of the Child in 2001.⁸ The Committee expressed deep concern with the state of juvenile justice, and made a number of far-reaching recommendations.⁹

Turkey is a founding member of the Council of Europe, and ratified the European Convention on Human Rights in 1954. In 2006, the European Court of Human Rights awarded damages to a 12-year-old boy who was beaten by police during an interrogation.¹⁰

Turkey became an associate member of the European Union in 1999. An Accession Partnership entered in 2003, and subsequent agreements, have driven extensive reforms in the judicial, law enforcement and correctional sectors, including juvenile justice.

Contextual factors that influence juvenile justice reform efforts include: a strong interest in harmonizing laws and institutions with European standards; poor interagency cooperation; a relatively weak civil society; limited government-civil society cooperation; the prevalence of punitive attitudes towards crime and offenders; and the low priority given to adolescents.

Executive Summary

Offending by juveniles has increased significantly during the last decade, judging by the number of arrests. The number of juveniles taken into custody and charged with an offence more than doubled between 1997 and 2006.¹¹ It should be noted that this refers to the number of times a juvenile was taken into custody, not the number of individual juveniles taken into custody; more than half of all juveniles taken into custody had been taken into custody at the same police station previously at least once.¹²

The number of juveniles sentenced to juvenile correctional facilities fell sharply over this period, from a high number of 706 in 1998 to 78 in 2006.¹³ The very low figure for 2006 is due in part to the entry into force of new legislation, which caused delays in the trial of juveniles, but the decline

⁷ The terms 'child' and 'child pushed to crime', not 'juvenile' or 'juvenile offender', are used in Turkish law and documentation. Discussion and preparation of these changes began in 2002.

⁸ A combined second and third report is expected to be presented soon.

⁹ Committee on the Rights of the Child, Consideration of reports submitted by States parties under Article 44 of the Convention, Concluding observations: Turkey, CRC/C/15/Add.152, 2001, paras. 65–67.

¹⁰ European Court of Human Rights, *Okkali v. Turkey*, Case No. 52067/99, Sentence of 17 October 2006. The violation took place in 1995. The decision was based on the fact that two officers found responsible for the beating received suspended sentences.

¹¹ From 22,305 in 1997 to 46,791 in 2006, according to data concerning 27 provinces. See Turkish Statistical Institute, *Juveniles Received into Security Unit, 2006: 27 provinces*, TURKSTAT, 2006, Table 1.

¹² See online database of Ministry of Justice: <http://www.uyap.gov.tr>, accessed 20 May 2009.

¹³ Turkish Statistical Institute, *Prison Statistics 2006*, TURKSTAT, Ankara, 2008, Table 9, p. 8. Statistical trends during this period must be treated with caution, for various reasons. In 2005, the minimum age for prosecution was raised from age 11 to age 12. In addition, prior to 2005, the age of an offender at the time of admission to a correctional facility was used to distinguish juveniles from adults. In 2005, the age at the time of the offence became the criterion. See *Prison Statistics 2006*, p. XI, Note 3. Although it is general knowledge that the criminal process is slow, and most offences committed by juveniles are committed by older juveniles, the information available is insufficient to calculate the impact of this change on the data to be calculated.

was also quite significant earlier in the decade.¹⁴ The trend in the detention of juveniles prior to trial over this period is different: it declined by one third from 1998 to 2001, then spiked in 2003 and 2004, only to fall sharply in 2005 and 2006.¹⁵

Most cases prosecuted are offences against property (64 per cent in 2006) followed by offences against life or physical integrity, including sexual offences (19.2 per cent in 2006).¹⁶

Turkey has a specialized juvenile justice system, although some components of the system are still in the process of expansion and consolidation. Child police units were established in 2001, and now exist throughout the country. The first juvenile court was created in 1988, but until recently juvenile courts were few in number. They are now 83 in 25 provinces, and a specialized prosecutor or team of prosecutors is attached to each juvenile court. More than half of all cases involving accused juveniles are tried by juvenile courts.

The legislative basis for the juvenile justice system was modified extensively in 2005. The minimum age for the prosecution of juveniles (age of criminal liability) was raised from 11 to 12, and the age at which offenders may be prosecuted as adults was raised from 15 to 18.

There are three correctional facilities for convicted juveniles – all open facilities – and three pretrial detention centres specifically for accused juveniles. Most juveniles detained during investigation and trial are kept in special sections of closed pretrial detention facilities, which also house adults. There are 19 such facilities.¹⁷ Convicted juveniles may be transferred to them if they escape from open juvenile correctional facilities.

UNICEF's first project on juvenile justice in Turkey, funded by the European Commission, took place from 2001 to 2005. Support was provided to law reform, training, data collection and the development of new models in areas such as legal services. From 2005 to 2008, UNICEF played a key role in providing technical assistance for a second major EU-funded project on juvenile justice, known as 'Children First'. The main counterpart in this project, which focused largely on training, was the Ministry of Justice. UNICEF has the same role in a large 15-month follow-up project that began late in 2008. The project emphasizes interagency coordination on the local level.

The assessment team concludes that considerable progress has been made in strengthening the juvenile justice system and bringing it into greater compliance with international standards. Throughout the system, there is a core of professional staff that have a good understanding of and deep commitment to the rights of children and juvenile justice. Other conclusions include: the Children's Police Division is a model for other countries; raising the minimum age of criminal responsibility from 11 to 12 years and extending the competence of juvenile courts to offences committed by persons aged 15 to 18 years are major steps towards compliance with international standards; the increase of the number of juvenile courts from 8 in 2003 to 83 in 2008 is a major achievement; the appointment of specialized prosecutors having exclusive responsibility for the interrogation of juvenile suspects is a positive development; important measures have been adopted to prevent ill-treatment of children in custody; the provisions on detention of the 2005 Child

¹⁴ e.g., 329 in 2003; 334 in 2004; and 202 in 2005 (Ibid.)

¹⁵ Ibid., Table 6, p. 13: 610 in 1998; 380 in 2001; 1,005 in 2003; 1,319 in 2004; 513 in 2005. The number of juveniles released from correctional facilities also spiked in 2003–2004, with 1,004 and 2,303 releases, respectively.

¹⁶ Ibid. These include 618 juveniles prosecuted for homicide and related offences, and 1,051 prosecuted for sexual offences. Sexual offences include early marriage.

¹⁷ The degree of separation varies from a cellblock reserved for juveniles to separate cells in a block that also houses adult prisoners.

Protection Law are compatible with the 'last resort' principle, and the provisions concerning diversion and alternative sentences are positive developments; the use of open facilities for convicted offenders and underage offenders as well as the incorporation of psychologists and social workers into the work of juvenile courts and correctional facilities are in harmony with United Nations standards.

Recommendations include the following:

- UNICEF should continue to cooperate in efforts to bring the juvenile justice system into full compliance with international standards and best practices;
- UNICEF should develop a strategy concerning its role in juvenile justice reform in Turkey;
- while emphasis should be given to the consolidation of the advances made thus far, additional changes in the legislation should be made at the earliest possible opportunity;
- a plan to further expand the network of juvenile courts should be developed; a study on the correctional system should be undertaken to identify changes that would help reduce the proportion of juveniles in detention, ensure separation of juveniles and adults and facilitate contact between juveniles and their families;
- a national plan or strategy on the prevention of offending, or a broad national plan on juvenile justice addressing prevention, law enforcement, diversion and restorative justice, adjudication, rehabilitation, monitoring, accountability, research and the role of civil society cooperation should be developed;
- mechanisms to monitor respect for juveniles' rights should be made more transparent;
- juvenile courts should have responsibility for the detention of accused juveniles, and shorter time limits on detention should be adopted;
- juvenile courts should be given competence over juveniles accused of terrorism;
- the discretion of prosecutors over diversion should be expanded;
- the discretion of judges to impose supervision instead of a custodial sentencing should be expanded;
- custodial sentences should be made shorter;
- victim-offender mediation should be developed;
- procedures concerning underage offenders should be modified to meet standards for due process;
- time limits regarding the detention and trial of accused juveniles should be brought into compliance with international standards;
- training of judges, prosecutors and forensic and psychosocial specialists should be institutionalized;
- data management systems should be improved, and
- the social and professional recognition of juvenile justice professionals should be enhanced.

PART I. The Process of Juvenile Justice Reform

1) Policy and advocacy

During the last five years or more, the Government of Turkey has been involved in an intensive effort to bring its law, policies and national institutions into conformity with European standards. This commitment has favoured the reform of the juvenile justice system.

Civil society has limited influence in Turkey. Debates on national policies are dominated by political parties and institutions, such as the armed forces and the Supreme Court.

There is no formal declaration of juvenile justice policy, as such. Very important changes in the juvenile justice system have been made, however, through legislation. The Child Protection Law, adopted in 2005, is the keystone of the new juvenile justice system, which is still in development. The new Criminal Code, the Code of Criminal Procedure and other legislation adopted the same year also form part of this new legal framework.

In addition to promoting activities directly linked to law reform (see below), UNICEF supported the creation of a Parliamentary subcommission on child rights monitoring. It also has carried out direct advocacy in its permanent contacts with officials of the Ministry of Justice and other concerned ministries and agencies.

2) Law reform

When Turkey became a party to the Convention on the Rights of the Child, the juvenile justice system was based largely on Law No. 2253 on the Establishment, Duties and Trial Procedures of Juvenile Courts ('Law on Juvenile Courts'), the Criminal Code, the Code of Criminal Procedure and the Law on the Execution of Sentences and Security Measures.¹⁸

Support to law reform was one of the main aims of the 2001–2005 EC-UNICEF project 'Upgrading of the Juvenile Justice System in Turkey'. Activities included the translation of UNICEF publications on child rights, the preparation of a study on the compatibility of national law with the Convention on the Rights of the Child, technical assistance by foreign experts and a series of training and awareness activities. UNICEF also supported the committees and working groups convened by the Ministry of Justice to prepare the draft legislation.

The impact of these activities was far-reaching. The Law on Juvenile Courts, adopted in 1979 and in force since 1982, was amended in 2003 to extend the competence of these courts to accused offenders aged 15–18 years.¹⁹

In 2005, the Law on Juvenile Courts was replaced by the Child Protection Law, designed "to regulate the procedures and principles with regard to protecting juveniles who are in need of protection or who are pushed to crime, and ensuring their rights and well-being."²⁰ A new Criminal Code, the Code of Criminal Procedure and the Law on the Execution of Sentences and Security Measures were adopted the same year. These laws establish the foundation of the juvenile justice system now in the process of development.²¹

¹⁸ This law was adopted in 1979 and came into force in 1982 (except the provisions on establishing juvenile courts, which came into effect in 1988).

¹⁹ Before, they only had competence over accused persons aged 11–15 years.

²⁰ Law No. 5395 of 3 July 2005, Article 1.

²¹ There also were some setbacks. Under the previous law alternative measures could be imposed instead of sentencing.

The Child Protection Law was drafted and adopted in order to bring Turkish law into conformity with the Convention on the Rights of the Child and to respond to the recommendations made by the Committee on the Rights of the Child, which had expressed “deep concern at the major discrepancies between domestic legislation concerning juvenile justice and the principles and provisions of the Convention.”²²

The Child Protection Law recognizes many of the principles contained in the Convention, including the right to life, development and protection, the prohibition of all discrimination, and the right to privacy and to a procedure that is fair, effective, swift and respectful of human rights.²³ There are, however, significant differences in the way some principles are formulated. The Child Protection Law alludes to “safeguarding the interest and well-being of juveniles,” for example, but does not provide that the best interests of the child must be “a primary consideration” in all actions affecting a child.²⁴ It provides that “Penalty of imprisonment and measures that restrict liberty shall be the last resort for juveniles,” but does not mention that they shall be for the shortest appropriate period of time.²⁵ The Law refers to the “participation of the juvenile and his/her family in the process,” but equates this with “keeping them informed.”²⁶

One of the most important changes made by the new Criminal Code was to raise the minimum age for prosecution or ‘age of criminal liability’ to 12.²⁷ The new Code of Criminal Procedure prohibits the interrogation of juvenile offenders by police; only prosecutors may interrogate juvenile offenders, and juvenile suspects are entitled to the services of a lawyer as soon as an investigation begins, without having to request one.²⁸

Initially, the law allowed mediation for crimes committed by juveniles punishable a sentence of two years or less. It was amended in December 2006, due to public outcry against leniency for repeat offending by children involved in theft.²⁹

Amendments to the 2007 Law on Social Services and Child Protection Agency established new institutions specifically for offenders, including underage offenders, and for child victims. The aim was, in part, to prevent these groups from being placed in residential facilities with other orphans and other children in need of care.

3) Administrative reform and restructuring

Two important institutions have been restructured in order to further develop specialized units for children in conflict with the law.

In 1997, a special unit of the National Police was created to deal with child victims. In 2001, this unit was converted into a division known as the Children’s Police, whose mandate includes all persons under age 18 involved in offences, whether as perpetrators or as victims. Presently, the Children’s Police have 3,500 officers and staff throughout the country. Staff includes social

²² Committee on the Rights of the Child, Concluding observations, CRC/C/15/Add.152, para. 65.

²³ Child Protection Law, Article 4(1)(a), (c), (l) and (f), respectively.

²⁴ Ibid., Article 4(1)(b).

²⁵ Ibid., Article 4(1)(i); see also Article 4(1)(j).

²⁶ Ibid., Article 4(1)(d).

²⁷ Criminal Code, Article 31(1).

²⁸ Code of Criminal Procedure, Articles 15 and 150.

²⁹ Law No. 5560 of 6 December 2006.

workers, psychologists and internet technicians, as well as police officers. The Istanbul office developed a psychological questionnaire to evaluate candidates, and by the end of 2009 all of its staff will have been screened.

The first juvenile court was established in 1988, pursuant to Law No. 2253 on the Establishment, Duties and Trial Procedures of Juvenile Courts. Although the law called for juvenile courts to be established in every province or district with a population of 100,000 or more, by 2004 there were only 10 juvenile courts in seven provinces.³⁰ The number has since increased significantly to 83 juvenile courts in 25 provinces. Of these, 70 are ordinary juvenile courts and 13 serious crime juvenile courts.

In addition, as mentioned above, the Social Services and Child Protection Agency has established new facilities specifically for juvenile offenders, to prevent those who are too young to be prosecuted or who are given non-custodial sentences from being placed in facilities designed for children in need of care.

4) Available resources

Little information is available about the budgets of the various components of the juvenile justice system. The limited information accessible suggests that, while considerable investments have been made in some areas, meagre resources are a factor that reduces the pace of the development and consolidation of the system.

The Children's Police, established in 2001, is one of the most consolidated components of the system. It appears to be adequately funded.

The population of facilities for convicted juvenile offenders is less than half of their capacity, and there are approximately two to three staff members per inmate. Yet the Head of the Prison Department indicated that there are deficiencies in terms of the recruitment of specialized staff, such as social workers and psychologists.

Most juveniles deprived of liberty are in pretrial facilities, not correctional facilities for sentenced offenders. There are three facilities exclusively for juveniles awaiting trial, and 19 detention facilities for adults that have sections set aside for accused juveniles. Although conditions are good in the model pretrial detention facility for juveniles near Ankara visited by the assessment team, they do not provide a basis for conclusions about the adequacy of resources allocated to other units for juvenile offenders.

The number of juvenile judges is clearly insufficient for the caseload prosecuted, despite the expansion of the juvenile court system in recent years. Responsibility for determining the number of judges lies with the Ministry of Justice. There are no known plans to expand the number of judges.

5) Training and capacity-building

Training was one of the main components of the 2001–2005 juvenile justice project, although some of the activities described as training might better be called 'awareness'. Seminars and other training activities organized through this project include four activities in which some 300 judges, prosecutors, law enforcement officers, social workers and other juvenile justice professionals participated: a series of four regional and four national meetings for lawyers, and a national meeting of provincial heads of the Children's Police. The repercussion of these meetings was not evaluated directly,

³⁰ Arkadas, A., *Follow-up Situational Report on Children's Rights in Turkey with Special Focus on Juvenile Justice*, The Children's Legal Centre, University of Essex, 2004, p. 16.

but it is clear that the impact on the functioning of some parts of the juvenile justice system, such as the police, has been significant.

Further development and institutionalization of training programmes was the main aim of the project supported by the European Union and implemented with UNICEF's technical assistance during 2005–2008. Institutionalization of training was considered appropriate at this point, because efforts made to bring the national law into compliance with international standards had come to fruition in 2005. Moreover, Article 32 of the Child Protection Law requires the training of judges and prosecutors:

- (1) Judges and Public Prosecutors to be assigned at the courts and the social workers and probation officers appointed at probation and assistance centre directorates shall be provided with training in subjects such as juvenile law, social service, child development and psychology in line with the principles set forth by the Ministry of Justice during candidateship periods.
- (2) It shall be ensured that those appointed to serve at courts receive in-service training oriented to provide them with the opportunity to specialize in their fields and self-development.
- (3) The principles and procedures for pre-service and in-service training shall be determined with a regulation.

The training design and materials were based on a needs analysis as well as a manual developed by national and international experts for the use of all relevant professional groups, from judges to correctional staff, and approved by the relevant agencies.³¹ The main implementing partner was the Ministry of Justice.

The first training materials developed by Turkish NGOs targeted staff of residential facilities for accused juveniles and juvenile offenders.³² There are two versions of the training, one for psychosocial personnel and one for guards and other support staff. During 2005–2006, 347 staff were trained. Nineteen 'master trainers' were selected and trained, and by 2008 a 10-day course had been fully integrated into the curricula of the four Ministry of Justice's training centres. The final evaluation of the 2005–2008 programme concluded, "The training has improved staff motivation, enthusiasm and morale... developed child-centred approaches and ... a change in the attitude towards the children detained."³³

Responsibility for providing entry-level and in-service training to judges and prosecutors lies with the Justice Academy. A 10-day in-service training programme for judges, prosecutors and staff of juvenile courts, in particular social workers and psychologists, was piloted early in 2008. In June 2008, six judges and prosecutors participated in a 10-day 'training of trainers' programme.

In 2009, the Justice Academy hopes to provide in-service training to some 50 to 100 persons, and entry-level training to some 400. One limitation is that the Academy relies primarily on serving judges and prosecutors to provide training. Since the other responsibilities of trainers are not reduced to compensate for the time invested in training, this limits the time trainers can afford to dedicate to this task. Moreover, in-service training is not obligatory, and no adjustment is made to the caseload of participants.

³¹ Other target groups include prosecutors, defence lawyers, forensic experts, social workers and probation workers.

³² They are known as the 'Ardıç' programme, named for the juniper tree, which grows in harsh conditions and symbolizes resilience.

³³ European Union, Government of Turkey, UNICEF, *Child Protection Review Report, Project 'Towards Good Governance, Protection and Justice for Children in Turkey'*, 2004, p. 21.

According to the members of the Child Rights Committee of the Ankara Bar Association, the attitudes of judges and prosecutors who have participated in training “are changing,” but there is still a tendency to apply the new legislation formally. Many judges and prosecutors, in their view, need to improve their skills in listening to children and treating them as individuals.

6) Accountability

The Ministry of Justice informed the assessment team that, in 2008, 16 complaints about mistreatment of juvenile detainees and prisoners had been received, resulting in 2 convictions and 3 warnings. No further details were provided, and the Ministry of the Interior did not provide any information on the investigation of complaints of abuse by the police.

All sources interviewed agreed that the Children’s Police respect the rights of children, in particular their right to physical integrity. However, most children who come into their custody are first captured by the ‘public order’ police.

One positive measure taken to detect and deter violence by police is a requirement that children be examined by a medical practitioner each time they are transferred from the custody of one police unit to another. This also applies to transfers from police custody to detention centres, which are operated by the Ministry of Justice.

Official policy is that the use of unnecessary violence against juvenile offenders is not tolerated and, if detected, will be sanctioned severely. In practice, however, there is a gap between perception of this problem by practitioners and higher authorities. Practitioners from different sectors interviewed by the assessment team recognize that the use of violence against prisoners and detainees has declined, but insist that beatings of children continue to occur. In these circumstances, the insistence of higher authorities that the practice does not exist, which implies that further efforts to combat it are unnecessary, is a reason for concern.

The main effort that has been made to reinforce mechanisms for detecting and investigating violations of the rights of children caught up in the juvenile justice system, was the creation of an ombudsman. Those who were in favour of this effort took a strategic decision to support the establishment of a general ombudsman, whose mandate would include the rights of children, rather than a specialized children’s ombudsman. The law was adopted by the Parliament in 2001, but it was not signed by the President and was referred to the Constitutional Court, which has barred implementation of the law pending a decision on its constitutionality.

7) Coordination

A Central Coordination Council on Juvenile Justice met late in 2006, and was legally recognized in 2007. It is composed of the Deputy Undersecretaries of the Ministries of Justice, Interior, Health, National Education and Labour and Social Security, and the Director General of Social Services and Child Protection. The Director General of Penal Affairs and Head of the Ministry of Justice’s Training Department are also members. NGOs and universities can be invited when desired. The Central Coordination Council meets thrice yearly.

There is wide agreement on the need for the Council to play a more dynamic role in leading juvenile justice reform. One observer indicated that the special needs of adolescents are not a priority in the juvenile justice system. This may well be true, although the assessment team believes that several key officials do have a strong commitment to the rights of children, including juvenile offenders. Several observers interviewed by the team commented that weak interministerial cooperation is a

broader problem, not limited to this area. Indeed, many of the middle-level public officials interviewed by the assessment team indicated that the first EU-UNICEF-supported project has begun to develop a new awareness of the need for closer interagency cooperation, even though much remains to be done to make such cooperation a reality.

8) Data and research

In Turkey, a considerable amount of data on offending by juveniles and the treatment of juvenile offenders is collected and published annually. Information on the prosecution, trial and sentencing of juvenile offenders and on juvenile detainees and prisoners is collected by the Ministry of Justice, and published by TURKSTAT, the Turkish Statistical Institute.³⁴ Two volumes are published: *Judicial Statistics* and *Prison Statistics*. In addition, data on juveniles 'received' at police stations are collected by the police forces and published by TURKSTAT. This began in 1997 as a pilot project in 27 provinces. It is now being expanded to cover the whole country.

Both *Judicial Statistics* and *Prison Statistics* contain chapters on juvenile offenders.³⁵ Unfortunately, the information is incomplete, as it refers only to juveniles confined in facilities classified as juvenile facilities.³⁶ For example, the chapter of *Prison Statistics 2006* on juvenile convicts contains information on the 78 convicted juvenile offenders sent to juvenile correctional facilities, but the publication's data on all prisoners admitted to correctional facilities, disaggregated by age, indicates that 513 persons under age 18 were admitted that year.³⁷

This is unfortunate, because the data concerning offenders sent to juvenile facilities are disaggregated by various criteria concerning, in particular, their background.³⁸ Data concerning all juvenile offenders given custodial sentences are disaggregated by some important criteria, in particular sex, age (12–14 and 15–18), type of offence and province.³⁹ Data concerning other important issues – such as the percentage of convicted prisoners detained before trial, the duration of the sentence imposed and the percentage of prisoners who benefit from conditional release – are available for all offenders sentenced to prison, but are not disaggregated to distinguish between juvenile and adult offenders.⁴⁰

Judicial Statistics includes data on the caseload handled by each juvenile court annually: the number of cases involving accused juveniles handled annually by type of court, the status of the case (pending, acquittal, conviction etc.), the number of juveniles prosecuted annually by offence, and the number of juvenile offenders sentenced annually by offence.⁴¹ Most of these data are disaggregated by the age (11–14 or 15–17) and the sex of the offender.

³⁴ The Institute is known as 'TÜİK' in Turkish.

³⁵ Turkish Statistical Institute, *Judicial Statistics 2005*, TURKSTAT, Ankara, 2007, pp. 182-190 (sentenced juveniles); *Prison Statistics 2006*, chapter 4 on Juvenile Convicts, especially p. 182.

³⁶ *Prison Statistics 2006*, Tables 4.1–4.10, especially 4.3, identifying the six juvenile prisons and reformatories to which the data refer.

³⁷ *Ibid.*, compare p. 91 with Table 6, p. 13.

³⁸ *Ibid.*, e.g., educational level, employment status/school enrolment, living arrangement and parents' profession, pp. 91–92.

³⁹ *Ibid.*, Table 6, p. 13; Table 2.2, p. 39. Also included in *Judicial Statistics 2005*.

⁴⁰ *Ibid.*, Table 2.13, p. 65; Table 2.7, p. 45; graph 3.5, p. 72, respectively. Data on the number of prisoners released conditionally, disaggregated by age at the time of release, are found in *Judicial Statistics 2005*, Table 4.3.10.

⁴¹ *Ibid.*, Tables 3.1.3, 3.1.4, 3.1.5, 3.1.9 and 3.1.10, respectively.

Data on children 'received' by the police are disaggregated by the reasons for reception. The most relevant, for the present purposes, are 'offence charged' and 'suspect'.⁴² Children charged with an offence are by far the largest group: 46,791 persons in 2006. This represents 70 per cent of all children 'received'. Ninety-five per cent of children 'received' in connection with an offence are referred to prosecutors for preliminary investigation.⁴³

The data are disaggregated by age and sex. Some 4.4 per cent of all children 'received' for offending are under age 12, the minimum age for prosecution, including 183 under age 6.⁴⁴ Sixty-four per cent are 16 or 17 years of age, and 9 per cent are girls.⁴⁵ These data are also disaggregated by offence, province and police force. The most frequent charge is assault and battery, followed closely by theft.⁴⁶

Data are also available on the educational background, 'living situation' and history of substance abuse of those taken into custody for an offence, disaggregated by offence.⁴⁷ Eighty-five per cent of juveniles report that they live with both parents.⁴⁸ Only 8 per cent have a history of substance abuse. The most frequently abused substance is alcohol.⁴⁹

Of the juveniles taken into custody for offending 45 per cent had acted alone; 37 per cent with others spontaneously; some 18 per cent with others after planning their actions;⁵⁰ and 12 per cent with the 'encouragement' of another person or persons.⁵¹ Twenty-two per cent of the juveniles 'received' by the police in connection with an offence had been taken into custody two or more times previously, and 7 per cent on one previous occasion.⁵²

The Prison Department has recently decided to sponsor a five-year longitudinal study on persons released from correctional facilities after serving sentences for crimes committed as juveniles.

Disaggregation by ethnicity

Data on ethnicity are not collected and the subject is sensitive. Turkey has made a reservation to Article 30 of the Convention on the Rights of the Child, and official documents refer only to the minorities recognized by the Treaty of Lausanne, namely, Armenians, Greeks and Jews.⁵³

⁴² The others are: abandonment, foundling, lost, 'escape from home', 'victim', 'drug addict', 'working on the street', beggar and 'other'. See *Juveniles Received into Security Unit, 2006: 27 provinces*, Table 1, p. 1.

⁴³ *Ibid.*, Table 13 (these data are disaggregated by crime).

⁴⁴ *Ibid.*, Table 2.

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*, Table 4.

⁴⁷ *Ibid.*, Tables 6–8.

⁴⁸ *Ibid.*, Table 7.

⁴⁹ *Ibid.*, Table 9 and Graph 7.

⁵⁰ *Ibid.*, Table 11 and Graph 11.

⁵¹ *Ibid.*, Graph 12. Data are disaggregated by crime in Table 12.

⁵² *Ibid.*, Graph 14. Data are disaggregated by crime in Table 14.

⁵³ See Committee on the Rights of the Child, Consideration of reports submitted by States parties under Article 44 of the Convention, Initial reports of States parties: Turkey, CRC/C/51/Add.4, 1999, para. 560; Committee on the Elimination of Racial Discrimination, Reports submitted by States parties under Article 9 of the Convention, first, second and third periodic reports of Turkey, CERD/C/TUR/3, 2007, paras.16–19 and 27–32.

According to one source, an estimated 17 to 21 per cent of the population is Kurdish.⁵⁴ Officials interviewed made frequent reference to problems concerning offending by juveniles from South-East Turkey, where most of the Kurdish population lives. These problems include children who commit crimes on behalf of terrorist organizations, and those who commit 'honour' killings on behalf of their families.⁵⁵ In 2006, 721 cases were pending before the High Juvenile Court of Diyarbakir, a city of 1.4 million in South-East Turkey.⁵⁶

There are no official statistics on the number of Roma in Turkey. Some officials interviewed readily discussed the issue of Roma involvement in juvenile offending, while others declared, somewhat unconvincingly, that they had no idea whether the offenders with which they had contact might be Roma or not. The Children's Police in Istanbul reported that there are different Roma communities in the city, only one of which was deeply involved in theft. A deliberate effort was made to break up an organized theft ring operating with that community, and many of the adult leaders were sent to prison. This operation reportedly reduced significantly the number of juveniles from that community arrested for theft.

Comments on the compatibility of the data collected with international indicators are set forth in Annex 1 to this report.

⁵⁴ Council of Europe: European Commission Against Racism and Intolerance (ECRI), *Third Report on Turkey, Adopted on 25 June 2004*, 15 February 2005, CRI(2005)5, available at: <http://www.unhcr.org/refworld/docid/46efa2efd.html>, accessed 20 May 2009, para. 72.

⁵⁵ The term 'honour killings' refers to "the murder of women by members of their immediate family purportedly motivated by the desire to save the honour of the family." See Inter-Parliamentary Union and UNICEF, *Child protection, a handbook for parliamentarians*, Geneva, 2004, p. 96 and sources cited therein.

⁵⁶ *Judicial Statistics 2005*, Table 3.1.3, p. 59.

Part II. The Juvenile Justice System in Turkey

1) Prevention

Various agencies have some responsibility for the prevention of offending, including the General Directorate of Social Services and Child Protection, the Children's Police, the Ministry of National Education ('Ministry of Education') and local governments. There is, however, no national plan for the prevention of offending by juveniles, and interagency coordination is weak.

2) Detention and interrogation of suspects by the police

There are two police forces in Turkey: the Gendarmerie (*Jandarma*), which operates in rural areas, and the Turkish National Police, which operates in urban areas.⁵⁷ In 1997, a special unit of the National Police for the protection of children was established. In 2001, this was transformed into the Children's Police Division, which has a staff of approximately 3,500 and is present in every province.

The Child Protection Law provides that juveniles detained by law enforcement agencies shall be kept in special rooms set aside for this purpose, but adds that if none exist they shall be kept separate from detained adults.⁵⁸ It also prohibits the use of handcuffs.⁵⁹ Juveniles in detention have the right to be visited by family members.⁶⁰

When the police begin to investigate a case involving a juvenile offender, they must notify the child's parents or guardian, the Social Services and Child Protection Agency, and the Bar Association.⁶¹

In most cases, juveniles taken into custody by the police must be referred to the prosecutor within 24 hours. If an offence has been committed by a group, however, the period may be extended, as indicated below.

Independent observers informed the assessment team that, although the level of police violence against juveniles has declined substantially in recent years, beatings continue to occur. There was agreement that juvenile police units do not participate in such abuses.

The assessment team visited the headquarters of the Children's Police in Istanbul, and was very positively impressed by the physical facilities and, especially, by the frankness and commitment of the officers in charge. The Children's Police is one of the most important accomplishments in the Turkish juvenile justice system, and could serve as a model for other countries.

3) Prosecutors and detention during investigation and trial

In principle, juveniles taken into custody by the police must be referred to the judge within 24 hours.⁶² However, if an offence has been committed by three or more persons jointly, they may be kept in police custody for up to four days.⁶³ Approval for continued detention must be given by

⁵⁷ Unless otherwise indicated, the term 'police' refers to both.

⁵⁸ Child Protection Law, Article 16.

⁵⁹ Ibid., Article 18.

⁶⁰ Ibid., Article 31(3).

⁶¹ Ibid., Article 31(2). There is an exception to the duty to notify parents, i.e., if they are suspected of soliciting the juvenile to commit the crime.

⁶² Code of Criminal Procedure, Article 91(1).

⁶³ Ibid., Article 91(3).

the prosecutor every 24 hours. More than half of all offences committed by juveniles are committed by a group.⁶⁴

The investigation of offences allegedly committed by persons under age 18 must be carried out by a prosecutor "assigned to the juvenile bureau," according to the Child Protection Law.⁶⁵ The juvenile bureau is a unit of prosecutors assigned to cases involving juvenile offenders. In larger cities, such bureaus have been established. In smaller offices, the head prosecutor simply assigns one member of the office to cases involving juveniles. In either instance, special training is not required.

The number of prosecutors assigned to this function nationally is unknown. In Ankara, the second largest city in Turkey with a population approaching 4 million, the juvenile bureau has four members. In 2006, 2,900 juveniles were 'received' by the police in Ankara,⁶⁶ which suggests that the annual caseload of each prosecutor in the province, for purposes of the preliminary investigation, might be approximately 800 cases.

The assessment team believes that conferring specialized prosecutors the mandate for cases involving juveniles is an important accomplishment. Giving prosecutors the responsibility of interrogating accused juveniles and requiring judicial approval of detention are also important safeguards. However, the team does not know how much progress has been made in consolidating a network of specialized prosecutors throughout the country. It believes that much remains to be done in terms of training and creating incentives for specialization in this area.

Pretrial detention

In Turkey, there is only one facility with a capacity of 70 persons devoted exclusively to the detention of juveniles. In some provinces, including Ankara, Istanbul Adana and Kayseri, there are separate buildings for juveniles within complexes that also accommodate adults. In the rest of the country, detained juveniles are kept in special sections of buildings for detained adults. These detention centres are usually large and are located in every province. This arrangement allows detained juveniles to remain close to their families, but has the disadvantages resulting from detention in facilities designed primarily to meet the needs of adult prisoners and whose population is predominantly adult.

The Child Protection Law recognizes the principle that "measures that restrict liberty shall be the last resort..."⁶⁷ Alternatives to detention include restrictions on movement and bans on contact with certain persons or organizations.⁶⁸ Accused juveniles under age 15 may not be detained prior to trial unless they are accused of offences bearing a sentence of five years or more.⁶⁹

The detention of accused juveniles is approved by ordinary courts, not by juvenile courts. Although the time limit for trial when the accused is arrested is normally one year, for some offences it can be as long as three years.⁷⁰

⁶⁴ *Juveniles Received into Security Unit, 2006: 27 provinces, Graph 11 (54.7 per cent in 2006).*

⁶⁵ Child Protection Law, Article 15(1).

⁶⁶ *Juveniles Received into Security Unit, 2006: 27 provinces, Table 3.*

⁶⁷ Child Protection Law, Article 4(i).

⁶⁸ Code of Criminal Procedure, Article 109 and Child Protection Law, Article 20.

⁶⁹ Child Protection Law, Article 21(1).

⁷⁰ Code of Criminal Procedure, Article 102.

There are six separate detention facilities dedicated to accused offenders under age 21. One located near Ankara was visited by the assessment mission (see below). Another 19 detention facilities designed for adults have special units for detainees under age 18.

At the time of the assessment mission, some 2,460 juveniles were confined in detention facilities. This represents more than 90 per cent of all juveniles deprived of liberty. It includes juveniles under investigation; juveniles detained during their trial (which may last for months or even years) and convicted juveniles awaiting the results of an appeal. About 16 per cent of persons under age 18 in detention have been convicted and sentenced, but are awaiting the outcome of an appeal. Although data on the percentage of detainees who are given custodial sentences after trial are not available, the Head of the Prison Department estimated that 45 per cent of juveniles arrested prior to trial are found not guilty. This is a serious indicator of the unnecessary use of deprivation of liberty before trial. The use of pretrial detention to punish, as the Committee on the Rights of the Child has pointed out, violates the presumption of innocence.⁷¹

One prosecutor interviewed by the assessment team expressed the view that, in practice, detention is the first resort, not the last resort.

The Sincan juvenile detention facility

The assessment team visited a new detention facility for juveniles and young adults, located near Ankara. It is situated next to a detention facility for women and one for adult men, but is entirely separate. It is spacious and clean. The facility has a capacity of 326. There is approximately 130 staff, including 2 social workers, 2 psychologists and 2 teachers. Detainees are housed in units containing nine individual bedrooms and a living area. The population consists of two groups, those aged 12–18 years and those aged 18–21 years, which are housed in separate wings of the facility and use common workshops, recreation areas and classrooms at different times. Most of the detainees under age 18 at the time of the visit were charged with violent offences.⁷²

The programme includes remedial education and the normal public school curriculum, vocational training (ceramics and sewing), sports and life skills. The staff is quite knowledgeable about international standards regarding the rights of children and juvenile justice. The staff includes psychologists, but they are not qualified to provide therapy.

The facility is a model in some ways, but the assessment team is concerned about some information received. Independent sources indicated that corporal punishment was used until recently and may still be used. A medical officer commented that self-mutilation is a problem, but other staff members were reluctant to provide more specific information. Staff also declared that the income from the sale of handicrafts and other products produced by the detainees are used to cover the costs. Detainees do not receive a share of the proceeds.⁷³ The team was left with the impression that, although both the physical infrastructure and the programme are impressive, there is no systematic commitment to ensuring transparency about policies and practices.

⁷¹ Committee on the Rights of the Child, Children's rights in juvenile justice, General Comment No. 10, CRC/C/GC/10, 2007, para. 80.

⁷² The population included 13 detainees for homicide, 21 for sexual assault, 29 for robbery, 21 for theft and 2 for drug offences.

⁷³ The administration has indicated that paying juvenile detainees would amount to child labour. However, almost all detainees are above the minimum age for employment established by Turkish Law (15 years), and the United Nations Rules on the Protection of Juveniles Deprived of their Liberty indicates, "Every juvenile who performs work should have the right to an equitable remuneration." (Rule 46)

The women's detention facility

The assessment team also visited the women's detention facility in Sincan. The facility has a capacity of 352. Two detainees were under age 18 at the time of the visit. Most of the girls detained there are Roma over age 15 accused of thefts committed in groups. Conditions are generally good, and the centre offers a wide range of activities, including tailoring workshop, drawing, theatre, traditional dance, hairdressing, computers, cooking and accounting. Some courses are offered in cooperation with the Turkish Employment Agency. Ideally, adolescent girls accused of an offence should be detained – when detention is necessary – in a facility specially designed to meet their needs. However, the very positive fact that so few adolescent girls are detained makes it difficult to establish separate facilities for them, as that would mean in practice isolation of the girls.

4) Diversion and restorative justice

The police have no discretion not to refer cases involving juvenile offenders to the prosecutor for investigation.

Prosecutors are obliged to investigate each case referred to them, but do have discretion not to prosecute in certain circumstances. The prerequisites include: the offence is punishable by a sentence of one year or less; the absence of prior offences; the belief that the suspect is unlikely to commit additional offences and that the interests of both society and the offender would be served by deferring prosecution; and compensation of the victim, if appropriate and possible.⁷⁴ If these conditions are met, and the judge approves, prosecution may be postponed for a period of three years. If the accused is not convicted of another offence during this time, the case is closed.⁷⁵

Prosecution also may be avoided if the offender compensates the victim, a solution known as 'negotiating and settling'. Under the Child Protection Law as adopted, this procedure was applicable to all minor offences committed by juveniles.⁷⁶ The law was amended in 2006 to restrict the scope of application of this law to certain offences, eliminating the preferential treatment of juveniles. Such settlement can be proposed by the prosecutor, or by the police or the judge with the order of the prosecutor. It is handled directly by the prosecutor or judge, or by a lawyer, not by trained mediators.

5) Adjudication and sentencing

The minimum age for adjudication

The 2005 Criminal Code provides, "Minors under the age of twelve are exempt from criminal liability. While such minors cannot be prosecuted, security measures ... may be imposed."⁷⁷

However, the Code also provides that children between the ages of 12 and 15 may be prosecuted only if two conditions are met: the child is "capable of appreciating the legal meaning and consequences" of the act committed, and his/her "capacity to control his [her] behaviour is [not] underdeveloped."⁷⁸ This determination is made by the judge, on the basis of a report prepared by a forensic specialist and the social inquiry report. If the court or defence lawyer is dissatisfied with the report, a second

⁷⁴ Art. 171 Code of Criminal Procedure.

⁷⁵ Ibid., Article 19(1).

⁷⁶ Ibid. Article 24; Art.41, Law No. 5560 of 6 December 2006 and Art.253 of the Code of Criminal Procedure.

⁷⁷ Criminal Code, Article 31(1).

⁷⁸ Ibid., Article 31(2).

opinion may be requested, and if there is still disagreement, the opinion of a board of qualified experts⁷⁹ may be requested.

Data from 2006 indicate that in 1,270 cases against juveniles the court decided not to proceed because the accused lacked criminal responsibility.⁸⁰ This represents approximately 2 per cent of the cases filed that year.

Practitioners interviewed believe that the requirement to examine the maturity of all accused offenders aged 12–15 years is a good one, because it obliges the court to weigh this factor and ‘makes visible’ the problem of exploitation of children by adults in the commission of crimes. Some child rights’ advocates consider this is of limited use because it is rarely concluded that an accused child lacks criminal responsibility, unless the accused child is mentally retarded. The assessment team is of the opinion that it affords some additional protection to children above age 12, which the Committee on the Rights of the Child considers the lowest acceptable “minimum age of criminal responsibility.”⁸¹

Another aspect of these evaluations raises issues about their compatibility with international standards regarding due process: the information, which children often give about the offence during the interview with a social worker or forensic expert, is not confidential or privileged under Turkish law.

Prior to 2003, persons over age 15 charged with an offence were tried in ordinary criminal courts. The 2005 Child Protection Law applies to all persons under age 18 and the new 2005 Criminal Code defines the term ‘minor’ as “all persons under age 18.”⁸² However, juveniles over age 15 accused of terrorist offences are still tried under the law applicable to such offences, not the law applicable to juvenile offenders.⁸³ In 2006, 474 juveniles (0.3 per cent of all juveniles prosecuted) were tried by this court.⁸⁴

The Committee on the Rights of the Child has indicated that, under the Convention on the Rights of the Child, “every person under the age of 18 years at the time of the alleged commission of an offence must be treated in accordance with the rules of juvenile justice,” and expressed concern that laws which allow some children under age 18 “to be treated as adult criminals” may be discriminatory.⁸⁵ Although the assessment team deplores the exploitation of children by terrorist groups, it believes that all persons under age 18 deserve to be treated as juveniles regardless of the gravity of the crime, and suggests that consideration be given to amending the legislation in the light of the doctrine of the Committee on the Rights of the Child.

⁷⁹ General Board of Forensic Medicine Institution.

⁸⁰ Judicial Statistics, TURKSTAT, Table 3.2 page 62.

⁸¹ General Comment No. 10, CRC/C/GC/10, para. 32.

⁸² Child Protection Law, Article 3(1)(a) and Criminal Code, Article 6(1)(b).

⁸³ Anti-Terror Law, Act No. 3713 of 12 April 1991, Article 9.

⁸⁴ See Ministry of Justice website: http://www.adli-sicil.gov.tr/istatistik_2006/cmkgagir/dgm9.htm, accessed 20 May 2009.

⁸⁵ General Comment No. 10, CRC/C/GC/10, paras. 37–38.

Specialized courts

The first juvenile court in Turkey was established in 1988. When Turkey submitted its Initial Report to the Committee on the Rights of the Child in 1999, there were four juvenile courts. There are now 83 juvenile courts, which represents a major step forward. The number of juvenile courts is still not sufficient to meet the needs, however. In 2006, 44 per cent of all juveniles prosecuted were tried by criminal courts.⁸⁶ This is mainly because juvenile courts have yet to be established in some areas.

There are two kinds of juvenile courts: ordinary courts presided over by a single judge, and courts for serious crimes presided over by a panel of three judges.⁸⁷ Both kinds of juvenile courts may have more than one chamber, if the caseload requires. Juvenile courts for serious crimes have jurisdiction over offences punishable by serious sentences, including homicide, sexual assault and armed robbery.⁸⁸

At the time of the assessment mission, there were 70 ordinary juvenile courts in 33 provinces, and 13 juvenile courts for serious crimes in 7 provinces. If a juvenile is accused of an offence within the competence of a juvenile court for serious crimes but there is no such court in the province, he will be tried by the adult criminal court for serious crimes. Similarly, if a juvenile is accused of an offence within the competence of an ordinary juvenile court, but there is no such court in the province, he will be tried by an adult criminal court.

In appointing judges to juvenile courts, preference is to be given to judges “specialized in juvenile law with training in the fields of child psychology and social services,” and to those who have experience as a juvenile judge or express an interest in the position.⁸⁹ The staff of juvenile courts includes social workers, who prepare social inquiry reports.

In 2006, the total caseload of all juveniles courts was 104,400 cases, including 42,774 cases on the docket at the beginning of the year.⁹⁰ The percentage of cases resolved by ordinary juvenile courts, 33.5 per cent, was lower than that of any other kind of court. This means that two thirds of all cases brought before juvenile courts were not resolved by the end of the year. In contrast, the percentage of cases resolved for all criminal courts was 58 per cent.

The right to legal assistance

The Child Protection Law recognizes the principle that juvenile court shall “follo[w] a procedure that is based on human rights, fair, effective and swift.”⁹¹

The right to an attorney is a key element of the right to a fair trial. In Turkey, as indicated above, the Bar Association must be advised at the beginning of legal proceedings concerning juveniles suspected or accused of an offence. If the juvenile does not have his own attorney, one will be assigned. Low compensation means that most assigned attorneys are inexperienced, and there is no requirement that they have any training in the relevant law or the skills needed to handle cases involving children.

⁸⁶ 47.8 per cent were tried by an ordinary juvenile court and 8.3 per cent by a juvenile court for serious crimes. See online database of Ministry of Justice: <http://www.uyap.gov.tr>, accessed 20 May 2009.

⁸⁷ Child Protection Law, Article 25.

⁸⁸ Law No. 5235 of 26 June 2004 on the Establishment, Duties and Powers of Courts of Original Jurisdiction and Regional Courts of Justice, as amended by Law No. 5328 of 31 March 2005, Article 12.

⁸⁹ *Ibid.*, Article 28. In practice, some judges who are appointed have little interest in the post.

⁹⁰ Judicial Statistics, TURKSTAT 2006, Table 3.1, page 62.

⁹¹ Child Protection Law, Article 4(1)(f).

The right to be tried without delay

The right to be tried without delay is particularly important, given the large number of accused juveniles detained while awaiting trial. The average duration of trials increased steadily from the time the first juvenile court was established in 1988 until the year 2000, when it peaked at 755 days.⁹² It declined sharply in 2001, and from 2004 to 2005 has remained stable at 11 to 12 months.⁹³ This is substantially longer than the average length of trials in other criminal courts.⁹⁴

Opinions on the reasons why trials in juvenile courts are slow vary to some extent. Some believe that this is due in part to changes in the law designed to protect the rights of accused juveniles, while others consider that assigned defence lawyers are sometimes less than diligent, due to low rates of compensation. The main reason seems to be that the number of juvenile judges is too small for the caseload to be handled expeditiously. In addition, many cases go to court before the prosecution phase is completed thoroughly (e.g., the evidence on some issues is lacking) and are returned to the prosecutor for further investigation.⁹⁵

Some experts consider that the proportion of accused persons who are found not guilty is a rough substitute indicator of the fairness of proceedings. In 2006, approximately 8 per cent of all juveniles prosecuted were convicted, and 9 per cent were acquitted.⁹⁶ In nearly half of all cases the court ruled that it did not have jurisdiction, and 13 per cent of the cases were dismissed either because the statute of limitations had expired or for unspecified reasons. The large number of cases resolved in such ways may reflect the difficulties experienced in adjusting to the new legislation adopted in 2005.

The courtroom

The Committee on the Rights of the Child has observed that the right of accused juveniles to participate effectively in legal proceedings requires that they be "conducted in an atmosphere of understanding to allow the child to participate and to express himself/herself freely."⁹⁷ In Turkey, juvenile court rooms resemble ordinary courtrooms, and no special efforts are made to create an atmosphere different from that of a criminal court.⁹⁸ It should be noted, however, that the prosecutor does not appear in trials in the ordinary juvenile court, but simply submits the results of the investigation to the court.

Sentencing of juvenile offenders

Under the new Criminal Code, the minimum sentence of imprisonment for adults is one month and the maximum, except for life sentences, is 20 years.⁹⁹ When a person is sentenced for more than one offence, sentences are always cumulative.

⁹² Online database of Ministry of Justice: <http://www.uyap.gov.tr>, accessed 20 May 2009.

⁹³ For ordinary juvenile courts: 357 in 2004, 326 in 2005 and 335 in 2006; for juvenile courts for serious crimes: 267 in 2005 and 323 in 2006.

⁹⁴ See online database of Ministry of Justice. The average length of trial in criminal courts was 244 days in 2006.

⁹⁵ Yet another reason is the large number of accused juveniles who cannot be located when the date of their trial arrives.

⁹⁶ See online database of Ministry of Justice.

⁹⁷ General Comment No. 10, CRC/C/GC/10, para. 46, citing the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), Rule 14.

⁹⁸ This could be done administratively, without any changes in the law.

⁹⁹ Criminal Code, Article 49.

Sentences of imprisonment imposed on juveniles aged 15–18 years are reduced by one third, or one half if the offender is aged 12–15.¹⁰⁰ For juveniles aged 15–18 years, the maximum sentence is 18 to 24 years of imprisonment, and for those aged 12–15 years, the maximum sentence is 12 to 15 years.¹⁰¹

Moreover, if an offender under age 18 is sentenced to a term of imprisonment of less than one year, an alternative sentence must be imposed.¹⁰² The alternative sentences recognized by the Criminal Code in these circumstances include fines, enrolment in an educational institution, restrictions on activities and freedom of movement, and community service.¹⁰³

Judges also have discretion to suspend sentences of three years or less when the offender is a juvenile who is a first offender who expresses remorse, leading the judge to conclude that re-offending is unlikely.¹⁰⁴ This is, for all intents and purposes, a sentence to probation for a period of one to three years.¹⁰⁵ Suspension of the sentence may be made conditional on compensation of the victim.¹⁰⁶ Other conditions, such as employment or school enrolment, also may be imposed.¹⁰⁷

Sentencing also may be avoided through reconciliation with the victim.¹⁰⁸ This is known as ‘negotiation and settling’ and can be done by the prosecutor or judge. In 2006, 3,689 cases were resolved in this way – the equivalent of one-third of the cases in which a verdict was pronounced. The availability of this procedure was subsequently restricted to certain offences, and data on the number of cases in which it is applied now is not available.

If neither of these provisions is applicable, for example, if the offender has a prior conviction, the judge has no discretion to impose a non-custodial sentence.

In 2006, 6 per cent of all cases involving juveniles ended with dismissal of charges due to reconciliation between the accused and the victim. In 4 per cent of cases sentencing was postponed and probation ordered.¹⁰⁹

The number of sentenced juvenile offenders entering juvenile correctional facilities has been in decline over the last decade, from a high number of 706 in 1998 to 236 in 2007.¹¹⁰

¹⁰⁰ Ibid., Article 31(2).

¹⁰¹ Ibid., Article 31(2) and 31(3). These maximum sentences may be imposed for offences which, in the case of an adult, would be punishable by life imprisonment. It should be noted, however, that sentences imposed for offences committed on behalf of terrorist organizations are first doubled, before being reduced by one third when the offender is under age 18.

¹⁰² Ibid., Article 50(3).

¹⁰³ Ibid., Article 50.1(a)-(d) and (f)

¹⁰⁴ Ibid., Article 51.1.

¹⁰⁵ Ibid., Md.51.3.

¹⁰⁶ Ibid., Article 23(2) and 23(3).

¹⁰⁷ Ibid., Article 23(4) and 23(5).

¹⁰⁸ Court of Criminal Procedure, Art.254.

¹⁰⁹ Ibid. (In Turkey, probation is not a sentence, but a measure imposed while sentencing is postponed.)

¹¹⁰ *Prison Statistics 2006*. (It should be noted that this does not necessarily mean the number of juveniles given custodial sentences during the year, because convicted offenders who benefit from probation may be admitted to prison later if they fail to comply with the conditions imposed, and the figures are not disaggregated to distinguish between such persons and those given firm custodial sentences during the year.)

The number of juveniles given custodial sentences has fluctuated greatly over this same period.¹¹¹ There was a sharp drop from 1,653 in 2004 to 591 in 2006, but it will not be known until more recent data become available whether the low figure reported in 2006 is evidence of the long-term impact of the legislation adopted in 2005.

In 2005, 38 juveniles serving custodial sentences were released conditionally, before serving their full sentence.¹¹²

The assessment team believes that the provisions of the law concerning sentencing are appropriate, insofar as minor offences are concerned. However, the team believes that the long sentences applicable to more serious crimes are not compatible with the fundamental principle that deprivation of liberty shall be a last resort and for the shortest appropriate period of time, especially given that judges have no discretion to impose an alternative sentence when the crime is a serious one, regardless of the circumstances of the offence.

Offenders under the age of criminal responsibility

Cases involving children ‘pushed to crime’ who lack ‘penal liability’ are governed by the Criminal Code and the 2005 Child Protection Law. A hearing on the facts is not required, unless the judge considers it necessary.¹¹³ The opinion of a ‘juvenile having adequate perception capacity’ shall be heard, however, and the court has discretion to hear other ‘relevant persons’ and to request a social inquiry report.¹¹⁴

The measures that may be imposed in such cases are the same as those that may be applied in cases of children in need of protection, namely, ‘consultancy measures’, ‘education/training measures’, ‘care measures’ and ‘health measures’.¹¹⁵ ‘Consultancy measures’ consist of guidance or counselling provided to juveniles and their parents or caretakers; ‘education/training measures’ consist of mandatory attendance in a school, boarding school, vocational training programme, apprenticeship or employment; ‘care measures’ consist of placement in foster care or a children’s home, and ‘health measures’ involve mandatory participation in a substance abuse programme or other rehabilitation programme.¹¹⁶

Children under age 12 who commit offences may not be put under the supervision of probation officers, but services similar to those provided by the probation office to offenders shall be supplied by the Social Services and Child Protection Agency.¹¹⁷

In 2006, the Social Services and Child Protection Agency established a new kind of open facility, known as ‘protection, care and rehabilitation centre’ for children involved in criminal activity. There are presently six such centres. Children placed there include those without ‘criminal responsibility’, i.e., those under age 12 and those aged 12–15 years found to lack criminal responsibility. The main reason for the creation of such centres was to prevent the placement of children involved in crime (and prostitution) in facilities for orphans and child victims of abuse and neglect. The total population of the six centres, at the time of the assessment mission, was reportedly some 120.

¹¹¹ 1,235 in 1997; 1,319 in 1998; 1,084 in 1999; 851 in 2000; 738 in 2001; 1,002 in 2002; 1,334 in 2003; 1,653 in 2004; 1,098 in 2005 and 591 in 2006.

¹¹² *Judicial Statistics 2005*, Table 4.3.10.

¹¹³ Child Protection Law, Article 13(1).

¹¹⁴ *Ibid.*, Article 13(2). This provision does not expressly provide that the views of the child shall be given due weight.

¹¹⁵ *Ibid.*, Article 5(1)(a) to (d) and Article 11.

¹¹⁶ *Ibid.* See also Article 12 on underage offenders with mental disorders.

¹¹⁷ *Ibid.*, Article 37(1).

One such centre, in Kocaeli, was visited by the assessment team. It has a capacity of 30 boys and, at the time of the visit, had a population of 8.¹¹⁸ Most had been placed in the centre for theft and for involvement with drugs (mostly glue and thinner) and theft.¹¹⁹ Those with substance abuse problems are placed in a special rehabilitation facility before admission to the centre. Most come from a violent environment and have poor social skills, and many are on medication for psychosocial problems. The staff includes social workers and educators. Residents attend school in the community, but receive remedial education and participate in cultural activities in the centre. Children sometimes leave the facility without permission, and the possibility of making the facility more secure was mentioned. (A centre in Istanbul has hired a private security company to provide external security.)

The assessment team was impressed by the comfortable physical environment and, especially, by the commitment of the staff, which has a very challenging task. The results of the centre are mixed. Of the 20 or so persons placed there during the last two years, two left because they had reached age 18; one is now in prison; three were returned to their families; one was returned to a 'dormitory' (home for children in need of alternative care); and two committed new offences and are now in detention or serving a sentence. These results may seem disappointing, but given the serious difficulties experienced by these children, they should not be seen as surprising or as an indication of failure.

During the first six months the facility was in operation no juveniles were placed there because the courts were unfamiliar with its existence. This is a striking example of the problem of interagency coordination, mentioned often during the assessment mission. In this case, a local coordinating body involving the Children's Police, the Health Department, provincial government and university was established to overcome this problem. The Council meets every two months, and the case of each child is discussed in a multi-disciplinary team which meets weekly.

Orders imposing such measures normally expire when the child reaches 18 years of age, although they may be rescinded or modified at any time, and also may be extended past the 18th birthday. The decision ordering one of these measures may be appealed, and quarterly review of the implementation of such measures is required.¹²⁰

The assessment team is impressed by the effort to provide care in an open residential facility to children who have been involved in crime, but have not been prosecuted. Although it is too soon to evaluate the results, this is an interesting experience that should be watched closely. However, the assessment team is concerned by the lack of due process in proceedings that may lead to placement in such facilities. Standards concerning the findings sufficient to substantiate this decision are vague, and there seems to be a presumption that placement normally is effective until the child reaches age 18.

6) The rehabilitation of convicted juveniles

Juvenile correctional facilities

There are three reformatories for juvenile offenders, located in Ankara, Elazig and Izmir. They are all open facilities, and have a combined capacity of approximately 400 persons. At the time of the assessment mission, the total population was 244. Since prisoners convicted for offences committed as juveniles may be allowed to remain in these specialized facilities until reaching age 21, part of this number consists of offenders aged 18–21 years.

¹¹⁸ Two of the eight had absconded the night before the visit.

¹¹⁹ The centre also receives 'guests' for short periods, without a court order. 'Guests' include children found living on the streets or using drugs, but not involved in criminal activity. They are kept in these special facilities for a period of adaptation before they are transferred to 'normal' childcare institutions.

¹²⁰ Child Protection Law, Article 8(2).

The facility in Ankara was visited by the assessment mission. It had a capacity of 108, and a population of 47. The youngest prisoners were 15 years of age, and the oldest, 21. Sentences ranged from 1–2 years to 15–20 years. Two prisoners were serving sentences of 15 years or more, one for murder and the other, a repeat offender with four convictions, for robbery.

The centre visited offers a variety of vocational programmes, such as hairdressing, and heating and air conditioning. One third of the prisoners are employed in the community. The physical facilities are old, but spacious, well maintained and clean. The prisoners are assigned to dormitories that sleep six. They attend school in the community.

The staff includes social workers, who organize group work on issues such as anger management and other life skills. They also meet with prisoners individually, and outreach to families. Some of the staff met seemed to lack commitment. The Director indicated that ‘burn-out’ is a problem.

Prisoners who escape and are captured may be sent to the juvenile section of the closed detention facility, but after six months they are returned to this facility. The Director suggested that not all the prisoners are ready for assignment to an open facility. In particular, he questioned whether placement in an open facility is appropriate for juveniles serving long sentences, who are likely to be transferred to an adult prison as they grow older. The fact that all facilities for convicted juveniles are open facilities also makes it difficult, in his view, to protect the majority from those who have a bad influence on their peers.

Probation

Juveniles may be placed under the supervision of a probation officer if the court that has tried the case decides to “put off the announcement of the verdict.”¹²¹ This course of action may be taken when a juvenile is a first offender and has been found guilty of a crime punishable by a sentence of two years or less. When a juvenile offender is put on probation, the probation officer is to develop a plan that must be submitted to the juvenile judge for approval.¹²² The views of the offender must be taken into account in the development of the plan.¹²³ The Child Protection Law defines the responsibilities of the probation officer in very broad terms: they must provide the juveniles with guidance; assist them in obtaining services to which they are entitled; help in the process of adapting to the educational, familial and social environment; cooperate with the juveniles’ teachers and parents; and prepare quarterly reports for the court.¹²⁴ Supervision may be terminated before the period fixed by the court if the court agrees that its purpose has been achieved.¹²⁵

A Probation Department was established in 2005, with the support of the European Union and expertise provided through a ‘twinning’ arrangement with the United Kingdom. There are 820 probation officers, and a caseload of approximately 40,000. The caseload under age 18 is approximately 3,200 persons. There is a small children’s unit in the main office, but no specialization in field offices.

Some observers indicated to the assessment team that the capacity of the probation service to provide children with the kind of assistance envisaged by the law is quite limited. In practice their role

¹²¹ Ibid., Article 36, Code of Criminal Procedure, Art.231.

¹²² Ibid., Article 39.

¹²³ Ibid., Article 39(2)(f).

¹²⁴ Ibid., Article 38.

¹²⁵ Ibid., Article 40(1).

is largely restricted to meeting with clients and preparing reports. A new two-year EU programme launched in March 2009 is aiming at strengthening the capacity to assist juvenile offenders and victims.

Post-release support

There are two 'youth houses' in Ankara for sheltering juveniles released from correctional or detention facilities who are attending school and have no known home or who should not return to their previous environment. They are operated by an NGO and do not receive any governmental funds.

PART III. UNICEF's Support to Juvenile Justice Reform

UNICEF's support to juvenile justice reform has developed without the preparation of a situation analysis, nor the adoption of express, medium- or long-term strategy. It has been very closely linked to the 2006–2010 Country Programme and the implementation of a series of European Commission (EC) projects.

The first EC-UNICEF project on juvenile justice began in 2001, the month after Turkey's first report on the implementation of the Convention on the Rights of the Child was examined by the Committee on the Rights of the Child. The project had four components: law reform, training/capacity development, data collection and research, and the development or strengthening of 'models' in various areas, including legal services, mediation and the treatment of juvenile prisoners and detainees. The law reform component was quite successful, as indicated above. Training activities carried out as part of this project were *ad hoc*. Although there was reluctance to institutionalize training and develop training materials while law reform was underway, the training undertaken during this period contributed to law reform and helped create the basis for further training development as well as institutional reform. A pilot project for the collection of data on children and the police has generated useful information, and is now being implemented on the national level. The effort to develop victim-offender mediation failed for the reasons stated above, and was replaced by the training of probation officers on skills needed to help juvenile probationers. The European Commission is presently planning a new project with the same purpose, which suggests that this early effort had limited results. The creation of child rights commissions in bar associations throughout Turkey was successful, although it has not resolved the challenge of ensuring that all accused juveniles and juveniles victims of human rights abuses receive adequate legal assistance. The creation of new 'models' for working with juvenile prisoners and detainees likewise has had positive results, but it has not eliminated mistreatment and exploitation entirely.

UNICEF also began to cooperate with a series of small projects supported by the British Council and implemented by civil society. Although civil society has limited influence over social and political priorities of the government, there is a small group of knowledgeable and committed organizations and individuals that have helped shape the aims and plans of international organizations, including UNICEF. There was some public support for reforming juvenile justice at the time, due to media reports of harsh sentences imposed on poor children for theft of food.

Around the same time, meeting conditions for membership in the European Union became one of the main priorities of the government. Since the adoption of a revised Accession Partnership in 2003, the European Commission has supported several important projects concerning law enforcement and the administration of justice. A first project concerning juvenile justice began in 2001. Its aims included law reform and training. The duration was less than one year, and the budget € 765,000.

A second project, 'Towards Good Governance, Protection and Justice for Children in Turkey', with a budget of € 6 million, began in 2005 and ended in 2008.¹²⁶ The Ministry of Justice, the Ministry of Interior, the Ministry of Education, the Ministry of Health and Social Services, the Child Protection Agency and the Turkish Bar Association were implementing partners, and UNICEF was chosen to provide technical assistance. Another large project of the European Union, 'Children First – Modelling Child Protection Mechanisms at Provincial Level', began in 2008 and will end in 2009. The budget is € 5.8 million. The focus of this project, improving interagency cooperation at the local level, was identified as a priority during the evaluation of the previous project.

¹²⁶ The project was also referred to as the 'Children First' project.

The European Union has supported a number of projects that have important consequences for juvenile justice, although their objectives are broader. One promoted the development of a Probation Department, which was established in 2005. A second stage, which has a double focus on services for juvenile offenders and services for victims, will begin in 2009. Another project aims to strengthen the judicial management system. One of the courts selected for piloting new management methods and technology is a juvenile court. The European Union has indicated that it would like UNICEF to cooperate in the second stage of the probation project.

In the absence of an expressly defined strategy, UNICEF's implicit strategy or approach towards juvenile justice has, in effect, consisted mainly in supporting the implementation of these European Union projects. This approach has been appropriate and productive, to a large extent. The government's interest in bringing the juvenile justice system into compliance with international standards is driven to a large extent by its interest in accession to the European Union. The assessment team was unable to obtain any information about the extent UNICEF influenced the preparation of the first project. However, since the second and third projects were based on needs and opportunities identified during the previous project, and since UNICEF played an active role in coordinating their implementation, it did have considerable influence in the design of the second and third projects.

The aims supported by UNICEF through its participation in these projects have been fairly limited, focusing mainly on law reform and training. But these are, in the view of the assessment team, two of the areas that most needed attention. Some major improvements of the system had been carried out, or were in progress, separately. They include the increase of the number of juvenile courts and juvenile judges, the creation of the specialized Children's Police force, and the creation of the Probation Department. The scope of reform undertaken or underway covers most of the relevant aspects of juvenile justice: the interaction between suspects and police, diversion, adjudication, alternative sentences and correctional facilities and programmes.

There nevertheless are, in the view of the assessment team, some areas that might have been addressed more directly, or differently, had UNICEF's work on juvenile justice been based on a situation analysis and strategy. One has to do with the detention/correctional system. Reducing the number of accused juveniles detained during investigation and trial as well as the length of their detention has not been given the priority it deserves. Improvements in the infrastructure of the detention/correctional facilities are proceeding with insufficient attention to principles concerning the treatment of juveniles, such as decentralization and separation from adults.¹²⁷

The low priority given to accountability is another example. The establishment of a children's ombudsman, or specialized unit of a human rights ombudsman, was envisaged. Since that effort did not meet with success, a strategic approach to strengthening accountability might have led to advocacy or support to alternative methods, such as reinforcing existing mechanisms in the Police and Prison Departments or assisting civil society efforts to document abuses.

Finally, the assessment team believes that, although UNICEF relies heavily on the expertise of persons from civil society, enhancing the role of civil society is not seen as a strategic objective. If it were, more attention might be paid to boosting the incorporation of child rights into university curricula, encouraging efforts by civil society organizations to document abuses or developing a strategy to work with the media or other opinion makers.

¹²⁷ See Rule 30 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, which provides, "The number of juveniles detained in closed facilities should be small enough to enable individualized treatment. Detention facilities for juveniles should be decentralized and of such size as to facilitate access and contact between the juveniles and their families. Small-scale detention facilities should be established and integrated into the social, economic and cultural environment of the community."

Part IV: Conclusions and Recommendations

POSITIVE DEVELOPMENTS

1. Very considerable progress has been made in strengthening the juvenile justice system and bringing it into greater compliance with international standards.
2. The consolidation of the Children's Police has resulted in qualitative improvements in the treatment of accused juveniles and suspects throughout the country. The Children's Police can be considered a model for other countries.
3. The competence of juvenile courts was extended to offences committed by persons aged 15–18 years by an amendment to the law on juvenile courts adopted in 2003. This was a major step towards compliance with international standards and the recommendations of the Committee on the Rights of the Child concerning juvenile justice.
4. The Criminal Code adopted in 2005 raised the minimum age of criminal responsibility from 11 to 12 years. This complies with the recommendation of the Committee on the Rights of the Child in 2007. The requirement that the court evaluate, on the basis of a psychosocial inquiry, the capacity of accused offenders aged 12–15 years to appreciate the legal meaning and consequences of their act and their ability to control their behaviour, provides additional protection against the prosecution of adolescents not mature enough to be held criminally responsible.
5. The increase of the number of juvenile courts from 8 in 2003 to 83 in 2008 is a major achievement.
6. The number of juveniles given custodial sentences has been falling significantly over the last decade, even though the number of recorded offences has grown.
7. The requirement that each prosecutor's office establishes a special unit specialized in cases involving children or, in smaller offices, appoints a prosecutor to be responsible for such cases, is a positive development.
8. Under the legislation now in force, only the prosecutor may interrogate child suspects during the investigation of an offence, and prosecutors do not have authority to detain children without a court order.
9. Important measures have been taken to prevent ill-treatment of children in custody. The use of handcuffs and chains is prohibited, and a medical exam is required upon entry into custody and after each transfer from one facility to another.
10. The Code of Criminal Procedure adopted in 2005 introduced several provisions that, although they apply to both juveniles and adults, help bring juvenile justice into greater conformity with international standards and principles: Article 109, which increases the availability of supervision as an alternative to pretrial detention; Article 171, which gives the prosecutor limited discretion not to file charges in certain circumstances; Art.231, which allows for postponement of announcing the sentence followed by dismissal if the offender does not commit a new offence; and Art.253 and 254 which require in certain cases an effort to reach settlement between the victim and the accused before trial for certain offences.¹²⁸

¹²⁸ Articles 52(3) and 236(2)–236(3) of the new Code of Criminal Procedure contain new provisions designed to protect children who are witnesses or victims of crimes.

11. The Child Protection Law prohibits the detention of juveniles under age 15 unless they are charged with a serious offence (i.e., punishable by more than five years of imprisonment) and gives judges broad discretion in determining whether other accused juveniles must be detained during investigation and trial. This is compatible with the principle that any deprivation of liberty must be imposed only as a last resort.
12. Prosecutors have discretion to suspend the prosecution of accused juveniles if they are first offenders, are charged with a crime punishable by a sentence of one year or less and compensate the victim. This is a form of diversion, which is considered an essential part of juvenile justice.
13. Sentences of imprisonment of less than one year must be replaced by an alternative sentence when the offender is under age 18.¹²⁹ Moreover, if a first offender is convicted of an offence punishable by a sentence of two years or less, the judge has discretion to postpone announcement of the sentence and order the offender to supervision by the Probation Department. These provisions help satisfy the last resort principle, recognized by Article 37 of the Convention on the Rights of the Child.
14. All correctional facilities for sentenced juveniles are open facilities. This is in harmony with the United Nations Rules on the Protection of Children Deprived of their Liberty.
15. The Social Services and Child Protection Agency has established a number of small, open facilities for underage offenders and offenders given alternative sentences involving placement in a residential care.
16. Psychologists and social workers are being fully incorporated into the work of juvenile courts and detention and correctional facilities for juveniles. Psychosocial intervention programmes have been developed and are being implemented in detention centres and correctional facilities for juveniles.
17. Throughout the various components of the juvenile justice system, there is a core of professional staff that has a good understanding of and deep commitment to the rights of children and juvenile justice.
18. Training materials and curricula based on a training needs assessment have been developed for the judiciary, staff of juvenile courts, prosecutors and the police. Considerable training has been carried out, and the legislation has been adopted requiring juvenile court judges and prosecutors who work in such courts to be trained.

CHALLENGES

1. It is unclear whether the political will exists to pursue the process of reforming the juvenile justice system. Many counterparts, particularly decision makers, appear to believe that most of the changes that were desirable and feasible have been made, and that the main task at the present time is to consolidate the changes already operated through training, the appointment of more judges and prosecutors, the improvement of coordination and similar measures.
2. Much remains to be done to implement the reforms that have been adopted, in terms of infrastructure, developing human resources and changing institutional cultures.

¹²⁹ Criminal Code, Article 50(3).

3. Although a variety of institutions and agencies are involved in the prevention of offending, there is little cooperation between the concerned agencies and institutions and no national prevention strategy.
4. According to credible observers, abuses of juvenile suspects by police units other than the Children's Police continue, despite the official commitment of the National Police to respect the rights of children and to endeavour to change the attitudes of the police as a whole.
5. Diversion, in the form of a decision by the prosecutor to suspend prosecution, is only available for first offenders charged with relatively minor offences (those punishable by less than one year's imprisonment).
6. Although prosecution of certain cases may be discontinued in the event of an agreement between the victim and the offender regarding compensation, restorative justice as such has not been incorporated into the juvenile justice system.
7. The limitations on the use of detention during investigation and trial incorporated into the Child Protection Law and other new legislation are not sufficient to ensure compliance with international standards. If the crime is serious and the law gives courts discretion to detain or not detention is used routinely. Authorization of detention of juveniles comes within the competence of ordinary courts, not juvenile courts, and the maximum periods of detention are the same as those applicable to adults.
8. Juvenile courts may order children under age 12 who have committed an offence or older children found not to be criminally responsible to be placed in a special facility for underage offenders without a hearing. The legislation does not require that the court considers placement in such a facility as necessary, or in the best interests of the child.
9. Legislation regarding the sentencing of convicted juveniles is inflexible in some respects. Judges have no discretion not to impose a custodial sentence on repeat offenders and on offenders convicted of a crime bearing a sentence of more than three years.
10. The maximum sentences that may be imposed on juvenile offenders for a single offence – 24 years for an offender over age 15 and 15 years for an offender under age 15 – are not in harmony with the principle that any deprivation of liberty should be for the shortest appropriate period of time. Similarly, the application to juveniles of the requirement that sentences for separate offences must be served sequentially is not in harmony with the basic principles concerning juvenile justice contained in the Convention on the Rights of the Child and related instruments.
11. The probation service does not yet provide juvenile probationers, in practice, with the kind of assistance and support foreseen by Article 38 of the Child Protection Law.
12. Although data collection systems produce much valuable information regarding offending by juveniles, the prosecution, adjudication and sentencing of juveniles and juveniles deprived of liberty, no data concerning some important indicators are produced. Examples include the number of juveniles detained during investigation and trial as well as the length of custodial sentences imposed on convicted juveniles. In addition, data on persons under age 18 deprived of liberty are somewhat contradictory, as they do not clearly distinguish between detainees who serve sentences, and between those detained in juvenile facilities and those detained elsewhere. The data collected by different institutions are not compiled and presented in such a way as to create a comprehensive picture of the juvenile justice system, as a whole.

13. There is a lack of confidence in the transparency and effectiveness of mechanisms designed to identify violations of children's rights by law enforcement and correctional staff.
14. Cooperation between the various ministries, institutions and agencies involved in juvenile justice remains insufficient.
15. The training of juvenile judges and prosecutors has not been institutionalized.
16. Civil society has little involvement in the juvenile justice system or in the formulation of law and policy concerning juvenile justice.

RECOMMENDATIONS

National Juvenile Justice Strategy

1. While the consolidation of the advances made thus far should be emphasized, further changes in the legislation should be made at the earliest possible opportunity (see below, Recommendations 7–13).
2. A time-bound plan should be developed regarding the expansion of the network of juvenile courts and the increase in the number of juvenile judges and prosecutors, with a view to ensuring that all cases involving accused juveniles and other cases arising under the Child Protection Law are handled by specialized courts and prosecutors.
3. A study should be undertaken on the structure of the detention/correctional system as it relates to juvenile detainees and prisoners, with a view to identifying any changes that would help reduce the proportion of juveniles in closed detention facilities and ensure the maximum possible respect for the principles that juvenile prisoners and detainees should be separated from adults and placed in facilities designed to meet their special needs, and whose location facilitates contact with their families and communities.
4. The government should consider adopting a national plan or strategy regarding the prevention of offending by children, or eventually a broad national plan or strategy on juvenile justice addressing prevention, law enforcement, diversion and restorative justice, adjudication, rehabilitation, monitoring and accountability, research and the role of civil society's cooperation.
5. Mechanisms for monitoring respect for the rights of juvenile suspects, defendants, detainees and prisoners should be made more transparent and effective. Data management systems should be improved in order to eliminate discrepancies regarding the number of persons under 18 deprived of liberty and to clearly indicate the kind of facility in which they are detained or housed.

Specialisation

6. Juvenile courts should be given responsibility for authorizing the detention of accused juveniles. Time limits applicable to juveniles should be significantly shorter than those applicable to accused adults, in accordance with the principle that any deprivation of liberty should be for the shortest period of time.¹³⁰

¹³⁰ Convention on the Rights of the Child, Article 37(b); General Comment No. 10, CRC/C/GC/10, paras. 52 and 80.

7. Since juvenile courts should be entrusted with competence over all offences committed by persons under age 18, even the most serious offences, consideration should be given to amending the provisions of the law that allow terrorist offences to be tried by high criminal courts.

Diversion and alternative sentencing

8. Since the law provides for diversion (suspension of prosecution) only when it is in the best interests of society and when the offender compensates the victim, consideration should be given to eliminating other restrictions on the prosecutor's discretion to suspend prosecution measures, namely, that the juvenile be a first offender and the crime be a minor one. In addition, the procedure should be modified in order to emphasize recognition by the offender of the consequences of his/her actions, rather than compensation per se.
9. Similarly, the discretion of judges to postpone sentencing during a period of supervision should be extended to any case in which the offender is willing to compensate the victim and the judge 'has the opinion that the juvenile will not commit any other crime'.
10. A study should be made of the sentences applicable to juvenile offenders with a view to identifying the changes needed to bring the law into conformity with the principle that any deprivation of liberty should be for the shortest appropriate period of time, which requires that sentencing be based mainly on the circumstances in which the offence is committed, the characteristics of the offender and the relationship between the sentence and the rehabilitation and social reinsertion, rather than the gravity of the offence, deterrence and retribution. In particular, it is recommended that judges be given discretion as to when sentences should be served concurrently.
11. The possibility should be considered of transforming present procedures concerning compensation of victims into victim-offender mediation, giving the victim a greater role in the process and enhancing the rehabilitative and preventive impact of the process for the offender.

Due Process

12. Consideration should be given to amending the provisions of the Child Protection Law on underage offenders to ensure that they may not be placed in a residential facility against their wishes without a hearing that meets essential standards for due process.

Capacity-building

13. Efforts should aim to institutionalize both entry-level and in-service training of judges, prosecutors, forensic and psychosocial specialists and the police; reinforce the capacity of the relevant training institutions; develop training materials specifically for these sectors; and develop and put into effect regulations and procedures regarding professional qualifications and career development.
14. Consideration should be given to creating a mechanism that encourages social and professional recognition of juvenile justice professionals, such as the presentation of an award for outstanding service or special contributions to the development of juvenile justice, or sponsoring the participation of selected practitioners or experts in international professional fora.

UNICEF

15. UNICEF should continue to cooperate with the European Union and its governmental partners in efforts to bring the juvenile justice system to full compliance with international standards and best practices concerning juvenile justice, including the ongoing project on interagency cooperation and the planned project to strengthen the capacity of the Probation Department to provide appropriate services to juvenile probationers.
16. UNICEF should develop a strategy concerning its role in juvenile justice reform in Turkey, which should, *inter alia*, identify the goals of its work in this area and address the role of civil society and potential linkages between projects concerning juvenile justice and those in other areas, such as education.

Annex 1: Data collection and analysis

National data collection system and international and regional indicators

One of the aims of this assessment is to ascertain whether the information corresponding to global and regional indicators exists; identify problems or difficulties concerning the use or definition of such indicators; and explore the availability of other indicators of particular relevance. Turkey has one of the most comprehensive data collection systems of the countries covered by this series of assessments, but some significant gaps nevertheless exist. The indicators and corresponding observations of the assessment team are as follows:

(1) Crimes committed by juvenile offenders

This indicator is not used in Turkey. The closest equivalent might be the number of children 'received' by the police because they are charged with an offence, which is published in the annual report of police statistics concerning children. These data are disaggregated by specific offences, as well as age, which would allow data concerning children under age 14 to be removed. However, since the minimum age for prosecution is age 12, removing data concerning 12- and 13-year-olds would result in underreporting by 8 per cent the children investigated as potentially liable offenders. Data for the period 1997–2006 cover only 27 provinces. As from 2008, they will cover the entire country.

(2) Children in conflict with the law/children arrested

The term 'arrest' is defined by the UNODC-UNICEF Manual¹³¹ 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, "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."

Data on the number of children 'received' by the police are compiled and published. They are disaggregated by the reason for 'reception' and, as mentioned in the assessment report, the largest category is those charged with an offence. As indicated above, data to be published concerning 2008 will, for the first time, cover the entire country.

(3) Children in detention

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

This indicator as such is not used by the Ministry of Justice, which operates both detention centres and correctional facilities (i.e., prisons and juvenile reformatories). Published data do indicate the number of juveniles admitted to and released from detention and correctional facilities annually. One piece of data – the number 'remanded until next year' – appears to represent the number in juvenile facilities at the end of the year.¹³²

It should be noted, however, that different sets of data on admissions and release appear to be inconsistent. *Prison Statistics* contains data on 'convicts' under age 18 received into and released from

¹³¹ United Nations, *Manual for the Measurement of Juvenile Justice Indicators*, Office on Drugs and Crime (UNODC) and UNICEF, New York, 2007, p. 11.

¹³² *Judicial Statistics 2005*, Table 4.4.2 (616 in 2005); *Prison Statistics 2006*, Table 1.3 (56 in 2006).

'prison', and other data concerning 'juvenile convicts received into juvenile prison and reformatory'. Although, in principle, juveniles are not confined in adult facilities, the number of persons under age 18 received into prison is considerably larger than the number of 'juvenile convicts received into juvenile prison and reformatory'.¹³³ *Judicial Statistics* contains another set of data, on arrested persons received into prison and detention facilities by type of facility.¹³⁴ This publication includes data on the number of persons received into juvenile facilities that are considerably higher than the numbers published in *Prison Statistics*.¹³⁵

Finally, it should be noted that none of the annual publications concerning juvenile justice include data on the population of the open 'care, protection and rehabilitation centres' for offenders operated by the Social Services and Child Protection Agency.

(4) Children in pretrial or pre-sentence detention

The UNODC-UNICEF Manual describes this indicator as including children deprived of liberty while awaiting trial and convicted juveniles awaiting sentencing, but not those who are sentenced and awaiting the outcome of an appeal.

This indicator is not used by the Turkish Ministry of Justice, which is responsible for all detention facilities.

(5) Duration of pretrial detention

Data on this important indicator are not compiled at present.

This gap in data collection should also be remedied as a matter of priority, in order to facilitate monitoring of the relevant national and international standards.

(6) Child deaths in detention

Information on this indicator is not compiled systematically. The Ministry of Justice informed the assessment team that no deaths of juveniles had been registered in either correctional or detention facilities in 2008.

(7) Separation from adults

This indicator is defined by the UNODC-UNICEF Manual as "the percentage of children in detention not wholly separated from" adult prisoners. The TransMONEE project¹³⁶ does not include this indicator.

In most detention and correctional facilities in Turkey, there is some contact between prisoners and detainees under age 18 and those over age 18. One reason for this is that juvenile offenders who reach age 18 are allowed to remain in juvenile correctional facilities, in certain circumstances. This also applies to the open facilities operated by the Social Services and Child Protection Agency for offenders below the age of criminal responsibility and offenders who receive alternative measures. Most detention facilities for juveniles are separate units located within facilities for adults, but the assessment team did not have an opportunity to observe conditions there. Detainees under age 18 are separated from those aged 18–21 years in the new model facility for juvenile and young adult detainees.

¹³³ For 2006, the numbers were 513 and 78. *Prison Statistics 2006*, Tables 6 and 10. See also Table 2.2 at p. 39.

¹³⁴ *Ibid.*, Table 4.4.2.

¹³⁵ In 2005, 2,802 persons were admitted, compared to 896 reported in Table 6 and 202 reported in Table 10 of *Prison Statistics 2006*.

¹³⁶ See Moestue, H., *Lost in the Justice System: Children in conflict with the law in Eastern Europe and Central Asia*, UNICEF Regional Office for CEE/CIS, Geneva, May 2008, Appendix 2.

(8) Contact with parents and family

This indicator is defined by the UNODC-UNICEF Manual 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.”

Data on this indicator are not available.

(9) Convictions

Data on convictions of juvenile offenders are posted on the website of the Ministry of Justice. They are disaggregated by sex, by age (12–15 or 16–18) and by type of court, but not by type of crime.¹³⁷

(10) Custodial sentences

This indicator is defined by the UNODC-UNICEF Manual 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 website of the Ministry of Justice contains data on the number of juveniles convicted, disaggregated by age, sex and sentence. Strictly speaking, all sentences involve deprivation of liberty. The main alternative is probation, but probation is not considered a sentence, but rather a measure taken when the pronouncement of the sentence is postponed. The number of cases in which this disposition is ordered is given. In 2006, this measure was adopted in 2,486 cases, as compared to 5,155 convictions (one third).

(11) Alternative sentences

The TransMONEE matrix requests information on the kinds of sentences 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. The number of cases in which the announcement of a sentence is postponed, which implies probation, is available on the website of the Ministry of Justice, as indicated above.

(12) 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 contradictory,¹³⁸ and the Manual recognizes that what constitutes diversion “will need to be identified in the local context.”

¹³⁷ See online database of Ministry of Justice: <http://www.uyap.gov.tr>, accessed 20 May 2009.

¹³⁸ 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 published on the website of the Ministry of Justice indicate the number of cases dismissed by reason of mediation or reconciliation between the victim and the accused. In 2006, 3,689 cases were resolved in this way, as compared to 10,862 that ended in a verdict of conviction or acquittal.¹³⁹

(13) 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.

In Turkey, the number of juvenile offenders released before reaching age 18 is published annually,¹⁴⁰ but no data are available on their living situation or any assistance provided. No governmental agency is responsible for providing aftercare. Only one NGO provides this service, in one city.

Other relevant data and information

Children prosecuted or charged with an offence during the year

In Turkey, the annual publication of TURKSTAT on judicial statistics includes data on the number of criminal cases against juveniles brought to court annually, disaggregated by age group (11–14 or 15–17), by sex, by type of court and disposition or other outcome (e.g., acquittal, conviction, still pending etc.).

¹³⁹ See online database of Ministry of Justice: <http://www.uyap.gov.tr>, accessed 20 May 2009.

¹⁴⁰ *Prison Statistics* 2006, Table 3.11.

Annex 2: List of persons interviewed

Government

- N. Kalaman, General Director, Prison and Detention Centre General Directorate, Ministry of Justice
 Y. Erdogan, Judge, Law Department, Ministry of Justice
 O. Avci, Head, Training Department, Ministry of Justice
 F. Benek, Judge, Training Department, Ministry of Justice
 I. Usta, Judge, Probation Department, Ministry of Justice
 B. Karakas, President, Justice Academy
 C. Erdöl, member of the Parliamentary Working Group on Child Rights
 M. Ekmen, member of the Parliamentary Working Group on Child Rights
 G. Koçoglu, juvenile judge, Ankara
 C. Köksal, juvenile prosecutor, Ankara
 Deputy Head, Public Order Department, National Police, Ministry of Interior
 Ö. Temur, Head of the Children's Police, Istanbul
 H. Kadioglu, Director, Department of Social Services and Child Protection, Kocaeli Province
 Director and staff, Protection, Care and Rehabilitation Centre, Kocaeli Province

Civil society

- Prof. Ü. Biçer, Professor of forensic medicine, Kocaeli University
 Dr. B. Metin, Secretary General, Turkish Public Health Association
 Dr. K. Ögel, Education and Health Organization
 Prof. F. Yenisey, Professor of Penal Law, Bahçesehir University
 B. Çanlı, Director, ÖZGEDER (Solidarity with Children Deprived of their Liberty)
 Ö. Özok, President, Turkish Bar Association
 T. Asma, S. Aktas and S. Antakyalı, members, Child Rights Commission of the Ankara Bar Association

UNICEF

- R. Hossaini, UNICEF Representative in Turkey
 B. Akbulut, Child Protection Officer
 C. Dedeoglu, Child Protection Expert

Other international agencies

- D. Ulusoy, political officer, European Commission
 A. Önsoy, project manager, European Commission
 S. Aydeniz, project manager, British Council

Annex 3: List of documents consulted

Legislation

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Final Narrative Report on the 2001-2005 EC project 'Upgrading of the Juvenile Justice System in Turkey' (unpublished)

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