



ASSESSMENT OF JUVENILE JUSTICE REFORM ACHIEVEMENTS IN UKRAINE

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Note on the Assessment Mission

The assessment mission took place from 11 to 23 May 2008. The team consisted of Dan O'Donnell, international consultant, with support provided by Andriy Haidamashko, UNICEF Programme Officer, Nataliya Kyyak, Assistant Programme Officer and Alla Sanchenko, a national consultant. The mission began in the capitol, Kyiv, and included a visit to Kharkiv, in eastern Ukraine.

Sources interviewed include the Deputy Minister of Justice, the Deputy Head of the Office of the General Prosecutor, the Parliamentary Commissioner for Human Rights (Ombudsman), and representatives of the Ministry of Justice, the Ministry of Education and Science, the Ministry of Family, Youth and Sport, the State Department of Penal Implementation (prison and probation services), the Supreme Court, the Parliament and the State Statistics Committee. Meetings also took place with representatives of the International Renaissance Foundation, the Swiss Agency for Development and Cooperation, the Embassy of the Netherlands, the Ukrainian-European Policy and Legal Advice Centre, the NGO Protection of Children's Rights, the NGO Ukrainian Centre for Common Ground, the NGO Youth for Democracy, the Director and staff members of the Kharkiv Academy of Justice, representatives of the Centre of Social Expertise of the National Academy of Sciences, and UNICEF staff.

Visits were made to a school for underage offenders, the juvenile section of a detention centre, correctional facilities for juvenile offenders and a legal aid office.

At the end of the mission, the international consultant addressed the Consultative Council on Juvenile Justice.

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

Background

Ukraine is the largest country located wholly within the European continent. Its population is approximately 46.2 million, of which less than 20 per cent is under age 18.¹ Some 78 per cent of the population is of Ukrainian origin, and 17 per cent of Russian origin.² More than two thirds of the population are urban.

Ukraine became independent from the Union of Soviet Socialist Republics (USSR) in 1991. The present Constitution was adopted in 1996. There are 24 provinces (*oblast*) and one autonomous republic, the Crimea.

In 2004, peaceful protests known as the 'Orange Revolution' led to new presidential elections and opened a period of broad political, social, economic and legal reforms. In 2007, however, political differences between the President and the Prime Minister created an environment in which the adoption of legislative and other reforms became very difficult.

¹ United Nations Children's Fund, *The State of the World's Children 2009*, UNICEF, New York, 2009, Tables 1 and 6.

² 2001 Census.

The economy declined during the 1990s but grew rapidly from 2000 to 2007. In 2007, the Gross National Income (GNI) per capita was estimated at US\$ 2,550.³ In 2005, 7.9 per cent of the population was living in poverty, down from 31.7 per cent in 2001.⁴

Ukraine ratified the Convention on the Rights of the Child in August 1991, four days after declaring independence. The Convention forms part of the national law. Ukraine's second report to the Committee on the Rights of the Child was presented in 1999 and considered in 2002.

Ukraine joined the Council of Europe in 1995 and ratified the European Convention on Human Rights in 1997. Membership in the Council has been a driving force in legal and institutional reform.⁵

Executive Summary

Ukraine has some of the components of a juvenile justice system. There is no law specifically on juvenile justice, or juvenile courts. Each trial court has a judge assigned to cases of juvenile offenders, however, and there is a specialized police unit. Juveniles detained during investigation and trial are kept in a separate section of detention centres, and convicted juveniles given custodial sentences are confined in specialized correctional facilities. The agency that supervises offenders given non-custodial sentences does not have specialized staff for juveniles.

The number of offences committed by juveniles increased dramatically from 1992 to 2003, and has fallen sharply since then.⁶ There are 11 facilities for convicted juveniles. At the time of the assessment mission, their population was approximately 1,800, including prisoners sentenced as juveniles over age 18.⁷ The population of these facilities has fallen by roughly one half during the last decade. There are 24 centres for pretrial detention that have sections for juveniles. At the time of the assessment mission, approximately 1,100 juveniles were detained in these facilities. There are also 14 closed educational facilities for underage offenders, with a total capacity of 2,520. At the time of the assessment mission, the total population was 504 children.

The minimum age for prosecution is 14 years for serious offences and 16 years for other offences. Children over age 11 found to have committed an offence may be placed in a closed 'school for social rehabilitation' but only courts are competent to impose this measure.

Prosecutors have discretion to impose educational measures instead of prosecuting, in certain circumstances, but there are no data indicating how often this is done. Educational measures include placement in a school for social rehabilitation, warnings, supervision and compensation of the victim.

Detention prior to and during trial often lasts from six months to one year, and sometimes as long as two years. Although conditions in detention facilities have improved, they are not suitable for lengthy detention.

³ *The State of the World's Children 2009*, Table 7.

⁴ World Bank, *Ukraine: Poverty Update*, Report No. 39887-UA, World Bank, Washington, DC, 2007, Table 1. See: <http://siteresources.worldbank.org/INTECONEVAL/Resources/UkrainePovertyUpdate2007.pdf> accessed 22 June 2009.

⁵ See Council of Europe, Parliamentary Assembly, Resolution 1466 (2005).

⁶ Number of offences committed by juveniles: 11,620 in 1992; 21,800 in 2003, 11,170 in 2007, in *Study by the Centre of Social Expertise*, Kyiv, 2008 (forthcoming). (There is some controversy as to the implications of these data during recent years, for reasons stated below.)

⁷ Approximately one third of the prisoners are over age 18.

The maximum sentence that may be imposed on convicted juveniles is 10 years, or 15 years for homicide. First offenders may not be given custodial sentences for minor offences.

Conditions in correctional facilities for juveniles have improved considerably in recent years. The population has decreased significantly, by one third during the last five years and by one half during the last decade.

UNICEF began working on juvenile justice in 2003, the year after the Committee on the Rights of the Child examined Ukraine's second report. Juvenile justice became a priority in the present Country Programme (2006–2010). UNICEF has supported law reform, training, the establishment of a coordination mechanism and improvements in data management, and is seen as a valuable partner by the government.

A framework for juvenile justice reform elaborated by government experts in 2004 was not adopted. Significant reforms have been made, however, including the requirement of a judicial order for detention prior to trial; the requirement of a court order for placement in schools for underage offenders; and the reduction of the sentences applicable to juvenile offenders.

In 2008, the President signed a decree calling for the creation of a juvenile justice system. This represents an important opportunity and UNICEF should make every effort to contribute to this new, crucial stage of the development of a juvenile justice system compatible with international standards and best practices. Priorities should include:

- reducing the number of juveniles detained prior to trial and the duration of detention;
- supporting the establishment of juvenile courts where appropriate;
- supporting the development of community-based secondary prevention and rehabilitation programmes;
- supporting the adoption of a legislation on mediation (victim-offender mediation);
- strengthening the probation service;
- supporting the establishment of Public Defenders' offices;
- supporting the creation of mechanisms to monitor the rights of children involved in the juvenile justice system;
- supporting the incorporation of juvenile justice into the curricula of the relevant professional training institutions;
- continue supporting the efforts of the State Statistics Committee to develop a more comprehensive data bank on juvenile justice;
- supporting further law reform, as appropriate;
- continue supporting the work of the Consultative Council on Juvenile Justice.

PART I. The Process of Juvenile Justice Reform

1) Policy and advocacy

Paradoxically, the concept of juvenile justice is new in Ukraine, although one of the most influential figures in the history of the treatment of juvenile offenders, Anton Makarenko, began work in Ukraine in the 1920s. It was not until the 1960s that sections on juvenile offenders were added to the Criminal Code and the Code of Criminal Procedure. And it was not until the situation analysis prepared by a UNICEF consultant in 2003 that the term ‘juvenile justice’ came into use.

The issue was put on the agenda by the reaction of the Committee on the Rights of the Child to Ukraine’s second report on the implementation of the Convention on the Rights of the Child in 2002. The Committee expressed concern with police operations targeting street children; the lengthy period of pretrial detention; the lack of specialized juvenile judges and courts; insufficient educational and psychosocial services in facilities for offenders; and the limited number of professionals working in this field.⁸

The following year, UNICEF contracted Prof. S. Asquith to prepare a report on juvenile justice in Ukraine. His report emphasized the need for a more modern and comprehensive approach to the prevention of offending.⁹ It also called for:

- the development of a comprehensive strategy;
- greater coordination;
- greater awareness of the Convention on the Rights of the Child and other international standards regarding juvenile justice;
- a comprehensive system for collecting data on offending by children and children at risk;
- the creation of juvenile courts;
- the introduction of more alternative sentences;
- programmes to prepare institutionalized offenders for release;
- specialized training of social workers who work with offenders.

In 2004, a group of experts convened by the Supreme Court prepared a draft law on the ‘Concept of Juvenile Justice’. Participants included representatives of the Ministry of Justice, the Office of the General Prosecutor and NGOs as well as the judiciary. Political developments prevented the adoption of the law, but the paper nevertheless marked a paradigm shift and a new understanding of the need for a true juvenile justice system. The Deputy Minister of Justice informed the assessment team that it still forms the basis of an understanding between all concerned ministries and institutions.

A genuine juvenile justice system does not yet exist, and the challenge of adopting a comprehensive national policy on juvenile justice has still not been met. Some important changes in policy have nevertheless taken place. The State Department of Penal Implementation, for example, has adopted a policy of providing special services to juveniles serving custodial sentences as the end of their sentence approaches, and providing access to education during pretrial detention. The decision of the Supreme Court that each trial court should designate a judge to handle cases involving juvenile offenders is another example. Other changes that have been incorporated into legislation are mentioned below.

⁸ Committee on the Rights of Child, Consideration of reports submitted by States parties under Article 44 of the Convention, Concluding observations, second periodic report: Ukraine, CRC/C/15/Add.191, 9 October 2002, paras. 68(c) and 70.

⁹ Asquith, S., *Report on Juvenile Justice Reform in Ukraine*, Visit to Kyiv, 26–29 May 2003, UNICEF, 2003.

A few days before the assessment mission, the President of Ukraine signed a decree on children calling for the creation of a juvenile justice system.¹⁰ The process of reform thus seems likely to accelerate and a series of significant developments, which have been under discussion in recent years, may bear fruit.

A Consultative Council on Juvenile Justice, established in 2006, is contributing to the development of a juvenile justice policy. The Consultative Council is attached to the national Parliament through the Institute of Legislation. Participants include the Supreme Court, the Ministry of Justice, the Ministry of Family, Youth and Sport, the State Department of Penal Implementation, the Office of the General Prosecutor, the juvenile police, UNICEF and selected NGOs (see below).

Some important studies now underway will provide information of great value to the reform process. One is a study on juvenile justice by the Centre of Social Expertise, which is part of the Institute of Sociology of the National Academy of Sciences. The study, which is intended to contribute to the juvenile justice reform, incorporates statistical data and interviews with juvenile justice professionals as well as interviews with offenders and their parents. In addition, the State Statistics Committee is making an effort to improve existing mechanisms for collecting data on offending by juveniles and on juvenile justice. Although the data collection system is partly based on regional and global standards, the improvements currently underway are also aiming to provide information on questions that are being raised as part of the reform process.

2) Law reform

Many significant new laws or decrees related to juvenile justice have been adopted since Ukraine became independent in 1989. The most relevant include:

‘On the establishment of a juvenile criminal police’, Order of the Cabinet of Ministers, 1995;

‘On juvenile affairs’ agencies and services and on special juvenile institutions’, enacted by the Parliament in 1995;

the Criminal Code, enacted by the Parliament in 2001;

an amendment to the Code of Criminal Procedure concerning juvenile correctional facilities, 2004.

More recently, a Law on Amendment to the Criminal Code of Ukraine and Code of Criminal Procedure of Ukraine Regarding the Humanization of Criminal Responsibility, adopted on 15 April 2008, reduces to 10 years the maximum sentence that can be imposed for offences committed by persons under age 18. The law also expands eligibility for alternative sentences to juveniles convicted of ‘medium grave’ offences for the first time.

Other laws that will affect juvenile offenders have been drafted or are in the process of being drafted. A new Code of Criminal Procedure containing a section on juvenile offenders has been drafted and continues to be revised. A draft law on probation (for adults and juveniles) has been prepared. Considerable importance is attached to both laws. A draft law on mediation has also been prepared, but has not yet been presented to the Parliament.

¹⁰ Presidential Decree No.411 of 5 May 2008 on Measures to Ensure Protection of Rights and Legal Interests of Children.

None of these laws specifically concern juvenile justice and, although many of the sections that concern or apply to juvenile offenders are compatible with international norms, some gaps remain. The Deputy Minister of Justice indicated that further changes in legislation are needed and will receive priority as per the recent Presidential Decree calling for the creation of a juvenile justice system. She also expressed a commitment to ensuring that such legislation is fully compatible with the relevant international standards.

3) Administrative reform, restructuring and resources

Some administrative reform or restructuring of relevance to juvenile justice has taken place. The creation of the juvenile criminal police in 1995 was one of the earliest and most important examples of restructuring. Sources interviewed considered that this was a positive step and, although abuses have not been eliminated, the treatment by the police of juvenile suspects and children living and/or working on the streets is improving.

In 2003, the Supreme Court instructed each trial court to appoint a judge responsible for cases involving accused juvenile offenders and/or child victims. The process was completed in 2005. Appellate courts also have designated judges responsible for cases involving children, whether as offenders or victims. Sources interviewed believe that the impact of this measure has been uneven. While the behaviour of some judges assigned to juvenile cases has not changed significantly, some specialized judges have become more sensitive to the rights of juvenile offenders than in the past.

In 2002, the Public Prosecutor established a small Child Rights Unit in the central office, whose role is described below, in the section on accountability mechanisms. Prosecutors who handle cases on the local level are not specialized.

Apart from these developments, none of the institutions involved in juvenile justice have created new kinds of professional categories, changed requirements for positions relating to juvenile justice or established new criteria or procedures for recruiting professionals in this area.

Insofar as resources are concerned, the number of persons working for some of the institutions that form part of the juvenile justice system is quite substantial. One government source indicated that approximately 7,000 public servants worked with children in conflict with the law, in particular in the special police unit and in residential facilities for juvenile offenders. (In other areas, such as the courts and the supervision of offenders not in custody, no personnel are assigned specifically to juveniles.) The inmate-staff ratio in facilities for juvenile offenders (schools for social rehabilitation and 'colonies') is small. None of the sources interviewed identified the lack of resources as an obstacle to respecting the rights of juvenile offenders.

Cost was, however, identified as a potential obstacle to the adoption of legislation and the establishment of new programmes, such as Public Defenders' offices and mediation services.

4) Training and capacity-building

Some training on juvenile justice has taken place, mostly *ad hoc* and directed to participants from specific sectors.

In Kharkiv, the NGO Youth for Democracy has developed training materials for probation officers working with juvenile offenders, with the support of UNICEF.

In the legal sector, the Odessa Law Academy has reportedly prepared a course on juvenile justice as well as a manual. The Kharkiv Academy of Legal Sciences has prepared a 'dictionary' on juvenile justice. A representative of the Academy of Judges confirmed, however, that to date only 'small steps' have been taken in training judges. A more ambitious training programme is scheduled to begin in 2009. It will include two-week training for judges and court staff. A manual on juvenile justice, developed by Penal Reform International with UNICEF's support, is being translated into Ukrainian to be used in the course. The Academy of Judges has seven regional branches. Training of trainers is also planned.

The All-Ukrainian Foundation for Children's Rights developed training materials for different sectors, with the support of UNICEF and the Dutch Embassy's Matra Programme.¹¹ The materials have been used to train judges, prosecutors, law enforcement officers, social services personnel and NGO staff in two pilot regions, in the capital and the Autonomous Republic of Crimea. A model juvenile court has been established and operates in the town of Bila Tserkva (Kyiv).

Some of the training provided, which is contributing to the new thinking on juvenile justice, does not concern juvenile justice as such, but topics that have broader relevance. This is particularly true for the training on victim-offender mediation (VOM) carried out in certain districts by the NGO Ukrainian Centre for Common Ground and the training in social work with juvenile offenders carried out by the NGO All-Ukrainian Foundation for Children's Rights. The introduction of probation and VOM is expected to bring about a significant change in the handling of cases concerning juvenile offenders.

5) Accountability mechanisms

The responsibilities of the Office of the General Prosecutor include the monitoring of public authorities' respect for the law. A special team was established in 1995 to monitor the treatment of children. It consists of five prosecutors. Schools, colonies and detention facilities for accused juveniles and juvenile offenders are visited regularly. The assessment team was informed that the most common violations identified include admitting children into detention centres without a court order and detaining a child for longer than the maximum period allowed by law (30 days).

The Parliamentary Ombudsman also takes an active interest in child rights. The unit responsible for visiting prisons gives some priority to colonies for juvenile offenders. The most recent case involving cruel treatment of a juvenile was reported in 2006. The responsible staff member was convicted and is now serving a sentence.

6) Coordination

Many of the sources interviewed stated that poor coordination between the different agencies and institutions dealing with juvenile offending is a major problem.

In 2006, a Consultative Council on Juvenile Justice was established. The Secretariat of the Council is provided by the Parliament's Institute of Legislation.¹² Participants, as indicated above, include the Supreme Court, the Ministry of Justice, the Ministry of Family, Youth and Sport, the State Department of Penal Implementation, the Office of the General Prosecutor, the juvenile police, UNICEF and selected NGOs. The Council is a useful forum for the exchange of information and ideas, but does not seem to have played a leading role in the development of juvenile justice thus far.

¹¹ The Matra Programme was carried out in cooperation with the Netherlands Section of Defence for Children International.

¹² The Parliament is also called, in English, the Supreme Rada or Supreme Council.

7) Data management and research

The State Statistics Committee publishes a report on juvenile justice every three years.¹³ The report is based on data obtained from the Ministry of Internal Affairs, the Ministry of Education and Science, the Ministry of Family, Youth and Sport, the courts and the State Department of Penal Implementation, as well as from the regional offices of the State Statistics Committee. A Presidential Decree, adopted in May 2008, calls for the development of a juvenile justice system. The State Statistics Committee is strengthening its database on juvenile justice in order to provide information that will be useful in the process of creating a juvenile justice system and monitoring the workings of the system once it is established.

Disaggregation by ethnicity

The report on juvenile justice prepared for UNICEF Ukraine in 2003 stated, "The point was made openly that there was a disproportionate number of young people from the Roma community" in correctional facilities for juvenile offenders.¹⁴ The United Nations Committee on the Elimination of Racial Discrimination, in its Concluding observations on the seventeenth and eighteenth periodic reports of Ukraine, expressed concern about "allegations of police abuse of Roma, including arbitrary arrests and searches and pretrial abuse based on racially motivated presumptions of guilt..."¹⁵ Similarly, the United Nations Committee on Economic, Social and Cultural Rights recently "note[d] with concern reports about police abuse ... committed against ethnic and religious minorities, especially Roma [and] Crimean Tartars..."¹⁶

Data concerning the criminal justice system are not disaggregated by nationality or ethnicity. The Roma represent only 0.1 per cent of the country's total population.¹⁷ Sources interviewed, including officials and representatives of NGOs, invariably expressed the view that discrimination against Roma is not an issue in the juvenile justice system.

Documenting the experiences of children

In 2008, the Centre of Social Expertise of the National Academy of Sciences undertook a study on juvenile justice based in large part on interviews with offenders, their parents and juvenile justice professionals and practitioners (see above). The study contains 'case studies' on 17 offenders, including 4 girls and 13 boys, 8 of whom were confined in schools for social rehabilitation and 9 in colonies. The information obtained is very relevant to the process of developing a juvenile justice system.

¹³ A semi-annual report on the economy also includes a section on crime.

¹⁴ Asquith, S., *Report on Juvenile Justice Reform in Ukraine*, Visit to Kyiv, 26–29 May 2003, UNICEF, 2003, p. 16.

¹⁵ United Nations, Committee on the Elimination of Racial Discrimination, Consideration of reports submitted by States parties under Article 9 of the Convention, Concluding observations, seventeenth and eighteenth periodic reports: Ukraine, CERD/C/UKR/CO/18/*, 8 February 2007, para. 12. (It should be noted that the Committee does not affirm that such discrimination exists.)

¹⁶ Committee on Economic, Social and Cultural Rights, Consideration of reports submitted by States parties under Articles 16 and 17 of the Covenant, Concluding observations: Ukraine, E/C.12/UKR/CO/5, 4 January 2008, para. 10.

¹⁷ Committee on the Elimination of Racial Discrimination, Reports submitted by States parties under Article 9 of the Convention, Seventeenth and eighteenth periodic reports: Ukraine, CERD/C/UKR/18, 11 May 2006, para. 86, citing the 2001 census. (Tens of thousands of Ukrainian Roma and Jews were exterminated during the Second World War. *Ibid.*, para. 66.)

PART II. The Juvenile Justice System in Ukraine

1) Prevention

The 'militia' or national police have primary responsibility for the prevention of crime, including offending by juveniles. In 1995, a unit specialized in offences involving children, either as offenders or victims, was established.¹⁸

The police keep a 'register' of children of concern. Those registered fall into two categories: one ('prophylactic') includes drug users, offenders given non-custodial sentences and offenders released from custody; the other ('preventive') consists of what could be called 'children at risk', including those involved in 'deviant behaviour',¹⁹ runaways, children who abuse alcohol and victims of domestic abuse. The former group is subject to supervision for one year; if their conduct is good, they are 'de-registered'. The second group is generally supervised by social services, but the police indicate that they "need to know" who they are in order to provide assistance when required. On 1 January 2008, 10,787 persons were under supervision by the juvenile police.²⁰

In recent years, the police have received training in community policing and restorative justice from the Ukrainian NGO Centre for Common Ground and through a study visit sponsored by the Swiss Agency for Development and Cooperation. In 2007, two pilot projects began, one in the capitol and another in a smaller city in Central Ukraine. The projects support closer cooperation between the police, social services, schools, the local government and NGOs in seeking consensual solutions to conflicts and situations that could lead to offending. The children's police have adopted this approach nationally, visiting schools, organizing campaigns (a campaign against domestic violence was mentioned) and liaising with community organizations.

The Ministry of Family, Youth and Sport operates 28 psychosocial support centres for children and young adults.²¹ They are what could be called 'drop-in centres', where children can do homework, get a meal, wash and talk to the staff (social workers, psychologists and educators).²²

Because of the disproportionate number of juvenile offenders who are orphans or deprived of parental care²³, the Ministry of Family, Youth and Sport sees the policy of encouraging adoption and foster placement instead of institutional placement as a contribution to prevention, as well as the most appropriate form of alternative care.

Notwithstanding these policies and programmes, and the participation of local social services departments in the pilot projects mentioned above, the Ministry of Family, Youth and Sport nor any other ministry or department has any programme specifically designed to provide secondary prevention services to children at risk of becoming offenders.

¹⁸ Order of the Cabinet of Ministers on Establishment of a Juvenile Criminal Police, 1995.

¹⁹ Deviant behaviour includes: not attending school, not returning home, and aggressive behaviour.

²⁰ *Study by the Centre of Social Expertise*, Kyiv, 2008 (forthcoming). In 2002, the Committee on the Rights of the Child criticized this system (see Concluding observations, CRC/C/15/Add.191, para. 68(b)) but none of the sources interviewed during the assessment mission expressed concern over the consequences or implications of this practice for children's rights.

²¹ These centres attend persons under age 35.

²² The Ministry of Family, Youth and Sport also operates a similar number of shelters for victims of domestic violence.

²³ In 2007, 10 per cent of sentenced juvenile offenders were residents of orphanages or facilities for abandoned or neglected children. This percentage has doubled since 2000. See *Study by the Centre of Social Expertise*, citing unpublished data provided by the Supreme Court. (The percentage of the population under age 18 in residential care is well below 1 per cent.)

While most offenders have had difficulties in school, they do better in their studies when sentenced to correctional facilities. This may be explained in part by the deprivation of liberty as such and by the sobering impact of exposure to the justice system, but also by the low student-teacher ratio in such facilities, teachers' efforts and commitment, and the support and counselling provided to offenders by other staff. This raises the question of whether community-based programmes providing similar assistance might help reduce offending.

The Ukrainian NGO Centre for Common Ground has supported 'peer mediation' in schools as a measure to reduce conflict and offending. The results are considered positive. One school head, for example, indicated that, while the year before peer mediation was introduced it had been necessary to call the police to the school 12 times, during the year it was established the police were not called once.

2) Police detention and investigation of offences

The police may detain children caught in the act of committing an offence for up to eight hours; children brought to the police station for general suspicion may not be detained for more than three hours. The juvenile police have recently decided to set aside special rooms in police stations, called 'green rooms', for children who are detained or have been called in for questioning.

The juvenile police also operate 20 'reception/distribution centres' for children of all ages, including suspects and children detained temporarily for other reasons.²⁴ In 2007, 624 children were admitted to such centres: 217 children taken into custody for participation in offences; 176 detained by court order; 152 returned to Ukraine from other countries; and 93 who escaped special educational facilities.²⁵

In Kharkiv, a 'reception/distribution centre' operated by the juvenile police was visited. The physical facility, recently renovated with the support of the private sector, was clean and attractive. There was a small chapel near the entrance. The centre has a staff of 25, including 13 police officers, and a capacity of 50; the population at the time of the visit consisted of five boys and one girl.

In 2007, approximately 325 to 350 children passed through the facility, which is intended for suspected offenders aged 11–14 years and 'transit children' from early childhood to 18 years. The vast majority of children²⁶ belong to the latter category, which includes Ukrainian children caught trying to leave the country illegally, unaccompanied Ukrainian children in the process of repatriation, and foreign children caught trying to enter Ukraine or in the country illegally.

The centre can be considered as a model for others having similar functions.

Juveniles may not be kept in custody prior to trial unless suspected or charged with a serious crime.²⁷ In other cases, a juvenile suspect or accused juvenile is committed to the custody of his/her parents or guardian, provided both the child and the parent or guardian agree.²⁸ The juvenile police indicated that about 10 per cent of all children suspected of committing an offence are referred to the prosecutor with a request to authorize pretrial detention.

²⁴ Study by the Centre of Social Expertise.

²⁵ The breakdown by sex and by age is: 148 girls and 478 boys; 33 children under age 11, 338 aged 11–14 years, and 253 aged 15–17 years.

²⁶ Perhaps 95 per cent, according to data cited during the visit.

²⁷ Code of Criminal Procedure, Article 505.1.

²⁸ Ibid., Article 506.1 and 506.2.

The Code of Criminal Procedure spells out in detail the information concerning the background of a juvenile suspect and the circumstances of the supposed offence that must be investigated prior to trial, for purposes of determining whether the suspect should be charged and whether he/she should be detained prior to trial.²⁹

Suspects and accused persons under age 18 may not be questioned for more than two hours without a break, or for more than four hours per day, and may only be questioned in the presence of their defence counsel.³⁰ The juvenile's parent or guardian may be present at his/her request, or at the juvenile's request.³¹ A psychologist or special educator ('pedagogue') must be present when a child is interrogated.³²

3) Pretrial detention

The State Department of Penal Implementation ('the Department') operates centres for the detention of persons accused of an offence, usually referred to as 'temporary detention centres' or 'investigative isolation centres'. Convicted persons may also be detained in these centres while awaiting the results of an appeal or the transfer to a prison or juvenile correctional colony. There are 32 such centres, of which 24 have sections for persons under age 18. Detention can only be authorized by a court.

Legislation does not limit the length of detention in such facilities. Detention of juveniles for six months to one year is common, and cases of two-year detention were mentioned.³³ Many persons interviewed, including the staff of such centres, considered the length of detention in the centres to be one of the characteristics of the present system most in need of urgent reform.

A court also may authorize the confinement of convicted juveniles in a centre for a maximum of 30 days while transfer to a juvenile correctional facility is arranged.³⁴

At the time of the assessment mission, approximately 1,100 adolescents were detained in such centres.

Due to recent reforms, accused juveniles in these facilities are now able to attend school and participate in leisure and sports activities. Religious groups have access to the facilities. The Department cooperates actively with NGOs throughout the country.³⁵

One such centre was visited in Kharkiv, on 20 May 2008. The juvenile population included 77 boys and 3 girls. Boys are detained in a separate building where there are no apparent opportunities for direct physical contact. Girls are housed in the part of the centre set aside for female detainees. Since the female member of the assessment team did not participate in the visit to Kharkiv, only the separate facility for boys was visited.

The building reserved for boys contains classrooms, a small gym, interview rooms, multi-person cells and a single-person cell used for disciplinary/protective purposes. Except for the exercise

²⁹ Ibid., Articles 496–498, 506.

³⁰ Ibid., Article 503.

³¹ Ibid.

³² Ibid., Article 504.

³³ Pretrial detention of adults is often even longer.

³⁴ Code of Criminal Procedure, Article 514.3.

³⁵ The figure of 180 was mentioned.

period and schooling, detainees spend all their time in their cell (meals are eaten there). The part of the facility visited was clean and reasonably well furnished. Groups of cellmates ranging from three to seven persons remain together all the time; there is no contact between different groups.

Nearly all the detainees were 17 years old at the time of the visit; none were 14 or 15 years old. Detention for six months is common. The longest period a juvenile was detained in the centre, in the memory of the Director, was two years. Approximately one quarter of the juvenile population was still in the centre because a co-defendant was appealing conviction. The Director stated that conditions for six-month detention, or more, were inappropriate and that legislation setting a limit is needed.

Juveniles can be detained in isolation for several days as a disciplinary measure, but the Director said that this sanction is rarely used. The single-person cell was not in use at the time of the visit. The assessment team later met with an attorney who represented a juvenile prostitute who was tortured by his cellmates while detained in the facility visited.

4) Diversion

Although there is great interest in alternative sentences, Ukrainian authorities rarely mentioned diversion, in the sense of disposing of cases with the consent of the accused without adjudication.

According to the Code of Criminal Procedure, if a prosecutor concludes that a juvenile first offender who has committed a minor offence or a crime of moderate severity may be rehabilitated without criminal sanction, he/she may recommend that the court impose “compulsory measures of an educational nature.”³⁶ The prosecutor also makes a recommendation of this kind if he/she concludes that the juvenile did not fully understand the nature or consequences of his/her behaviour.³⁷ These measures include warnings, restrictions on behaviour, supervision, compensation of the victim and, if the child is under age 15, placement in a special educational and correctional institution, placement under parental supervision or placement in a foster family.³⁸ Such a recommendation can only be made after the juvenile is charged, and only if both the child and his/her parent or guardian agree.³⁹ This procedure can be considered diversion because it is voluntary and avoids the need for a trial.

A pilot project involving victim-offender mediation (VOM) began in 2007 in two regions. The Ministry of Justice has prepared a draft law on VOM.

5) Criminal responsibility, adjudication and due process

Persons aged 11–18 years accused of an offence are tried by ordinary courts.⁴⁰ Since 2003–2005, they are tried by a judge specially designated to handle cases involving children.⁴¹ The applicable law consists primarily of the Criminal Code and the Code of Criminal Procedure. A new Criminal Code was enacted in 2001, and a new Code of Criminal Procedure is being drafted.

³⁶ Code of Criminal Procedure, Article 510.

³⁷ Ibid.

³⁸ Criminal Code, Article 105.2.

³⁹ Code of Criminal Procedure, Article 510.1–510.2.

⁴⁰ Ibid., Articles 495.2 and 551.

⁴¹ The Supreme Court instructed all trial courts to designate a judge for this purpose in 2003, but the appointment and training process concluded in 2005.

The Criminal Code provides that offenders aged 16 years “have criminal liability,” as do those aged 14 or 15 years who commit one of nineteen offences.⁴² These include: murder, assault resulting in serious injury, rape, robbery, theft, damage to property and hooliganism (participation in a serious public disturbance).⁴³ The rules concerning the sentencing of offenders under age 18 differ from those applicable to adult offenders, however, as described below.

The Code of Criminal Procedure contains a chapter on juvenile offenders that regulates the trial and sentencing of those who do not have criminal responsibility as well as those who do. Offenders aged 14 or 15 years convicted of an offence other than those mentioned above may be sentenced to a ‘school for social rehabilitation’ or to supervision, even though they are not criminally responsible.⁴⁴

Similarly, children aged 11–14 years who commit “a socially dangerous act, which contains elements of [an] act punishable” under the Code of Criminal Procedure are subject to “compulsory measures of educational nature.”⁴⁵ According to the Code of Criminal Procedure, no such measures may be imposed unless the judge concludes that “a socially dangerous act has really occurred,” the act was committed by the accused juvenile and “it is necessary to impose [a] compulsory measure of educational nature and, if so, which measure exactly.”⁴⁶ These requirements comply with the principle of legality and the last resort principle contained in Article 37 of the Convention on the Rights of the Child.

Other provisions of chapter 3 of the Code of Criminal Procedure also comply with international standards of due process. Trials take place in closed session.⁴⁷ The participation of defence counsel is obligatory as from the time a child is identified as a suspect, apprehended or charged.⁴⁸ A juvenile suspect may not be questioned without the presence of his/her attorney.⁴⁹ Any order imposing a ‘compulsory educational measure’ may be appealed.⁵⁰ Parents or legal guardians are normally required to be present at the trial of an accused person under age 18.⁵¹ Both parents or legal guardians and defence counsel must be present when a juvenile is charged with an offence.⁵²

Some of these guarantees are insufficiently respected in practice, in particular the requirement that a lawyer be present when a juvenile is questioned. Although statements taken without the presence of an attorney are not used as evidence during trial, sources informed the assessment team that children are often questioned without the presence of an attorney in order to pressure them and to obtain information that is not admitted into evidence.

⁴² Criminal Code, Article 22.1–22.2.

⁴³ *Ibid.*, Article 22.2. (Article 296 for the definition of hooliganism.)

⁴⁴ Code of Criminal Procedure, Article 511.

⁴⁵ *Ibid.*, Article 511.1

⁴⁶ *Ibid.*, Article 514.1.

⁴⁷ *Ibid.*, Article 507.

⁴⁸ *Ibid.*, Article 499.

⁴⁹ *Ibid.*, Article 503.

⁵⁰ *Ibid.*, Article 514.4.

⁵¹ *Ibid.*, Article 500.

⁵² *Ibid.*, Article 502.

6) Sentencing

Both the sentences that may be imposed on offenders under age 18 and the rules concerning sentencing differ from those applicable to adult offenders. While adults may be sentenced to life imprisonment, the maximum sentence that may be imposed on an offender aged 14–18 years convicted is 10 years imprisonment.⁵³

Persons under age 18 may not be sentenced to a colony for their first offence, if it is a minor one.⁵⁴ More generally, first offenders under age 18 may be given alternative sentences if the court concludes that confinement is not necessary for their rehabilitation.⁵⁵ Alternative sentences include warnings, release subject to conditions and/or supervision, compensation of the victim and confinement in a school for social rehabilitation.⁵⁶ Charges against juveniles accused of minor or ‘medium grave’ offences also may be dismissed if he/she has demonstrated repentance and irreproachable conduct, even if the offender has a prior offence.⁵⁷

Juvenile offenders sentenced to a term of five years or less may benefit from probation.⁵⁸ This is the most commonly used alternative sentence. Some 5,000 juveniles are currently on probation.⁵⁹ Offenders aged 16 or 17 years may be sentenced to community service, but this sentence is rarely imposed.⁶⁰

Juveniles sentenced to a colony also are eligible for release on parole after serving part of the sentence.⁶¹

The offender’s age, motives, home life and upbringing, level of development, personality, the influence of adults and voluntary reparation of the injury caused are factors that must be taken into account in sentencing.⁶²

The conviction of juvenile offenders who are given a non-custodial sentence or sentenced to a school for social rehabilitation or to ‘arrest’ is erased once the sentence has been served, but the conviction of those sentenced to a colony is erased only when they have completed their sentence and one or more years have passed without commission of a new offence. It should be noted that, in contrast to many countries in the region, local Minors’ Commissions do not have competence to commit to

⁵³ Criminal Code, Article 102.3(5).

⁵⁴ Ibid., Article 102.2.

⁵⁵ Ibid., Article 101.1.

⁵⁶ Ibid., Article 105.5.

⁵⁷ Ibid., Article 105.1.

⁵⁸ Ibid., Articles 104 and 75. Probation shall be for a period of one to three years. If the conditions are violated, the offender may be ordered to serve the original sentence, but if he/she completed the probationary period satisfactorily, the sentence is considered discharged.

⁵⁹ Unpublished data provided by the State Department of Penal Implementation.

⁶⁰ Criminal Code, Article 101.1. Community service for juveniles may be from 30 to 120 hours, to be performed at a maximum of 2 hours per day. At the time of the assessment mission, only 13 offenders were serving community service sentences. See *Study by the Centre of Social Expertise*, citing unpublished data provided by the Supreme Court. [Offenders aged 16–17 years may be sentenced to ‘correctional labour’ as well, which consists in deducting 5 to 10 per cent of one’s salary for a period ranging from two months to one year (Criminal Code, Article 100.2–100.3). At the time of the assessment, no juveniles were serving a sentence of this kind. See *Study by the Centre of Social Expertise*, citing unpublished data provided by the Supreme Court.]

⁶¹ Criminal Code, Article 107. Parole is available regardless of the nature of the offence, but the gravity of the offence affects the portion of the sentence (from one third to two thirds) that must be served before the offender may apply for parole.

⁶² Criminal Code, Articles 65.1(3), 66.1(3), 103.1.

residential facilities children involved in antisocial behaviour or children below the minimum age for adjudication who are involved in offences. Although such institutions – now called ‘Bodies Caring for Children’ – exist, they were deprived of authority to commit children to closed facilities some 15 years ago.

During the period 1993–1997, the average total population of the 11 colonies for juvenile offenders was 3,600.⁶³ At the time of UNICEF’s situation analysis in 2003, the total population of colonies was 2,871. At the time of the assessment mission, it was 1,819.⁶⁴

A sharp decrease in the number of offences committed by juveniles appears to be the main reason for this trend: in the year 2000, 37,239 offences by juveniles were recorded; in 2007, the number had fallen by one half, to 18,755.⁶⁵ This decline is explained, in part, by a decrease in the population aged 14–18 years and, in part, by the impact of economic indicators on the way offences against property are handled.⁶⁶

Data on sentencing also indicate that judges have imposed fewer custodial sentences since 2000. The most common custodial sentence was, and still is, 3–5 years; but the number of such sentences fell by almost half during the last five years.⁶⁷ The number of sentences of 1–2 years, 2–3 years and 5–10 years also decreased during this period. The small number of sentences of less than one year remained flat. Only the smallest category of sentences – those of 10–15 years – has increased slightly.⁶⁸

7) The rehabilitation of offenders

Two different public bodies operate institutions for juvenile offenders: the Ministry of Education and Science (‘Ministry of Education’) and the State Department of Penal Implementation.⁶⁹

Schools for social rehabilitation

The Ministry of Education operates 14 ‘schools for social rehabilitation’: eleven for boys aged 11–14 years, three for boys aged 14–18 years and one for girls aged 11–18 years.⁷⁰ All offer the same curricula as other public schools, and those for children aged 14–18 years also contain ‘vocational schools’. Each school has a psychologist.

Graduates from these facilities receive the same diplomas as graduates of other schools, but are presently unable to apply for admission to universities. The Child Rights Unit in the Office of the General Prosecutor is making an effort to eliminate the obstacles that prevent their access to higher education.⁷¹

⁶³ Committee on the Rights of the Child, Consideration of reports submitted by States parties under Article 44 of the Convention, Second periodic reports of States parties: Ukraine, CRC/C/70/Add.11, 12 August 1999, para. 774.

⁶⁴ Including 105 young women. Unpublished data provided by the State Department of Penal Implementation.

⁶⁵ *Study by the Centre of Social Expertise*, citing unpublished data provided by the Supreme Court.

⁶⁶ Theft of an object whose value is below a certain threshold is an administrative offence, not a crime. Since this value is defined in terms of the amount of income that is taxable, the threshold for ‘theft’ has been increasing.

⁶⁷ *Study by the Centre of Social Expertise* [slide 25].

⁶⁸ *Ibid.*, NB: The most recent data are for 2007. In 2008, the maximum sentence was reduced to 10 years.

⁶⁹ The Department also operates 24 remand centres for juveniles accused of an offence, as indicated above.

⁷⁰ The schools for younger boys are called ‘schools for social rehabilitation’; those for older boys are called ‘vocational schools for social rehabilitation’.

⁷¹ After the assessment mission, two schools reportedly were reclassified to allow graduates to apply to college.

In principle, only children who have committed an offence may be admitted by order of a court (see above). Such schools are operating well below capacity: the 14 schools have a capacity of 2,520 but had a population of 504 at the time of the assessment mission.⁷² One school with a capacity of 180 students had a population of 12, and another with a capacity of 200 had a population of 14. The Ministry of Education attributes this to the high percentage of convicted offenders released subject to parental supervision.

Because the Ministry believes that the services provided by these schools are effective and is concerned by the underutilization of their capacity, it has begun to admit some children involved in antisocial behaviour, at the request of their parents. This 'experimental' practice is not authorized by law and the Ministry is seeking authority to continue it on a regular basis.

A school for social rehabilitation in Kharkiv was visited on 21 May 2008. This school has a staff of 60 and a capacity of 140, but a population of only 20 boys aged 11–14 years. It is located in a large site within the city limits containing gardens and much open space, as well as some unused buildings in poor repair. The facilities visited include classrooms, the dormitory, which is located in a separate building, an infirmary, a kitchen and a cafeteria. The classrooms were clean and well equipped; the dormitory appeared clean but Spartan.

The approach to rehabilitation is based on that of Anton Makarenko, the pioneering Soviet educator whose philosophy included the importance of trust in and respect for the individual, the participation of juvenile offenders in the management of the rehabilitation facility, and the development of self-discipline and self-sufficiency through the community.⁷³ The policies applied are not entirely in harmony with contemporary understanding of 'good practices', however: contact with the community is limited as are efforts to encourage and facilitate contact between students and their families, and practices regarding 'benefits' based on behaviour and performance seem somewhat rigid.⁷⁴

Juvenile correctional facilities

The Department operates secure facilities for adolescent offenders called 'special juvenile correctional facilities' (commonly known as 'colonies'). There are 10 colonies, which at the time of the assessment mission housed 1,819 convicted offenders.

Juvenile offenders who are still serving their sentence when they reach age 18 may opt to remain in the colony until age 22, provided they have demonstrated good behaviour. Consequently, about one third of the colonies' population is young adults serving sentences for offences committed while under age 18.⁷⁵ Only 6 per cent is below age 16.⁷⁶

Offenders are housed in rooms having 30 persons, with three such rooms per block. Each room has a 'monitor' trained in social work, and each block a head monitor.

The approach to rehabilitation consists of three phases. During the first two weeks, the offender is kept separate from the general population and a rehabilitation plan is developed jointly with the offender. Six months before release, increased attention is given to preparation for return to the community, including assistance in locating employment and a place to live.

⁷² Unpublished data provided by the Ministry of Education and Science.

⁷³ See, e.g., <http://www.skolo.org/spip.php?article145>, accessed 20 May 2009.

⁷⁴ For example, students' progress is evaluated only once a semester and meetings with students to discuss issues were described as "like a game."

⁷⁵ Unpublished data provided by the State Department of Penal Implementation.

⁷⁶ Ibid.

The approach to rehabilitation includes education, psychosocial assistance and training in life skills. Each colony has a basic school and a vocational school. The staff of the Department includes 560 teachers. Offenders who have finished their studies have the opportunity to work for remuneration within the colony.

In each colony, there are two psychologists. Life skills education includes training in interpersonal relations and a healthy lifestyle.

There are approximately 10 'interest groups' per colony, which offer opportunities to participate in sports and cultural and leisure activities. Sports matches and cultural activities are organized outside the colony. 'Caring councils', incorporating representatives of the local government and NGOs, have access to the colonies to monitor conditions and provide released offenders with assistance in the transition to living in the community.

Guidelines on cooperation between the Department and the State Social Services for Family, Children and Youth, prepared with inputs from juvenile offenders, were adopted in 2006. Prior to release offenders are asked to sign a voluntary agreement to seek assistance from the local social services centre after returning to the community. Most do, but only half of them cooperate actively with such centres after release.

A colony in Kuriazh, near Kharkiv, was visited on 20 May 2008. The colony had a population of 180, and a staff of 185, of which 15 teachers. The walls surrounding the facility are imposing, but within them there is much open space as well as gardens and sports fields. Some unused buildings appear to be in poor repair, but those in use are clean and in good repair.

The staff interviewed seemed highly motivated and concerned with practices that violate the rights of juvenile offenders, such as prolonged pretrial detention. In contrast to the staff of the school for social rehabilitation, they expressed favourable views on the reforms that have been made thus far, such as greater use of non-custodial sentences.

One policy in effect in this facility that can be considered a good practice is the voluntary participation of inmates in projects outside the facility of benefit to the community, such as repairing children's playgrounds, which the staff viewed as a method for changing the public's negative attitude towards offenders.

Views of convicted offenders

Research by the Centre of Social Expertise on the experiences of juvenile offenders serving sentences in schools for social rehabilitation and colonies (see below) indicates that juveniles have more criticisms about their treatment before and during trial than about the facilities in which they are confined. None of those interviewed complained of conditions in either kind of facility. Attitudes towards the colonies were particularly positive. Many offenders stated that, except for the lack of freedom, conditions were better than in their homes. Most of the offenders had established a positive relationship with their psychologist and expressed gratitude for the services provided.

Offenders given non-custodial sentences

The Department also has a unit responsible for the supervision of convicted offenders, juveniles and adults who are given non-custodial sentences.⁷⁷ The unit has offices throughout the country and a staff of 2,243. At the time of the assessment mission, 5,310 juvenile offenders (and 130,000 adult offenders) were under supervision – a caseload of some 60 clients per staff member. Staff who work with juveniles also work with adults. Sixty-six per cent of juvenile offenders on supervision attend school, 7 per cent work and the remainder do neither. Supervision of juvenile offenders is done in close cooperation with social services centres and, in approximately one quarter of the caseload, NGOs. During the first few months of 2008,⁷⁸ 68 juvenile offenders under supervision had committed a new offence.

⁷⁷ In English: 'Criminal Execution Inspection'.

⁷⁸ Prior to the interview, which took place on 14 May 2008.

PART III. UNICEF's Support to Juvenile Justice Reform

UNICEF's work on juvenile justice reform in Ukraine began in 2003, with the preparation of a situation analysis based on a four-day mission to the capitol by a British consultant.⁷⁹ Juvenile justice reform became a priority area in the present UNICEF Country Programme (2006–2010).

The Country Programme cites as reasons for the priority given to this area widespread violations of children's rights in juvenile prisons and the Committee on the Rights of the Child's recommendation that Ukraine seek assistance from UNICEF in implementing international standards on juvenile justice.⁸⁰

Improvement of the juvenile justice system is recognized as an 'output' of the 2006–2010 United Nations Development Assistance Framework. This goal is defined as "strengthened legislative framework, law enforcement, prosecution legal profession, and fair trials, all consistent with international standards."⁸¹ The corresponding 'resource allocation target' is US\$ 200,000. The responsible United Nations agency is UNICEF, and counterparts include the Ministry of Justice, the Supreme Court, Parliament, civil society and the Swedish International Development Authority.

Strategy

No document containing a UNICEF strategy for juvenile justice reform exists.

UNICEF's approach to juvenile justice has been shaped to a large extent by the recommendations contained in the situation analysis, which can be considered as the main elements of the strategy tacitly followed by UNICEF during the past five years. These recommendations include:

- development of a strategy for the juvenile justice reform with both long- and short-term goals;⁸²
- greater coordination at all levels (national, regional and local);⁸³
- training on the Convention on the Rights of the Child and other international standards regarding juvenile justice;⁸⁴
- establishment of a comprehensive system for collecting data on offending by children and children at risk;⁸⁵
- training of juvenile judges and creation of juvenile courts;⁸⁶
- establishment of programmes to prepare institutionalized offenders for release and post-release programmes;⁸⁷
- specialized training of social workers who work with offenders.⁸⁸

⁷⁹ Asquith, S., *Report on Juvenile Justice Reform in Ukraine*, Visit to Kyiv, 26–29 May 2003, UNICEF, 2003.

⁸⁰ United Nations Children's Fund, Draft country programme document, Ukraine, E/ICEF/2005/P/L.19, 4 April 2005, para. 39.

⁸¹ The United Nations Development Assistance Framework, *UNDAF-Ukraine 2006–2010, Into the future together*, United Nations, Kyiv, 2006, p. 15.

⁸² *Ibid.*, pp. 3, 25.

⁸³ *Ibid.*, pp. 25–26.

⁸⁴ *Ibid.*, p. 29.

⁸⁵ *Ibid.*, p. 26.

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*, pp. 27–28.

⁸⁸ *Ibid.*, p. 28.

The situation analysis also stresses the importance of prevention, diversion and alternative sentences.⁸⁹

In 2004, the year after this situation analysis was prepared, UNICEF supported the Working Group convened by the Supreme Court to develop a 'Concept' on juvenile justice.⁹⁰ Participants in the Working Group included representatives of most of the relevant sectors. This initiative thus satisfied two key strategic recommendations made by the consultant. The Concept was prepared, but never officially adopted, due to political developments.⁹¹ The Working Group ceased to meet, but the Concept, although it has no official status, serves as the basic understanding shared by the relevant agencies and institutions (see above).

In 2006, UNICEF began to support a new intersectoral Consultative Council on Juvenile Justice, chaired by the Institute of Legislation under the auspices of the Parliament (see above). This coordination mechanism is still operative.

Since 2003, insofar as data management is concerned, UNICEF is supporting the State Statistics Committee in its efforts to compile data on offending by juveniles and on juvenile justice from the relevant ministries and other bodies.

Thus far, efforts have focused on collecting data related to the TransMONEE indicators, but there are plans to gather additional data to inform policy development and planning, especially since the recent Presidential Decree, adopted in May 2008, calls upon the Ministry of Justice to prepare a draft National Programme of Juvenile Justice Development.

The situation analysis also encouraged the use of information received from offenders themselves. In 2008, UNICEF supported a study on juvenile justice, which incorporates information obtained from interviews with offenders in different kinds of facilities, together with statistical data and information gathered from interviews with juvenile justice professionals and the parents of offenders. The results of this as yet unpublished research, which is cited repeatedly in this assessment, will be of great value in developing the national programme called for by the Presidential Decree and in influencing the future course of juvenile justice reform.

UNICEF has also supported training on juvenile justice, which covers international standards, relevant theory and best practices. Thus far, most training has been carried out by NGOs. Some training has focused on specific sectors, such as the juvenile police, prosecutors and judges; other training has been intersectoral and has concentrated on localities in which pilot projects are being implemented. Topics that have received more attention include victim-offender mediation, social work with offenders, community policing and prevention.

UNICEF's advocacy in favour of the specialization of judges responsible for cases involving accused juveniles contributed to the decision of the Supreme Court, which led to the designation of judges responsible for such cases throughout the country. Many view this as a half-measure. There is considerable support for the establishment of specialized courts, which is one of the issues to be addressed by the National Programme of Juvenile Justice Development called for by the Presidential Decree.

⁸⁹ Ibid., pp. 7–10.

⁹⁰ In Ukraine, the term 'Concept' refers to a basic document setting forth a vision and policy on a given topic.

⁹¹ Massive protests against fraudulent elections known as the 'Orange Revolution' led to new presidential elections in December 2004, and the inauguration of a new government in 2005.

The policies applied by the correctional colonies for juvenile offenders now include a component directed to those nearing the end of their sentence. Protocols designed to put released offenders into contact with the local social services departments have been adopted.

Planning

The Country Programme prepared by UNICEF in 2005 includes in the section on child protection several of the recommendations made by the situation analysis: law reform, training of legal personnel and social workers, development of restorative justice and, in general, the creation of a juvenile justice system that “protects children’s rights and promotes their reintegration.”⁹²

The Country Programme Action Plan Matrix includes two specific targets: a 5 per cent increase in the number and percentage of children in conflict with the law receiving alternative measures to deprivation of liberty; and a 5 per cent decrease in the average time of detention prior to trial and sentencing as compared to the length of sentences. Both targets address concerns that are important, although there are other equally relevant targets (e.g., length of sentences, number of juveniles deprived of liberty). Both are framed in ways that do not necessarily address the real problem, that is, either could be attained in ways that are contrary to the desired goals (e.g., by an increase in the number of offenders sentenced or an increase in the length of sentences imposed). In both cases, the Matrix indicates that baseline data are unavailable, although data on sentencing, while they may have been unavailable, did exist.

Data on the average length of detention prior to trial remain unavailable, possibly because this is one of the most urgent problems concerning juvenile justice. Other data indicate that progress is being made. For example, in 2006–2007, there was a significant decrease in the number of children receiving custodial sentences (especially the most common sentences from 2 to 10 years).⁹³ There is some ambiguity as to the significance of this data, however, as the number of offences has also been declining. Information on the percentage of offenders given custodial sentences is unavailable.⁹⁴ The number of offenders serving sentences in correctional facilities for juveniles is diminishing as well, although data concerning the period 2006–present are not available.⁹⁵

Until 2006, UNICEF’s work on juvenile justice reform was funded from regular resources. Expenditure totalled approximately US\$ 20,000–30,000 annually. In 2007–2008, UNICEF increased the assignment of resources, mainly with funds received from the United Kingdom National Committee for UNICEF and the Swedish International Development Authority. US\$ 69,000 was spent in 2007, and US\$ 128,000 allocated for 2008. To fund the work on juvenile justice until the end of the programme cycle (2010), UNICEF developed a project proposal amounting to some US\$ 300,000, which was submitted to the European Commission.

Management

UNICEF’s support to the juvenile justice reform has been carried out by two national staff members and by two consultants, one from an institute linked to the Parliament and one from the State Statistics Committee.

⁹² Draft country programme document, Ukraine, E/ICEF/2005/P/L.19, paras.40 and 43.

⁹³ *Study by the Centre of Social Expertise*, unpublished data obtained from the Supreme Court [slide 25].

⁹⁴ This is another example of data that probably exist, but are not being published nor used.

⁹⁵ Data include juvenile offenders who remain in such facilities after reaching age 18.

There has been little reliance on foreign experts, with the important exception of the situation analysis prepared in 2003, which marked UNICEF's entry into this area. National NGOs have been implementing partners for some activities, in particular training.

Some of the most important advances in juvenile justice since Ukraine became independent in 1991 took place prior to UNICEF's entry into this area. Advances include the establishment of the specialized juvenile police in 1995 and the adoption of the new Criminal Code in 2001. Other achievements, notably improved conditions and policies in correctional and detention facilities, have been largely independent of UNICEF's efforts. Some important reforms, such as the adoption of a new Code of Criminal Procedure and the approval of the draft framework for juvenile justice reform elaborated by a group of experts in 2004, have proceeded slowly or been sidelined. The Consultative Council on Juvenile Justice appears to have less influence and fewer accomplishments to its credit than comparable bodies in other countries. Perhaps the most tangible progress achieved between the 2003 elaboration of the situation analysis and 2008 was the appointment of specialized judges during the period 2003–2005.

This relatively negative balance sheet is only part of the story, however. UNICEF's sustained advocacy efforts over this period have been effective. The most tangible result is the Presidential Decree on children's rights, adopted in May 2008, shortly before the assessment mission.⁹⁶ The Decree should, in principle, mark the beginning of a period of rapid and concrete legal and institutional reforms.⁹⁷ Parallel to this important development, there appears to be a broad, genuine interest on the part of concerned government agencies and institutions to moving ahead with the development of a juvenile justice system that respects the rights of children. Moreover, governmental counterparts respect UNICEF as a valuable counterpart in this area. Its ability to facilitate cooperation between the government and civil society is recognized and appreciated as well. This suggests that UNICEF's efforts, which to date have focused largely on advocacy and have relied on a modest budget, have been managed sensitively and effectively.

Evaluation

With the exception of trainings, most of the activities supported by UNICEF during this initial period of involvement in juvenile justice are not the kind that calls for formal activity-by-activity evaluation. The impact of trainings has not been evaluated independently or objectively.

The present assessment is the first independent effort to assess globally UNICEF's efforts in this area, but it is timely.

⁹⁶ Presidential Decree No.411 of 5 May 2008 on Measures to Ensure Protection of Rights and Legal Interests of Children.

⁹⁷ There are now two main obstacles: the still unresolved conflict between the executive and legislative branches of government, and the world economic crisis which appears likely to have serious consequences for Ukraine. A draft 'Concept of National Programme of Juvenile Justice Development in Ukraine' was prepared later in 2008, but had not yet been adopted at the time this study was going to press.

PART IV. Conclusions and Recommendations

POSITIVE DEVELOPMENTS

1. Many significant steps have been taken to reform the institutions involved with juvenile offenders, especially since 2004. UNICEF's contribution to the development of juvenile justice thus far is recognized by government as well as concerned NGOs. UNICEF is seen as a valuable partner, and no other international agency or organization is playing a lead role in this area.⁹⁸
2. Some important institutional reforms have taken place: specialized juvenile police units have been established throughout the country, and all trial courts have judges designated to handle cases involving juvenile offenders.
3. Data concerning offending by juveniles and juvenile justice reveal some very positive trends: the number of offences by juveniles has fallen by one half since 2000; the population of correctional colonies for juvenile offenders has decreased by one third since 2003; and facilities for underage offenders are at 20 per cent of their capacity.
4. Legislation in force complies with international standards regarding due process in many respects, in particular the right of suspects not to be interrogated without the presence of an attorney; the right to free legal assistance at trial; the presumption of innocence and the principle of legality; and the principle that deprivation of liberty should be a last resort. Existing legislation also recognizes diversion, non-custodial sentences and parole (early release).
5. Some important changes in legislation have taken place: the amendment of the Criminal Code has reduced to 10 years the maximum sentence for juvenile offenders; administrative bodies no longer have competence to confine children involved in minor crimes and underage offenders to schools for social rehabilitation; and only courts may authorize pretrial detention.
6. Conditions in pre-sentence detention facilities have improved, especially regarding the separation of accused juveniles from accused adults and access to education and psychosocial services. Improvements have also been noted regarding policies applied in correctional facilities for convicted juvenile offenders, in particular preparation for release and, to some extent, easier availability of post-release assistance. NGOs and religious groups have access to both kinds of facilities.
7. Civil society organizations are actively involved in juvenile justice reform. They play an important role in the implementation of pilot projects (in particular victim-offender mediation and Public Defenders' offices), training and the development of training materials.
8. An interministerial/intersectoral coordination mechanism is operational.
9. Valuable research on the treatment of accused and convicted juvenile offenders has taken place, with the full cooperation of relevant authorities. The State Statistics Committee is attempting to coordinate and harmonize sectoral data collection mechanisms in order to create a common database, which can provide evidence that will help inform policy-making, law reform and planning.

⁹⁸ Other international actors have made important contributions in specific fields: the Canadian International Development Agency (CIDA), the Swiss Agency for Development and Cooperation, and the Office of the United Nations High Commissioner for Human Rights (OHCHR).

10. The President of Ukraine recently made a commitment to develop a comprehensive juvenile justice system, and most agencies and institutions concerned with juvenile justice seem willing, if not eager, to get on with this task. In general, there appears to be a commitment to compliance with international standards and interest in learning from other countries' experience.

CHALLENGES

1. Many accused juveniles are confined in detention facilities for extended periods while awaiting trial, sentencing and the outcome of their appeal. Although there have been improvements, detention for periods of six months to one year or more in facilities, whose population consists mainly of adults, has very negative consequences for juvenile detainees.
2. Compliance with legal norms regarding the duration of detention in police custody and the presence of lawyers during questioning is weak. Poor enforcement of these safeguards facilitates the practice of improper use of psychological pressure during interrogation.
3. There are neither mechanisms nor procedures designed specifically to monitor respect for the rights of children in conflict with the law or children deprived of liberty. Existing mechanisms, whose mandate includes monitoring the rights of children or the enforcement of legal standards regarding the treatment of children, lack the capacity, the authority or the procedures needed to address effectively the kinds of violations identified by this assessment.
4. Although the designation of judges responsible for cases involving juvenile offenders is a positive step, it does not suffice to ensure that all accused juveniles are tried without delay and that their age and special needs are given due consideration. Prosecutors who handle cases involving accused juveniles are not specialized.
5. Although the right to free legal assistance is recognized by law, the quality of services provided to accused juveniles who cannot afford to pay for the services of a defence lawyer is generally poor. No specialized legal service for children exists.
6. Institutional responsibility for secondary prevention is not clearly defined. There are no programmes (other than supervision by the police) designed to provide assistance in the community to offenders under the age of criminal responsibility, to children at risk of offending and to their families, without removing children from their homes.
7. Although probation is recognized by law and the State Department of Penal Implementation supervises some 5,000 convicted juvenile offenders, it does not have the capacity to provide all the professional services needed, including the supervision of accused juveniles awaiting trial, the preparation of social reports on the background of accused or convicted juveniles and the supervision of juvenile offenders on parole.
8. Although diversion is recognized by law, it apparently is rarely used. Sentences to community service, which may be imposed only on older juveniles, are not frequent, while sentences to open facilities may be imposed on adults but not on juvenile offenders.
9. Child rights and juvenile justice have not been introduced into the curricula of the relevant professional training institutions, and professional standards, requirements or qualifications have not been established.

10. Data on juvenile justice collected by different agencies and institutions (e.g., the police, courts and the Prison Department) are not pooled into a database that would provide the comprehensive information needed to inform policies and to make evidence-based decisions on legal and institutional reform. Data on some important issues, such as the length of detention while awaiting trial and sentencing and the use of diversion, do not exist.
11. Support to juvenile justice reform inspired by international standards and good practices is never unanimous. Ukraine is no exception, although the consensus in favour of reform appears to be quite broad. Some professionals in the Ministry of Education, for example, believe that reforms, such as the exclusive judicial control over offending and increased use of alternative sentences made in the name of child rights, deprive children of the help they need.
12. The political impasse between the Executive and the Legislature has a negative effect on law reform and the adoption of other measures requiring approval by both branches of government. The legislature does not appear to be actively committed to the rights of children, and social legislation does not seem to be a priority. Some legislators reportedly believe that the age of criminal responsibility should be lowered.
13. The Ministry of Finance is said to be reluctant to support new programmes such as victim-offender mediation.

RECOMMENDATIONS

1) Probation

Priority should be given to strengthening the probation service, enabling it to provide juveniles sentenced to probation with more effective assistance and to undertake additional roles, such as the preparation of reports on the background of accused or convicted juveniles; the supervision of accused juveniles who do not require detention; and the supervision of offenders released under parole.

2) Community-based prevention and rehabilitation

The role that community-based non-residential programmes could play in assisting children at risk of offending, children diverted from the juvenile justice system, underage offenders and offenders who could benefit from non-custodial sentences should be studied, and pilot programmes developed.

3) Detention in pre-sentence facilities

Priority should be given to the development of a strategy aiming to reduce the number of juveniles detained prior to trial and while awaiting sentencing or appeal, and the duration of detention when there are compelling reasons for an accused juvenile to be deprived of liberty. The strategy should take into consideration the usefulness and feasibility of all relevant measures, including diversion; the supervision of accused juveniles by the future probation service; the appointment of specialized prosecutors; the improvement of case management and monitoring; and the establishment of appropriate legal standards.

4) Schools for social rehabilitation

The unused capacity of schools for social rehabilitation is an issue that needs to be addressed. Since there are presently no responses to offending between supervision and sentences to closed facilities, a possible solution might be to 're-profile' the part of the system operated by the Ministry of Education to include open/semi-open facilities or day centres.

5) Specialized courts

Further consideration should be given to the establishment of special courts having competence over children accused of an offence, when the number of such cases is sufficient to justify the establishment of specialized courts, taking into account the appropriate use of diversion as well as the possibility of giving such courts competence over other cases involving children, such as maintenance, custody or domestic violence.

6) Legal services

Consideration should be given to providing public funding to the Public Defenders' offices now functioning as pilot projects, not only to ensure that juveniles accused of an offence receive a proper legal defence at all stages of legal proceedings, but also because such services play a valuable role in detecting abuses and encouraging respect for existing legal standards.

7) Law reform

Consideration should be given to the appropriateness of adopting a comprehensive law on juvenile justice, or on legal proceedings concerning children. Issues that need to be addressed by law reform, whether through the adoption of a new law on juvenile justice or through amendments to existing legislation, include limiting the duration of detention prior to sentencing; eliminating the trial of juveniles and adults as co-defendants; and expanding the range of alternative sentences that may be imposed on juveniles.

8) Restorative justice

Priority should be given to the existing draft legislation on mediation; in particular because of the important role victim-offender mediation can play in diversion and because of the value of victim-offender mediation as a vehicle to protecting the rights of victims and reducing the risk of future offending.

9) Accountability mechanisms

Consideration should be given to establishing mechanisms designed specifically to monitor the rights of children involved in the juvenile justice system, including the treatment of children by the police, the treatment of children deprived of liberty and the treatment of children in legal proceedings.

10) Data management

The State Statistics Committee should continue developing a data bank that incorporates information from all the relevant sectors, ensures the use of compatible and reliable indicators by all sources and addresses all the key issues being faced by the authorities responsible for the development of a juvenile justice reform strategy.

11) Professional training

The topic of child rights and juvenile justice should be incorporated into the curricula of the relevant professional training institutions.

12) UNICEF

UNICEF should continue to promote juvenile justice reform, especially during the window of opportunity that has been opened by the recent Presidential Decree. Priority should be given to supporting the work of the Consultative Council on Juvenile Justice, particularly through advocacy to encourage the active participation of all relevant actors and to help the Council become a dynamic space for policy development.

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. The assessment reveals that data corresponding to most of the UNODC and TransMONEE indicators are available, despite the significant number of problems regarding the definitions or relevance of the indicators, as presently defined. The indicators and corresponding observations of the assessment team are as follows:⁹⁹

(1) Crimes committed by juvenile offenders

This indicator is defined by the TransMONEE matrix¹⁰⁰ as “the number of crimes committed by persons aged 14–17,” disaggregated by the kind of crime, i.e. violent, property, or other.

The State Statistics Committee compiles data on crimes committed by or with the participation of persons aged 14–17 years. The data are provided by the Ministry of Internal Affairs, and are based on the number of juveniles found guilty after the appropriate legal proceedings.

The data are disaggregated by the criteria indicated in the TransMONEE matrix. The number of homicides is given as well. Data available from primary sources permit more detailed disaggregation indicating, for example, forcible rape committed by juveniles. They also distinguish between different crimes against property, some of which involve the use of violence.

In Ukraine, it is artificial to limit these data to crimes committed by or with the participation of persons aged 14 or older. Children aged 11–14 years can be tried for acts punishable under the Criminal Code, even though they do not have criminal responsibility for such acts. If they are found to have committed such acts, they may be confined to a school for social rehabilitation, for a period of up to three years (see above).

There is presently a controversy in Ukraine concerning the decrease in the number of crimes committed by persons under age 18, as official statistics show. The reason for this is that data on crimes do not include administrative offences and that theft of property whose value falls below a certain threshold is an administrative offence. Since the threshold is defined in terms of a certain economic indicator¹⁰¹ it has been rising, making thefts that would have been crimes in the past mere administrative offences. The impact of this factor on offending by juveniles has not been calculated, but some professionals believe that the apparent decrease is not a real one.

A third comment regarding these data is that the distinction between violent crimes and crimes against property may be misleading, since some crimes against property are defined by the use of or threat of ‘violence dangerous to life and health’.¹⁰² These constitute about one third of all property crimes in Ukraine.

⁹⁹ The assessment team did not take into account the TransMONEE indicator on crimes against children, which falls without the scope of juvenile justice.

¹⁰⁰ 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.

¹⁰¹ The threshold for income that is taxable. (One source stated that the threshold had risen from US\$ 30 to US\$ 150.)

¹⁰² Criminal Code, Article 187 (a crime variously translated as ‘brigandism’ or ‘plunder’).

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

The indicator is defined by the TransMONEE matrix as “the number of children taken into police custody (following arrest on suspicion of having committed an offence)” during a 12-month period. In Ukraine, as indicated above, children suspected of an offence may be held in police custody for up to eight hours without approval of any other authority. Data on this practice are not available.

After eight hours, a court order is needed to keep a child in custody. This in effect constitutes pretrial detention, not arrest. Data on the number of children detained pursuant to such court orders are available from the State Department of Penal Implementation. However, it is not clear whether such data as reported by the Department differentiate between detainees not yet sentenced and those awaiting the results of an appeal who are often detained in the same kind of facility.

(3) Children in detention

This indicator is defined by the TransMONEE matrix as “the total number of children/juveniles in conflict with the law in closed correctional/punitive institutions or open/semi-open institutions at the end of the year.”

In Ukraine, there are no open or semi-open facilities for juvenile offenders. The number of persons confined in the three main kinds of facilities for juvenile offenders – ‘colonies’ for convicted offenders, ‘isolators’ for pretrial detention and ‘schools’ for children aged 11–16 years who have committed offences but are not criminally responsible – is known. Various problems exist when applying the internationally accepted definition, however. First, more than half of the children confined in schools for social rehabilitation because they have been tried for the commission of an offence are under the age limit of 14 years, which used to define juvenile offender for TransMONEE purposes.¹⁰³ This represents about 8 per cent of the population of facilities for accused or convicted juveniles, or 12 per cent of those who have been tried and given a custodial sentence.

Second, nearly one third of the population of colonies for juvenile offenders is over age 18, for the reasons indicated above. A smaller proportion of the population of juvenile units in pretrial detention facilities is over age 18, although they are accused of offences committed as juveniles.

While it would be possible to process the data to fit them into regional and international indicators, doing so would not make the data more useful for the purpose of monitoring offending by juveniles and for the workings of the juvenile justice system by the responsible national authorities.

(4) Children in pretrial detention

This indicator is defined by the TransMONEE matrix as “the number of children who are placed in pretrial detention during the year.” The data of the State Department of Penal Implementation include children under age 14 and might need to be filtered to exclude those convicted and awaiting the outcome of an appeal or those who have reached their 18th birthday while awaiting trial.

The data reported by the State Statistics Committee in the past have included information on children ‘taken into custody’, but not on children placed in pretrial detention during the year nor children actually in pretrial detention at the end of the year.

¹⁰³ Fifty-three per cent, according to unpublished data provided to the assessment team by the Ministry of Education and Science.

(5) Duration of pretrial detention

Data on this important indicator are not compiled by the State Statistics Committee at present.

(6) Child deaths in detention

This information is confidential.

(7) Separation from adults

This indicator is defined by the UNODC-UNICEF Manual¹⁰⁴ as “the percentage of children in detention not wholly separated from” adult prisoners.

In Ukraine, the relevance of the data as defined by the UNODC-UNICEF Manual and TransMONEE indicators is relative. There are no persons under age 18 detained in schools for social rehabilitation, but the population of 11 schools out of 14 is under the age limit used by TransMONEE to define juvenile offenders.

The population of the colonies consists entirely of persons sentenced as juvenile offenders, but nearly one third is between 18 and 22 years of age. Thus, the entire juvenile population of the 10 colonies is not separated from adults. The policy of allowing juvenile offenders who reach age 18 while serving their sentence to remain in colonies until age 22 is a recent reform, intended to make the system more humane. It is not clear whether this practice should be considered harmful to offenders under age 18, most of who are aged 16–17 years, or incompatible with international standards, which do not categorically preclude the detention of children with adults.¹⁰⁵

The indicators are relevant for the situation of juveniles confined in pretrial facilities operated by the State Department of Penal Implementation. In the facility visited by the assessment team, the section for males under age 18 met the criteria for separation used in the UNODC-UNICEF Manual. The section for women where adults and adolescents are detained probably does not but, given the small number of female offenders under age 18 who are detained before trial, doubts also arise as to whether strict compliance with the principle of separation would be in the interest of detained girls or not.

(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 of this kind are not compiled by the State Statistics Committee, and do not appear to be collected systematically by the entities that operate facilities for juvenile offenders. Detailed information on the family background of accused offenders, convicted offenders and offenders serving sentences is collected, however. The State Department of Penal Implementation used the indicator ‘offenders who do not have or have lost socially beneficial connections in the outside life’, and considers that 70 per cent of the male juvenile population and 90 per cent of the female juvenile population serving sentences come within that category.

¹⁰⁴ See United Nations, *Manual for the Measurement of Juvenile Justice Indicators*, Office on Drugs and Crime (UNODC) and UNICEF, New York, 2007.

¹⁰⁵ Convention on the Rights of the Child, Article 37(c): “...every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so...”

(9) Convictions

This indicator is defined by the TransMONEE matrix as “the number of juveniles convicted during the year,” disaggregated by sex, age and type of crime, i.e., violent, property, or other.

The State Statistics Committee compiles data on convictions of juveniles, which are disaggregated by sex and the three types of crimes specified in the matrix.

(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., a sentence of confinement to an open/semi-open or closed facility. The TransMONEE matrix limits this to children aged 14–18 years.

The State Statistics Committee compiles data on the number of juveniles convicted, which are disaggregated by the kind of sentence, including sentences of imprisonment. This allows the percentage of convicted juveniles receiving custodial sentences to be calculated (in 2005, the percentage was 20.6).

The TransMONEE matrix requests that the data be disaggregated by the “duration of imprisonment” and specifies six categories for this purpose: up to 1 year; 1–2 years; 2–3 years; 3–4 years; 4–5 years, and more than 5 years.¹⁰⁶ The UNODC–UNICEF Manual uses criteria for disaggregation that are somewhat different, and includes four categories for sentences of less than one year.

Neither the UNODC-UNICEF nor the TransMONEE indicators reveal the number of juveniles given the maximum sentences allowed by law: 10 years (crimes other than homicide) and 15 years.¹⁰⁷

The TransMONEE indicators do not clearly identify the number of juveniles receiving sentences to ‘arrest’, i.e., imprisonment for 15–45 days. They also exclude children aged 11–14 years.

(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.

Data compiled by the State Statistics Committee in the recent past (2000–2005) include information on only two categories of ‘alternative’ sentences: ‘public works/fines’ and ‘suspended sentence involving deprivation of liberty’. Data also contain (since 2002) information on convicted juveniles ‘released from punishment’.

The new Criminal Code recognizes sentences corresponding to most of those referred to in the TransMONEE indicators. They include fines, community service, probation and ‘discharge from punishment subject to compulsory correctional measures’.¹⁰⁸ The latter have five modalities, which include warnings, conditions regarding conduct, supervision and compensation of the victim, as well as confinement in a school for social rehabilitation (Article 105).

¹⁰⁶ The UNODC–UNICEF Manual uses criteria for disaggregation that are somewhat different.

¹⁰⁷ Sentences of more than 10 years were eliminated in 2008, as indicated above.

¹⁰⁸ Criminal Code, Articles 97–100, 104.

Informants indicated that ‘supervision’ is the most common sentence, but it is not clearly distinguished in the data. More detailed disaggregation of data on sentences would help analyse the way courts apply the Criminal Code. It would also be useful to distinguish between the various kinds of ‘non-punitive’ measures set forth in Article 5, at least between measures involving deprivation of liberty and measures that do not.

(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.” The definition is somewhat confusing,¹⁰⁹ and the Manual recognizes that what constitutes diversion “will need to be identified in the local context.”

Data on diversion are not compiled by the State Statistics Committee at present. Although diversion is authorized by the Code of Criminal Procedure,¹¹⁰ the number of cases is reportedly very small, and experimentation with diversion is just beginning in a limited number of jurisdictions. Since diversion is an important part of modern juvenile justice systems and appears likely to increase, data on diversion should be compiled systematically.

(13) Aftercare

This indicator is defined as “the percentage of children released from detention receiving aftercare.” Data on this indicator are not compiled by the State Statistics Committee, and it is not clear whether they exist.

There seems to be a conceptual or definitional 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 for those released from pretrial detention because, for example, they are not convicted or are given a non-custodial sentence.

Other relevant data and information

Repeat offending

Data collected by the State Department of Penal Implementation include the number of juvenile offenders serving sentences who were ‘previously made answerable for criminal offences’. According to unpublished data provided to the assessment team, this figure is presently 61 per cent of the population.

This information is valuable, although three limitations must be recognized. First, it does not include data on re-offending by children who do not receive custodial sentences. Second, it does not cover juveniles in schools for social rehabilitation (since the Department is not responsible for them), who constitute approximately 22 per cent of all juveniles serving sentences.¹¹¹ Third, it includes young adults sentenced as juveniles who are serving their sentences in ‘colonies’ for juvenile offenders, who represent about one third of the population of colonies (see above).

¹⁰⁹ 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.

¹¹⁰ Code of Criminal Procedure, Article 510, paras.1 and 2.

¹¹¹ Technically, juveniles who have committed an offence but do not have criminal responsibility do not have sentences but rather “compulsory measure of educational nature” (Code of Criminal Procedure, Articles 510–511).

Children prosecuted or charged with an offence during the year

This information is compiled by the State Statistics Committee. The data are not disaggregated by age and sex, although it would not be difficult to do so. They are disaggregated by other relevant criteria, namely, the number of charges against repeat offenders (although the definition used for this purpose is not known), the number of charges involving offences committed by a group of persons and the number of offences allegedly committed while under the influence of drugs or alcohol. In 2005, the percentages were 12, 79 and 12, respectively.

These data do not include charges placed against children aged 11–14 years.

Annex 2: List of persons interviewed

Government

- V. Lutkovska, Deputy Minister of Justice
- T. Korniakova, Deputy Head, Office of the General Prosecutor
- N. Shestakova, Head, Division on the Protection of the Rights of Children,
Office of the General Prosecutor
- N. Karpachova, Parliamentary Commissioner for Human Rights (Ombudsman)
- V. Tereshchuk, Head, Department of International Law,
Parliamentary Commissioner for Human Rights
- O. Shyian, Head of schools of social rehabilitation, Ministry of Education and Science
- Y. Vasylykevych, Secretary, Parliamentary Committee on Law Enforcement
- L. Hubar, Head, International Department, Supreme Court
- I. Kalachova, Expert, State Statistics Committee
- T. Bukhtiyarova, Head, Police Department for Children
- O. Lazarenko, Deputy Head, Police Department for Children and Head,
Section for prevention of offending and reception centres for children
- O. Yanchuk, Deputy Head, Department of Social and Psychological Work
- O. Bezarchuk, Head, Social and Psychological Work Section, Juvenile Correctional Colonies
- F. Hrytsenko, Deputy Director, State Department on Adoption and Protection of the Children's
Rights, Ministry of Family, Youth and Sport
- I. Voitiuk, Director, Academy of Judges
- D. Kholod, Director, Kharkiv Oblast Department of the State Department of Penal Implementation
Head, Kuriashz Juvenile Correctional Facility
- Head, juvenile section of Kharkiv Pretrial Detention Centre
- S. Shramko, Director, Kharkiv School for Social Rehabilitation
- B. Radko, Head, Temporary Reception Centre, Kharkiv

Civil society

- L. Amdzhadin, Project Manager, Centre of Social Expertise, National Academy of Sciences
- O. Goncharuk, Investigator, Centre of Social Expertise
- R. Koval, President, Ukrainian Centre for Common Ground
- L. Kanevska, Vice-President, Ukrainian Centre for Common Ground

- I. Tsymbaliuk, Coordinator, Juvenile Justice Project
- M. Siniushko, Coordinator, Prevention of Offending pilot project
- O. Timokhov, Head, Public Defender's Office, Kharkiv
- V. Novak, Head, St. Vincent de Paul street children project, Kharkiv
- O. Betsa, Head, International Renaissance Foundation
- Y. Pavlova, Head, Protection of Children's Rights (NGO)
- I. Savchuk, Executive Director, Service of Protection of Children (NGO)
- H. Ovcharova, Executive Director, Youth for Democracy, Kharkiv
- V. Zelenetsky, Deputy Director, Institute of Criminology, Kharkiv Law Academy
- N. Sibilyova, researcher, Institute of Criminology
- O. Shylo, researcher, Institute of Criminology
- N. Hlynska, researcher, Institute of Criminology

Donors and other international missions

- K. Schnieder, former Head, Swiss Agency for Development and Cooperation
- A. Kavakin, Project Manager, Swiss Agency for Development and Cooperation
- L. Nestrlyay, Programme Officer, Swiss Agency for Development and Cooperation
- P. van Vliet, First Secretary, Embassy of the Netherlands
- E. Spacca, Legal Adviser, Ukrainian-European Policy and Legal Advice Centre

UNICEF

- J. Hartley, UNICEF Representative in Ukraine
- A. Haidamashko, Child Protection Officer
- N. Kyyak, Assistant Child Protection Officer
- A. Sanchenko, Juvenile Justice Consultant

Annex 3: List of documents consulted

Legislation

Republic of Ukraine, Code of Criminal Procedure, adopted on 28 December 1960

Republic of Ukraine, Criminal Code, adopted on 5 April 2001, entered into force on 1 September 2001 (extracts)

Republic of Ukraine, Presidential Decree No. 411 of 5 May 2008 on Measures to Ensure Protection of Rights and Legal Interests of Children

Government documents

Information on juvenile offenders kept at specialized correctional facilities of the State Penitentiary Department of Ukraine, May 2008

The Concept of Creation and Development of a Probation System in Ukraine for 2008–2018, undated

UNICEF documents

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.

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Open Society Institute, Justice Initiatives: Pretrial detention, 2008

Council of Europe, Parliamentary Assembly, Resolution 1466 (2005), Honouring of Obligations and Commitments by Ukraine

Report on compliance of Ukrainian legislation with the standards of protection of children from all forms of violence and the reality of implementation of such laws and regulations in the system of law enforcement, undated

The inventory of Ukrainian Legislation and policy on the sectors covered by Action Plan on Justice, Freedom and Security, Ukrainian-European Policy and Legal Advice Centre, undated

* Prepared by the Government of Ukraine and translated and published by the United Nations.

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