JUVENILE JUSTICE IN KAZAKHSTAN
DEVELOPMENTS FROM 2008 TO 2011
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UNICEF Regional Office for Central and Eastern Europe/Commonwealth of Independent States

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Note on the present report

The UNICEF Regional Office for CEE/CIS sponsored an assessment mission that took place in August 2008. The team consisted of Dan O’Donnell, international consultant, and Prof. Gulnara Suleimenova, national consultant. Support was provided by Tatiana Aderkhina of UNICEF Kazakhstan. In 2009, a report based on the mission was published by the UNICEF Regional Office with the title Assessment of Juvenile Justice Reform Achievements in Kazakhstan. It was also translated into Russian and published by UNICEF Kazakhstan.

The present report contains an updated description of juvenile justice that highlights the most important legal and other developments between November 2008 and June 2011. It was drafted by Mr. O’Donnell on the basis of information provided by UNICEF Kazakhstan and the Kazakh delegation at the Child Protection Forum for Central Asia on the theme of juvenile justice that took place in Ashgabat (Turkmenistan) on 30 May – 1 June 2011 as well as interviews by Mr. O’Donnell with juvenile judges and a representative of a specialized legal defence team in Almaty in 2010. Ms. Aderkhina, Prof. Suleimenova, Mrs. B. Svetlana Bychkova, Secretary of the Majilis Committee for Legislation and Judicial-Legal Reform, and Judge Gulnara Abdigaliyeva, Head of the Astana Juvenile Court, provided information for the process of updating the report.

Background

Kazakhstan is the largest country in Central Asia, and one of the largest in the world. It has a population of 16.5 million, of which 30 per cent is under age 18.1 Once an agricultural country, the population is now 58 per cent urban.2 Some 60 per cent of the population is Kazakh and 25 per cent is of Russian origin; there are over one hundred smaller ethnic minorities.3

Kazakhstan is rich in petroleum and minerals. The economy has performed strongly after the economic dislocation that followed independence. The Gross National Income (PPP) per capita, US$ 10,320, is the highest in Central Asia.4

Kazakhstan became independent in December 1991. It is a unitary republic, divided into 14 provinces.5 A constitution adopted in 1993 was replaced by a new constitution in 1995. Most of the laws now in force have been adopted since independence.

Offending by juveniles increased in the years following independence, but began to decrease in 1994 and, by 1996, had fallen below the number of offences during the last year before independence.6 In recent years, the number of offences has decreased further, from 8,799 in 2006 to 6,651 in 2009.7 The number of reported offenders has remained relatively stable during these years, however, apparently

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5 There are also 175 administrative districts.
7 Ibid. (for 2006); see also Ministry of Internal Affairs, Analysis of juvenile offences and activities of police on prevention of crimes, homelessness and street children, 2008, p. 1.
due to the growing number of crimes committed by juveniles acting as a group. Nonetheless, the number of convicted juvenile offenders has diminished by more than half since 2000. The number of juveniles given custodial sentences has fallen dramatically as well, from 1,668 in 2000 to 660 in 2009.

Kazakhstan did not have a juvenile justice system at independence. Juveniles accused of an offence were tried by ordinary courts, under the Criminal Code and the Code of Criminal Procedure.

UNICEF supported a situation analysis on juvenile justice in 2000. The lead role then passed to the Open Society Institute, which undertook a major project from 2001 to 2006. The project led to a comprehensive set of recommendations, many of which were incorporated into a ‘Juvenile Justice System Development Concept’ approved by the President in August 2008. Adoption of this Concept marked the beginning of a new stage in the development of juvenile justice. A plan of action for the implementation of the Juvenile Justice System Development Concept was adopted in November 2008. UNICEF was asked to help implementation, and the assessment team recommended that it make a commitment to support the development of juvenile justice, in cooperation with the government, civil society and interested international donors.

Summary of the significant developments 2008–2011

The plan of action for the implementation of the Juvenile Justice System Development Concept, adopted in November 2008, lists 16 activities, most of which were to be carried out in 2009 or 2010. Many of them had not yet been implemented at the time this report was prepared, but important changes in the juvenile justice system have taken place. One exception concerns law reform. Although the plan of action called for law reform in 2011, many important amendments to the legislation were made in 2009 and 2010.

Another important achievement was the transformation of the centres for temporary isolation, adaptation and rehabilitation of minors (known as CVIARNs). Responsibility for operating these centres – renamed centres for adaptation of adolescents (TSANs) – was transferred from the Ministry of Internal Affairs to the Ministry of Education and Science and new regulations were adopted.

Some of the recommendations made by the UNICEF assessment team in 2008 have been accepted as well and are being implemented. The recent adoption of a law on mediation that will allow mediation for crimes of minor and medium gravity is one example. The process of expanding the network of groups providing specialized legal services to children has begun. And, as indicated above, prosecutors no longer have authority to place children in the centres that have been transferred to the Ministry of Education and Science.

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8 Ibid., (number of crimes committed by juveniles acting as a group: 8,302 in 2001 and 8,344 in 2007).
10 Ibid., Annex 19.
11 Law No. 401-IV of 28 January 2011 ‘On mediation’.

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Both the number of juveniles serving sentences in correctional facilities and the number of accused juveniles in pretrial detention have declined significantly during this period, as the table below shows:\textsuperscript{12}

<table>
<thead>
<tr>
<th>Year</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Juvenile prison population</td>
<td>425</td>
<td>427</td>
<td>449</td>
<td>386</td>
<td>153</td>
</tr>
<tr>
<td>Juveniles in pretrial detention</td>
<td>546</td>
<td>494</td>
<td>232</td>
<td>170</td>
<td>105</td>
</tr>
</tbody>
</table>

The European Union decided to incorporate the development of juvenile justice into a four-year Project on Support to Judicial and Legal Reform (2010-2013), which is being implemented by the Supreme Court, the Ministry of Justice, UNICEF and other partners. Training manuals on child rights have been prepared for judges, prosecutors and the police, and training in juvenile justice has been incorporated into the curriculum of the Academy of Public Administration’s Institute of Justice, which trains judges. The law faculties of two universities have agreed to pilot courses on child rights during the 2011–2012 academic year.\textsuperscript{13}

\textsuperscript{12} Data on population of correctional facilities on 1 January provided by the Ministry of Justice to Penal Reform International and UNICEF.

\textsuperscript{13} Kazakh Humanitarian Law University and University of East Kazakhstan.
PART I. The Process of Developing a Juvenile Justice System

1. Policy and planning

The Juvenile Justice System Development Concept (‘Concept’) approved by Presidential Decree on 18 August 2008 calls for the creation, during the period 2009–2011, of a juvenile justice system compatible with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). The major components of the system were to include:

- specialized juvenile courts throughout the national territory;
- specialized juvenile legal offices throughout the national territory;
- a juvenile criminal police having both preventive and investigative functions;
- a specialized service for supervising non-custodial sentences;
- an efficient system for the coordination of child protection institutions, including ‘special schools’ and ‘centres for temporary isolation, adaptation and rehabilitation of minors’;
- social-psychological services in the juvenile justice system; and
- postgraduate programmes for the training of judges and other staff of the juvenile justice system.

In November 2008, a plan of action for the implementation of the Juvenile Justice System Development Concept was approved. It lists 16 activities, most of which were to be carried out in 2009 or 2010. Most (ten) do not call for concrete action, but rather for specific action to be considered. Six ministries, four additional public bodies and ‘local authorities’ have responsibility for the implementation of the various activities. Each activity was accompanied by a note indicating that costs were ‘not required’.

Some activities planned for 2009 and 2010 – such as “To enhance the work of regional authorities responsible for child rights protection” – are described in such vague terms that it is impossible to objectively assess the degree of implementation. It is nevertheless clear that most of the activities listed have not born fruit to date: juvenile courts and specialized police investigators have not been established throughout the country; there are no specialized prosecutors for the investigation and prosecution of crimes committed by juveniles; and there is only a small number of private groups providing specialized legal and psychosocial assistance to juvenile suspects and accused juveniles.

One important activity that has been carried out is the reorganization of the centres for temporary isolation, adaptation and rehabilitation of minors. A considerable amount of law reform has been carried out as well, as indicated in the following section.
2. Law reform

The legal basis for juvenile justice consists mainly in special sections or chapters of three Codes adopted in 1997: the Criminal Code (Section VI), the Code of Criminal Procedure (Chapter 52) and the Penal Execution Code (Chapter 17). Other relevant legislation includes the 2002 Law on the Rights of the Child and the 2004 Law on the Prevention of Juvenile Delinquency, Child Neglect and Homelessness. Of particular importance are the Presidential Decree of 2007 and the Law of 2008 establishing ‘juvenile courts’ in Almaty and Astana. These courts have jurisdiction over a broad range of cases involving children, including some family law and child protection cases.

Important amendments to the legislation on juvenile justice have been made since the assessment mission. Many of them are contained in legislation that aims to ‘humanize’ criminal law and procedure concerning both juveniles and adults. They include:

- Law No. 354-IV of 23 November 2010 ‘On amendments to some legislative acts of the Republic of Kazakhstan concerning the issues of protection of child rights’
- Law No. 375-IV of 29 December 2010 ‘On amendments to some legislative acts of the Republic of Kazakhstan on securing grounds, procedures and conditions for keeping persons in facilities of temporary isolation from society’
- Law No. 393-IV of 18 January 2011 ‘On the introduction of changes and addenda into some legislative acts of the Republic of Kazakhstan concerning the issues of further humanization of criminal legislation and strengthening of lawfulness guarantees in the criminal process’

The most significant changes resulting from these laws, insofar as juveniles are concerned, are the following:

- charges against juveniles may be dropped due to reconciliation in cases in which a grave offence has been committed, provided that death or serious injury did not result;
- charges also may be dropped in cases in which the victim is the society or state, not a private individual;
- juvenile first offenders may not be given a prison sentence unless the crime is a serious one;
- a juvenile convicted of a serious offence may be placed in a special educational facility rather than a correctional facility;
- juveniles aged 14–15 years may not be prosecuted for simple theft, simple robbery or simple ‘extortion’;

21 Decree No. 385 of 23 August 2007 ‘On establishment of the specialized interregional juvenile courts’; Law No. 64-IV of 5 July 2008 ‘On amendments and additions to some legal acts of the Republic of Kazakhstan on the specialized interregional juvenile courts’.
24 Ibid., amending Article 79.7 of the Criminal Code.
25 Law No. 354-IV of 23 November 2010, amending Article 83.5 of the Criminal Code (the literal translation of the term for such “special schools” is “educational institution with particular treatment”.
26 Ibid., amending Article 15.2 of the Criminal Code.
• in principle, juveniles may not be detained before trial unless accused of an offence that carries a sentence of five years of imprisonment;\(^\text{27}\)
• the maximum period of probation for a juvenile offender is one year;\(^\text{28}\)
• the duration of detention before trial is, in principle, two months;\(^\text{29}\)
• an extensive list of rights was incorporated into the law governing educational facilities for offenders and children at risk.\(^\text{30}\)

The impact of these changes, together with the creation of specialized courts in the two largest population centres, represents significant progress towards the development of a juvenile justice system in harmony with international standards.

3. Accountability

A Human Rights Commissioner (Ombudsman) was appointed in 2002. In 2004, the mandate and powers of the Commissioner were expanded in light of the recommendation made by the Committee on the Rights of the Child. In 2006, a special section with responsibility for children’s rights was established.\(^\text{31}\) Although the Commissioner has made recommendations to the relevant ministries concerning the treatment of accused juveniles on issues such as the need to separate juvenile prisoners from adults in pretrial detention, in 2008 he informed the assessment team that, in general, the situation was ‘not serious’. The Commissioner’s 2010 report indicated that 43 of 1,515 complaints concerned children, but the number concerning juvenile justice was not specified.

In 2005, the General Prosecutor’s Office established a special unit to coordinate and monitor compliance with legal standards concerning children. The 2006 report to the Committee on the Rights of the Child indicates that, during the previous year and a half, 185 officials of the Ministry of Internal Affairs had been prosecuted for excess or abuse of authority with respect to minors.\(^\text{32}\) Some of the facilities for children visited reported that prosecutors visit regularly and have complained about practices that violate children’s rights. This suggests that the unit has a positive effect but, unfortunately, efforts to obtain more recent and detailed information about the complaints investigated and measures taken in response to them were unsuccessful.\(^\text{33}\)

In 2009, the United Nations Special Rapporteur on torture visited the juvenile prison in Astana and a centre for temporary isolation, adaptation and rehabilitation of minors. He reported receiving “credible allegations of regular severe beatings of detainees held in the punishment cells” in the juvenile prison, and that practically all the juvenile prisoners interviewed “reported that they had been beaten by police officers with police truncheons in order to extract confessions” while in police custody.\(^\text{34}\)

\(^{27}\) Ibid., amending Article 150 of the Code of Criminal Procedure (there are exceptions for unidentified persons, foreign residents, persons who have fled justice in the past etc.).


\(^{29}\) Ibid., amending Article 153.1 of the Code of Criminal Procedure.

\(^{30}\) Law No. 375-IV of 29 December 2010, adding Article 14-1 and Articles 22-1 to 22-6 to the Law on the Prevention of Juvenile Delinquency, Child Neglect and Homelessness.

\(^{31}\) Committee on the Rights of the Child, Consideration of reports submitted by States parties under Article 44 of the Convention, Second and third periodic reports of Kazakhstan, CRC/C/KAZ/3, 2006, para. 31.

\(^{32}\) Ibid., para. 182.

\(^{33}\) Information on this subject, covering the years 2006 to June 2009, was provided by the Ministry of Internal Affairs to a non-governmental organization, but it was not disaggregated by the age of the victims. See *Kazakhstan: No effective safeguards against torture*, Amnesty International, London, 2010, p. 24.

\(^{34}\) Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak – Mission to Kazakhstan, A/HRC/13/39/Add.3, 2009, Appendix, paras. 54 and 55.
These findings indicate that mechanisms designed to hold public officials responsible for violating the rights of juveniles are still largely ineffective. Indeed, the Special Rapporteur concluded, “The commission of acts of torture is facilitated by the inaction of prosecutors, judges, staff of the Ministry of Justice, the medical profession and lawyers in the face of allegations of torture and ill-treatment, and by the lack of effectiveness of inspection and monitoring mechanisms.”

In 2011, the Ombudsman, UNICEF and Penal Reform International signed a Memorandum of Understanding to recognize and train civil society organizations to monitor the situation of children in closed facilities, including detention and correctional facilities for juveniles, and educational facilities for offenders and children at risk.

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35 Ibid., para. 74.

36 Penal Reform International is an international NGO that has an office in Kazakhstan.
PART II. The Juvenile Justice System in Kazakhstan

1. Prevention

The assessments of juvenile justice carried out by the UNICEF Regional Office for CEE/CIS focus on secondary prevention (i.e., services or programmes for individual children or groups of children at a higher risk of offending). Primary prevention (i.e., programmes that benefit large sectors of the population, such as poor families) is not within the scope of this assessment.

A Law on the Prevention of Juvenile Delinquency, Child Neglect and Homelessness was adopted in 2004, and amended in 2007 and 2010. It recognizes important principles, including the principles of legality, humane treatment, confidentiality, support to families and the importance of an individual approach to each child at risk.\(^{37}\) The relevance of a comprehensive, evidence-based approach and cooperation with civil society is also recognized.\(^{38}\)

The Ministry of Education and Science, the Commissions on Juvenile Affairs and Protection of Minors (‘Commissions on Minors’) and the police, in particular the juvenile police, all participate in the prevention of offending.\(^{39}\)

**Commissions on Juvenile Affairs and Protection of Minors**

The Commissions on Juvenile Affairs and Protection of Minors are collegial bodies that operate under regional and local governments.\(^{40}\) Membership includes the police, the Department of Education, the Department of Health, the local government and, at the discretion of the local or regional government, NGOs.\(^{41}\) The legal basis of the Commissions is a Statute adopted in 2001 and amended in 2005.\(^{42}\) It provides that the work of the Commissions shall be guided by the Law on the Rights of the Child, the Law on the Prevention of Juvenile Delinquency, Child Neglect and Homelessness and the international treaties in force for Kazakhstan.

The Commissions have a very broad mandate regarding child rights, child protection and juvenile justice. Their mandate regarding juvenile justice includes research on offending by children, the collection and dissemination of information, the development of methodologies on prevention, the inspection of residential facilities for juvenile offenders (as well as other residential facilities for children) and the coordination of the activities regarding the employment and lodging of persons released from juvenile facilities.\(^{43}\) However, they do not have direct responsibility for providing services related to secondary prevention.

**Juvenile police and school inspectors**

The police maintain a register of children who have been involved in offending, including children who have participated in criminal behaviour while under the age of criminal responsibility, have been released from correctional facilities, abuse alcohol or use drugs, are homeless or live on the streets.

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\(^{37}\) Law on the Prevention of Juvenile Delinquency, Child Neglect and Homelessness, Article 3.2; see also Article 3.3.

\(^{38}\) Ibid., Article 3.3, paras. 7–8 and Article 3.4, para. 7.

\(^{39}\) Other bodies sharing this responsibility include the public health authorities and employment services.

\(^{40}\) There is also a Commission on the national level.

\(^{41}\) Law on the Prevention of Juvenile Delinquency, Child Neglect and Homelessness, Article 9.5.


\(^{43}\) Ibid., Articles 2.8(4), 2.8(6), 2.8(7), 2.8(9), 2.9(2) and 2.9(11).
as well as children considered at risk of offending. They are visited monthly and a report on their conduct is made. Few services are provided to registered children, although they are invited to summer camps at the expense of public authorities. During the 2009–2010 school year, 18,431 children were registered.\textsuperscript{44}

A category of police officer called ‘school inspector’ was established in 2005. Each school inspector is assigned to one or two schools, and his/her main function is to prevent offending. In 2011, 1,595 school inspectors were assigned to 56 per cent of Kazakh schools. They work in close cooperation with the school administration and with the Ministry of Education’s Committees for the Protection of Children’s Rights. School inspectors give talks to students on the law and related subjects such as drug abuse; they monitor the behaviour of students and, when they detect problems in the home, they encourage parents to fulfil their parental responsibilities. They can refer students to the Commissions on Minors for actions such as placement in alternative care. They also supervise periodic drug testing in schools, and help enforce laws prohibiting the sale of alcohol to persons under age 18.

Doubts have been expressed regarding the effectiveness of the juvenile police. One study states, “Problem juveniles do not trust police officers and do not try to develop friendly relations with them.”\textsuperscript{45} Another source considered that their function is to deter offending by “keeping children in fear,” and yet another expressed the view that police are seen as a potential enemy and not trusted because of Kazakhstan’s history. The police themselves assure that their role is to “be a friend to children” and that the number of offences has declined in districts having school inspectors.

\section*{2. Police, investigation of criminal activities and pretrial detention}

\textit{Detention for questioning}

Police are authorized to take a person into custody in the following circumstances: when an individual does not possess identification papers; when an individual is discovered in the process of committing an offence; when a witness identifies an individual as the perpetrator of an offence; when there is physical evidence of involvement in an offence (e.g., blood stains, possession of a stolen object); when an individual is found fleeing a crime scene or has no fixed residence; or when police possess other evidence of participation in or preparation of a serious offence.\textsuperscript{46} An individual may be kept in custody for these reasons without a court order for 72 hours, regardless of his/her age.\textsuperscript{47}

After 72 hours, deprivation of liberty must be authorized by a court.\textsuperscript{48} The detention of a juvenile may be ordered “in exceptional cases only, when a grave crime or felony is committed,” and may not exceed six months.\textsuperscript{49} The accused and his attorney have the right to attend the hearing on detention as well as the right to remain silent, and the presence of the parent or guardian of the accused juvenile is mandatory.\textsuperscript{50}

\textsuperscript{44} Committee for the Protection of Children’s Rights, Key indicators on child protection of the Republic of Kazakhstan 2010, Ministry of Education and Science, Astana, p. 9.

\textsuperscript{45} Sange Research Center, Development of the Model of Rehabilitation Center for Minors, Almaty, 2004, p. 33. (This study was undertaken before the creation of the school inspectors.)

\textsuperscript{46} Code of Criminal Procedure, Article 132.

\textsuperscript{47} This standard applies to juveniles and adults alike.

\textsuperscript{48} Code of Criminal Procedure, Articles 142.1 and 150.1.

\textsuperscript{49} Ibid., Article 491.3 and 491.4.

\textsuperscript{50} Ibid., Articles 150.6, 169.1 and 487.1
When the suspect is under age 18, a parent or other responsible must be notified within 12 hours. In some police stations, a special room has been set aside for the questioning of children and juveniles taken into custody. The presence of an attorney is obligatory from the moment he/she is taken into custody or accused, and during any interrogation as a suspect or accused. Children and juveniles may not be interrogated for more than two hours at a time or more than four hours a day, nor at night. In the past, there reportedly was a practice of interrogating children as witnesses, even when they are actually suspects, and using what they say to pressure them into admitting participation in an offence.

Children under the age of criminal responsibility are interrogated when suspected of participation in criminal behaviour, in order to establish the facts. Once these have been ascertained to the satisfaction of the police investigators, they decide whether to refer the case to the Commission on Minors. The police maintain a registry of offences committed by underage children and the children involved.

In 2009, the United Nations Special Rapporteur on torture concluded, based on confidential interviews with convicted juveniles, that the use of beatings to extract confessions was widespread.

**Detention centres (‘isolators’)**

Although responsibility for correctional facilities was transferred to the Ministry of Justice in 2002, the Ministry of Internal Affairs retained responsibility for ‘temporary isolators’ for persons charged with an offence whose detention prior to trial has been approved by a court. There are 20 such facilities throughout the country. The maximum length of detention is six months. Data provided by the General Prosecutor’s Office in 2008 indicated that the average length of detention (from arrest to trial) was 79 days. Recent data indicate that the number of juveniles in pretrial detention has decreased by 80 per cent during the last five years.

A report on conditions in an isolator in Astana prepared by UNICEF staff in 2009 indicated that the four male juveniles confined there at the time of the visit were housed in a separate cell, on a floor where there are cells for adults. The centre has facilities for men and women, but no adolescent girls were detained there at the time of the visit. As there was no separate area outside the cell, either indoors or outdoors, reserved for the use of juvenile detainees, they were confined in their cell for most of the day. The facility was in the process of renovation and, as a result, physical conditions were much improved. There was a library containing old books and space in the cells to keep personal belongings. Juvenile detainees receive visits from their families, and the staff included a psychologist. The Director recognized, however, that the quality of psychosocial services and of recreation facilities needed to be improved.

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51 Ibid., Article 138.
52 One such room was visited in Almaty, in 2008. It was furnished comfortably, and had some stuffed animal toys as well as equipment for video recording of interviews.
53 Code of Criminal Procedure, Articles 71 and 486.2.
54 Ibid., Article 485.
56 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak – Mission to Kazakhstan, A/HRC/13/39/Add.3, supra, para. 55.
57 From 546 on 1 January 2007 to 105 on 1 January 2011. Data provided by the Ministry of Justice to Penal Reform International and UNICEF.
58 The United Nations Special Rapporteur on torture found that ‘most’ juvenile prisoners interviewed reported having been detained “in cells with male adult detainees” before trial. See A/HRC/13/39/Add.3, supra, para. 55.
3. Diversion and mediation

Diversion

Article 67 of the Criminal Code authorizes the closure of cases without prosecution (lit.: release from criminal liability) when the victim and the offender have reconciled and the victim has been compensated. It applies to minor offences and offences of ‘medium gravity’ committed by any person, regardless of age. In 2010, a new paragraph was added, allowing juvenile first offenders to be released from liability for grave offences, provided death or serious bodily harm was not caused. Another paragraph added in 2010 allows cases to be closed on these grounds when the victim is society or the state, rather than a private individual.

This article was rarely applied in the past. However, recent data from the children’s court in Astana indicate that 22 per cent of the cases of accused juveniles prosecuted between 2008 and 2010 were resolved by reconciliation.

Mediation

A Law ‘On mediation’ came into force in August 2011. It authorizes mediation in various kinds of cases (civil, family, labour), including cases involving minor crimes and crimes of medium gravity committed by juveniles, i.e., intentional crimes punishable by a prison sentence of less than five years, or crimes of negligence punishable by a prison sentence of more than five years. Mediation may be performed either by a professional mediator or by a registered mediator who is not a professional. It can take place before legal proceedings have begun, during the preliminary stage of criminal proceedings, or during trial. The consent of both parties is required and, if either party is under age 18, the participation of a pedagogue or psychologist is required. An agreement to mediate does not stay criminal proceedings, but a settlement agreement allows the prosecutor to close the case.

4. Adjudication

The minimum age for adjudication (‘age of criminal responsibility’)

The minimum age for prosecution for serious offences is 14 years; the minimum age for prosecution for other criminal offences is 16 years. Twenty-one crimes are classified as serious for this purpose, ranging from terrorism, murder, rape, kidnapping and felony assault to theft and vandalism. In 2010, the Code was amended to allow juveniles under age 16 to be prosecuted for theft, robbery and extortion only when aggravating circumstances, such as use of violence, are present. This is an important reform, since theft is the most common offence committed by juveniles.

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59 Law No. 354-IV of 23 November 2010 ‘On amendments to some legislative acts of the Republic of Kazakhstan concerning the issues of protection of child rights’.
60 Law No. 401-IV of 28 January 2011 ‘On mediation’.
61 Ibid., Article 1 and Criminal Code, Article 10.3.
62 Criminal Code, Articles 9 and 15.
63 Ibid., Article 20.2.
64 Ibid., Article 24.3.
65 Ibid., Article 27.7 and Code of Criminal Procedure, Article 38.1.
66 Criminal Code, Article 15.
67 Ibid., Article 15.2.
68 Law No. 354-IV of 23 November 2010 ‘On amendments to some legislative acts of the Republic of Kazakhstan concerning the issues of protection of child rights’.
Specialized courts and procedures

In 2007, two specialized courts were established by Presidential Decree, one in Almaty and one in Astana. In 2008, a law concerning the jurisdiction and competence of these courts was adopted. These courts are not juvenile courts in the usual sense of the word. Their competence is not limited to crimes committed by juveniles; it also includes child protection cases and certain family law cases, such as custody and adoption. The mandate of these specialized courts over crimes committed by juveniles does not cover cases involving especially grave crimes.68 In the rest of the country, juveniles accused of an offence are tried in ordinary criminal courts although, as indicated above, the Juvenile Justice System Development Concept calls for the creation of a national network of such courts.

In principle, the prosecutors who appear in such courts should be specialized, but specialized prosecutors had not yet been appointed and trained.

Data on the caseload of the specialized court in Astana indicate that, between 2008 and 2010, it handled 1,988 cases, including 310 cases (16 per cent of the caseload) against juvenile offenders, 675 family law cases (34 per cent of the caseload) and 931 administrative cases (47 per cent of the caseload).70

The right to legal assistance

Juvenile offenders have the right to be represented by defence counsel, including the right to free legal assistance if necessary. The rights of the defence are defined in detail by the Code of Criminal Procedure, and are compatible with international standards.71

In Almaty and Astana, specialized groups of lawyers defend juvenile suspects and accused juveniles who are not represented by a private lawyer. They work together with a psychologist and student volunteers, who assist in preparing information relevant to legal issues as well as providing basic psychosocial assistance. No financial support is received from public sources, except for the modest fees paid to lawyers appointed to defend poor clients in criminal cases.

The right to be tried without delay

The Convention on the Rights of the Child recognizes the right of accused juveniles to be tried “without delay,” and the Committee on the Rights of the Child has indicated that “final decision on the charges” should be made “not later than six months after they have been presented.” 72

The time limit for completing trials of juvenile offenders is two months.73 Detention before trial, as indicated above, may not exceed six months. Information on the length of trials in practice is not available. Although the combination of these two time limits does not guarantee compliance with the Committee’s recommendation, it seems likely that their combined effect probably ensures that most cases of accused juveniles are adjudicated within six months.

68 Code of Criminal Procedure, Article 290-1.
70 The other cases were ‘special appeals’.
71 Code of Criminal Procedure, Article 74.
72 Convention on the Rights of the Child, Article 40.2(b) (iii); Committee on the Rights of the Child, Children’s rights in juvenile justice, General Comment No. 10, CRC/C/GC/10, 2007, para. 93.
73 Code of Criminal Procedure, Article 153.
5. Sentencing of juvenile offenders

When a juvenile is convicted of an offence, two types of dispositions are possible: ‘penalties’ or educational measures (lit.: compulsory measures of educational influence). Penalties, also referred to as punishment, may be custodial or non-custodial. They may include a suspended sentence of imprisonment. Educational measures too may be custodial or non-custodial, as explained below.

Non-custodial sentences

The sentences (lit.: penalties) that may be imposed on convicted juveniles include fines, community service, corrective labour and ‘restriction of liberty’.74

Fines may be imposed only if a juvenile has income or property.75 Corrective labour consists of retaining part of the wages of an offender who is employed; it may only be imposed on a convicted juvenile over age 16.76 Community service (lit.: compulsory works) may be imposed on juvenile offenders of any age, although those under age 16 may only work two hours per day. These sentences are rarely imposed, however.77

A sentence of restriction of liberty is similar to home arrest combined with compulsory school attendance.78 It involves registration with the juvenile police, who monitor the family to ensure that parents control the offender’s use of leisure time. The imposition of this sentence fell in 2009 and 2010, but increased in 2011.79

A report on the children’s court in Astana indicates that, in 2010, eight convicted juveniles were given custodial sentences and 92 were given suspended sentences.80

Educational measures

Educational measures may be imposed on juveniles who have committed a minor offence, or first offenders aged 16–18 years convicted of an offence of average gravity. They include warnings, release in the custody of parents, a guardian or school, reparation of the damage, apology, restrictions or requirements regarding the offender’s conduct, and placement in a special school or medical facility for juveniles.81 Placement in a special school may not be imposed for minor offences

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74 Criminal Code, Article 79.1. (There is also a sentence called ‘deprivation of the right to engage in certain activity’ but it has fallen into disuse.)
75 Ibid., Article 79.2.
76 Ibid., Article 43.
77 In 2004, community service sentences were imposed on 62 juvenile offenders and 6 were sentenced to fines; in 2005, community service sentences were imposed on 55 juvenile offenders and 3 were sentenced to fines; and in 2006, community service sentences were imposed on 33 juvenile offenders and 1 minor was sentenced to a fine (see Committee on the Rights of the Child, Written replies by the Government of Kazakhstan concerning the list of issues received by the Committee on the Rights of the Child relating to the consideration of the second and third combined periodic report of Kazakhstan, CRC/C/KAZ/Q/3/Add.1, 2007, p. 12). More recent data on sentences to community service provided to UNICEF by the Committee on Legal Statistics and Special Accounts of the General Prosecutor’s Office indicate that the number of such sentences declined from 31 in 2008 to 2 during the first six months of 2011.
78 Criminal Code, Article 45.
79 Restriction of liberty was imposed on 107 juveniles in 2006, 57 in 2009, 59 in 2010, and 149 during the first six months of 2011. Data provided to UNICEF by the Committee on Legal Statistics and Special Accounts of the General Prosecutor’s Office.
81 Criminal Code, Article 81.1.
or non-intentional offences of medium gravity. The duration of placement is from six months to two years for a crime of medium gravity or a grave crime. Offenders may be released if the court finds, on recommendation from the staff of the facility, that placement is no longer necessary.

The number of juvenile offenders who have been sentenced to educational measures has increased from 132 in 2000 to 528 in 2006, but later fell to 151 in 2008 and 160 in 2009. Offenders on whom such measures are imposed do not have a criminal record.

**Prison sentences**

At the time of the 2008 assessment mission, prison sentences could be imposed on juveniles aged 14 or 15 years convicted of a grave crime, and juveniles aged 16 or 17 years convicted of a crime of moderate gravity. An amendment to the Criminal Code adopted in 2011 provides that no juvenile may be given a prison sentence unless sentenced for a grave crime. The maximum sentence that may be imposed on a juvenile is 10 years, or 12 years for murder with aggravating circumstances.

The number of juveniles given custodial sentences reportedly has fallen from 1,668 in 2000 to 660 in 2009. Recent data indicate that the population of juvenile prisons has fallen by 64 per cent in the past five years, from 425 in 2007 to 153 in 2011.

**Suspended or conditional sentences**

The court may also decide to suspend the implementation of prison sentences conditionally, if it concludes that rehabilitation is possible without serving the sentence. In 2009, the duration of probation for juveniles given a suspended sentence was reduced from one to three years, to six months to a year. From 1996 to 2000, the share of suspended prison sentences in the total number of prison sentences imposed on minors rose from 11 per cent to 66 per cent. As indicated above, in 2010, more than 90 per cent of the sentences imposed by the children’s court in Astana were suspended sentences.

There are no programmes to assist offenders given suspended sentences.
6. Centres for adaptation of adolescents

Until 2010, the juvenile police operated ‘centres for temporary isolation, adaptation and rehabilitation of minors’. There were 18 such centres, one in each region. Their mandate was defined by the Law on the Prevention of Juvenile Delinquency, Child Neglect and Homelessness, and their main purpose was to temporarily house children aged 3–18 years in need of protection while they are identified, their situation is evaluated and a suitable placement is arranged. In addition, children involved in criminal activity while too young to be prosecuted could be confined there for up to 30 days at the order of a prosecutor or court, and juveniles aged 14 –18 years or older accused of a crime could be detained there for up to six months on the order of a prosecutor or court. During the 2009–2010 school year, 7,598 children were placed in these centres, including 6 underage offenders and 117 accused juveniles.

In 2010, responsibility for these centres was transferred to the Ministry of Education and Science and they were renamed ‘centres for adaptation of adolescents’ (TSANs). A new regulation, adopted in January 2011, defines the main tasks of the centres, as follows:

- to provide social and psychological assistance to minors, their parents or other legal representatives in order to overcome difficult situations;
- to develop and provide implementation of individual programmes on the social adaptation of minors; and
- assist the return of minors back to their families.

In principle, the centres are open. The number of centres has been reduced, and conditions in those that remain have improved. The walls are nicely decorated and psychologists work in ‘development rooms’ where children have access to Internet and participate in art therapy.

Children who are homeless or neglected or whose lives or health are at risk may be placed by the guardianship authority for up to three months. The only other ground for admission is a court order ordering a child to be placed in a special school. Children placed by a court may include juveniles involved in criminal activity while too young to be prosecuted.

The authorities believe that the transformation of these centres is contributing to the prevention of offending. However, there is still a large gap between the kind of prevention activities supported or carried out by local governments and the juvenile police, and the kind of assistance (e.g., guidance and counselling, remedial education, life skills training) that is available only to children in residential facilities. The establishment of community-based programmes providing more comprehensive assistance should be a priority.

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93 Law on the Prevention of Juvenile Delinquency, Child Neglect and Homelessness, Article 11.1, 11.2 and 11.5; Statute of Centres for Temporary Isolation, Adaptation and Rehabilitation of Minors, Articles 3(2) and 7.
94 Key indicators on child protection of the Republic of Kazakhstan 2010, supra, p. 9.
95 Rules of Minors’ Placement in Centres for Minors’ adaptation approved by the Order of the Ministry of Education and Science of the Republic of Kazakhstan on 10 January 2011, No. 1, Article 5, paras. 1, 2 and 5.
96 Ibid., Article 7 provides, “Technical facilities of the centre shall provide conditions for twenty-four-hour control of minors with a possibility of free entrance and exit outside the center.” There are no longer bars on the windows.
97 Ibid., Articles 8.1, 8.2, 9.2, 12 and 15.
98 Ibid., Articles 8.3, 9.1 and 17.
PART III. Conclusions and Recommendations

POSITIVE DEVELOPMENTS

1. The government appears to have a strong commitment to cooperating with the international community, to implementing international standards, and to achieving transparency. It was the first country in Central Asia to open a juvenile prison and detention centre to scrutiny by the United Nations Special Rapporteur on torture.

2. The legislation in force is compatible with international standards in many respects, including the age of criminal responsibility, which complies with the recommendations of the Committee on the Rights of the Child. It recognizes the right to legal assistance as from first interrogation; prohibits interrogation for more than two hours at a time and four hours per day; it requires pretrial detention of accused juveniles be authorized by a court and not exceed six months; first offenders convicted of minor crimes and first offenders under age 16 convicted of crimes of medium gravity may not be sentenced to prison; and the maximum sentence that may be imposed – except for homicide – is 10 years.

3. The ‘Juvenile Justice System Development Concept’ signed by the President in 2008 establishes the basic framework for the future juvenile justice system: a nationwide network of specialized courts or judges, specialized prosecutors, specialized police and investigators and specialized legal defence teams; better coordination of social, educational and preventive/protective services at the local level; integration of social and psychological services for adolescents into the juvenile justice system; and further development of university and postgraduate education for juvenile justice specialists.

4. The number of reported offences by juveniles has decreased significantly since independence.

5. During the last decade, the number of juvenile offenders sentenced to prison has fallen by 60 per cent, and during the last five years the number of juveniles serving prison sentences reportedly has diminished by 64 per cent.

6. During the last five years, the number of juveniles detained before trial has decreased significantly.

7. In the capital and former capital, specialized juvenile courts handle cases of offending by juveniles, as well as other cases involving children.

8. In Almaty and Astana, teams of specialized police investigators were established to investigate crimes committed by juveniles, as well as crimes against children. A recent Ministerial Order calls for such teams to be established throughout the country.

9. The integration of psychologists and/or social workers into the correctional system, police and legal defence teams has begun, and the ‘Concept’ foresees that they will become an integral part of the new juvenile justice system.

10. Conditions in colonies for juvenile offenders are good in many respects. They include professional counselling and links between professional staff and university departments; humane attitudes of senior staff; a broad range of activities, such as secondary and vocational education, sports, music, theatre and art, religious services, information technology, libraries and reading rooms; generous use of early release; low level of disciplinary problems due to a preventive approach; quality of medical care and food; and support to family visits.
11. A law authorizing victim-offender mediation has been adopted.

12. Conditions in the centres for adaptation of adolescents have improved since they were transferred to the Ministry of Education and Science. The centres are semi-open, and children may no longer be placed for up to 30 days by order of a prosecutor.

13. The General Prosecutor’s Office collects detailed data on offences committed by juveniles and the processing of cases involving juveniles.

CHALLENGES

1. Efforts to prevent offending focus on primary prevention, and secondary prevention consists essentially of registration and supervision by the juvenile police or placement in special schools. Police can play a useful role in prevention, but they do not have the range of skills needed to do it alone. The absence of community-based programmes makes it impossible to obtain psychosocial assistance without the separation of children from their families and communities.

2. Although the right to free legal assistance is recognized, the fees paid to lawyers appointed to assist poor offenders are low and the quality of the services provided by lawyers who are not specialized often is inadequate.

3. Many convicted juvenile offenders receive conditional sentences, but there is no specialized agency to supervise offenders given suspended or alternative sentences, and there are no programmes to provide rehabilitation in the community for offenders diverted from prosecution.

4. Some provisions of the law in force are incompatible with international standards, in particular the provision of the Code of Criminal Procedure that allows children to be deprived of liberty for the purpose of investigation for up to 72 hours, although the Committee on the Rights of the Child considers that juveniles deprived of liberty should be presented to a court within 24 hours.

5. Juveniles in pretrial detention facilities are kept in separate cells, on floors where adults are also detained. They spend most of their time in their cells and have little or no opportunity to participate in recreational, cultural and educational activities.

6. Solitary confinement may be used as a disciplinary measure in juvenile prisons, although international law considers solitary confinement of juveniles as cruel and inhumane treatment.

7. While considerable training in child rights and juvenile justice has taken place, training has not yet been sufficiently incorporated into the curricula of the institutes and academies that train juvenile justice professionals.

8. Efforts to investigate violations of the rights of juvenile suspects and prisoners are neither transparent nor effective.

9. Although the ‘Concept’ envisages the integration of social workers and psychologists into the juvenile justice system, it is unclear how such services will be organized. There is no probation service and some of the functions usually ascribed to probation services are assigned to ‘social workers of the juvenile courts’, a job classification that does not yet exist. Functions such as preparing recommendations regarding sentencing and supervising released prisoners are attributed to social workers, but there is no indication as to the agency to which they would be attached. Some social work functions are mentioned as being the responsibility of specialized
police inspectors and the Prison Department. It is unclear what body would be responsible for supervising accused juveniles who benefit from diversion or alternative sentences.

10. There is little research on issues concerning juvenile justice, despite the existence of qualified national experts. This is unfortunate, since the social and economic changes that have occurred since independence and the reported decline in offending pose important questions as to the causes of offending and prevention.

RECOMMENDATIONS

1. Secondary prevention
Consideration should be given to establishing, on a pilot basis, a community-based programme for children at higher risk of offending that provides counselling, remedial education, life skills and similar services to these children and their families. Such a programme might be linked to existing efforts to establish family support centres.

2. Diversion
Mediation, which is to be introduced in 2011, can be expected to increase the number of cases closed without prosecution. Other forms of diversion should also be recognized, however, including voluntary participation in structured community-based programmes for the prevention of reoffending or voluntary acceptance of obligations or requirements such as attending school or avoiding certain places or persons. At present, measures of this kind can be imposed by a court as an alternative sentence, but cannot be accepted on a voluntary basis as an alternative to prosecution.

3. The police
Special rooms for the interrogation of juvenile offenders and child victims should be introduced throughout the country.

The practice of consulting police psychologists about the best way to carry out law enforcement responsibilities with children and juveniles should be continued and reinforced.

The police contribution to prevention should be part of a broader interdisciplinary approach. Although there is good cooperation between the juvenile police and clubs, special schools, Commissions on Minors and NGOs, community-based programmes that provide psychosocial services and medication are also needed.

4. Detention prior to trial
A plan should be developed to ensure that juveniles who must be deprived of liberty before trial are confined in units where they have no contact with adults, are not forced to spend most of the day in their cells and have adequate access to educational, recreational and cultural activities.

5. Prosecution
Prosecutors handling cases should be fully trained and selected on the basis of their understanding and commitment to the rights of children. Experience shows that the knowledge and skills needed to handle cases involving children are more fully developed when prosecutors concentrate exclusively on such cases. In some districts, however, the number of cases may be too low to establish a special unit for children’s cases. Consequently, where the number of cases involving children, either as victims or as accused, is substantial, a specialized unit should be established; in other districts, prosecutors should be specially selected and trained, even though they are not assigned to handle
such cases exclusively. Instructions, a code of conduct and protocols for the handling of cases involving children should be established, and compliance with them should be monitored.

6. Legal services

The specialized legal services such as those in Almaty and Astana can contribute to the efficient administration of juvenile justice. In addition to guaranteeing respect for the rights of individual juveniles, they also play a valuable role in helping ensure that laws are respected and applied correctly. The ‘Concept’ recognizes the value of incorporating psychosocial services into specialized legal services for children, and calls for similar centres to be set up throughout the nation. The assessment team recommends that this be given high priority and sufficient funds be allocated from the public budget.

7. Courts

The ‘Concept’ recognizes that “the specialized juvenile court must be the most important part of the juvenile justice system,” and calls for study of the best way “to spread the positive experience of specialized (juvenile) courts throughout the whole territory of the Republic.” The experience of the two existing courts should be analysed, in order to incorporate any relevant lessons into the planned creation of specialized courts throughout the country. A plan should be drawn up for the progressive establishment of specialized courts in all cities and regions where the caseload would be sufficient, and to develop policies designed to ensure that cases in all areas are handled without undue delay by judges and prosecutors having knowledge and understanding of the applicable law, procedures and practices.

8. Legislation

Interest has been expressed in the development of a law specifically on juvenile justice, and consideration should be given to the elaboration of a comprehensive law on juvenile justice that would bring the legislation into greater harmony with international standards and principles, in the context of Kazakhstan’s social and economic conditions and legal and cultural traditions.

Priority should be given to bringing the law into compliance with the recommendation of the Committee on the Rights of the Child that children deprived of liberty should be presented to a court within 24 hours to determine whether there are sufficient reasons to continue the deprivation of liberty and to provide judges with an opportunity to detect physical abuse of suspects.

In addition to amending provisions of the existing law that are not in harmony with international standards, the new law should regulate matters not addressed by the existing legislation on questions such as the role of social workers and psychologists, the measures to be taken to ensure that children and juveniles understand legal proceedings concerning them and feel able to express their views, and many others.

If requested, UNICEF should assist the national authorities in obtaining access to information about the legislation and experiences of other countries, and in sharing their experiences with the authorities of other countries engaged in the process of creating juvenile justice systems.

9. Detention during investigation and trial

Conditions in pretrial detention facilities where juveniles are detained should be reviewed to identify conditions that are not compatible with international standards, in particular those regarding

99 See Juvenile Justice System Development Concept, section 4.1.
separation from adults, exercise, medical care and participation in educational, recreational or other beneficial organized activities. An appropriate deadline should be set for making the changes necessary to meet such standards and once the deadline has passed no juveniles should be admitted to any detention centre that does not meet them.

10. Community-based rehabilitation programmes

Consideration should be given to the establishment of a specialized service for supervising accused juveniles who benefit from diversion, probation or alternative sentences, staffed by social workers or persons with similar training. The same service could also prepare social reports for the consideration of prosecutors and courts, supervise juveniles released from correctional facilities before completing their entire sentence, and assist those released from correctional facilities.

11. Accountability

The investigation of abuses of juvenile suspects and offenders should be transparent and effective. Criminal investigations shall be opened against any public official suspected of participation in unjustified acts of violence against a juvenile suspect, detainee or prisoner. Appropriate criminal or administrative sanctions should be imposed on any public official who fails to report or thoroughly investigate acts of violence against juveniles by persons under his/her supervision.

12. Training

The ‘Concept’ calls for the development and reinforcement of child rights and juvenile justice education at the postgraduate level for relevant professions. The recommendations made by the training needs assessment conducted in 2011 should be carried out. The training needs of the staff of the juvenile colonies should be assessed as well, and appropriate training modules and materials should be developed.

13. Interinstitutional coordination and cooperation

A permanent interinstitutional body should be established to coordinate the work of the various bodies having a role in the future juvenile justice system. Although such a body may not have decision-making powers, it could coordinate the activities of different actors, help monitor the functioning of the system and make recommendations to the competent legislative, executive and judicial authorities. Consideration also should be given to the establishment of juvenile justice councils at the local level, as recommended in 2006 by the interministerial group that coordinated the juvenile justice pilot project.

14. Data and research

Data collection and the data management system should be reviewed to identify those data that are relevant to decisions that will have to be taken in developing a national juvenile justice system, and to determine how it can contribute to monitor the operation and measure the impact of the new system. For example, the data should be taken into account in deciding how many specialized courts are needed and where, to calculate the impact the establishment of a probation service would have on the need for special schools, and similar questions. The data management system should also be used to watch the impact of new institutions such as mediation, and to monitor the respect for children’s rights, for example, by producing data on the number of juveniles detained while awaiting trial and how long they wait for trial.
Policy decisions should take into account objective research by qualified specialists. The creation of a juvenile justice system should include the establishment of a fund for research on issues like the causes of certain kinds of offences and the longer-term impact of different forms of treatment of offenders. Although the creation of a juvenile justice system cannot be postponed while such research is carried out, a research programme undertaken in parallel to the development of the juvenile justice system will help resolve issues that emerge as the system becomes operational and matures.
Annex 1. Documents consulted in the preparation of this update

Legislation

Law No. 401-IV of 28 January 2011 ‘On mediation’

Law No. 393-IV of 18 January 2011 ‘On the introduction of changes and addenda into some legislative acts of the Republic of Kazakhstan concerning the issues of further humanization of criminal legislation and strengthening of lawfulness guarantees in the criminal process’

Law No. 375-IV of 29 December 2010 ‘On amendments to some legislative acts of the Republic of Kazakhstan on securing grounds, procedures and conditions for keeping persons in facilities of temporary isolation from society’

Law No. 354-IV of 23 November 2010 ‘On amendments to some legislative acts of the Republic of Kazakhstan concerning the issues of protection of child rights’


Law No. 64-IV of 5 July 2008 ‘On amendments and additions to some legal acts of the Republic of Kazakhstan on the specialized interregional juvenile courts’

Decree No. 385 of 23 August 2007 ‘On establishment of the specialized interregional juvenile courts’

Other governmental documents


Written replies by the Government of Kazakhstan concerning the list of issues received by the Committee on the Rights of the Child relating to the consideration of the second and third combined periodic report of Kazakhstan, published as United Nations document CRC/C/KAZ/Q/3/Add.1, 2007

Juvenile Justice System Development Concept, Presidential Decree of 18 August 2008

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