ASSESSMENT OF JUVENILE JUSTICE REFORM ACHIEVEMENTS IN KOSOVO

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

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Juvenile Justice in Kosovo

Note on the Assessment Mission

The mission took place from 5 to 16 October 2009. The assessment team consisted of Dan O’Donnell, international consultant, and Saad Gashi, national consultant. Support was provided by Laura Fragiacomo, Ardian Klaiqi, Afrim Ibrahimi and Ivana Milosavljevic of UNICEF Kosovo.

The assessment team met with the President of the Supreme Court, the Chief Prosecutor, the Ombudsman, the President of the Commission on Legislation and the Judiciary of the National Assembly, the Permanent Secretary of the Ministry of Justice, the Director of the Probation Service, the Director of the Judicial Institute and representatives of the Correctional Service, the Ministry of Education, the Kosovo Police, the Prime Minister’s Advisory Office on Good Governance, Human Rights, Equal Opportunities and Gender Issues and a number of other judges, prosecutors and probation officers. The team also met with the President of the Bar Association, the Director of the Human Rights Centre of the University of Prishtinë/Priština, the Director of the NGO Terre des Hommes and representatives of the Organization for Security and Co-operation in Europe (OSCE) and the European Union Rule of Law Mission in Kosovo (EULEX Kosovo).

The assessment team visited Mitrovicë/Mitrovica and two Kosovo Serb areas whose governance is characterized by parallel administrative systems under Kosovo and Serbia: Zvečan/Zveçan, in northern Kosovo, and the enclave of Gračanica/Graçanicë. Following the mission, the local consultant conducted a second visit to the juvenile correctional/detention facility and interviewed a small number of prisoners and the medical doctor. He also interviewed an official of the municipal department of education in regard to the schooling provided in the juvenile prison.

Lists of persons interviewed and documents consulted are attached.

Note on the Scope of this Report and Terminology Used

In Kosovo, the law applicable to persons under the age of 18 suspected, accused or convicted of an offence also applies to young adults aged 18 to 21. This is compatible with both international and European standards, provided that no adverse consequences result for persons under the age of 18 (United Nations Standard Minimum Rules for the Administration of Juvenile Justice [Beijing Rules] Rule 3.3; European Rules for Juvenile Offenders Subject to Sanctions or Measures, Rule 17). Since the UNICEF mandate focuses on children under the age of 18, however, and since the legal framework for the assessment mission was based mainly on the Convention of the Rights of the Child, which does not apply to young adults, this report does not address issues concerning persons over the age of 18.

Since the English version of this report is intended primarily for a broad international readership, generic terms used do not always reflect the technical terminology used in English versions of the

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1 All non-historical references to 'Kosovo' refer to the United Nations Administered Province of Kosovo as per UN Security Council Resolution 1244 (1999). References to 'The Republic of Kosovo' are made only when referring to the constitution and government so denominated and do not imply recognition of the same or any position on the status of the UN Administered Province of Kosovo under international law.

2 The head of the assessment team visited Zvečan/Zveçan alone, as the national consultant did not have the security clearance required to travel there.

3 Two of the juveniles interviewed were serving sentences of imprisonment, and two were held under 'correctional-educational' measures.
relevant legislation. For example, the term ‘juvenile’ is used here to refer to persons under the age of 18 considered old enough to be prosecuted for an offence (i.e., aged 14 to 18); the same term, in contrast, is used in the Juvenile Justice Code to refer to ‘a child or young adult’. Similarly, the term ‘sentence’, used here to refer to any disposition imposed by a court on a convicted juvenile, is not used in the Juvenile Justice Code, which instead refers to ‘measures’ and ‘punishments’.

Executive Summary

When Kosovo first declared independence in 1991, the legal framework for juvenile justice consisted mainly of certain provisions in the Criminal Code and Code of Criminal Procedure of former Yugoslavia. Cases involving juveniles aged between 14 and 18 accused of a crime were heard by panels consisting of a judge for juveniles and two lay advisers. Cases involving traffic offences, disorderly conduct and other similar offences were heard by courts for petty offences. No specialized juvenile police, nor specialized juvenile prosecutors, existed. Prosecutors had some discretion not to prosecute but there were no diversion programmes to which juveniles could be referred as an alternative to prosecution. Non-custodial sentences for juveniles included supervision by parents or by social welfare authorities.

Data on offending by juveniles during the first decade following the first declaration of independence are no longer available. Recent data, although incomplete and somewhat inconsistent, indicate that offending by juveniles has increased significantly in recent years. The number of homicides and attempted homicides, in particular, increased sharply in 2008 and 2009. The number of juveniles serving prison sentences has fallen, but the number detained while awaiting trial has increased.

Two of the most important developments since the first declaration of independence are the entry into force in 2004 of the Juvenile Justice Code, prepared under the auspices of the UN Interim Administration Mission in Kosovo (UNMIK), and the establishment of the Probation Service. The majority of cases handled by the Probation Service, which became fully operational in 2004, involve juveniles.

The Juvenile Justice Code complies with international standards, but its implementation has been adversely affected by the lack of certain institutions and by insufficient human resources. These limitations are due in large part to financial constraints, but gaps in the legislation (for example, the absence of a law on mediation in juvenile cases) and the limited capacity of the Government of the Republic of Kosovo have also affected implementation of the Code. The number of juvenile cases annually in which dispositions are imposed by the courts is less than half the number of juvenile cases in which charges are filed.

Crime prevention is weak. Responsibility for prevention lies primarily with the social welfare authorities, but staff do not specialize in secondary prevention or assisting children involved in criminal activity. A good pilot project is being implemented by an NGO, however.

A considerable amount of training has already taken place and relevant institutions have incorporated training on juvenile justice into their curricula. The Ombudsperson monitors the rights of all children, including juvenile prisoners and detainees. Conditions in the juvenile correctional facility are good in many respects and the number of juveniles serving custodial sentences is relatively small (8 serving ‘prison sentences’ and 18 involved in ‘correctional-educational’ measures).
The situation in northern Kosovo, where the authority of the government in Priština is contested, is dire. The police are the only part of the juvenile justice system to have a presence. A good school-based prevention programme has been established, however.

UNICEF established an office in Kosovo in 1996. In 2007, a two-year, €1.3 million programme on juvenile justice began. One of the first activities was a situation analysis, which has had considerable influence. Most of the remaining activities consisted of training and advocacy, which have had mixed but generally positive results. Implementation was extended to October 2009 and funding obtained for a second two-year project to begin in 2010.

The recommendations made by the assessment team include the following:

- A permanent mechanism should be created for the exchange of information and the coordination of policies and activities concerning juvenile justice.
- In the process of amending the Juvenile Justice Code, consideration should be given to handing responsibility for choosing the most appropriate activities for cases diverted to the Probation Service; to limiting the duration of legal proceedings; to limiting the circumstances in which social inquiry reports are prepared; and to clarifying the jurisdiction over juveniles accused of minor offences.
- A law on victim-offender mediation for juveniles should be adopted without further delay.
- Training materials should be updated when the Juvenile Justice Code has been amended and the problems identified in this report concerning the role of social workers should be remedied. Training programmes should be based on needs assessments, minimum requirements for professionals specializing in juvenile justice should be established and a training programme for legal practitioners should be established in conjunction with the Chamber of Advocates.
- A strategy for the prevention of offending by children should be developed and the Centres for Social Welfare should adopt methodologies and develop expertise in the prevention of offending and reoffending, particularly with children under the age of 14.
- Priority should be given to the establishment of one or more non-residential centres or programmes for the rehabilitation of juvenile offenders. The facility for ‘correctional-educational’ measures should be detached from the juvenile prison.
- Consideration should be given to establishing one or more specialized juvenile or children’s courts.
- Support should be provided to allow specialization within the police in regard to the proper treatment of children involved in crimes, whether as offenders, victims or witnesses.
- Data on offending by children and juveniles should be centralized, published and distributed, and the indicators used regularly reviewed to ensure that they remain relevant to policy decisions that must be made.
- The possibility should be explored of introducing informal, community-based, victim-offender mediation in those areas of Kosovo where juvenile justice institutions are inoperative.
Background

Kosovo was divided between Serbia and Montenegro after the collapse of the Ottoman Empire in 1912, and integrated into the Kingdom of Serbs, Croats and Slovenes (later the Kingdom of Yugoslavia) in 1918. Under the Socialist Federal Republic of Yugoslavia it had the status of autonomous province, until that status was revoked by Serbia in 1989.

Kosovo declared independence in 1991. Armed struggle between Serbian forces and the Kosovo Liberation Army erupted in 1997, and a campaign of ethnic cleansing took place in 1998. The bombing of the Serbian capital of Belgrade by NATO in 1999 led to the withdrawal of Serbian forces, and UN Security Council Resolution 1244 (1999) established a transitional administration, the UN Interim Administration Mission in Kosovo (UNMIK).

Elections were held in 2001, leading to the establishment of the Provisional Institutions for Self-Government of Kosovo. UNMIK began transferring functions to this government in 2003. The present government was elected in 2007. The legal system has, in large part, been developed by OSCE and the international community under the auspices of UNMIK.

The Republic of Kosovo has now been recognized by 65 states. It is not a member of the United Nations, nor the Council of Europe. The General Assembly of the United Nations has requested that the International Court of Justice issue an advisory opinion on the validity of Kosovo’s unilateral declaration of independence.

A second declaration of independence was made in 2008, following the failure of UN-sponsored negotiations concerning the future of Kosovo. Many of the functions of UNMIK were transferred to the European Rule of Law Mission in Kosovo (EULEX Kosovo) in June 2008. A constitution was adopted in 2008, identifying the Republic of Kosovo as a unitary state, with a unicameral legislature and parliamentary form of government. It has 36 municipalities. In June 2009, Kosovo became a member of the World Bank and the International Monetary Fund, two important steps towards securing much-needed international aid and support for economic development.

Parts of the territory of Kosovo are not, in actual fact, under the effective control of the Government of Kosovo. The largest such area is a band of land in northern Kosovo that borders Serbia, where the majority of the population are ethnic Serbs who respond to the Serbian rather than Kosovar authorities. A similar situation also exists in a number of smaller Serb-majority enclaves within Kosovo. With the exception of the police, public services in these areas are financed and administered by Serbia. The justice system does not function in the North Mitrovicë/Mitrovica and Zvečan/Zveçan areas.

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6 General Assembly Resolution A/RES/63/3, United Nations, 8 October 2008. (Hearings on the request took place from 1 to 11 December 2009; the opinion of the Court has not yet been announced.)
7 In 2007, talks between the Kosovo Unity Team and the Republic of Serbia, mediated by the UN Secretary General’s Special Envoy, concluded with the development of the Ahtisaari package, which called for supervised independence in Kosovo. The Security Council failed to consider the package, however, given the threat of a Russian veto.
9 An EU report concluded: “The constitution is in line with European standards, which require stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.” Ibid., p. 8.
10 Ibid., p. 6, p. 11; see also Annex I of the present report.
Since Kosovo is not recognized by the UN as a state, it is not one of the States Parties to the Convention on the Rights of the Child. Article 22 of the Constitution of Kosovo recognized, however, the direct application of the Convention on the Rights of the Child in Kosovo. Moreover, since the Convention on the Rights of the Child came into force in Kosovo in 1991, following its ratification by the Socialist Federal Republic of Yugoslavia in 1990, it most likely remains in force in Kosovo, irrespective of the validity under international law of Kosovo’s unilateral declaration of independence.11

In 2009, the Government adopted the Kosovo Strategy and Action Plan on Children’s Rights 2009–2013, setting clear targets and timelines to achieve progress for children in the areas of education, health, social protection, juvenile justice, good governance and budget allocation.

The population of Kosovo is estimated to be 1.9 million.12 Estimates vary since the most recent census was in 1981 and because of the significant population movements caused in recent years by independence, poverty and conflict. Serbs, who account for an estimated 5.6 per cent of the population, are the largest ethnic and linguistic minority.13 Smaller minorities include Bosnians, Gorani, Turks, Roma, ‘Egyptians’ and Ashkali.

Kosovo is the poorest country in Europe. In 2006, the gross national income per capita was USD $1,383, according to the World Bank.14 The Poverty Assessment Report published in 2008 by the Statistical Office of Kosovo and the World Bank found that 45 per cent of the population was living in poverty and 15 per cent in extreme poverty.15 Kosovo also has the youngest population in Europe, with an estimated 44 per cent of the population under the age of 18.16 Confidence in the judicial system is low, corruption is widespread, investment in children is insufficient, civil society is weak, and service delivery is adversely affected by the division of responsibilities between central government and municipal departments.17

Although substantial discrepancies exist between data on offending from different sources, all of the data show a large increase in offending by juveniles in recent years. The number of ‘criminal reports’ received by prosecutors concerning alleged offending by juveniles was 1,313 in 2005, 1,859 in 2006, 2,203 in 2007 and 2,059 in 2008.18 The number of juveniles implicated in these cases increased

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11 Although the Committee on the Rights of the Child has not addressed this issue, the Human Rights Committee, in a General Comment on Continuity of obligations under the International Covenant on Civil and Political Rights, has stated: “The rights enshrined in the Covenant belong to the people living in the territory of the State party. The Human Rights Committee has consistently taken the view, as evidenced by its longstanding practice, that once the people are accorded the protection of the rights under the Covenant, such protection devolves with territory and continues to belong to them, notwithstanding change in government of the State party, including dismemberment in more than one State or State succession or any subsequent action of the State party designed to divest them of the rights guaranteed by the Covenant.” Human Rights Committee, General Comment No. 26: Continuity of obligations, HRI/GEN/1/Rev.9 (vol.1), 27 May 2008, p.223.
14 Ibid.
from 1,811 juveniles in 2003 to 2,982 juveniles in 2008, an increase of 65 per cent.\textsuperscript{19} The number of more serious offences – those referred to the prosecutor of a district court rather than a municipal court – has also increased, though less dramatically, from 150 cases in 2005 to 187 cases in 2008.\textsuperscript{20} Indeed, the number of such cases is now lower than in 2002, when 206 cases involving juveniles were reported to district court prosecutors.\textsuperscript{21}

Approximately 30 per cent of all reports of juvenile offending, and almost half of all reports of serious offences by juveniles, occurred in the capital, Prishtinë/Priština.\textsuperscript{22} Almost half of the offences by juveniles reported in 2008 (47 per cent) involved theft. The second largest category of offences (20 per cent) involved assault or homicide.\textsuperscript{23} The number of reported homicides by juveniles has increased dramatically in the last three years. From 2000 to 2004, no homicides involving juveniles were reported, and in 2005 and 2006, just 2 cases were reported annually. In 2007, the number of cases of homicides involving juveniles rose sharply to 20 cases; in 2008, to 27 cases; and during the first nine months of 2009, to 28 cases.\textsuperscript{24}

In 2008, 2,085 cases involving juveniles were prosecuted and 772 (some 27 per cent) were not.\textsuperscript{25} Cases not prosecuted include those in which evidence was insufficient or the offender was under the age of 14; cases in which the prosecutor exercised discretion not to prosecute because of the circumstances of the case; and cases in which the prosecutor imposed a diversion measure.\textsuperscript{26}

The capacity of courts to handle a caseload of this size is apparently insufficient: of the 2,085 cases prosecuted in 2008, only 891 (43 per cent) were disposed of by a court. The delay in deciding cases may result in some cases being dismissed because the statute of limitations (time limit for establishing criminal liability) expires whilst the trial is pending.\textsuperscript{27}

The population of the juvenile correctional/detention facility has increased substantially during the last two years, from 31 juveniles in October 2007 to 56 juveniles in October 2009. The distribution of this population has also shifted during this period, with the number of juveniles serving prison sentences falling from 16 to 8, and the number of accused juveniles in detention rising from 3 to 30.

UNICEF established an office in Kosovo in 1996. A two-year, €1.3 million programme on juvenile justice, financed by the European Commission, began in February 2007. This programme continued, under a bridging arrangement, until October 2009.

\textsuperscript{19} Report on the Performance of the Public Prosecutor Offices of the Republic of Kosova [sic] for the Year 2008, p. 4, p. 6 and p. 8; and an unpublished document provided to UNICEF entitled 'Report 01.01–31.12.2005 Number of Criminal Reports – cases and persons in District Public Prosecution of Kosova' [sic].

\textsuperscript{20} Report on the Performance of the Public Prosecutor Offices of the Republic of Kosova [sic] for the Year 2008, p. 8; and an unpublished document provided to UNICEF entitled 'Report 01.01–31.12.2002 Number of Criminal Reports – cases and persons in District Public Prosecution of Kosova' [sic].

\textsuperscript{21} Unpublished data for 2002 provided to UNICEF. (It should be noted that new legislation enacted in 2004 might have had an influence on the offences within the jurisdiction of district courts.)

\textsuperscript{22} Report on the Performance of the Public Prosecutor Offices of the Republic of Kosova [sic] for the Year 2008, p. 17.

\textsuperscript{23} Ibid., pp. 42–43.

\textsuperscript{24} ‘Delikuencia e te miturve’, an unpublished document.

\textsuperscript{25} Ibid., p. 38.

\textsuperscript{26} Ibid.

\textsuperscript{27} Organization for Security and Co-operation in Europe, Department of Human Rights and Communities Legal System Monitoring Section, Monthly report, OSCE, June 2009, p. 4.
PART I. The Process of Juvenile Justice Reform

1) Policies and advocacy

Policies

Several important policies concerning juvenile justice (e.g., diversion, deprivation of liberty as a last resort, specialization of judges) were embodied by the Juvenile Justice Code adopted in 2004. 28 UNICEF provided the technical assistance to draft the Code in consultation with local counterparts and international partners. Although these policies were introduced largely by the foreign experts who participated in drafting the Code under the auspices of UNMIK, they have been embraced by all of the relevant parties, including the judiciary, legislature and various ministries and agencies.

In 2007, a situation analysis of juvenile justice was prepared by a team of consultants contracted by UNICEF. 29 It focused largely on difficulties affecting the implementation of the Code and made some recommendations concerning amendments to the Code. Few of the recommendations made called for changes in policy. What the situation analysis did call for was the separation of the ‘correctional-educational’ unit from the juvenile prison, the appointment of specialized prosecutors, the development of an aftercare programme, improvements in data collection and the creation of juvenile justice committees at the municipal level.

In 2009, the Prime Minister’s Advisory Office for Good Governance adopted a Strategy and Action Plan on Children’s Rights, which contains a chapter on juvenile justice. The chapter in effect endorses many of the recommendations made in the situation analysis. 30 It calls for the Juvenile Justice Code to be amended to allow diversion measures to be imposed for more serious offences and to give the Probation Service – not the prosecutor – responsibility for determining what kind of diversion measure is most appropriate when cases are diverted. 31 The chapter also calls for the creation of the non-residential ‘disciplinary centres’ for the rehabilitation of offenders envisaged by Article 19 of the Juvenile Justice Code, and for the correctional-educational unit to be separated from the juvenile prison. Other recommendations endorsed include the appointment of specialized prosecutors for juvenile offenders and for Centres for Social Welfare to have staff who specialize in working with offenders; the provision of better aftercare services for juvenile prisoners; the creation of councils for the coordination of actions concerning juvenile offenders at the municipal level; and the creation of a comprehensive inter-agency mechanism for the collection and analysis of data.

Unfortunately, at the time of the assessment mission, there were indications that this chapter of the Strategy and Action Plan did not have the full support of the Ministry of Justice, the ministry that plays the lead role in juvenile justice. The Ministry has indicated, for example, that it does not agree with the suggestion that the Juvenile Justice Code be amended to give the Probation Service responsibility for determining the appropriate diversion measure when cases are diverted. The Ministry has also indicated that it does not support the establishment of the non-residential ‘disciplinary centres’ for convicted offenders at this time due to cost.

30 See Part III, Section I of the present report for more information about the recommendations made in the situation analysis.
Advocacy

In July 2008, seven key officials from relevant Kosovar agencies and the Supreme Court of Kosovo, including the Chief Public Prosecutor, participated in a study visit to Austria. Several of these officials are now active and influential participants in the process of improving juvenile justice in Kosovo.

Various materials concerning juvenile justice were produced in Albanian and Serbian and distributed widely to relevant professional groups, often during related activities. In addition to those items listed in the following section on training, materials included the situation analysis Justice for Children and a selection of international instruments concerning juvenile justice. The instruments translated and published did not include the important United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime or the European Rules for Juvenile Offenders Subject to Sanctions or Measures. Some 350 copies of the situation analysis and 1,300 copies of the selected international instruments were distributed to judges, lawyers and prosecutors; police, correctional and probation officers; social workers; and university students. The distribution of the international instruments appears to have had a limited impact: officials interviewed indicated that they were unaware of the Committee on the Rights of the Child General Comment on Juvenile Justice.

2) Law reform

As a province of Serbia, Kosovo was governed in part by its own provincial legislation and in part by the legislation of the Socialist Federal Republic of Yugoslavia. Although a transitional government was established under the auspices of UNMIK in 2001, the older criminal legislation, which applied to juvenile offenders, was not replaced until 2004, when the new Criminal Code, Code of Criminal Procedure and Juvenile Justice Code approved by the Assembly of Kosovo and promulgated by UNMIK entered into force.

The three new Codes were drafted by teams of Kosovar and international legal experts. The Juvenile Justice Code is based upon international and European standards, but in some respects it does not comply with the recommendations concerning juvenile justice adopted by the Committee on the Rights of the Child in 2007 (see below). At the time of the assessment mission a working group was considering amendments based upon the experiences of the last five years spent implementing the Code.

One of the main difficulties in implementing the Juvenile Justice Code is that some of the infrastructure and programmes required to establish several provisions regarding dispositions do not exist. The Code distinguishes between two types of dispositions, ‘measures’ and ‘punishments’. Only measures may be imposed on offenders aged 14 or 15; either measures or punishments may be imposed on offenders aged 16 or 17. Two broad kinds of measures exist: diversion and educational measures. In turn, educational measures can be one of three types: ‘disciplinary measures’, supervision or institutional placement.

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32 The international instruments included the Convention on the Rights of the Child, the UN Rules for the Administration of Juvenile Justice (Beijing Rules), the UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), General Comment No. 10 of the Committee on the Rights of the Child, and a document of the European Economic and Social Committee. See also the fourth quarterly report on the implementation of the juvenile justice project, Section 1.3.1.
34 Ibid., p. 39.
'Disciplinary measures’ include admonition and enrolment in a ‘disciplinary centre’. A disciplinary centre is not a residential facility; according to the Code, it is a centre where an offender may be obliged to spend up to four hours a day (or up to eight hours a day when schools are not in session). Disciplinary measures are imposed on some 19 per cent of convicted offenders, according to one source. Since no ‘disciplinary centres’ exist, all such offenders instead receive admonitions.\footnote{Anderson, K. and Hamilton, C., \textit{Justice for Children: Juvenile crime and juvenile justice practice in Kosovo}, UNICEF, Prishtinë/Priština, 2008, p. 62, table 4.2 (July 2006 to June 2007).}

Similarly, the Code envisages three kinds of institutional placement: those in which offenders are placed in an ‘educational institution’, in a ‘correctional-educational institution’ or in a facility for children with mental disorders or physical handicaps.\footnote{Juvenile Justice Code of Kosovo, 2004, Articles 24–26.} Only the ‘correctional-educational institution’ exists and, in practice, this is not a separate facility but a unit within the juvenile prison.

Another obstacle to the implementation of the Juvenile Justice Code concerns diversion. The Code recognizes eight types of diversion measures, including victim-offender mediation and counselling. The Law on Mediation adopted in 2008 provides: “This law does not regulate the mediation procedure for juveniles, and commercial arbitration. These two procedures shall be regulated by separate laws.”\footnote{Law on Mediation, Law No. 03/L-057, Article 28.2.} In 2007, probation officers supervised victim-offender mediation in 31 cases, almost all of them referred through diversion.\footnote{Kosovo Probation Service – Bulletin 2008, Kosovo Probation Service, Prishtinë/Priština, 2008, p. 18. (Seventy cases were resolved through diversion in 2007.)} Ironically, the Law on Mediation has for the time being put an end to victim-offender mediation in juvenile cases.\footnote{Law on Mediation, Law No. 03/L-057. The Law on Mediation indicates that a separate law on cases involving juvenile offenders will be adopted; this is interpreted as implying that mediation in such cases cannot continue until such a law is enacted.}

The dearth of psychologists – and the cost of their services – also makes it difficult to implement counselling as a diversion measure. Only 14 cases were resolved by diversion to psychological counselling in 2007.\footnote{Ibid.}

The lack of such facilities, programmes and personnel has a significant negative impact upon the implementation of the Juvenile Justice Code.

\section*{3) Administrative reform and restructuring}

In Kosovo, the question of administrative reform and restructuring has different characteristics than in other countries. Although most of the countries in the region are newly independent, institutional structures inherited from the former regime have remained largely intact during the early years of independence. In Kosovo, the break with the past was more profound. Most public institutions were established only recently, while Kosovo was under the administration of the United Nations.

One development that can be seen as an example of administrative restructuring concerns the Probation Service, established on a pilot basis in 2002. No law regulates the Service, although some of its functions are recognized by the Criminal Code, the Juvenile Justice Code and the Law on the Execution of Sentences. The Probation Service plays an important role in juvenile justice (see Part II).

Another recent administrative measure expected to contribute to the development of juvenile justice in Kosovo is the Chief Prosecutor’s directive requesting that each prosecution office appoint one...
prosecutor to be responsible for juvenile cases. This directive was adopted a few months before the assessment mission, but a decade-long freeze on the appointment of prosecutors has made it difficult for some offices to comply. Some prosecutors have been designated this role – and given training on juvenile justice – by offices based outside the capital. No specific amount of training is currently required. More training is planned following the adoption of the amendments to the Juvenile Justice Code that are presently under consideration, and this should coincide with the recruitment of more prosecutors.

4) Available resources

The number of qualified judges and prosecutors is a problem affecting Kosovo’s entire systems of justice. None have been appointed since 1999 as a result of the requirement that the Kosovo Judicial Council vet all existing judges and prosecutors and new candidates for these posts. There seems to be a consensus that funds to increase the number of judges and prosecutors will be available once this obstacle is eliminated later in 2010.

Financial constraints appear to have little adverse effect upon conditions in the correctional/detention facility for juveniles. Financial constraints are, however, an important obstacle to the establishment of a number of institutions and facilities envisaged by the Juvenile Justice Code, namely the ‘disciplinary centres’ and the ‘correctional-educational institution’ separate from the juvenile correctional facility.

The Probation Service has enough staff to handle its present caseload, although it might be possible to improve the distribution of cases. Financial constraints do, however, impact upon the Service’s infrastructure and its ability to provide services in rural areas.

5) Training and capacity-building

Training courses

A considerable amount of training has been conducted in Kosovo over the course of the last decade, with the support of a number of UN and European agencies.

Many important training activities have also been carried out as part of the EC-supported UNICEF project. These include:

- five regional round tables organized by the Kosovo Judicial Institute in 2007
- five regional workshops on prevention organized by Terre des Hommes in 2008
- a dozen regional interdisciplinary round tables on juvenile justice conducted in 2008
- a juvenile justice training programme for police officers organized by the Human Rights Centre of the University of Prishtina

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42 A senior prosecutor informed the assessment team that there are presently 87 prosecutors; 154 are needed.
43 Physical conditions and programmes are quite good, as indicated below, and the problems identified by the assessment team are not due to financial constraints.
46 Ibid., p. 24.
47 Ibid., p. 15.
48 Ibid., p. 25.
• a four-day workshop for police officers on interviewing children, victims\textsuperscript{49} in particular, in 2008
• a training course in aftercare support\textsuperscript{50} for correctional and probation officers
• two one-day workshops on juvenile justice data collection and management.\textsuperscript{51}

Some progress has been made in institutionalizing training in juvenile justice and related subject areas. Juvenile justice is part of the curriculum of the Kosovo Judicial Institute, which trains judges and prosecutors. The focus is on entry-level training; ongoing legal education is not obligatory for judges and prosecutors. The practical impact of this training upon the development of juvenile justice has been limited to date, as no judges or prosecutors have been recruited in the last decade, except to replace those who have retired or left the bench. A pool of recent graduates, however, is expected to be recruited in 2010.

Training of police officers has been institutionalized by the addition to the Kosovo police academy basic training programme of a one-week module on children. The Ombudsman, the President of the Supreme Court, a senior prosecutor and other authorities interviewed agreed, however, that police officers are in great need of further training on child rights.

The Ombudsman informed the assessment mission that, in his view, training courses for judges, prosecutors and correctional staff have increased respect for the rights of children in conflict with the law.

Between 2001 and 2006, UNICEF provided technical assistance in the form of training to probation officers, correctional staff, police officers and social workers. UNICEF also supported, to a limited extent, a Terre des Hommes pilot project on the implementation of community service orders as alternative measures. During this time, Terre des Hommes conducted juvenile justice training on an ad hoc basis, mainly with social workers but also with their counterparts in other departments at the municipal level, such as police officers and teachers. In 2007, UNICEF began to support more comprehensive training for judges, prosecutors, probation officers and correctional staff. This is particularly important because the University of Prishtina has no social work faculty and its department of psychology is a recent addition.

**Training materials**

UNICEF has produced five publications in support of training activities:

• *Training Materials on Juvenile Justice for the Probation Service of Kosovo*
• *General Guidelines on Diversion Measures*
• *Guidelines on Specific Diversion Measures*
• *Guidelines for Social Workers Undertaking Intensive Supervision of Minors Subject to an Order Under Article 22 of the Kosovo Juvenile Justice Code*
• *Guidelines for Supporting Children under the Age of Criminal Responsibility who have Committed a Criminal Offence.*

The first publication above appears to be a print version of a collection of PowerPoint presentations used in a three-week training for trainers programme for the Probation Service. It contains materials on six modules entitled: the Juvenile Justice System of Kosovo, Adolescent Development,
Interviewing, Probation Services, Pre-sentence and Social Inquiry Reports and Case Management. This is a positive initiative, although a publication that develops these ideas further, rather than simply presenting them in bullet points, would be more valuable.

*Guidelines on Specific Diversion Measures* is a short publication containing practical descriptions of the seven kinds of diversion measures authorized by the Juvenile Justice Code.\(^{52}\) UNICEF sponsorship of such a publication is somewhat surprising, given the recommendation of the 2007 Situation Analysis and the Strategy and Action Plan on Children’s Rights 2009–2013 that an amendment be made to the article of the Code that places on the prosecutor responsibility for selecting a specific diversion measure so that the Probation Service can develop plans more suited to the needs of the individual.\(^ {53}\)

Publishing guidelines for social workers is a good idea, and some sections of the *Guidelines for Social Workers* are useful. The assessment team has reservations about the orientation and content of this publication, however. The main concern about the content is the absence of any recognition that children suspected of involvement in an offence enjoy the presumption of innocence.\(^ {54}\) This basic principle is recognized by the Constitution of Kosovo as well as by the Code of Criminal Procedure.\(^ {55}\) The fact that it is not reaffirmed in the Juvenile Justice Code is not reason to avoid mentioning it in a manual for social workers involved in juvenile justice; rather it is good reason to draw attention to the principle.

Other areas of the content also seem to convey the idea that the presumption of innocence is irrelevant – an accusation frequently levelled against the ‘welfare’ approach to juvenile justice. A flow chart indicates that cases proceed from a ‘decision to prosecute’ to ‘preparation for trial’, and from there to ‘court imposes measures on the minor’, ignoring the possibility that the court may find the child innocent of the charges.\(^ {56}\)

A related problem is that publication does not clearly distinguish between the role of the Guardianship Authority/Council for Social Work in cases where a child may not or will not be prosecuted (whether because of the child’s age or because the prosecutor exercises discretion not to prosecute despite the existence of a ‘reasonable suspicion’ of the child’s involvement in an offence) and cases in which a child is prosecuted. If a child under the age of 14 has been involved in an offence, or if an older child has been involved in an offence but the prosecutor decides that prosecution is not warranted under the circumstances, the case will be referred to the Guardianship Authority/Council for Social Work.\(^ {57}\) The Law on Social and Family Services describes the functions incumbent upon the social worker. No further legal action will be taken unless the social authorities decide that the removal of the child from his or her home is necessary and the child or parent(s) do not consent to placement.

The Guidelines provide that, when the Guardianship Authority is called upon to assess the child’s needs and circumstances, a social worker “should always talk to the child on his/her own” to determine inter alia “his/her views about the offence”. It may be appropriate for social workers to do this when it is clear that the child may not be prosecuted (e.g., if the child is under 14). If the child

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54 The basic principles listed on page 3 of the present report include only the principles recognized expressly by the Juvenile Justice Code of Kosovo, which does not mention the presumption of innocence.

55 Juvenile Justice Code of Kosovo, 2004, Article 35.5 and Articles 1.2 and 3.1, respectively.


57 Juvenile Justice Code of Kosovo, 2004, Articles 38 and 54(3).
is subject to prosecution, however, such an interview would be incompatible with the right of any suspect to remain silent and not be interrogated in the absence of a lawyer.

Unfortunately, the Guidelines do not make this distinction clearly, and broad statements about the duty of the social worker to “help the court make the right decision” during a child’s trial by “providing facts and evidence” increase the risk that this statement be interpreted and applied to the detriment of the presumption of innocence. Distinguishing between the proper roles of the attorney of a juvenile suspect and social workers is a complex issue that any guidelines for social workers involved in juvenile justice cannot afford to overlook, as this publication unfortunately does.

The Juvenile Justice Code allows for some duplication of roles across the new Probation Service and the Guardianship Authority/Centres for Social Welfare. The Code stipulates, for example, that the Probation Service must prepare social inquiry reports before sentencing or diversion, and that the Guardianship Authority may participate in criminal proceedings of accused juveniles, by putting forward motions and contributing “facts and evidence”. This is no doubt because the Probation Service was just coming into existence when the Code was drafted – and the Centres for Social Welfare have been reluctant to surrender the functions they held under the previous system.

The Guidelines for Social Workers, which address the staff of Centres for Social Welfare, should be oriented towards minimizing potential duplication of effort, especially given the much broader responsibilities incumbent upon such personnel. For example, although the Code provides that Centres for Social Welfare may participate in criminal proceedings against accused juveniles, the Guidelines state that a representative of a Centre for Social Welfare “must attend the trial”. Similarly, although the Code provides that decisions made by the prosecutor not to prosecute should be based upon a social inquiry report prepared by the Probation Service, the Guidelines indicate that when such cases are referred to a Centre for Social Welfare, the Centre should prepare a comprehensive assessment. Although such duplication of effort is in part due to the legislation, guidelines on the practical application of the legislation should promote the development of complementary roles, not overlapping ones. In our view, this publication focuses too much on the role of the Centres for Social Welfare in legal proceedings and not enough on their role in helping children under the age of 14 involved in offending and in reintegrating children released from custody.

6) Accountability

Appointing an Ombudsman is one of the mechanisms that helps to ensure accountability among public officials. It is the Ombudsman’s job to bring to light cases in which public officials have neglected their duties or violated the rights of children and put pressure on the appropriate authorities to take action against those responsible.

The Office of the Ombudsman was established in 2004, and one staff member specializes in cases involving juveniles. The Ombudsman confirmed that complaints are received from boxes placed in the juvenile correctional facility specifically for this purpose; most complaints concern the administration of justice, not treatment in the facility, however.

58 Guidelines for Social Workers Undertaking Intensive Supervision of Minors Subject to an Order Under Article 22 of the Kosovo Juvenile Justice Code, UNICEF 2009, p. 13; see also p. 11.


60 Anderson, K. and Hamilton, C., Justice for Children: Juvenile crime and juvenile justice practice in Kosovo, UNICEF, Prishtinë/Priština, 2008. This publication describes, for instance, the reluctance of the Centres for Social Welfare to cooperate with the Probation Service a few years ago, p. 59.

The Ombudsman indicated that only one complaint had been received about mistreatment of a juvenile confined in the Lipjan/Lipljan correctional facility. The Ombudsman recommended that the case be investigated, but the investigation concluded that the evidence of abuse was insufficient and no further action was taken. Another case involving police officers accused of beating street children has been referred to the prosecutor for investigation, but the results were not known at the time of the mission.

7) Coordination

Coordination at the national level between the various ministries, agencies and organizations involved in juvenile justice is weak. At the beginning of the juvenile justice project, a steering committee comprising representatives of the Ministry of Justice, Ministry of Education, Ministry of Interior, the Judicial Council and Judicial Institute, the Human Rights Centre of the University of Prishtina, UNICEF and an NGO implementing partner was established. According to the documentation provided to the assessment team by UNICEF, the first meeting of the steering committee took place in November 2007, when the preliminary findings of the situation analysis were presented to the committee. There is no record of any discussion – nor of any decisions subsequently made – by the members of the committee. Another meeting of the steering committee took place in October 2008, at which time the published version of the situation analysis was presented. A brief summary of the meeting suggests that the purpose of the meeting was the exchange of information rather than coordination. No discussion or decisions are mentioned.

An exchange of ideas on future activities and possible areas of inter-agency cooperation was made at the steering committee meeting held at the end of the two-year project – a meeting that two ministries failed to attend. Several participants spoke of the need for improved coordination. It seems clear that any progress made towards improving inter-agency and inter-sectoral coordination over the course of the project was insufficient.

8) Data and research

In 2007, the Ministry of Justice began to publish an annual report on the work of prosecutors. The data it contains are disaggregated by the status of the accused (juvenile or adult); the offence; the disposition recommended; and the disposition adopted by the court.

In 2008, four workshops were held to improve the capacity of prosecution and court clerks and administrators in regard to data management. It is difficult to evaluate the impact of these activities, since the assessment team has been unable to obtain published information on the activities of the courts.

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63 United Nations Children’s Fund, Third quarterly report to the EC on the implementation of the juvenile justice project, UNICEF, November 2007, p. 5.
64 United Nations Children’s Fund, Seventh quarterly report to the EC on the implementation of the juvenile justice project, UNICEF, February 2009, p. 5. This is described as the fourth meeting of the steering committee, although the assessment team has not been able to find any record of two previous meetings.
65 Juvenile Justice Steering Committee meeting, Meeting minutes, UNICEF, 10 February 2009. The Ministry of Labour and Social Welfare and the Legal Office of the Ministry of Justice were not represented.
66 Representatives of the Ministry of Education, the Probation Service and Terre des Hommes drew attention to the need for better coordination.
The Probation Service has also begun to publish an annual report – in Albanian, Serbian and English. The report contains basic data on the caseload of the Service, as well as data on the personal characteristics and background of accused juveniles, which derives from social reports. These data cover gender, school enrolment, level of education, family size and structure, parental education and health, and economic level and living conditions of accused juveniles. All these data are disaggregated by the specific offence the juvenile is charged with committing. The report also contains data on the number of offences allegedly committed in groups, disaggregated by the size of the group and the status of the other members of the group (juvenile or adult).

The report also contains data on the physical and mental health of accused juveniles. In both cases, the data simply indicate – on the basis of an interview with the juvenile and his or her family – whether health is satisfactory or not. The percentage of unhealthy persons is very low. Just 3.7 per cent of accused juveniles are classified as having poor physical health, with only nine persons – 0.5 per cent – identified as having poor mental health. An assessment of health based on self-reporting – especially mental health – is practically worthless, however.

The Probation Service report also contains data on the number of times accused juveniles for whom a social inquiry report had been prepared during the year had featured in previous social reports, disaggregated by offence. The data are intended as a substitute indicator for repeat offending (recidivism). In 2007, 21 per cent of the accused juveniles for whom a social inquiry was prepared had previously been the subject of one or more social inquiries. Of these cases, 70 per cent are juveniles accused of theft.

As a substitute indicator, these data have two limitations. Firstly, the number of social inquiry reports prepared (1,678 reports in 2007) is substantially less than the number of cases resolved by the prosecutors (2,317 cases), and substantially greater than the number of cases prosecuted (1,382 cases). These discrepancies are due, in part, to the time lag between the preparation of reports and action taken by prosecutors. The data would be more useful if they were processed to take into account the outcome of the cases.

Secondly, the data on social inquiries are not disaggregated by the outcome of the case. Since prosecutors decide not to prosecute in some 40 per cent of cases – for a variety of reasons, including insufficient evidence – the data must include an unknown number of cases in which social inquiries were prepared on juveniles who did not commit an offence. The data on previous social inquiries would be more useful if they were disaggregated by the outcome of the case, in such a way as to eliminate cases in which the outcome implies that the juvenile did not commit an offence.

The Kosovo Correctional Service reportedly produces an annual report that circulates within government but is not published. Data provided by the Service to the assessment team describe the number of juveniles admitted to the juvenile correctional facility annually by reason for admission, i.e., detention before trial, prison sentence or ‘educational measure’. Whether or not the annual report contains additional information concerning juvenile detainees and prisoners is unknown. The Ministry of Labour and Social Work – responsible for assisting children under the age of 14 involved in crime or at risk – apparently has no data on this aspect of its caseload.

70 Ibid., Table 19.
71 Ibid., Table 1 (11 per cent on one prior occasion; 6 per cent on two prior occasions; and 4 per cent on more than two prior occasions).
72 Ibid. Also see Report on the Performance of the Public Prosecutor Offices of the Republic of Kosova [sic] for the Year 2008, pp. 23–24. (The term ‘resolved’ is used here to refer to cases in which the prosecutor decides whether or not to prosecute, i.e., all cases referred to a prosecutor except those pending at the end of the year.)
Each of the reports mentioned above has a very limited circulation.

Research on juvenile offending and juvenile justice is rare. In 2008, the Human Rights Centre of the University of Prishtina conducted a study on community service orders. This 57-page study largely consists of an introduction to the idea of restorative justice and an analysis of the reasons for the relatively infrequent use of community service orders in Kosovo since the adoption of the Juvenile Justice Code. This analysis is based largely upon interviews with judges. While the study contains some research, its emphasis is on advocacy.
PART II. The Juvenile Justice System

1) Prevention

The Juvenile Justice Code makes no reference to the prevention of offending. The national strategy and action plan on crime prevention adopted in 2009 is notable for its lack of attention to the problem of offending by juveniles and the absence of prevention actions directed towards children at risk.\(^{73}\)

The title of the chapter on juvenile justice in the Strategy and Action Plan on Children’s Rights 2009–2013 refers to the prevention of offending, but it contains no recommendations or aims in regard to prevention. The Strategy and Action Plan also contains a section on the problem of children’s access to small arms – highly relevant to the prevention of offending – but it does not identify any specific plans to reduce the availability of arms.\(^{74}\)

The Law on Social and Family Services states that Centres for Social Welfare shall provide “social care and/or counselling” to children who have “behavioural difficulties” or who are “delinquent”.\(^{75}\) It also stipulates that a “comprehensive professional assessment” must be conducted whenever “there are grounds to suspect that a child is beyond the control of his parents [or guardian] to the extent that their behaviour or lifestyle poses a serious risk to their own welfare, health or safety or that of others...”.\(^{76}\) In addition, the Juvenile Justice Code provides that the Guardianship Authority – a function entrusted to the Centres for Social Welfare – should be notified when a child under the age of 14 has been involved in an offence.

These provisions appear to give the Centres for Social Welfare a significant role in the prevention of offending and the prevention of reoffending by younger children. In reality, however, the Centres do not have special programmes or specialized staff for offenders. The situation analysis and the Strategy and Action Plan on Children’s Rights both call for the recruitment of specialized staff to fill this gap.\(^{77}\)

The Law on Social and Family Services enables the Centres for Social Welfare to enter into agreements with a wide range of other service providers.\(^{78}\) In 2003, international NGO Terre des Hommes began a pilot project targeting the prevention of offending by children between the ages of 9 and 14. The project aims to develop the capacity of social workers to assist younger children involved in offending or at risk of offending, and to develop preventive activities in schools. The project began in Prishtinë/Priština and has recently been extended to include six other cities and some children aged 14 and 15 who have completed sentences or other measures.

At the time of the assessment mission, around 80 children based in the capital and 20 from other cities were participating in the project. Schools refer most children, with the police and Centres for

\(^{73}\) See, for example, very vague references to the role of the Ministry of Education and the Ministry of Culture, Youth and Sports on page 9. The description of the role of the Ministry of Labour and Social Welfare (p. 9) makes no mention of its legally recognized role in regard to underage offenders and children at risk. An annex mentions the Convention on the Rights of the Child but not the United Nations Guidelines for the Prevention of Juvenile Delinquency, and the list of national legislation does not include the Juvenile Justice Code or the Law on Family and Social Welfare.


\(^{75}\) Juvenile Justice Code of Kosovo, 2004, Article 9.3.

\(^{76}\) Ibid., Article 10.17. The provisions of the law concerning interventions are exemplary in many respects. For example, a court order is required to remove a child from his or her home without the consent of the child and his or her parent(s), and the law expressly provides that children removed from home may not be placed in a penal establishment. Also see Articles 11.4 and 11.5.


Social Welfare referring some others. Participation is voluntary. Implementation of the programme is supported by local working groups, which include representatives of the Centres for Social Welfare, the police, schools and community-based organizations, and meet monthly. Individual plans are prepared for each child, and he or she will generally meet with staff twice a week for eight months.

Activities run by the project include educational and recreational activities, informal counselling and development of life skills. There are also activities for parents, which aim to develop parenting skills and improve communication between parents and children. Monthly outings take place and summer and winter camps are organized during the school holidays. In 2008, a meeting was held to evaluate the project and identify lessons learned. It concluded that the project provides valuable services. No quantitative data on the impact on children and their families are available, however.

Schools can also play a valuable role in the prevention of offending. 79 A study on violence in schools conducted in 2005 contains an annex entitled ‘Strategies for addressing violence against children in schools’, which includes many elements of a school-based strategy for preventing offending. 80 One positive development is the recruitment of some 23 school psychologists. Plans are in place to double this number in the coming years.

In 2008, Kosovo Educational Centre, an NGO, began to implement a two-year pilot project on the ‘Creation of safe, non-violent and human/friendly environments in society and in schools’. Providing assistance to students whose behaviour indicates a higher risk of offending is not a recognized aim of the project, although a recent report on activities mentions that this subject was discussed in an international meeting attended by project staff. The first stage of the project includes mobilizing students, parents and teachers in 169 primary and ‘lower secondary’ schools, and instigating research to establish a baseline for measuring the impact of the project. One interesting finding is that there has been a rapid increase in bullying in schools, an indicator of risk of offending. The next stage of the project is expected to begin later in 2010. Although the existing aims of the project are such that they may well have a positive effect on the prevention of offending regardless of whether or not this is an expressly recognized goal, the assessment team believes that recognition of the prevention of offending as goal – and the incorporation of components designed to identify and address risk factors in the student population – is desirable.

In many countries where juvenile police units exist, prevention of offending is an important aspect of their role. The Kosovo Police has expressed interest in creating a special children’s unit.

### 2) The detention and interrogation of suspects

The Juvenile Justice Code provides that the ‘provisional arrest or detention’ of juveniles may be ordered only as a last resort. 81 The grounds for ‘provisional arrest or detention’ are those recognized by the Code of Criminal Procedure, e.g., to establish identity or ensure that the suspect does not destroy evidence, obstruct the investigation or flee. 82 Police may not keep a juvenile in custody for more than 24 hours, unless a court orders pre-trial detention. 83 This complies with the recommendations of the Committee on the Rights of the Child. 84

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82 Ibid., Article 63; Code of Criminal Procedure of Kosovo, Chapter XXIV.
83 Juvenile Justice Code of Kosovo, 2004, Article 63(3). (For adult suspects, the time limit for detention without a court order is 72 hours; Article 212(4), Code of Criminal Procedure of Kosovo.)
Both police officers and prosecutors interrogate juvenile suspects. No separate police unit specializes in investigating juvenile crimes. Some police officers have, however, been designated to handle cases involving juveniles.

A study published in 2008 by the Human Rights Centre of the University of Prishtina included interviews with four juveniles serving community service orders in that year. Two of the juveniles claimed to have been beaten by the police, another claimed that a child arrested with him had been beaten, and the last one claimed to have been treated well. It is not indicated when the alleged beatings were said to have taken place, only that they did not happen in Prishtinë/Priština. It is not known how representative these experiences are of the present situation as a whole.

3) Detention prior to and during trial

A prosecutor may decide to initiate a criminal investigation (‘preparatory proceedings’) on the basis of a report by the police or information received from a member of the public, if there is reasonable suspicion that a criminal offence has been committed. (As indicated below, the prosecutor also has the discretion to not open an investigation, even where there is sufficient evidence to conclude that an offence may have been committed.) A social inquiry may be requested at this point. The decision must indicate the offence as well as the ‘circumstances and facts’ on which the decision is based. If the offence is punishable by imprisonment of three years or more, the right to a lawyer attaches at this point.

If the investigation is not complete within six months, a request for an extension of six months may be made to the competent court. If the extension is granted and the investigation is still not completed during the second six months, a further extension may be requested only if the offence is one punishable by more than five years’ imprisonment.

Pre-trial detention may be ordered by a juvenile judge if “alternatives to detention on remand would be insufficient to ensure the presence of the minor, to prevent re-offending and to ensure the successful conduct of the proceedings.” An order authorising pre-trial detention is valid for one month and may be extended for an additional two months. The reasons why alternative measures are considered inappropriate must be stated in the order, and the juvenile suspect and his or her defence attorney have the right to be present when a request for an extension is considered.

The Juvenile Justice Code requires that a medical examination take place at the time an accused juvenile is admitted to a detention facility. A senior prosecutor indicated, however, that such examinations are not performed.

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87 Ibid., Articles 54(4) and 56(2). (An examination of the mental health and competence of the target population of the investigation may also be requested; Article 56[1].)
88 Ibid., Article 55(1).
89 Ibid., Article 40(1)(2). (See below for other circumstances in which the right to legal assistance is recognized.)
90 Code of Criminal Procedure of Kosovo, Articles 59 and 225.
91 Ibid., Article 64.
92 Ibid., Articles 64(1) and (2).
93 Ibid., Articles 64(1) and (3).
94 Ibid., Article 42.
Data provided by the Kosovo Correctional Service indicate that the number of juveniles detained before trial during the last decade has fluctuated greatly, from a low of 35 juveniles in 2000 to a high of 140 juveniles in 2003. The number of accused juveniles ordered to be detained before trial during the first nine months of 2009 (112) was more than double the number detained during the whole of 2008 (52).

At the time of the assessment mission, 30 juveniles were detained while awaiting trial or sentencing. No data are available on the number of investigations involving juveniles completed within the first six months. The director of the Lipjan/Lipljan facility stated that four of the detainees in the facility at the time of the assessment visit had been detained for around 12 months.

4) Diversion

The Juvenile Justice Code authorizes diversion for crimes punishable by sentences of three years’ imprisonment or less. It may be authorized by a prosecutor or judge. Before authorizing diversion, the prosecutor or judge must summon the juvenile and his or her attorney and parents or guardian, and the juvenile must accept responsibility for the offence, express readiness to make peace with the injured party and agree to comply with the requirements included in the diversion order. The juvenile’s parent(s) or guardian must also agree to comply with the conditions.

The diversion order specifies the kind of diversion measures to be taken. Measures include victim-offender mediation, compensation for the victim, school attendance, vocational training or acceptance of employment, community service work and psychological counselling. The imposition of a diversion measure suspends legal proceedings; failure to comply with the requirements of the diversion order may resume the prosecution. The Probation Service is responsible for the implementation of diversion measures.

The Criminal Procedure Code of 2004 also contains an article authorizing mediation. Article 228 of the Criminal Procedure Code is similar to the provisions of the Juvenile Justice Code in most important respects and more detailed in others. A Law on Mediation adopted in 2008 states “This law does not regulate the mediation procedure for juveniles, and commercial arbitration. These two procedures shall be regulated by separate laws.” Unfortunately, a law regulating mediation for juveniles has not yet been adopted, so mediation between juvenile offenders and their victims has ceased.

Prosecutors also have the discretion not to prosecute a case where the offence is punishable by a sentence of three years or less, without imposing any of the requirements required by diversion orders.

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95 The number of pre-trial detentions fell to 74 in 2004 and to 52 in 2005; the figure stood at 76 in 2006 and 64 in 2007, according to unpublished data provided to the assessment team by Lipjan Correctional Centre.
97 Juvenile Justice Code of Kosovo, 2004, Articles 50(1) and (2), respectively.
98 Ibid., Articles 50(2) and 14(2).
99 Ibid., Articles 14(2)(3).
100 Ibid., Article 15.
101 Ibid., Articles 14(2)(3) and 14(3).
102 Ibid., Article 79.
103 It authorizes diversion by the prosecutor for crimes punishable by a sentence of up to three years, but it does not authorize diversion by judges and specifies inter alia that the mediator must be independent.
104 The Assembly of the Republic of Kosovo, Law on Mediation, Law No. 03/L-057, Article 28.2.
This discretion is recognized in Article 54.1 of the Code, which stipulates:

“For criminal offences punishable by imprisonment of less than three years or a fine, the public prosecutor may decide not to initiate preparatory proceedings, even though there is a reasonable suspicion that the minor committed the criminal offence, if the prosecutor considers that it would not be appropriate to conduct the proceedings against the minor in view of the nature of the criminal offence, the circumstances under which it was committed, the absence of serious damage or consequences for the victim, as well as the minor’s past history and personal characteristics.”

Data concerning the work of prosecutors indicate that, in 2008, 16 per cent of all cases handled by prosecutors were closed either because the accused was under the age of 14 or because the prosecutor exercised his or her discretion under this article not to prosecute. Unfortunately, the data are not disaggregated to reveal the specific reasons.

5) Adjudication and sentencing

The minimum age for prosecution and specialized courts or judges

The minimum age for prosecution as a juvenile offender is 14. This complies with the recommendations of the Committee on the Rights of the Child.

Kosovo has 5 district courts and 27 municipal courts. District courts have competence over more serious offences, i.e., those punishable by sentences of imprisonment of five years or more. Most juvenile cases come within the competence of the municipal courts.

Article 48 of the Juvenile Justice Code empowers the Judicial Council to “designate a court which will be competent at first instance for all criminal matters concerning minors on the territories of several courts.” No juvenile court has been established, however. One reason – and perhaps the most significant reason – is the shortage of qualified judges in Kosovo.

Article 49(1) of the Code states: “A juvenile panel in the court of first instance and the juvenile panel in the court of second instance, except for panels in the Supreme Court of Kosovo, shall be composed of a juvenile judge and two lay judges. The juvenile judge shall be the presiding judge of the panel.”

District court judges and municipal judges have been designated to handle cases under the Juvenile Justice Code, including those in which juveniles are accused of an offence and those in which children are the victims of offences. Most such judges also try adult criminal cases, however.

In addition to its district and municipal courts, Kosovo has some 25 ‘minor offence’ courts, which still function under the Law on Minor Offences of Serbia. These courts handle cases involving traffic

108 Organization for Security and Co-operation in Europe, Department of Human Rights and Communities Legal System Monitoring Section, Monthly report, OSCE, June 2009, Pristina Annex 1. (Two municipal and two minor offence courts are not functioning; there are also ‘minor offences’ courts.)
109 In the larger municipalities, one specific municipal court has been designated to handle all cases involving juveniles that are within the competence of the local municipal courts, but it does not have competence over juveniles accused of more serious offences, nor is it devoted exclusively to cases involving juveniles.
violations, minor violations of public order and violations of municipal ordinances, and can impose custodial sentences of up to 60 days. A 2006 study by OSCE and UNMIK uncovered flagrant violations of due process in such courts, including some examples involving the trial of children under the age of 14. More recent information on the subject was unavailable to the assessment team.

**The right to legal assistance**

The right of juvenile suspects and accused juveniles to legal assistance – and to free legal assistance if the child and his or her family are poor – is recognized by the Juvenile Justice Code. In certain circumstances, legal assistance is mandatory and may not be waived. In general, it is mandatory from the first interrogation of a juvenile suspect. A juvenile accused of an offence punishable by a sentence of more than three years must also have legal assistance as soon as the prosecutor opens ‘preparatory proceedings’. If the offence is less serious, the judge must decide whether legal assistance is mandatory; the accused juvenile is entitled to legal assistance whether it is mandatory or not, however.

No lawyers in Kosovo specialize in handling cases involving children, whether as offenders or victims. The President of the Kosovo Chamber of Advocates informed the assessment team that this situation has a negative impact on the rights of children and indicated that the Chamber is prepared to cooperate with other agencies to provide training to its members.

**The right to a fair trial and to ‘child-sensitive’ procedures**

The right to a fair trial is recognized by the Constitution of Kosovo and by the Code of Criminal Procedure. The Juvenile Justice Code complements the Code of Criminal Procedure, so all of the guarantees of due process recognized by the latter apply to cases involving juveniles. Few additional guarantees are found in the Juvenile Justice Code, although one is that the right to appeal a conviction may not be waived.

In regard to the right to be tried without delay, Article 70 of the Juvenile Justice Code provides that trials of juveniles may only be suspended in exceptional circumstances. There is no limit to the duration of a trial, however. The Committee on the Rights of the Child has indicated that criminal proceedings involving accused juveniles should not exceed six months.

Article 40 of the Convention on the Rights of the Child provides that every juvenile accused of an offence has the right “to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the child’s age and the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.” Article 39(2) of the

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111 Ibid., p. 37.
113 Ibid., Article 40(1)(1).
114 Ibid., Article 40(1)(2).
115 Ibid., Articles 40(1)(3) and 40.
116 Ibid., Articles 40(1)(3) and 40.
117 Ibid., Article 40(6). Only members of the Kosovo Chamber of Advocates may represent juveniles accused of an offence.
118 See in particular Articles 30, 31, 33 and 34 of the Constitution of Kosovo and Chapter One of the Code of Criminal Procedure of Kosovo.
119 The right to be tried in public is an exception (see below).
120 Juvenile Justice Code of Kosovo, 2004, Article 75(3).
Juvenile Justice Code appears to be inspired by Article 40 of the Convention on the Rights of the Child. It states:

“When undertaking an action at which a minor is present, and especially at his or her examination, the authorities participating in the proceedings are obliged to act carefully, taking into account the psychological development, sensitivity and the personal characteristics of the minor, so that the conduct of the proceedings does not have an adverse effect on his or her development.”

Proceedings involving juveniles are closed to the public. Parents are entitled to attend and participate, unless their presence or participation would be contrary to the best interests of the child. The Guardianship Authority is also entitled to be heard at the trial of any juvenile.

When a juvenile under the age of 18 and an adult are charged with participating in the same offence, their cases must, as a rule, be tried separately. A joint trial may be held only when a juvenile panel decides that this is “essential for a comprehensive clarification of the case”. This decision may be appealed.

No studies or reports based on the observation of proceedings involving juvenile offenders in district or municipal courts exist. The assessment team was impressed by the understanding of principles concerning juvenile justice demonstrated by the most of the judges and prosecutors interviewed; the only complaints made about legal proceedings concerned delays and the quality of legal representation. A direct observation study of how such courts handle juvenile cases is needed to reach firm conclusions about the degree to which the legal guarantees mentioned above are respected in practice.

Sentencing of juvenile offenders – alternative sentences

The Juvenile Justice Code distinguishes between two kinds of dispositions that may be imposed by juveniles found to have committed an offence: ‘educational measures’ and ‘punishments’.

Convicted juveniles aged 14 or 15 may only be sentenced to educational measures. Responsibility for the implementation of educational measures lies with the Probation Service, and such measures must be based upon a plan drawn up to meet the needs of the individual. Technically, a trial that ends with the imposition of educational measures is not a conviction.

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121 Juvenile Justice Code of Kosovo, 2004, Articles 47(1) and 69(1).
122 Ibid., Article 41(1).
123 Ibid., Articles 45(1) and 69.
124 Ibid., Article 44(1).
125 Ibid., Article 44(2).
126 Ibid.
127 The term ‘juvenile’ is used here in the usual sense to refer to persons under the age of 18; the Code uses it to refer to children and young adults between the ages of 18 and 21. Juvenile Justice Code of Kosovo, 2004, Article 2(4).
128 ‘Alternative sentences’ is a generic term for sentences – i.e., dispositions made by a court after a finding of guilt – that do not involve deprivation of liberty, irrespective of how they are classified in the national legislation.
129 Juvenile Justice Code of Kosovo, 2004, Article 6. (The term ‘measures’ is not limited to dispositions imposed on sentenced offenders; it also includes diversion measures.)
130 Ibid., Article 6(3).
131 Ibid., Article 82(2). This requirement appears to apply to placement in a correctional-educational facility as well as to non-custodial educational measures, although in practice such placements are not made.
132 Ibid., Article 71.
Most such measures are non-custodial. They include ‘judicial admonition’, ‘intensive supervision’ and ‘commitment to a disciplinary centre’. The conditions that may be attached to supervision orders are specified in Article 23 of the Juvenile Justice Code and include compensation of the victim, school attendance, vocational training, employment, avoiding contact with designated persons or places, abstaining from drugs and alcohol and psychological counselling. Data from 2006 to 2007 indicate that more than half of all convicted juveniles (53 per cent) receive sentences of intensive supervision. The second most common disposition was judicial admonition, imposed in 19 per cent of the cases for which a disposition was recorded.

Attendance at a disciplinary centre can take place after school or for periods of up to eight hours per day during school holidays, according to the Code. The Code indicates that this measure is appropriate for offenders “whose best interest is served by a short-term measure, particularly if the criminal offence was committed out of thoughtlessness or carelessness.” This measure is to be carried out by ‘special educational institutions’. It is not used, however, because no disciplinary centres or ‘special educational institutions’ exist in Kosovo.

The Code recognizes three kinds of ‘institutional measures’: commitment to an educational institution, a correctional-educational institution or a ‘special care’ facility. Since these measures involve the deprivation of liberty, they are described below in more detail in the section concerning custodial sentences.

Two types of ‘punishments’ are non-custodial: fines and community service orders. Fines may be imposed only on juveniles who have the means to pay them. Community service orders may be imposed as a diversion measure (see above) or alternative sentence. When imposed as a sentence, community service may replace a sentence of two years in juvenile prison or three years of placement in an educational facility. It may be imposed only with the consent of the convicted juvenile. The minimum amount of service is 30 hours and the maximum 120 hours, to be completed within one year. Community service orders are supervised by the Probation Service. During the first nine months of 2009, 98 persons, including 81 juveniles, were given community service orders, according to the Probation Service. All were imposed as sentences rather than diversion measures.

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133 Ibid., Articles 18–22. (There are three modalities of ‘intensive supervision’: supervision by parents, supervision in a substitute family, and supervision by the Guardianship Authority, i.e., a Centre for Social Welfare, without removal from the home. Disciplinary centres, as indicated below, are non-custodial and non-existent.)

134 Ibid., Article 23(2).

135 Anderson, K. and Hamilton, C., Justice for Children: Juvenile crime and juvenile justice practice in Kosovo, UNICEF, Prishtinë/Priština, 2008, p. 62. (Judicial admonition and/or fines may have been used in the 3 per cent of cases in which the sentence imposed was recorded as ‘other’.)

136 Ibid., p. 62.

137 Juvenile Justice Code of Kosovo, 2004, Article 19(2). (Up to four hours per day on a school day.)

138 Ibid., Article 17(2).

139 Ibid., Article 85.

140 Ibid., Articles 24–26.

141 Ibid., Articles 27–28.

142 Ibid., Article 27.

143 Ibid., Articles 15(6) and 28.

144 Ibid., Article 28.

145 Ibid.

146 Unpublished data provided by the Probation Service.
In addition, sentences of imprisonment for a period of less than two years, as well as sentences to an educational or correctional-educational facility for less than two years, may be suspended.\footnote{Juvenile Justice Code of Kosovo, 2004, Article 6(5).} This is not strictly speaking a non-custodial sentence, but in practice it can be considered the equivalent of one. Data on sentencing for 2006 to 2007 indicate that 3 per cent of all sentences were suspended.\footnote{Op. cit. Anderson and Hamilton, p. 62. (Data are not disaggregated to distinguish between suspended prison sentences and suspended educational-correctional sentences.)}

In total, data from 2006 to 2007 indicate that at least 83 per cent of all sentences were non-custodial.\footnote{This includes the 3 per cent of suspended sentences. (It should be noted that information was unavailable for 9 per cent of the sentences from this period.)}

**The Probation Service**

The Probation Service was established on a pilot basis in 2002 but did not take its legal mandate until the new penal codes came into force in April 2004. The Service operates under the Ministry of Justice.

The Probation Service plays an important role in juvenile justice. It prepares social inquiry reports during the preliminary phase of criminal proceedings, and is responsible for managing or supervising diversion measures, educational measures and the ‘intensive supervision’ of convicted juveniles by their parents. The fact that roughly half of all convicted offenders receive sentences of ‘intensive supervision’ underlines the centrality of this new service to Kosovo’s juvenile justice system. At the time of the assessment mission, the great majority of probation cases concerned juveniles: 133 juveniles with diversion measures, 280 juveniles under ‘intensive supervision’ and 98 juveniles conducting community service.\footnote{The workload also includes the preparation of social inquiry reports, as indicated elsewhere.} The Service has a staff of 65, including 59 probation officers.

**Sentencing of juvenile offenders – custodial sentences**\footnote{‘Custodial sentences’ is a generic term for sentences that, irrespective of how they are classified in the national legislation, involve deprivation of liberty in a residential facility of any kind. Here the term covers both ‘measures’ and ‘punishments’.}

Sentences of ‘juvenile imprisonment’ may be imposed only upon juveniles who are aged 16 or 17 at the time of the offence and are convicted of an offence punishable by a prison term of five years or more.\footnote{Juvenile Justice Code of Kosovo, 2004, Article 30.} The Juvenile Justice Code specifies that a sentence of imprisonment may only be imposed “when the imposition of an educational measure would not be appropriate because of the seriousness of the criminal offence, the resulting consequences and the level of responsibility.” This clause appears to have been designed to incorporate the ‘last resort’ principle set out in Article 37(b) of the Convention on the Rights of the Child. How well it manages to do so depends upon the way in which ‘level of responsibility’ is interpreted and the weight attributed this term in practice.

The Juvenile Justice Code also provides that the court shall consider all of the aggravating and mitigating factors recognized by the Criminal Code, which include “the degree of criminal liability, the motives for committing the act, the intensity of danger or injury to the protected value, the circumstances in which the act was committed, the past conduct of the perpetrator, the entering of a guilty plea, the personal circumstances of the perpetrator and his or her behaviour after committing a criminal offence.”\footnote{Ibid., Article 31(3); Criminal Code of Kosovo, 2003, Article 64(1).} This provision potentially undermines the last resort principle, since it could be interpreted as suggesting that all of these factors have equal weight.
The minimum sentencing term for ‘juvenile imprisonment’ is six months.\textsuperscript{154} The maximum sentence provided by the Juvenile Justice Code for most crimes is five years. Sentences of up to 10 years may be imposed where juveniles are convicted of serious offences committed with aggravating circumstances or causing especially grave injury, or where they are convicted of two or more serious offences.\textsuperscript{155} The term of imprisonment imposed on a juvenile may not be less than the minimum nor more than the maximum prescribed by the penal code (i.e., for an adult).\textsuperscript{156}

Data provided by the Correctional Service indicate that, during the present decade, the number of juveniles admitted to the correctional facility for sentences of imprisonment has fluctuated on an annual basis from a low of 3 juveniles in 2000 to a high of 22 juveniles in 2008.\textsuperscript{157} Data from 2006 to 2007 indicate that only 1 per cent of the sentences imposed on juveniles were sentences of imprisonment.\textsuperscript{158} At the time of the assessment mission, just eight juveniles were serving prison sentences. All of them were convicted of homicide, and the maximum sentence being served was nine years. This appears to indicate rather good compliance with the last resort principle in sentencing. Even if the 2 per cent of convicted juveniles given correctional-educational sentences (see below) is taken into account, the percentage of sentenced juveniles sent to prison is small.

The Juvenile Justice Code, as indicated above, recognizes three kinds of ‘institutional measures’ involving deprivation of liberty: commitment to an educational institution, to a correctional-educational institution or to a special care facility.\textsuperscript{159}

Special care facilities are residential facilities for persons with mental or physical handicaps. A juvenile placed in such a facility pursuant to the Juvenile Justice Code may be placed there upon the recommendation of a medical expert, if it is in his or her best interests.\textsuperscript{160} Placements must be reviewed by the courts biannually.\textsuperscript{161}

Placement in an educational or correctional-educational institution is intended for the offender “whose best interest is served by isolation from his or her previous environment and by a long-term measure which provides the minor with an opportunity for education, rehabilitation or treatment.”\textsuperscript{162}

The Code provides for placement in an educational institution for convicted juvenile offenders who “require full-time supervision by appropriate educators”.\textsuperscript{163} The duration of placement may be from three months to two years.\textsuperscript{164} No such facility exists, however.

\textsuperscript{154} Juvenile Justice Code of Kosovo, 2004, Article 31(2).
\textsuperscript{155} Ibid.; Criminal Code of Kosovo, 2003, Article 37(1).
\textsuperscript{156} Juvenile Justice Code of Kosovo, 2004, Article 31(1).
\textsuperscript{157} Other figures for the admission of juveniles with prison sentences are: 7 juveniles in 2001; 12 juveniles in 2002; 20 juveniles in 2003; 14 juveniles in 2004; 12 juveniles in 2005 and in 2006; 15 juveniles in 2007; and 8 juveniles during the first nine months of 2009.
\textsuperscript{158} Anderson, K. and Hamilton, C., Justice for Children: Juvenile crime and juvenile justice practice in Kosovo, UNICEF, Prishtinë/Priština, 2008, p. 62. (As indicated previously, information was not recorded for around 9 per cent of the sentences imposed.)
\textsuperscript{160} Ibid., Article 26.
\textsuperscript{161} Ibid.
\textsuperscript{162} Ibid., Article 17(4).
\textsuperscript{163} Ibid., Article 24(1).
\textsuperscript{164} Ibid., Article 24(2).
Placement in a correctional-educational facility is reserved for juveniles convicted of offences punishable by a sentence of three years or more, where the offender “requires special education and when such a measure is in the best interest” of the offender. The Code does not indicate how the best interests of the child are to be determined, but it does indicate that the “the gravity and nature of the criminal offence” and prior record of the offender are to be taken into consideration. The maximum duration of placement is five years, the minimum one year. The duration of an ‘institutional placement’ may not exceed the duration of the sentence for the offence in question. Sentences of this kind are served in the juvenile prison, as no correctional-educational facility exists, and although the juveniles in question are housed separately, their treatment is in most respects identical to – and in some ways inferior to – that of juveniles serving sentences of ‘juvenile imprisonment’.

Data provided to the assessment team by the Correctional Department Service indicate that during the present decade the number of juveniles entering the correctional-educational unit of the juvenile prison has fluctuated between zero in 2004 and 2006 to seven during the first nine months of 2009. Data on sentencing from 2006 to 2007 indicate that 2 per cent of all sentenced juveniles received a correctional-educational sentence and 2 per cent received a sentence to an educational institution. At the time of the assessment mission, the juvenile correctional facility housed 26 convicted juveniles, 18 of whom were serving correctional-educational sentences. All were male.

**Early conditional release**

Juveniles serving sentences of imprisonment are eligible for release after serving one third of their sentence. The Juvenile Justice Code provides that the authority to release prisoners lies with the courts, which may impose supervision for the remainder of the sentence. The assessment team found no information on the use of early conditional release.

**6) The rehabilitation of convicted juveniles**

**Lipjan/Lipljan juvenile prison and detention centre**

The Lipjan/Lipljan correctional and detention facility is a complex that contains a women’s prison, a remand or pre-trial detention facility and a juvenile correctional facility. It was built in 1974, and was operated by UNMIK from 1999 to 2008.

The facility is the only one in Kosovo for women and for juveniles who are serving sentences or detained before trial. It has a staff of 140 correctional officers and 44 civilians. A medical doctor is present every day and night, and medical check-ups are reportedly performed monthly. Social workers are present five days a week and psychologists three days a week. Probation officers visit juveniles given correctional-educational measures as well as those serving sentences.

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165 Ibid., Article 25(1).
166 Ibid., Article 25(2).
167 Ibid., Article 25(3).
168 Ibid., Article 17(5).
169 Anderson, K. and Hamilton, C., *Justice for Children: Juvenile crime and juvenile justice practice in Kosovo*, UNICEF, Prishtinë/Priština, 2008, p. 62. (It should be noted that this is contradicted by data provided to the assessment team by the Correctional Service, which indicate that a total of 27 juveniles were admitted to the juvenile facility with prison sentences during the years 2006–2007, with just 2 juveniles admitted with correctional-educational sentences during this time.)
171 Ibid., Article 32(2).
At the time the assessment team visited the facility, it had a total population of 56 juveniles. All were boys: 30 in pre-trial detention, 18 given correctional-educational measures and 8 serving prison sentences. The youngest female prisoner or detainee was 25 years old.

All of the juveniles serving prison sentences had been convicted of homicide, and the longest sentence being served was nine years. Of the 30 juveniles awaiting trial, 6 had also been accused of homicide. The director of the facility stated that detention for five or six months before and during a trial is common; four of the detainees had been detained for around 12 months. The daily cost of detention or imprisonment in the facility is €33 per person.

All juvenile prisoners and detainees have access to schooling in line with the national curriculum. The municipal department of education, responsible for ensuring that juvenile prisoners receive an education, has no direct control over the education provided but pays the teachers employed by the facility. Ministry of Education staff could provide no information about the education being offered at the facility.

Two vocational training programmes are run by the facility – one inside and one outside, at a restaurant. The programme within the facility provides training in the building trades. School and training certificates do not indicate that they were obtained in the facility. The facility has a well-equipped gymnasium, and prisoners compete against students from other schools in sports matches and races.

Prisoners displaying good behaviour are entitled to visit their families for 30 days per year. The director considers this privilege a valuable incentive to behave well. The Juvenile Justice Code prohibits solitary confinement as a disciplinary measure, but does allow juvenile prisoners to be confined in a ‘special unit’ for up to 15 days.\textsuperscript{172} The director indicated that isolation is usually avoided by detaining the prisoner being punished with another prisoner, but that this is not possible if the prisoner being punished is dangerous. This seems to indicate that solitary confinement is sometimes used as a disciplinary measure, in violation of the Code and international standards.

Juveniles serving correctional-educational measures are housed on separate floors of the same building, which is surrounded by a high fence of razor wire. Ironically, juveniles in the correctional-educational unit have fewer privileges than juvenile prisoners. Unlike juvenile prisoners displaying good behaviour, they are not allowed to visit their families or leave the facility for any other purpose. Imposing measures that are in practice more onerous than prison sentences on convicted juveniles deemed not to deserve prison sentences perverts the intent of the Juvenile Justice Code. Quite understandably, it also causes among juveniles serving such sentences a feeling of unfairness that is disadvantageous to their rehabilitation.

The assessment team visited a cell used to house four juveniles serving prison sentences and a disciplinary cell. The former was a very large room with a wooden door. The large windows were barred but offered a view of the surrounding area. The cell was equipped with tables, a television and plastic storage units for personal property. Books and video cassettes were in evidence. The prisoners seemed at ease.

A separate hall contained cells used for two purposes: discipline and temporary isolation of new arrivals. The cells were smaller than the cells used for juveniles serving sentences of imprisonment, with a metal door, beds for two prisoners and a toilet inside the room.

\textsuperscript{172} Ibid., Article 118.
In general, the facility was very clean and in good repair. Residents receive weekly visits from their families.

**Post-release support**

The Probation Service is responsible for providing assistance to juveniles released from the prison complex.\(^{173}\) At the time of the assessment mission, training for staff to undertake this function was under way.

7) **Younger children involved in criminal activity**

The treatment of children under the age of 14 who participate in criminal activities is not covered by the Juvenile Justice Code. The Code does, however, contain one general provision that could apply to such children. It states:

“At any time, the juvenile judge may impose appropriate measures to protect the rights and well-being of a child, including placing the child in a shelter or an educational or similar establishment, placing the child under the supervision of the Guardianship Authority or transferring the child to another family, if it is necessary to separate the child from the environment in which he or she has lived or to offer help, assistance, protection or accommodation for the child. The juvenile judge shall inform the Guardianship Authority of any measure imposed.”\(^{174}\)

The treatment of children under the age of 14 involved in criminal activity is regulated by the Law on Social and Family Services. The Law makes no special provisions concerning children involved in such activities. Instead, such children are assimilated as persons ‘in need’, a category that also includes “children with antisocial behaviour, children without paternal care, persons with disabilities or mental illness, persons vulnerable to abuse or exploitation, and victims of substance abuse, domestic violence, trafficking, natural or other disasters” and “any other cause that renders them in need.”\(^{175}\)

This law assigns responsibility for providing services to persons ‘in need’ to municipal governments and, in particular, to the Centres for Social Welfare.\(^{176}\) Services may also be provided by NGOs, voluntary agencies, international organizations and similar bodies, either at their own initiative or under contract with the national or municipal government.\(^{177}\) The Code does specify that Centres for Social Welfare “will ensure the provision of social care and/or counselling” to children in need of services because “she or he has behaviour difficulties [or] is delinquent.”\(^{178}\)

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\(^{173}\) Ibid., Articles 137–138.

\(^{174}\) Ibid., Article 5(1). (Art.2(1) of the Code provides that ‘child’ means any person under the age of 18.) See also Article 38 of the Code, which states: “Proceedings shall not be initiated against a child under the age of fourteen years. If the child is under the age of fourteen years at the time of the commission of the criminal offence, any proceedings that have been initiated shall be immediately terminated, and the Guardianship Authority shall be notified of the case.”

\(^{175}\) Ibid., Article 1.3.e.

\(^{176}\) Ibid., Articles 6.1, 7.1, 7.2 and 7.6.

\(^{177}\) Ibid., Articles 2.3 and 8.

\(^{178}\) Ibid., Article 9.3. (This same provision applies to other categories of children, such as the disabled and those without parental care.)
The Law on Social and Family Services does contain a provision that seems designed to cover children exhibiting antisocial behaviour, including conduct that is criminal in nature. It provides:

“In circumstances where there are grounds to suspect that a child is beyond the control of his parents … to the extent that their behaviour or lifestyle poses a serious risk to their own welfare, health or safety or that of others then the Director of the Centre for Social Work must without delay conduct a comprehensive professional assessment of the child’s needs for Social and Family Services.”

If after completion of the assessment the Department of Social and Family Services considers that there are grounds for seeking protective measures, a court order will be sought. The court may decide to issue a guardianship order, which can take different forms and does not necessarily involve separation of the child from his parents or removal of the child from his or her home. Parents are provided with assistance while an order is in force, and the need for guardianship must be reviewed every six months. If the assessment indicates that the child needs to be removed from his or her home, the consent of both the parents and child are sought; removal without the consent of both must be authorized by a court. Under no circumstances may a guardianship order be used to place a child in a penal establishment.

The law also specifies that “in fulfilling its responsibilities under the Juvenile [Justice] Code” the Centres for Social Welfare must comply with the Convention on the Rights of the Child.

In practice, cases referred to the Centres for Social Welfare are assigned to a ‘case manager’ who contacts the child’s parents and school to determine what assistance is needed.

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179 Ibid., Article 10.8.
180 Ibid., Article 10.11.
181 Ibid., Article 10.17.
182 Ibid., Articles 10.19 and 10.20.
183 Ibid., Article 11.4.
184 Ibid., Article 11.5.
185 Ibid., Article 9.5.
PART III. UNICEF Support for Juvenile Justice Reform

1) Strategy

The aims, content and nature of the 2007–2009 juvenile justice project

UNICEF established an office in Kosovo in 1996. Initially its focus was on emergency assistance. UNICEF became more involved in juvenile justice in February 2007, when it received funding from the European Union for a two-year project. No specific strategy was identified; one must be inferred from the project’s scope, aims, activities and participants.

The project had two components: capacity-building in alternative sentencing and prevention of juvenile crime. It appears that the first component was meant to cover diversion as well as alternative sentencing. This first component had two expected outputs: the research and dissemination of materials on the implementation of the alternative measures recognized by the 2004 Juvenile Justice Code, and the ‘preparation’ of judges, prosecutors, police, probation workers and social workers to implement them.

The second component had four expected outcomes: prevention activities for children aged 9 to 14 with behavioural difficulties and their families; rehabilitation programmes for children serving sentences in the correctional facility; police officers, social workers and teachers skilled in prevention/dealing with children presenting difficult behaviour; and the establishment of a juvenile justice resource and research centre at the University of Prishtina.

The small number of components gives the impression that the scope of this project was limited. In reality, the scope was fairly broad, including as it did research (which was badly needed), prevention, community-based treatment of offenders, institution-based rehabilitation and training of professionals in law enforcement and the administration of justice. The legislation in force was new and based upon international standards, so there was no reason to anticipate the need for further activity in that area at the time.

Although the project document was not based upon a thorough analysis of juvenile justice as such, it was based upon a good general analysis of the situation of the law enforcement, legal and social sectors as well as the evolving roles of the UNMIK and Kosovar governmental institutions. The document did not, however, clearly define the ultimate aims of the project, identify potential risks to successful implementation or analyse the potential complementariness of the activities foreseen and the activities of other international donors. In these ways, the approach to project design was not strategic.

One criterion used to evaluate a strategy is how well adapted to the project’s objectives were the activities envisaged. In this case, the objectives were defined in relatively general terms, which makes such an evaluation more difficult. The lack of reliable data and obstacles to accessing relevant data aggravate the difficulty. Alternative measures were being applied before the project began and, of course, continue to be applied. Although there is some indication that the total number of cases diverted and cases in which alternative sentences were applied increased between 2006 and 2008, the population of the prison population also increased. In short, it is very difficult to determine the extent to which this vague goal was achieved.

Similarly, it is difficult to determine the extent to which the vaguely defined goals of the preventive component were met. One positive development is the expansion of a pilot project implemented by Terre des Hommes that primarily offers services to children aged 9 to 13 involved in crime or
considered at risk. The Probation Service, established before the project began, also appears to be working satisfactorily, and the training provided through UNICEF has no doubt contributed to this. In general, as indicated above, community-based prevention policies and programmes remain inadequate.

No reliable data exist on reoffending, which is, of course, a major obstacle to assessing the effectiveness of activities intended to prevent reoffending by juveniles given custodial sentences. In any event, the prevention of reoffending should be measured over a longer period of time. The activities undertaken in this particular area, which consist mainly of strengthening vocational training, are certainly useful, but in the view of the assessment team, they fall far short of a comprehensive institution-based approach to the prevention of reoffending.

The situation analysis

One of the first activities undertaken as part of the project was the preparation of a situation analysis of juvenile justice by two foreign experts with the assistance of two Kosovar research assistants. The situation analysis was based upon data collected as part of a concerted effort to gather as much information as possible on offending by juveniles and on the workings of the juvenile justice system – a very positive effort.

The situation analysis recognized the importance of a couple of areas not addressed by the project, including the need to develop a better system for recording, compiling and analysing data. It also recognized the need for a few amendments to be made to the law, in particular to shift responsibility for selecting the most appropriate form of diversion to the Probation Service.

The situation analysis has had a positive impact, contributing to a greater awareness of issues within the relevant sectors and identifying important activities, some of which have already been set in motion. On balance, there is no doubt that the analysis has added momentum to the development of juvenile justice. It does, however, suffer from some strategic flaws. One is that it places emphasis on mechanisms designed to increase the number of cases diverted, when the capacity to provide the kind of services required for the types of diversion recognized by the law in force is very limited. This is even more the case since victim-offender mediation was discontinued. The other strategic flaw is that the analysis does not give sufficient attention to secondary prevention, in particular the prevention programmes for children under the age of 14. Instead of encouraging the Centres for Social Welfare to concentrate efforts in this area – where the Probation Service has no competence – the analysis tends to encourage duplication of effort by the Centres for Social Welfare and the Probation Service.

2) Planning

A steering committee comprising governmental and NGO participants in the project met five times during the project and the bridging period in 2009. Membership of the committee was extended to the Ministries of Justice, Labour and Social Welfare, and Education, Science and Technology; the Judicial Council and the Judicial Institute; the Kosovo Police; the Human Rights Centre of the University of Prishtina; and Terre des Hommes. UNICEF acted as secretariat. Minutes for most of the meetings do not exist, making it difficult to assess the extent to which the governmental and non-governmental counterparts participated in planning activities.

A strategic planning meeting held in June 2008 laid the foundations for a second two-year juvenile justice project, which will be implemented over the course of 2010 and 2011. While some partners were represented at the highest level (e.g., the President of the Supreme Court), the Ministry of
Justice was represented by the head of its statistics department and neither the Prison Service nor the Office of the Prosecutor participated. The limited information available suggests that the extent to which national counterparts participated in planning was uneven.

3) Management

The juvenile justice project was managed by one international officer and, initially, one national officer and one technical consultant. A second national officer later joined the team. Both national officers have relevant expertise. The two NGOs chosen to implement sub-projects had relevant expertise and performed their responsibilities well. Although one is an international NGO, it has a long-term commitment to working in Kosovo, until such times as its activities can be handed over to the national authorities or civil society; it is partially self-financed. Good use was also made of international experts, although the assessment team considers that the contribution of one international expert was inadequate. (See section on training, above.)

All partners of UNICEF who were interviewed had a positive impression of the competence of the UNICEF staff and consultants, and felt that UNICEF was responsive to their needs and, in general, to the unique context of Kosovo. A representative of the office of the Prime Minister, for example, stated, “UNICEF is more sensitive to national context than other organizations.”

4) Evaluation

Two sub-projects were evaluated in detail. In July 2008, Terre des Hommes organized a two-day workshop to evaluate and identify lessons learned from the sub-project on prevention that it had implemented. Among the participants in the workshop were senior international staff and 15 Kosovar participants, including teachers, police officers and social workers. Interviews with beneficiaries (children and their parents) also took place in advance of the workshop. The results, which concluded that the sub-project had a positive effect and identified certain conditions necessary to ensure its sustainability, were published.186

In June 2009, an international consultant evaluated a sub-project on prevention carried out in Mitrovicë/Mitrovica North and Zveçan/Zveçan, where parallel systems for governance and service provision exist. The evaluation concluded that research conducted on violence in schools; a series of short, inter-sectoral training activities on child protection, juvenile justice, social work and related topics; and reaching out to the general public through the media were all valuable. The youth club established in a local secondary school to provide secondary prevention services to adolescents at risk was also evaluated positively, but the evaluation concludes that the main aim of the project was not achieved due to the lack of cooperation from the local Centre for Social Welfare. This, in turn, was correctly attributed to the tense political situation in the area and to conflicting views on the status of Kosovo.

The foreign expert who organized a two-day long training for trainers session at the Kosovo police academy subsequently attended a training session at which attendees’ skills were evaluated. The results were disappointing, and a further two-week long training of trainers session was recommended.187

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Following a series of workshops and training sessions, the Judicial Institute organized a round table of 25 judges, prosecutors and probation officers, intended in part to evaluate the impact of the previous workshops and training sessions. The conclusion was that their impact had been significant.

Public service announcements concerning the consequences of juvenile offending and the need to support children in their homes and schools were produced and aired on radio and television in November 2008. A media survey used to assess the number of television viewers who saw these concluded that the audience numbered some 279,000 people.

In conclusion, the evaluations of the two sub-projects are welcome examples, although both suffered from some shortcomings. The evaluation of the police training was well done.188 The other evaluations are of more limited use. The evaluation of the television announcements, for example, did not indicate who the viewers were (children/adults, income, etc.) and no effort was made to determine how viewers reacted to the messages.

188 Unfortunately, there is no evidence that the recommendations have been taken up.
PART IV. Conclusions and Recommendations

Advances

1) Many high ranking officials are knowledgeable about the rights of children and have a strong commitment to them.

2) A Juvenile Justice Code based on international standards and good practices is in force and is being revised to take into account the lessons learned during five years of implementation.

3) Every trial court has one judge designated to handle cases involving juveniles; a decision has been taken to designate a prosecutor with similar responsibilities in each trial court.

4) The higher courts, including the Supreme Court, have shown a commitment to the rights of accused or convicted juveniles.

5) The number of convicted juveniles serving prison sentences is small, even if the number of juveniles serving correctional-educational measures is included.

6) The work of the Probation Service focuses on juvenile offenders and the caseload per probation officer is low.

7) A pilot project for the prevention of offending and reoffending by children aged 9 to 14 is functioning in six cities.

8) There is no evidence that abuse of juvenile suspects or prisoners is widespread.

9) The Ombudsman investigates cases concerning the rights of children and law enforcement and correctional staff.

10) An effort is being made to improve cooperation between the staff of the juvenile prison (including the correctional-educational unit) and the Probation Service to improve support for post-release reintegration.

11) The Strategy and Action Plan on Children’s Rights contains a chapter on juvenile justice that includes many important observations and objectives.

Challenges

1) Kosovo’s newly approved crime prevention strategy fails to recognize the importance of developing prevention policies and programmes for children, and the Centres for Social Welfare, which have important responsibilities in regard to prevention, do not have specialized staff or programmes.

2) The juvenile justice chapter of the Strategy and Action Plan on Children’s Rights does not have the support of key actors in juvenile justice, in particular the Ministry of Justice.

3) There is no mechanism responsible for coordinating the policies or activities of different ministries, agencies and organizations involved in juvenile justice.

4) When conditions for diversion are met, Article 15 of the Juvenile Justice Code requires the prosecutor or judge to select a specific diversion measure instead of simply authorizing diversion and allowing the Probation Service to prepare a plan in consultation with the juvenile, his or her
parent(s) and other concerned persons. This makes the decision to divert more complicated and
time-consuming for judges and prosecutors, and is probably an obstacle to the efficient use of
diversion.

5) Since 2008, victim-offender mediation is no longer authorized, owing to the absence of a special
law regulating the practice.

6) The range of community-based programmes for offenders is very limited in practice because there
are no disciplinary centres for part-time rehabilitation, no special care facilities for juvenile offenders
requiring treatment for mental or physical conditions, and no educational institutions for offenders
who are not part of the correctional system.

7) The correctional-educational facility is located within the juvenile prison, and there are few,
if any, differences between the programme, conditions and treatment in this facility and those in the
juvenile prison.

8) Confinement in conditions equivalent to solitary confinement is used for disciplining dangerous
juvenile prisoners.

9) Few prosecutors have been designated to handle juvenile cases to date.

10) No lawyers specialize in the defence of accused juveniles – nor in cases involving juvenile victims
of crime – and no programme exists to provide practising lawyers with training in these areas.

11) Conditions in some parts of Kosovo have prevented juvenile justice from operating since 2008
and obliged the courts displaced by the conflict to operate under extremely difficult conditions.

12) The data on offending by juveniles and juvenile justice compiled on a regular basis by different
authorities are not centralized and are difficult to obtain. Some data respond to indicators that limit
their relevance or usefulness.

Recommendations

1) A standing mechanism should be created for the exchange of information and coordination of
policies and activities concerning offending by children and juvenile justice. Participants should include
the Ministry of Justice, incorporating the Probation Service and Correctional Service; the Ministry of
Education; the Department of Social Welfare; and the judiciary, police and the Office of the Prosecutor.
Representatives of civil society, such as the Chamber of Advocates, the University of Prishtina and
NGOs involved in juvenile justice should also participate, either as members or observers.

2) In the ongoing process of amending the Juvenile Justice Code, consideration should be given to:

- implementing the recommendation concerning diversion (Article 15) made by the Justice for
  Children report and by the Strategy and Action Plan on Children’s Rights;
- establishing limits to the duration of legal proceedings, including the trial phase, in order to
  comply with the recommendation of the Committee on the Rights of the Child that the period
  between accusation and sentence not exceed six months;\(^\text{189}\)

\[^{189}\text{“The Committee, conscious of the practice of adjourning court hearings, often more than once, urges the States parties to introduce the legal provisions necessary to ensure that the court/juvenile judge or other competent body makes a final decision on the charges not later than six months after they have been presented.” Committee on the Rights of the Child, General Comment No. 10: Children’s Rights in Juvenile Justice, 2007, para. 83.”}\]
• clarifying the circumstances in which ‘social inquiry’ reports are requested with a view to limiting requests to specific circumstances, e.g., when the accused has been found to have committed an offence, when diversion is being considered, or when the prosecutor is considering exercising discretion under Article 54 not to prosecute and considers that more information is required to reach such a decision;
• clarifying whether children of any age come within the competence of minor offence courts and, if they do, the rights and principles that must be respected in proceedings before them.

3) A law on victim-offender mediation for juveniles should be drafted and adopted without delay.

4) A training programme should be established in cooperation with the Chamber of Advocates to provide interested practitioners with the knowledge and skills needed for litigating cases involving juvenile offenders and children who are victims of crime.

5) Training of social workers, probation officers, correctional officers, judges, prosecutors and police officers should continue. Training should aim to develop relevant skills in addition to furthering knowledge of national law, international standards and child and adolescent development, and should cover juvenile justice and closely related issues, including the prevention of offending and the rights and treatment of child victims of crimes. Training programmes should be based upon an assessment of training needs, and minimum requirements for professionals specializing in juvenile justice should be established.

6) Training materials should be updated once the process of revising the Juvenile Justice Code is complete, and the shortcomings identified in Part I of this report remedied. In particular:
• the Guidelines on Diversion Measures should be expanded to cover the conditions in which diversion is appropriate\(^\text{190}\) and any amendments to Article 15;
• the Guidelines for Social Workers Undertaking Intensive Supervision of Minors Subject to an Order Under Article 22 of the Kosovo Juvenile Justice Code should be revised to take account of the presumption of innocence; distinguish more clearly between cases in which a child is prosecuted and other cases; encourage a reduction of the duplication of effort by the Guardianship Authority and Probation Service; and address the relationship between the role of the social worker and that of the child’s attorney; and
• consideration should be given to expanding the training materials on juvenile justice for the Probation Service, and possibly to extending these to include training for the staff of the Centres for Social Welfare as well as probation officers.

7) The Centres for Social Welfare should adopt methodologies and develop expertise in the prevention of offending and reoffending, particularly in regard to children under the age of 14.

8) A strategy for the prevention of offending by children should be developed, within the framework of the national strategy for the prevention of crime.

9) Priority should be given to the establishment of one or more non-residential centres or programmes for the rehabilitation of juvenile offenders, in accordance with Article 19 of the Juvenile Justice Code. Centres that provide a relatively intensive, structured programme for offenders who do not need to be removed from their home, school and community are an important part of the range of dispositions that should be available. Here, such centres or programmes would fill a gap between admonition, individual supervision by a probation officer and confinement.

\(^\text{190}\) This recommendation was also made in the situation analysis, see p. 79.
10) Since the Juvenile Justice Code clearly indicates that correctional-educational measures should be different to juvenile prison sentences, an effort should be made to identify and take appropriate steps to make the regime and conditions in the correctional-educational unit qualitatively different to those of the juvenile prison.

11) Once the freeze on hiring judges is lifted, serious consideration should be given to establishing one or more juvenile or children’s courts – specialized in cases involving children who are accused of or the victims of an offence – in accordance with Article 48 of the Juvenile Justice Code. This would allow for greater specialization, and the number of juvenile cases tried in some districts is large enough to warrant this step.

12) Support should be provided to further the development of a specialization within the police in regard to the proper treatment of children involved in crimes, whether as offenders, victims or witnesses.191

13) Data on offending by children and juvenile justice compiled by the police, the Department of Social Welfare, Probation Service, prosecutors, courts and the Prison Service – or at least data on key indicators – should be centralized, published and distributed. The indicators in use should be reviewed to ensure that those used by different agencies are compatible and as relevant as possible to the policy decisions that must be taken and to monitoring compliance with national and international standards regarding the rights of children.

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191 The Committee on the Rights of the Child recommends the establishment of specialized police units in its General Comment No. 10: Children’s Rights in Juvenile Justice, 2007, para. 92. The experience of some countries, however, indicates that there is a risk that police involvement in prevention includes policies that are incompatible with the rights of children, e.g., labelling and excessive invasion of privacy.
Annex 1. Juvenile justice in northern Kosovo

“I don’t know about the law, or what needs to be done about the courts. What I do know is that we can’t abandon the post-war generation. We need to promote a healthier life style, and we can do that while waiting for the courts to reopen.”

– A young psychologist working with an NGO in Mitrovicë/Mitrovica North

1) Visit to Mitrovicë/Mitrovica North and Gračanica/Graçanicë

The term ‘northern Kosovo’ is used here to refer to parts of Mitrovicë/Mitrovica North, a part of Kosovo where the authority of the Government of the Republic of Kosovo is not fully recognized and where parallel systems of governance exist. The population of northern Kosovo is estimated at 50,000 people.

The head of the assessment team made a short visit to the northern part of Mitrovicë/Mitrovica on 8 October 2009 and to Gračanica/Graçanicë on 9 October 2009. The latter is an enclave near Prishtinë/Priština populated mainly by Serbs, which partially responds to Serb authority as part of the existing parallel system. It has an estimated population of 5,000 or 6,000 people. In Mitrovicë/Mitrovica North, the team head met with a focus group that included a representative of the police, a representative of the local Centre for Social Welfare and representatives of two NGOs; in Gračanica/Graçanicë he visited with a local NGO and the Centre of Social Welfare.

2) Background and general situation

The only institution in these areas that operates under the authority of Government of the Republic of Kosovo is the Kosovo Police. The court previously located in the northern part of Mitrovicë/Mitrovica was forced to relocate to the southern part of the municipality, which is under the control of the Republic of Kosovo. The Office of the Prosecutor was also forced to relocate and there are now no prosecutors based in northern Kosovo. A Serbian municipal court exists, but this only handles certain kinds of civil matters, such as divorce. It applies Serbian legislation.

The Kosovo Police recognizes the legislation in force in Kosovo, most of which was originally promulgated by UNMIK (in particular the Criminal Code, the Code of Criminal Procedure and the Juvenile Justice Code). Police officers apply the law selectively, however, because of the risk of inflaming public opinion in northern Kosovo. Cooperation with authorities not recognized by Serbia and the population of northern Kosovo risks provoking a violent reaction. For this reason, only serious crimes committed in northern Kosovo are referred to prosecutors for eventual prosecution by the relocated district court for Mitrovicë/Mitrovica. Only one juvenile accused of attempted murder was sent to Prishtinë/Priština and he was released pending trial and returned to northern Kosovo.

This situation has led to an impasse that in effect gives young people impunity for minor offences. Juvenile suspects are detained by the police for a few days and then simply released. There is no Probation Service in northern Kosovo (none exists in Serbia) and the Centre for Social Welfare cannot accept ‘diversion’ referrals from the police. Both Kosovar and Serbian law (the Centre for Social Welfare in northern Kosovo follows Serbian law) provide that diversion is the responsibility of prosecutors or judges.

Given the situation described above, no data on offending exist. In Gračanica/Graçanicë, ‘asocial’ behaviour by adolescents is reportedly a growing problem, but offending appears to be low, no doubt due to the small population. In northern Kosovo, abuse of hard drugs is a very serious problem. The
most frequent offences by adolescents involve fights and thefts. Illegal possession of weapons is also widespread.

3) The Mobile Teams project and youth club

In 2008, a year-long project designed to support the establishment of a programme for the prevention of offending and for the community-based rehabilitation of offenders was implemented in Mitrovicë/Mitrovica North and the neighbouring municipality of Zvečan/Zveçan. Modelled on a programme in Serbia and implemented by the Belgrade-based NGO Amity, the aims of the project included diversion to mediation and non-residential centres, inter-agency cooperation and the use of case management teams to provide psychosocial services for offenders as well as children at risk, and the establishment of a data collection system.

Only one of these aims was attained as the project underestimated, or failed to anticipate, the obstacles caused by the political situation in northern Kosovo, which deteriorated significantly in the months before implementation began in May 2008.

The objective that was achieved was the establishment of a youth club attended mainly by adolescents at risk. Originally the plan was to establish the club in the community, but as teachers were brought into the process a principal offered to provide space within one of the secondary schools. This offer was accepted, a move that proved to be crucial to the sustainability of the club when the project ended.

Around 40 students between the ages of 14 and 19 participate in the youth club. Participants include victims of parental abuse and neglect and students identified as being at risk of offending, who have been referred by their school or the police. The club is open four days a week after school and participation is voluntary. Activities include remedial education, cultural enrichment and life skills training. The students decide the activities to be organized, such as the study of poetry, the use of the Internet and the collecting of funds to help a sick child. Counselling was provided by the staff of the project, but is no longer available since the project ended. Two volunteer teachers continue to support and facilitate the activities of the club.

Two other activities were carried out successfully, despite not being included in the original aims of the project. One activity was a study on violence, which documented high rates of violence by children against children, as well as alarming levels of abuse and neglect by parents. Community-based organizations actively cooperated in this activity and UNICEF, which financed the project, believes that the study and related outreach activities have had a significant impact upon community awareness of these issues.

The other successful activity was the training of secondary school students as ‘peer mediators’ as part of the youth club activities. Nineteen students completed a four-day training programme. They reportedly became good at mediating conflicts in their two schools, but were not as good at maintaining records of their work. Attrition due to graduation is also a problem.

Neither diversion nor the establishment of community-based alternatives to custodial sentences have been possible, due to the legal and political situation described above, i.e., failure to recognize the Kosovo courts and prosecutors. The same problems have greatly limited cooperation between the police and the local Centre for Social Welfare, with the net result that juvenile justice is almost completely inoperative in northern Kosovo.
4) Conclusions and recommendations

Activities that provide assistance to children at risk of offending and those involved in minor offending are urgently needed given the poor economic situation, political instability and institutional gaps and weaknesses that characterize life in northern Kosovo and the enclaves, and contribute to the widespread and growing psychosocial problems of children and adolescents.

Although the impact of the youth club on participants has not been evaluated objectively, the information provided to the assessment team suggests that it has had a beneficial impact upon participating children and that it is sustainable. Schools are one of the few stable and functional institutions in northern Kosovo and the enclaves: secondary school enrolment is high and research in other countries indicates that success or failure in school and the school environment or ‘ethos’ are factors that have a significant impact on offending by juveniles. For these reasons, additional support should be given to the existing youth club, in particular to enable it to resume the provision of counselling, and the feasibility of establishing similar clubs or programmes in other schools in northern Kosovo and/or the enclaves should be explored.

The possibility of establishing community-based programmes to provide services for children involved in offending, in particular victim-offender mediation, should also be explored. Since the Centre for Social Welfare is only able to take on cases referred by the competent authorities – not currently operative in this area – mediation services would have to be provided through an NGO or community-based organization or agency. Experienced mediators from Serbia and elsewhere in the region could provide training.

Given the present legal situation, it might be necessary for mediation to be introduced as an extrajudicial or paralegal conflict resolution process – that is, one that is neither prohibited nor regulated by legislation, whose value lies purely in the intrinsic value of conflict resolution for the victim, the community and the offender. Referral to mediation could be made by the victim, a teacher, family members or any concerned member of the community. That is one option.

Another option might be for the police to informally refer minor cases involving juveniles for mediation. Although neither Kosovar nor Serbian legislation gives this power to the police, it is clear that under the unusual circumstances that exist in northern Kosovo the police are not able to follow the usual procedures to the letter of the law. Informal referral to mediation would be a more constructive way for police officers to fulfil their role rather than simply releasing suspects without taking any action whatsoever. Not being expressly authorized by the legislation, mediation would have no legal value under such circumstances, but it would help to prevent a climate of impunity and satisfy the expectations of victims. And, being by definition voluntary, mediation would not violate the rights of suspects.
Annex 2. List of persons met

Public officials

R. Haxhimusa, President, Supreme Court
F. Kadiu, Judge, District Court of Prishtinë/Priština
E. Kaqiku, Judge, District Court of Mitrovicë/Mitrovica
H. Zhitija, State Chief Public Prosecutor
I. Kabashi, State Chief Prosecutor, Prishtinë/Priština
S. Syla, Prosecutor, District Court of Mitrovicë/Mitrovica
F. Dushi, Permanent Secretary, Ministry of Justice
S. Maliqi, Head, Legal Office, Ministry of Justice
B. Bahtiri, Head, Division for Legislation and Policy, Ministry of Justice
M. Ademi, Director, Probation Service
N. Sahiti, Head, Regional Probation Service, Prishtinë/Priština
B. Latifi, Head, Regional Probation Service, Mitrovicë/Mitrovica
T. Bytyqi, Head, Programs and Training, Correctional Service
M. Bikliqi, Director, Lipjan Correctional Facility for Juveniles and Women
Y. Konjusha, physician, Lipjan Correctional Facility
B. Hyseni, President, Commission on Legislation and the Judiciary, Kosovo Assembly
L. Krasniqi, Director, Kosovo Judicial Institute
A. Racaj, Head, Training Department, Kosovo Police
H. Hajredini, Human Rights Coordinator, Office of Good Governance, Human Rights, Equal Opportunities and Gender Issues, Office of the Prime Minister
B. Kelmendi, Director, Department of Social Services, Ministry of Labour and Social Welfare
I. Kryeziu, Director, Law Department, Ministry of Education, Science and Technology
A. Istogu, Director, Pre-university Education, Ministry of Education, Science and Technology
A. Azemi, Director, Statistics Department, Ministry of Education, Science and Technology
H. Jashari, Deputy Ombudsperson
I. Rahmani, Child Rights Officer, Office of the Ombudsperson
B. Mitic, Director, Centre for Social Welfare, Gračanica/Graçanicë
N. Jokic, social worker, Centre for Social Welfare, Gračanica/Graçanicë
Civil society
M. Dragusha, President, Kosovo Chamber of Advocates
S. Makolli, Commissioner, Legal Aid Commission
V. Murati, Director, Human Rights Centre, University of Prishtina
A. Marku, delegate, Terre des Hommes (NGO)
B. Gudzic, representative, Working Group for Security (NGO)

UNICEF
L. Fragiacomo, Child Protection Specialist, UNICEF Prishtinë/Priština
A. Klaiqi, Child Protection Officer, UNICEF Prishtinë/Priština
A. Ibrahimi, Child Protection Officer, UNICEF Prishtinë/Priština
I. Milosavljevic, Project Officer, UNICEF Zvečan/Zveçan field office
L. Tustin, consultant, UNICEF Prishtinë/Priština

International agencies and organizations
C. Charpentier, Legal Assistant to the President of the Assembly of the EULEX Judges, EULEX Kosovo
X. Beqiri, Legal System Monitor, UNMIK, Mitrovicë/Mitrovica
K. Gabriel, Legal System Monitor, UNMIK, Mitrovicë/Mitrovica

Focus group, Zvečan/Zveçan:
M. Petrovic, Centre for Social Welfare
V. Krivokapic, representative of Kosovo Police Service
A. Gvozdic, Mission of People of Good Will (NGO)
A. Kosanin, psychologist
K. Knezevic, social worker
Annex 3. List of documents consulted

Legislation and regulations

Law on Mediation, Law No.03/L-057, 1 November 2008.
Law on Social and Family Services, No.02-L-17, 21 April 2005.

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Juvenile Justice Steering Committee meeting, Meeting minutes, 10 February 2009.

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Quarterly reports to the European Agency for Reconstruction on the implementation of the juvenile justice project.

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Hyseni, H., Narrative report on implementation of the project, ‘Creation of Safe, Non-violent and Human/Friendly Environment in Society and Schools’, Kosovo Education Centre, 2009.

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**Other**


Organization for Security and Co-operation in Europe Monitoring Department, *Different Communities before the Kosovo Justice System*, OSCE, Prishtinë/Priština, 2008.


Annual review meeting of the juvenile justice institutions, 27 November 2008.