



ASSESSMENT OF JUVENILE JUSTICE REFORM ACHIEVEMENTS IN MOLDOVA

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“Some may see the accused as a criminal; we see him as a child.”

– The president of a trial court

Note on the Assessment Mission

The assessment mission took place from 25 May to 5 June 2009. The team consisted of Dan O’Donnell, international consultant, and two national consultants: Vasile Rotaru and Victor Zaharia. Support was provided by Tatjana Colin, head of the UNICEF Child Protection Section, Sylvia Lupan, Sorin Hanganu and Valentina Timina.

The team interviewed representatives of the Ministry of Justice, the Ministry of the Interior, the General Prosecutor’s Office, the Supreme Court and Superior Council of the Magistracy, the National Council for the Protection of the Rights of the Child, the Department of Penitentiary Institutions, the Probation Service, the Ombudsman for Children, the National Institute of Justice and the Legal Aid Service.

In the capital, Chisinau, a district court, a police commissariat, a pretrial detention facility, the municipal Department for the Protection of the Rights of the Child and a ‘temporary placement centre’ for children were visited. A trip to the town of Telenesti included visits to the district court, the office of the Prosecutor, the office of the Probation Service and the office of the Community Justice Centre, an NGO.

Visits also were made to the correctional facility for juvenile boys in Lipcani, the prison for women in Rusca, where adolescent girls serve sentences, a ‘special school’ for children with deviant behaviour in Solonet and another pretrial detention facility in Balti. Focus group discussions were held with a group of judges in Telenesti and with the staff of the Balti juvenile pretrial detention facility.

The team also interviewed NGO representatives, including the Directors of the Moldovan Institute for Human Rights, the Child Rights Information and Documentation Centre and the Institute for Penal Reform, UNICEF’s main NGO partner in this area.

The final day of the assessment mission tentative conclusions and recommendations were presented to a meeting of government counterparts and to a meeting of donors and representatives of civil society.

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

Background

Moldova became independent of the former Union of Soviet Socialist Republics (USSR) in 1991. Shortly before independence, separatist movements broke in the Transnistria region (Eastern Moldova) and in Gagauzia (Southern Moldova). A ceasefire was negotiated in Transnistria in 1992, and the region remains under the control of an unrecognized government. In 1994 Gagauzia was recognized as a semi-autonomous region.

Moldova is a unitary republic, with a unicameral parliament and independent judiciary.¹ A communist president has been in office since 2001. A new parliament was elected in 2009 leading to several months

¹ There is, however, one semi-autonomous region, as indicated below.

of political crisis. Discontent with the electoral results led to protests and to the partial destruction of the Parliament and office of the President, and the arrest of hundreds of protesters and by-standers.

The population is approximately 3.39 million (without Transnistrian region), of which around 22 per cent is under age 18. The population is some 76 per cent Moldovan; the largest ethnic minorities are Ukrainian (8.4 per cent), Russian (5.8 per cent) and Gagauz (4.4 per cent).²

The economy depends largely on agriculture and on remittances, which in 2007 formed at least 20 per cent of the Gross Domestic Product (GDP).³ An estimated 15 to 25 per cent of the population has emigrated to seek work abroad.⁴ The percentage of the population living in poverty fell from 73 per cent in 1999 to 29 per cent in 2005, according to the World Bank.⁵ In 2007, the *per capita* Gross National Income (GNI) was US\$ 1,260.

The Constitution was adopted in 1994.⁶ International treaties form part of the national law and, in case of conflict, prevail over national legislation.⁷

Moldova became a Party to the Convention on the Rights of the Child (CRC) in 1993. Its initial report on the implementation of the CRC was submitted to the Committee on the Rights of the Child ('the Committee') in 2001, and examined in September 2002; a combined second and third report was submitted in 2007, and examined in 2009.⁸ In its Concluding observations on the initial report of Moldova, the Committee expressed concern that there was no separate system for juvenile justice, and encouraged the authorities to seek assistance from UNICEF.⁹ After examining the second report of Moldova in 2009, the Committee expressed regret that some of its concerns and recommendations regarding juvenile justice had not been adequately addressed or implemented, and reiterated its previous recommendation that a separate system of juvenile justice fully in line with the Convention be established.¹⁰

Moldova became a member of the Council of Europe in 1995 and a Party to the European Convention on Human Rights in 1997.

² Preliminary results of the 2004 Census (which did not cover Transnistria), cited in Committee on the Elimination of Racial Discrimination, Reports submitted by States parties under Article 9 of the Convention, Seventh periodic reports of States parties due in 2006, Addendum Moldova, CERD/C/MDA/7, 2006, para. 3.

³ Migration and Remittances Are Important Drivers of Growth in Moldova, World Bank News Release No. 2007, available at www.worldbank.org, accessed 31 January 2010.

⁴ Project Proposal: Reform of the Juvenile Justice System in Moldova, UNICEF, Chisinau, undated, p. 6, citing UNDP estimates.

⁵ The World Bank, Moldova Poverty Update, Report No. 35618-MD, Washington DC, 2006, Table 1.1.

⁶ Article 50 of the Constitution contains some general provisions on the rights of children.

⁷ United Nations, Core document forming part of the reports of States parties: Republic of Moldova, HRI/CORE/1/Add.114, April 2001, paras. 22–24. (Article 4.2 of the Constitution provides, "Wherever disagreements appear between the conventions and treaties on fundamental human rights to which the Republic of Moldova is a party and its domestic laws, priority shall be given to international regulations," and Article 8.2 provides, "The coming into force of an international treaty containing provisions contrary to the Constitution shall be preceded by a revision of the latter.")

⁸ Committee on the Rights of the Child, Consideration of reports submitted by States parties under Article 44 of the Convention, Second and third periodic reports of States parties due in 2005: Republic of Moldova, CRC/C/MDA/3, 2007; Committee on the Rights of the Child, Consideration of reports submitted by States parties under Article 44 of the Convention, Concluding observations, second and third periodic report of the Republic of Moldova, CRC/C/MDA/CO/3, 2009.

⁹ Committee on the Rights of the Child, Consideration of reports submitted by States parties under Article 44 of the Convention, Concluding observations, Initial report of the Republic of Moldova, CRC/C/15/Add.192, 2002, paras. 51 and 52.

¹⁰ Committee on the Rights of the Child, Concluding observations, second and third periodic report of the Republic of Moldova, CRC/C/MDA/CO/3, paras. 7 and 73.

The UNICEF Office in Moldova was opened in 1993. The present Country Programme covers the period 2007–2011.

A Law on Child Rights was adopted in 1994 and a National Council for the Protection of the Rights of the Child was established in 1998.¹¹

At independence, Moldova had only a few components of a juvenile justice system. Persons aged 14–15 years accused of a serious crime and those aged 16–17 years accused of any crime were tried by ordinary criminal courts under special provisions of the Criminal Code and the Code of Criminal Procedure. There was one special correctional ‘colony’ for convicted boys aged 14–17 years. Adolescent girls served sentences in the women’s prison. Children involved in criminal activities but too young to be prosecuted could be sent by the Commission on Minors to a school for children involved in antisocial behaviour.¹² As in other countries that formed part of the former USSR, the Ministry of the Interior had a department called ‘Inspectorate of Minors’ whose responsibility included the supervision of children involved in antisocial behaviour, including underage offenders, adolescents considered potential offenders and those released after serving sentences.

Offending by juveniles increased during the decade following independence, according to the Ministry of the Interior, from 1,652 cases in 1992 to 2,684 in 2001.¹³ The number of cases of juveniles convicted of an offence appears to have been relatively stable during the 1990s, however, at between 1,500 and 1,600 convictions.¹⁴ The number of juveniles serving sentences in the juvenile correctional facility during this period decreased significantly, from 262 in 1993 to 153 in 1999.¹⁵

The number of offences by juveniles peaked in 2004, and has subsequently fallen to below the number reported in 1992 – a decrease of 45 per cent over five years.¹⁶ The number of homicides, however, did not diminish and the number of rapes rose dramatically.¹⁷

In 2000 the number of convictions peaked at 1,934, falling to 445 in 2008 – a 77 per cent decrease. Data from the General Prosecutor’s Office confirm a drop of nearly 50 per cent in the number of criminal investigations concerning juveniles opened during the present decade, from 2,976 in 2002 to 1,629 in 2008.¹⁸

¹¹ Law No. 338-XIII of 15 December 1994 provides that arrest or detention “shall be used only as exceptional measures;” that arrested or detained children shall be kept separately from adults and convicted children; prohibits capital punishment and life sentences; and provides that the participation of a defence counsel is obligatory in court proceedings. (See Article 28, paras. 2–5.)

¹² The Commission on Minors was an administrative body composed of representatives of the local government, the police and others.

¹³ Botezatu, T., Catana, T., Costachi, J., and Rotaru, V., *Juvenile Justice in the Republic of Moldova, Evaluation Report 2002–2003*, Government of Moldova, UNICEF, undated, p. 10.

¹⁴ Committee on the Rights of the Child, Consideration of reports submitted by States parties under Article 44 of the Convention, Initial report of the Republic of Moldova, CRC/C/28/Add.19, 2002, para. 391. There was a sharp increase in convictions in 2000 and 2001 (1,934 and 1,894, respectively).

¹⁵ *Ibid.*, paras. 400 and 405. (The number was much lower in 2000 and 2001, due to an amnesty.)

¹⁶ 2,753 in 2004 and 1,502 in 2008. See National Bureau of Statistics, *The situation of children in the Republic of Moldova in 2008*, No. 08-06/126, 2009, Table 7. Available at <http://www.statistica.md/newsview.php?l=en&id=2623&idc=168>, accessed 31 January 2010 (Situa ia copiilor în Republica Moldova în anul 2008).

¹⁷ E.g., 12 homicides in 2004 and the same number in 2008; 25 rapes in 2004 and 115 in 2008. (For the most recent data, see *Bulletin of the Supreme Court of Justice, No.3*, March 2009.)

¹⁸ [Unpublished] data provided to the assessment team by the General Prosecutor’s Office.

During the last five years, the number of juvenile prisoners serving sentences has fluctuated between a high of 138 in 2006¹⁹ and a low of 32 at the time of the assessment mission. This low figure is due in large part to an amnesty in 2008 but, even before, the number of juveniles (boys and girls) serving sentences was 119.²⁰ There were 93 juveniles in pre-sentence detention facilities at the time of the assessment mission.²¹

UNICEF's support to the development of juvenile justice began in 2001, with the sponsorship of a series of round-table discussions. In 2002 UNICEF supported the preparation of a situation analysis by a group of national experts.²² This led to a three-year (2003–2005) project supported by a US\$ 750,000 grant from the Government of the Netherlands and to the implementation in 2008 of a three-year US\$ 1.779 million grant from the Swedish International Development Cooperation Agency (SIDA).

Executive Summary

At independence in 1991, Moldova had neither juvenile courts nor juvenile judges. Adolescents accused of a crime were prosecuted under special provisions of the criminal law and procedure. There was a correctional facility for boys aged 14–18 years and separate juvenile units (for boys) in 'pretrial' detention facilities. A specialized police unit was responsible for the prevention of offending and administrative bodies called 'Commissions on Minors' could place younger children involved in offences or 'deviant behaviour' in reform schools.

Criminal legislation adopted in 2002, shortly before UNICEF started supporting the development of juvenile justice, made the justice system more repressive for juveniles in some respects. The law has been amended repeatedly since then, and is now more compatible with international standards on child rights. While children may no longer be sent to the reform school without a court order, community-based programmes for the prevention of offending are still very weak.

Participatory training materials have been developed, a considerable number of judges, prosecutors, police and prison staff have participated in training, and child rights is being incorporated into some professional curricula. In each trial court at least one judge and one prosecutor have been designated to handle juvenile cases, although for most of them juvenile cases are a small part of their caseload.

The number of juveniles convicted of crimes and the number of juveniles deprived of liberty – whether in the reform school, detention centres or correctional facilities – have fallen dramatically. The training of prison staff has improved, but further progress in policies and programmes and a plan for the restructuring of the subsystem in charge of accused juveniles and juvenile prisoners are needed. The 'temporary placement centre' for street children, lost children and other children at risk has been renovated, and efforts have been made (with limited success) to provide schooling to juveniles in detention and psychosocial services to those serving sentences.

¹⁹ [Unpublished] statistics of the Ministry of Justice provided to UNICEF ('children behind bars').

²⁰ Ibid. Amnesties or pardons have been adopted frequently since independence – in 1996, 1998, 1999, 2001, 2006 and 2008 – and usually result in the release of all juveniles convicted or accused of a non-violent offence.

²¹ In Moldova, as in most countries of the region, persons detained before trial not only remain in detention during the trial, but also during the appeal. The term used in Moldova is often translated into English as 'pre-sentence' detention.

²² Botezatu, J. R., member of the Supreme Court; Catana, T., prosecutor; Costachi, J., President of the Association of Law Career Women; and Rotaru, V., Moldova State University Faculty of Law, *Juvenile Justice in the Republic of Moldova – Evaluation Report 2002–2003*, UNICEF, published in 2003, although preparation began in 2002. Preliminary conclusions were used in the first grant proposal. (See note 139, below).

A Probation Service and a publicly funded Legal Aid Service have been established and are in the process of developing specialized staff or programmes for juveniles. Measures intended to prevent abuse of juvenile suspects have been introduced – again with limited success – and the recently established ombudspersons play a valuable role in investigating the situation of juvenile suspects, detainees and prisoners.

Data on convicted juveniles are relatively good, while data on other issues are quite limited. Policies appear to be based largely on traditional theories and common sense; and there is little or no rigorous empirical research on juvenile offending and juvenile justice. The impact of most activities carried out has not been independently evaluated.

In Moldova, UNICEF's work in the field of juvenile justice began in 2001. A situation analysis prepared by a group of national experts in 2002 led to a three-year US\$ 750,000 project financed by the Government of the Netherlands, followed by a three-year US\$ 1.779 million grant from SIDA. The first project ran from 2003 to 2005, and the implementation of the second began in 2008.

The first project included components of law reform and training, and pilot projects on legal aid and diversion; the second focused on law reform, legal aid and probation services for juveniles. A national NGO played an important role in the implementation of the first project, thus contributing to strengthened capacity, while UNICEF supported an inter-agency coordination body, which is no longer active. Civil society had a smaller role in the execution of the second project.

Recommendations of the assessment team included:

- The Juvenile Justice Working Group should be reactivated.
- Priority should be given to pilot programmes for community-based secondary prevention, based on research concerning the causes of offending and preventive factors, and to community-based programmes for the prevention of re-offending by younger children, by juveniles 'diverted' from the judicial system and by juveniles given non-custodial sentences.
- Closure of the juvenile unit in the Chisinau pretrial detention facility should be a high priority. Consideration should be given to the opening of a facility in the capital exclusively for juveniles, with separate sections for those awaiting trial and those serving sentences.
- The use of isolation cells as a disciplinary measure should be eliminated.
- Prompt administrative and, when appropriate, criminal action should be taken in response to violations of the rights of children by public officials.
- A programme should be developed and tested to assist juveniles released from correctional facilities.
- Consideration should be given to establishing one or more specialized juvenile or children's courts, in keeping with the recommendations of the Committee on the Rights of the Child.
- A study on the monitoring of legal proceedings involving juveniles should be carried out in order to evaluate the impact of training and other reforms already implemented and to identify the need for further training and reforms.
- Legislation and procedures concerning children involved in criminal conduct while too young to be prosecuted should be clearly defined and brought into compliance with the 'last resort' principle and other relevant international standards.
- New indicators on juvenile justice should be developed and mechanisms for data collection and analysis should be made more transparent and robust.

- UNICEF and other international actors should continue to support the Public Defender, the Probation Service, the Ombudswoman for Children, the National Institute of Justice and the training of correctional staff, especially psychologists and social workers.
- Technical assistance should be provided to support research on the causation and prevention of offending and re-offending; to monitor legal proceedings concerning juveniles; to implement a stronger data management system; to develop a plan for the restructuring of the correctional system; and to conduct a feasibility study on the appointment of one or more full-time juvenile judges and/or the creation of children's courts.
- Consideration should be given to expanding the activities supported to closely related issues concerning children and justice.

PART I. The Process of Juvenile Justice Reform

1) Policy and advocacy

In 2003, an evaluation of juvenile justice was prepared by the Juvenile Justice Working Group of the National Council for the Protection of the Rights of the Child that included representatives of the relevant ministries and institutions, as well as independent national experts.²³ The recommendations of the report were presented at a National Conference on Juvenile Justice and endorsed by the relevant authorities later the same year. Although no national policy specifically on juvenile justice was adopted,²⁴ this report clearly influenced the legislative reforms approved subsequently, and no doubt influenced the policies followed by some of the relevant ministries and institutions. The recommendations also ensured that the broader policies adopted later addressed the problem of juvenile justice (see below).

A national Strategy for Strengthening the Judicial System was approved by the Parliament in 2007, as part of the Government's commitments to European integration.²⁵ "Streamlining the system of justice for minors" is one of the nine components of the Strategy.²⁶ Four specific objectives/activities are identified: evaluate the needs in terms of staff and infrastructure; reform the law to increase due process and simplify legal proceedings; improve the specialization of judges and train staff; and set up the infrastructure for a well functioning juvenile justice system.²⁷ This section calls for improvement in cases in which children are victims or accused. Some aims mentioned in other sections of the Strategy, in particular reducing the delay in trials, would also be very beneficial for juvenile defendants.

These aims are good, although their real value depends on the kind of measures adopted to achieve them. These are not identified, however. The explicit call for the creation of specialized economic courts throughout the country in another section, for example, contrasts with the vagueness of references to specialization and to the establishment of a juvenile justice system.

The National Development Strategy for the years 2008–2011 calls for the strengthening of juvenile justice, in particular by "Improving the legislative framework in the area of minors' rights protection by developing proposals for uniform regulation aimed at streamlining proceedings and increasing the procedural guarantees granted to minors [and] Creating the infrastructure for the proper functioning of juvenile justice by a specialization of judges and other categories of staff within the judicial system and by creating a documentation and information centre accessible to professionals in the area of juvenile justice."²⁸ These goals are vague, but very relevant.

The Strategy also recommends that the police prevent offending through "special measures and programmes for minors and their families living in an environment with an increased risk of delinquency..."²⁹ Recognizing that more needs to be done to prevent offending is positive, but failure

²³ Ibid.

²⁴ The adoption of a national plan of action on juvenile justice reform was one of the objectives of the 2003–2005 juvenile justice project. See Reform of the Juvenile Justice System in Moldova, UNICEF, 2002, p. 9.

²⁵ Strategy for Strengthening the Judicial System and Action Plan for the Implementation of the Strategy for Strengthening the Judicial System, adopted through Parliament Decision No. 174-XVI of 19 July 2007.

²⁶ Ibid., Annex, section 7.

²⁷ Ibid., section 7(d).

²⁸ National Development Strategy for the years 2008–2011, adopted by Law No. 295-XVI of 21 December 2007, section 1.2.3 (iv).

²⁹ Ibid., section 1.1.3(vi).

to acknowledge the importance of a much more comprehensive, evidence-based approach confirms the need for improved advocacy.

2) Law reform

There is no juvenile justice law in Moldova. The most relevant laws are the Criminal Code and the Code of Criminal Procedure, both of which were enacted in 2003, when UNICEF was just beginning to work on juvenile justice.³⁰

The 2002 Criminal Code made few beneficial changes. One is that custodial sentences are no longer mandatory for convicted juveniles having a previous conviction.³¹

Several provisions of the new Criminal Code had negative consequences for juveniles,³² as they greatly expanded the number of offences for which juveniles aged 14–15 years could be prosecuted.³³ Under the previous Criminal Code, juveniles aged 14 or 15 years could be prosecuted for some 39 extremely serious crimes.³⁴ Under the 2002 Code, they could be prosecuted for over one hundred crimes classified as ‘serious’.³⁵ The new Code also increased from 10 to 15 years the maximum sentence applicable to juveniles convicted of many offences³⁶ and restricted to certain offences the discretion of the court to suspend sentences.³⁷

The new Code of Criminal Procedure brought the provisions concerning juveniles into a single chapter, highlighting the importance of treating differently juvenile suspects and accused juveniles. Article 477(2) of the new Code provides that accused juveniles may not be detained before and during trial unless accused of a serious offence. Article 475 requires the court to take into account the level of intellectual and psychological development, character and needs of juvenile suspects and defendants, as well as the reasons for their participation in the offence and the influence, if any, of other persons. Article 186(4) reduced from six to four months the length of time a juvenile may be detained before trial.

These Codes were amended subsequently in order to bring them into greater compliance with the rights of children. The number of offences for which juveniles may be prosecuted as from age 14, rather than age 16, was significantly reduced by an amendment enacted in 2003.³⁸ In 2006 further amendments were approved.³⁹ One amendment to the Criminal Code provides that sentences

³⁰ The Code of Criminal Procedure entered into force in July 2003.

³¹ Criminal Code, Article 75.

³² Some of these changes were later reversed, as indicated below.

³³ There are five categories of crimes in Moldova (excluding administrative contraventions): ‘minor crimes’ (punishable by sentences of two years or less), ‘less serious crimes’ (sentences of two to five years), ‘serious crimes’ (sentences of five to twelve years), ‘extremely serious crimes’ (sentences of twelve years to life) and ‘exceptionally serious crimes’ (life imprisonment). Prior to the entry into force of this Code, juveniles aged 14 or 15 years could only be prosecuted for crimes classified as extremely or exceptionally serious. The new Code allowed them to be prosecuted for serious crimes, as well. In other words, the age of criminal liability was lowered from 16 to 14 years for this category of offences.

³⁴ Committee on the Rights of the Child, Initial report of the Republic of Moldova, CRC/C/28/Add.19, para. 378.

³⁵ Criminal Code, Article 21(1).

³⁶ *Juvenile Justice in the Republic of Moldova – Evaluation Report 2002–2003*, p. 18, comparing Article 23 of the old Code with Article 70 of the new Code enacted in 2003.

³⁷ *Ibid.*, comparing Article 43 of the old Code with Article 90 of the new Code enacted in 2003, which restricted this option to intentional offences punishable by sentences of five years and non-intentional offences by sentences of up to seven years.

³⁸ Law No. 305-XV of 11 July 2003, amending Article 21(2) of the Criminal Code.

³⁹ Law on modification of certain legislative acts, including the Criminal Code and the Code of Criminal Procedure, Law No. 184-XVI of 29 June 2006.

imposed on juvenile offenders may not exceed one half of the sentences applicable to an adult.⁴⁰ The maximum penalty that may be imposed on a juvenile for a single offence was reduced from 15 years to 12 years and 6 months.⁴¹

Amendments to three other provisions of the Criminal Code bring sentencing into greater conformity with the 'last resort' principle. One provides that juveniles convicted of crimes not classified as serious shall not be given a sentence (lit: 'punishment') if an 'educational measure' would suffice to prevent future offending.⁴² A similar provision to the effect that convicted juveniles shall not be given custodial sentences if educational measures or their placement in a special school or a medical facility would suffice to prevent future criminal behaviour was extended to benefit juveniles convicted of serious offences.⁴³ Finally, a provision to the effect that reconciliation with the victim of an offence removes criminal liability was extended, for juveniles, to include serious offences.⁴⁴

Two important amendments were made to the Code of Criminal Procedure. One provides that a prosecutor, not the police, shall be responsible for investigating offences by juveniles.⁴⁵ Another reduces from 72 to 24 hours the length of time a juvenile may remain in police custody after being apprehended.⁴⁶

The Law on Probation and the Law on Mediation, adopted in 2007 and 2008, respectively, also have beneficial consequences for juveniles, as indicated below in Part II of this assessment.

The drafting of a juvenile justice law was one of the aims of the first 2003–2005 juvenile justice project.⁴⁷ This goal was not attained. Although many improvements have been introduced into the legislation applicable to juvenile suspects and accused juveniles, the need for additional changes is recognized. The drafting of a juvenile justice law might well have been a more effective way of creating a comprehensive and coherent juvenile justice system.

3) Administrative reform/restructuring

The most significant administrative reforms related to juvenile justice concern the courts and the legal procedures applicable to juveniles. In 1997 the Supreme Court adopted instructions on juvenile cases underlining the need for strict compliance with the mandatory participation of the defence council as from apprehension. They required that the child's background and the circumstances of the offence should be taken fully into account, that no penal sanctions should be imposed if the offence did not represent a serious threat to society and that the suspension of sentences of three

⁴⁰ Ibid., Article I.7, modifying Article 75(3) of the Criminal Code.

⁴¹ Law on modification of certain legislative acts, Article I.7, modifying Article 75(4) of the Criminal Code, and I.6, modifying Article 84(1) of the Criminal Code.

⁴² Criminal Code, Article 75(3), cited in Committee on the Rights of the Child, Second and third periodic report of the Republic of Moldova, CRC/C/MDA/3, para. 369. This comprises two categories of offences: 'minor' and 'less serious' offences, i.e., those punishable by a sentence of up to five years, in the case of an adult offender. See Criminal Code, Article 16(2) and (3).

⁴³ 'Serious' offences are those punishable, in the case of an adult offender, by a sentence of up to 12 years. See Criminal Code, Article 16(4).

⁴⁴ Ibid., Article 109. 'Serious' offences include those punishable, in the case of an adult offender, by a sentence of up to 12 years. See note 43.

⁴⁵ Law on modification of certain legislative acts, Article II.4.

⁴⁶ Law on modification of certain legislative acts. Article II.2, modifying Article 166 of the Code of Criminal Procedure.

⁴⁷ Reform of the Juvenile Justice System in Moldova, p. 12.

years or less should be considered.⁴⁸ The instructions also stressed the importance of conducting hearings in such a way as to minimize the risk of any negative impact on the juvenile.⁴⁹

In 2004 the Superior Council of the Magistracy adopted a decision ordering the president of each trial court to appoint one or more judges to handle cases of juveniles accused of an offence. The same year, the General Prosecutor enjoined each district to designate a prosecutor to handle cases of accused juveniles. These decisions appear to have had a positive impact on the treatment of juveniles in the juvenile justice system.⁵⁰ The impact is limited, however, in part because judges designated as juvenile judges have insufficient training and because many of them handle a rather small number of cases involving juveniles.⁵¹

Also in 2004, the responsibility for supervising juveniles given non-custodial sentences, including community service and conditional sentences (probation), was transferred from the Ministry of the Interior to the Ministry of Justice.⁵² This was consolidated by the Law on Mediation and the Law on Probation.

4) Allocation of resources

The global financial crisis that struck in 2008 has had a major impact in Moldova, leading mainly to a reduction in remittances. The Government reacted by cutting the budget of all ministries and public agencies by 20 per cent.

The insufficient amount of resources made available is seriously affecting some parts of the system. The best example is the juvenile unit of the Chisinau pretrial detention facility, where conditions are frankly inhuman. Although material conditions are poor in most facilities in which juveniles are deprived of liberty, they are not as bad as those prevailing in Chisinau. There are two exceptions: the 'temporary placement centre' in Chisinau (not part of the juvenile justice system proper) and the women's prison, where a very small number of adolescent girls serve sentences.

Some other authorities also mentioned that the scarcity of resources was hindering compliance with recent legislative reforms. The General Prosecutor's Office, for example, indicated that the shortage of psychologists makes it difficult to ensure their presence at any questioning of a juvenile. Representatives of the Probation Service pointed out that the recent budget cut had affected their ability to provide services and to reimburse probation officers' expenses (e.g., travel costs to visit probationers). Similar constraints have contributed to a high staff turnover. A representative of the National Council for the Protection of the Rights of the Child indicated that, in her opinion, the lack of resources was delaying the establishment of the programmes and mechanisms required for the implementation of the new juvenile justice legislation.

The discrepancies between the best and the worst facilities in the correctional system reflect the differences in resource allocations. According to one interpretation, the persistence of poor conditions in most facilities is not so much an indication of meagre funding as the low priority given

⁴⁸ Supreme Court ruling No. 37 of 12 November 1997, paras. 5, 10, 20 and 21, cited in *Juvenile Justice in the Republic of Moldova – Evaluation Report 2002–2003*, p. 22.

⁴⁹ *Ibid.*, para. 8.

⁵⁰ It is not possible to differentiate the impact of this administrative measure from the positive impact of the new legislation, which came into force the previous year.

⁵¹ In 2008, only two courts outside the capital handled more than one juvenile case per week and 17 district courts handled fewer than one case per month (on average), according to unpublished data provided to the assessment team.

⁵² Government Decision No. 1059 of 27 September 2004.

to securing the necessary investments. According to a more optimistic interpretation, the process of making the required investments can be expected to continue, thus gradually improving other facilities.

Some public officials as well as representatives of civil society agreed that the lack of funds is not the main obstacle to improving the institutions that form part of the emerging juvenile justice system. The current economic crisis, however, may well increase the need for assistance from international donors.

5) Training and capacity-building

Training was one of the main objectives of the first juvenile justice project. A manual on juvenile justice intended mainly for judges, prosecutors and law enforcement officers was developed. It is worth mentioning that 130 judges and prosecutors were trained in child rights in six seminars.⁵³ The new modules were integrated into the official professional curricula of judges and prosecutors in 2006.

Legislation establishing the National Institute of Justice was adopted in 2006. The Institute is an autonomous body governed by a council.⁵⁴ Its main tasks are to provide entry-level and in-service training to judges and prosecutors. The basic training programme lasts 18 months. The curriculum includes a 32-hour course on juvenile justice, which uses the training manual prepared with the support of UNICEF. The aims and methodology of the training include the development of skills and values as well as cognitive learning.⁵⁵ The first class of 20 prosecutors and 9 judges graduated in 2009. The first in-service training on 'children in the criminal justice system' for judges and prosecutors was organized in 2007. The two-day course emphasized child psychology and interview techniques, in particular of child victims. A similar course was scheduled for 2009. In 2008 the Institute organized, on an *ad hoc* basis, entry-level training for mediators and probation officers. The training of public defenders is being discussed.

Opinions on the impact of training vary. One judge who had participated in a three-day activity in 2006 and who was interviewed by the assessment team demonstrated strong awareness of and commitment to the rights of accused and convicted juveniles. He also indicated that, in his opinion, the training of prosecutors had a noticeable impact on their professional conduct, as manifested by decreased use of pretrial detention and fewer requests for the maximum penalty. Another group of judges agreed that both the training and the materials were useful. A public defender considered that the training courses offered by UNICEF, the Organization for Security and Co-operation in Europe (OSCE) and the Norwegian Mission of Rule of Law Advisers to Moldova (NORLAM) were useful but had limited impact because only younger professionals participate.

On the other hand, the Deputy Minister of Justice declared that the results of the training of judges are "very poor." The Ombudsman for Children expressed the view that judges still "don't respect the best interests" of juveniles. The Director of the municipal Department for the Protection of the Rights of the Child indicated that, in her opinion, those trained still "don't respect the law." And a representative of the General Prosecutor's Office stated, "We need to change our mentality regarding abuse."

⁵³ Committee on the Rights of the Child, Second and third periodic reports of the Republic of Moldova, CRC/C/MDA/3, para. 374.

⁵⁴ The council consists of seven judges, four prosecutors, one representative of the Ministry of Justice and one representative of the Law Faculty of Moldova State University.

⁵⁵ A field trip to a prison is part of the programme.

All specialized juvenile police officers ('juvenile inspectors') participated in a five-day training activity on issues related to violence against children – identification of cases, response, referral, as well as interview techniques of both victims and aggressors.

The training of correctional officers was carried out by a separate programme supported by the United Nations Development Programme (UNDP). A representative of the Department of Penitentiary Institutions informed the assessment team that staff must participate in 'retraining' every three years. From its contacts with the staff, the assessment team's impressions are that they are reasonably sensitive to the rights of children. The lack of allegations of abuse seems to confirm this impression. Additional training is needed about different methodologies and approaches to assist offenders and reduce the risk of re-offending. Such training should be accompanied by improvements in other areas, such as promoting inter-agency coordination, developing community-based programmes, changing the applicable legislation and regulations and upgrading the material conditions of the correctional facilities where accused and convicted boys are confined.

6) Accountability mechanisms

In 2003 the United Nations Committee against Torture expressed concern that "the reported failure of the State ... to ensure prompt, impartial and full investigations into the numerous allegations of torture and ill-treatment [was] contributing to a culture of impunity among law enforcement officials." Investigations by the European Committee for the Prevention of Torture, most recently in 2007, have concluded that beatings by the police of persons taken into custody, including juvenile suspects, continue to be common.⁵⁶

Responsibility for the investigation of crimes, including abuse of juveniles by the police or other public servants, lies with the General Prosecutor's Office. The assessment team was informed that a campaign against torture had started some two years ago, and that progress had been made. Complaints against police officers are being investigated by prosecutors from a different district in order to safeguard against tolerance or complicity. The number of police officers prosecuted has increased, and some have been given prison sentences for adult suspects' abuse. Complaints against police officers for juvenile suspects' abuse reportedly are "much less common." However, it was not possible to point to any case in recent years in which criminal or administrative sanctions had been imposed for the abuse of a juvenile suspect by a police officer.

Representatives of the Ministry of the Interior indicated that during the last two to three years no complaints about police misconduct against children had been received. This kind of blanket denial not only lacks credibility, but reinforces the impression that there is little political will to eradicate abuse.

A Centre for Human Rights comprised of three ombudsmen was established in 1997.⁵⁷ In 2008 a fourth ombudswoman whose mandate included child rights was added to the structure of the Centre.⁵⁸ A member of the staff informed the assessment team that he had visited the correctional facility for

⁵⁶ Rapport au Gouvernement de la République de Moldova relatif à la visite effectuée en Moldova par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) du 14 au 24 septembre 2007, CPT/Inf (2008) 39, Conseil de l'Europe, Strasbourg, décembre 2008, para. 13. (The Committee specifically reported that about one third of the detainees interviewed in private indicated that they had been physically mistreated, usually during interrogation in police stations, and that most of those who did not report abuse attributed this to the fact that they had promptly confessed.)

⁵⁷ United Nations, Core document forming part of the reports of States parties, Republic of Moldova, HRI/CORE/1/Add.114, April 2001, para. 40. (The ombudspersons are also referred to as 'parliamentary advocates'.)

⁵⁸ Law No. 56-XVI of 20 March 2008.

juveniles four to five times in 2008. As no complaints of abuse against staff had been recorded, the Ombudsman's recommendations focused on material conditions and education. Pretrial detention facilities also are visited regularly, and a visit to the 'special school' was scheduled. A representative of the Department of Penitentiary Institutions explained that the Centre for Human Rights must be informed each time hand-cuffs or clubs are used to restrain an inmate.

Authorities do not always respond positively to the Ombudsman's recommendations. An example cited concerned the case of an 11-year-old who had complained that he was beaten while being apprehended for theft and who had identified the responsible officer. The initial response of the prosecutor was to open an investigation into the alleged theft, but not into the abuse. The investigation was still open at the time of the assessment mission.

The information obtained by the assessment team suggests that the Centre for Human Rights plays a valuable role in monitoring the treatment of juvenile suspects and prisoners and in bringing cases to the attention of the responsible authorities. Nevertheless, criminal and administrative investigations are not pursued promptly and efficiently, and accountability, as a result, remains weak.

7) Coordination

The National Council for the Protection of the Rights of the Child was established in 1998. Members include the Ministry of Justice, the Ministry of the Interior, the Ministry of Social Protection, Family and Child and the Ministry of Education and Youth, as well as representatives of the Supreme Court, the General Prosecutor's Office, UNICEF and NGOs. UNICEF supported the establishment of a Secretariat in 2002, but discontinued support in 2007 due to sustainability concerns. The composition of the Council changed in 2008: UNICEF and NGOs are no longer members, but may participate as observers.

In 2001, the Council established a Working Group on Juvenile Justice. The end of funding and subsequent changes in the status of the Council or in donors disrupted the activities of the Working Group, which had been chaired/convened by UNICEF. The first progress report of UNICEF's 2008–2011 juvenile justice project recognizes that the lack of coordination between the main government counterparts is an obstacle to implementation. Even though most of the sources interviewed agreed that inter-agency coordination regarding juvenile justice is insufficient, some of them acknowledged that efforts to achieve law reform have continued and have shown to be effective.

8) Data and research

The 2003–2005 juvenile justice project correctly recognized that "Improved quantitative and qualitative data gathering and management are essential as a base for the reform of the juvenile justice system" and observed that, in Moldova, "Statistical data gathering on children in the justice system is in complete disarray ... with insufficient and contradictory information."⁵⁹

One positive development was that the Superior Council of the Magistracy began to publish data in 2003. The establishment of a comprehensive computerized data management system failed due to the reluctance of some ministries to share information.⁶⁰ Data continue to be compiled and published separately by the Ministry of the Interior, the Ministry of Justice and the Superior Council of the Magistracy, although the National Bureau of Statistics started compiling and releasing some data from these sources in 2004.

⁵⁹ Reform of the juvenile justice system in Moldova, 2002, p. 12.

⁶⁰ Malby, S., Evaluation of UNICEF Project: Reform of the Juvenile Justice System in Moldova, Children's Legal Centre and UNICEF, Chisinau, mimeo, September 2006, p. 21.

The data compiled by the Ministry of the Interior include the number of juvenile suspects, disaggregated by whether they have a prior record, whether the offence was committed alone or by a group and whether the suspect was intoxicated at the time. The Department of Penitentiary Institutions publishes data on juveniles in detention facilities and prisons, disaggregated by sex, facility and offence. These data do not distinguish between juveniles accused and awaiting trial or sentence and juveniles convicted whose conviction is being appealed.

The General Prosecutor's Office provided the assessment team with data on the number of investigations opened and the number of cases taken to court. The difference between the two (618 cases in 2008) is not disaggregated as to the reason it was decided not to prosecute, which could be insufficient evidence, the exercise of discretion to "release from criminal responsibility" under Article 54 of the Criminal Code, or successful mediation.

Data on cases of accused juveniles handled by the courts are disaggregated by court. The number of juveniles convicted annually is published and disaggregated by offence and by sentence.⁶¹ Data on the number of criminal cases pending and resolved and on their disposition (acquittal or conviction) are not disaggregated to distinguish between adults and juveniles. Similarly, data on the number of months cases have been pending are published, but they do not distinguish between juvenile and adult cases.

Data not published, which would be useful in monitoring the functioning of the juvenile justice, in planning and in preparing reforms, include the percentage of accused juveniles detained before and during trial and the length of their detention; the duration of trials; the length of the sentences imposed disaggregated by offence, age and prior convictions; the length of sentences served; the number of persons convicted as juveniles serving sentences in adult facilities because of their age and the number of young adults in juvenile facilities; as well as indicators concerning the social reinsertion of juveniles on probation (e.g., school enrolment or employment) and of released prisoners.

The Strategy for Strengthening the Judicial System for the years 2007–2010 and the Action Plan for the Implementation of the Strategy for Strengthening the Judicial System, adopted through Parliament Decision No. 174-XVI of 19 July 2007, call for improved data collection systems concerning juvenile offenders. According to a senior public official interviewed by the assessment team, "Data are being collected all the time. The problem is that there's no capacity to analyse them." Certainly, the fact that relevant data on different aspects of the system are published separately by the institutions responsible for law enforcement, prosecution, adjudication and sentencing and prisons discourages analysis of the interrelationship of the different components of the system, and does not provide a holistic vision of juvenile justice. This is particularly so since no interinstitutional coordination mechanism is operational.

The development of an effective mechanism for centralizing, sharing and publishing information is indeed still needed, but no less important is the identification of new indicators that would shed more light on key policy questions and on the improvement of analysis capacity.

During the 2003–2005 project, UNICEF financed a study entitled *Situation of Children in Places of Detention*.⁶² The study, carried out by the leading national NGO, contains chapters by five authors,

⁶¹ Homicide, rape, robbery, burglary, other theft, hooliganism (disorderly conduct) and drug offences; custodial sentence, fine, conditional sentence (probation), community service and other.

⁶² Dolea, I., Vulpescu, A., Grosu, V., Rotaru, V., and Zaharia V., *Situation of Children in Places of Detention*, Institute for Penal Reform and UNICEF, Chisinau, 2005.

including four from Moldova State University. Two chapters concern the analysis of national and international law and one evaluates the conditions in the juvenile correctional facility for boys. A most interesting chapter analyses the respect for due process, the performance of defence lawyers, conditions of detention and the experience of juveniles on probation, on the basis of information provided by juveniles.⁶³ This is a valuable example of respect for the right of children to be heard and have their views taken into account, and of the importance of information that can only be obtained from them in order to identify practices that need to be changed.

The chapter on prevention of offending cites some interesting findings and makes recommendations that favour respect for the rights of children, but much of the analysis is not supported by data or ignores the rule 'correlation is not causation'. Only one empirical study on juvenile offenders carried out since independence is cited, which underlines the need for more research in this important area.⁶⁴

⁶³ Rotaru, V., Observance of the Rights of Juvenile Delinquents Interviewed by Mobile Teams.

⁶⁴ Vulpescu, A, Chief of the Social Reintegration Service of the Department of Penitentiary Institutions, 'Criminological Outline and Prevention of Juvenile Delinquency', citing *Psychological Coordinates Determining the Return to the Penitentiary of Juveniles Discharged from Correction Centres*, by Vulpescu, A., and Laiu, L., Bucharest, 2003 (publisher not identified).

PART II. The Juvenile Justice System in Moldova

1) Prevention

Responsibility for the prevention of offending by juveniles lays in large part on the Ministry of the Interior, in particular the specialized unit known as 'Juvenile Inspectors', which has existed since before independence. At the time of the assessment mission, it had a staff of 202 inspectors (half of them women), all with university degrees. The unit plans to recruit 24 psychologists who will deal with child victims and child suspects.

Their preventive activities include maintaining a presence in schools; giving talks about issues such as drug abuse and trafficking; general supervision such as visits to children's homes and talking to children and their parents; and, when necessary, taking 'protective action' (i.e., removing children from their homes and placing them in the care of child protection authorities). In 2007, 5,175 children were 'registered' with juvenile inspectors.⁶⁵

The 'Commission on Minors' is an administrative authority established during the Soviet period, typically consisting of a representative of the police, the local departments of education and health, the local government and perhaps the local prosecutor and court, and social organizations. The Commissions had competence to separate children from their parents for protection, which usually meant confinement in an 'orphanage', and to place children involved in minor offences or antisocial behaviour in closed 'schools for children with deviant behaviour'. It is unclear how many of them still function.⁶⁶ In Chisinau, the Commission reportedly has been renamed 'Council for the Protection of the Rights of the Child' and meets three to four times a year. The 1994 Law on Child Rights deprived Commissions of the competence to place children in 'special schools'. The Ministry of the Interior informed the assessment team that 1,187 cases had been referred to the Commissions on Minors during the previous six months.

In the capital, a Department for the Protection of the Rights of the Child was established in 1998. The Department provides a broad range of services to vulnerable children and their families, including legal assistance and psychosocial counselling for adolescents at risk, as well as outreach work with street children.⁶⁷

In 2006 the Ministry of Social Protection, Family and Child was established.

The juvenile police and, to some extent other authorities, in particular prosecutors, give talks in schools that are intended to prevent offending. Community Justice Centres are also beginning to explore the possibility of providing prevention activities in schools. Schools do not seem to have a clearly defined role in the prevention of offending, however. Many do not have a school psychologist.

During the 2004–2005 school year, the Child Rights Information and Documentation Centre, a national NGO, carried out a peer education programme designed to prevent offending. It was abandoned due to lack of interest on the part of the Ministry of Education and UNICEF.

The 'National Strategy for Community Action aimed to support children in difficulty for 2007–2009'⁶⁸ mentions 'children in conflict with the law' as a target group, but does not provide any criteria for

⁶⁵ Committee on the Rights of the Child, Second and third periodic reports of the Republic of Moldova, CRC/C/MDA/3, para. 66.

⁶⁶ The Evaluation Report 2002–2003 indicated that even at that point they had become "inactive in most communities," p. 42.

⁶⁷ It also represents children in legal proceedings when their parents or guardians cannot be located, and handles certain matters concerning family law.

⁶⁸ National Strategy for Community Action aimed to support children in difficulty for 2007–2009, adopted through Government Decision No. 954 of 20 August 2007.

identifying children at risk of offending or re-offending. An Action Plan on the Protection of Children's Rights and Prevention and Combating of Juvenile Delinquency covering the years 2008–2010 was adopted, but implementation has been minimal. Most of the persons interviewed by the assessment team who expressed a view on prevention considered that efforts undertaken by the juvenile inspectors and the Commissions on Minors in this area were not effective, or insufficient. Indeed, many of those interviewed agreed on the need for better prevention policies and programmes. No prevention programmes directed specifically at children at high risk of offending (secondary prevention) exist. Observations on the causes of offending found in official documents often are simplistic. There is no analysis of the interrelationship between different factors associated with a higher risk of offending, factors associated with various kinds of offending or the age of the offender, and factors that seem to prevent offending in children belonging to high-risk groups. The lack of research on offending may be related to the lack of secondary prevention.

2) The minimum age for prosecution ('minimum age of criminal responsibility')

Juveniles may be prosecuted for serious offences committed once they reach age 14; those aged 16 years can be prosecuted for any criminal offence.⁶⁹ This complies with the recommendation of the Committee on the Rights of the Child encouraging States "to increase their lower minimum age of criminal responsibility to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level.... for instance 14 or 16 years of age."⁷⁰

The number of offences for which juveniles can be prosecuted as from age 14 rose from 39 to over 150 when the new Criminal Code came into effect in 2003, but it later decreased to approximately the same number of offences as previously.

3) The apprehension and interrogation of juvenile suspects

Juvenile suspects apprehended by the police

Juvenile suspects apprehended by the police may not remain in police custody for more than 24 hours.⁷¹ Previously the limit was 72 hours, the same as for adults.

Suspects may be apprehended only if caught in the act of committing an offence, identified by an eye witness or with evidence of the offence on his/her person or in his/her immediate possession, or if there is reasonable grounds for believing that the person has committed an offence and he/she tries to hide or his/her identity cannot be established, or if there are grounds to suppose that he/she will commit another offence, elude justice or impede the investigation.⁷² In 2008 only 103 juveniles were apprehended, according to information provided by the General Prosecutor's Office, compared to 1,620 investigations of juveniles opened by prosecutors.

Police stations have cells for the detention of suspects, but they lack facilities that would allow them detain juveniles separately from adults. Moreover, the practice of beating suspects to obtain

⁶⁹ Criminal Code, Article 21(1). These age limits are found in the legislation of most countries in the region, including Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Kazakhstan, Kyrgyzstan, Lithuania, Moldova, Tajikistan, Turkmenistan, and Ukraine, as well as Mongolia and Viet Nam. See unpublished study on Juvenile justice and the rights of children: thresholds, procedures and dispositions, UNICEF Innocenti Research Centre, Florence, 2008.

⁷⁰ Committee on the Rights of the Child, Children's rights in juvenile justice, General Comment No. 10, CRC/C/GC/10, 2007, paras. 32 and 33.

⁷¹ Code of Criminal Procedure, Article 166(6).

⁷² Ibid., Article 166(1)–(3).

confessions was long widespread.⁷³ Consequently, responsibility for the investigation of offences committed by juveniles was transferred to prosecutors in 2006.⁷⁴ Children may remain in police stations for 24 hours, but parents must be informed immediately. A prosecutor must be notified within three to six hours and assume responsibility for interrogation.⁷⁵ Children may not be questioned for more than two hours at a time, and four hours per day.⁷⁶ The presence of an attorney and a psychologist or teacher during questioning is mandatory.⁷⁷

These and other reforms, such as the routine medical exam practised on admission to the pretrial detention facilities under the Ministry of Justice, may well have reduced the incidence of police violence against juvenile suspects. No survey of the experiences of juvenile detainees has taken place since 2004. Unfortunately, according to other sources, such measures have not succeeded in eliminating abuse. A representative of the Ombudsman informed the assessment team that police ‘very often’ use physical force when apprehending juveniles.

There also is evidence that the rules designed to prevent abuse are not always respected. Various sources indicated that the police sometimes detain juvenile suspects for periods longer than those allowed, and do not always notify their families promptly. Factors such as the negligence of defence attorneys and the fact that many juveniles are accustomed to violence help perpetuate the impunity of police.⁷⁸ A public defender pointed out that the presence of a psychologist or teacher during the questioning of a child suspect is “purely formal... They just sign the document indicating that they were present.”

The ‘temporary placement centre’

The temporary placement centre operated by the Ministry of the Interior in Chisinau has the capacity to host 25 children. The population at the time of the visit was 9. Children attend school in the community. They were not present at the time of the visit.

The centre has a staff of 39, including 18 police officers and 3 psychologists. The building was refurbished in 2002. It is clean and well furnished. It contains four bedrooms, and receives both boys and girls.

The population seems to consist mainly of two groups. Most children are runaways, street children or children picked up in raids on internet cafes. They often stay only one day or even a few hours, while an appropriate solution to their situation is being determined or arranged. (Approximately 900 children had been admitted during the first five months of 2009.) Those admitted for a longer stay of up to six months are called ‘residents’. Children may be admitted by a decision of the Commission on Minors, the police department or, simply, the head of the facility.

⁷³ Rapport au Gouvernement de la République de Moldova relatif à la visite effectuée en Moldova par le Comité européen pour la prévention de la torture et des peines ou des traitements inhumains ou dégradants (CPT) du 20 au 30 septembre 2004, CPT/Inf (2006)7, Conseil de l’Europe, Strasbourg, février 2006, paras. 13–15; see also Legal and Psychosocial Assistance for Juveniles in the Justice System, Monitoring Report, Institute for Penal Reform, Chisinau, 2005, p. 40.

⁷⁴ Cases of juveniles being beaten by prosecutors and, in one case, raped by a prosecutor also have been reported, but apparently were less common. See Legal and Psychosocial Assistance for Juveniles in the Justice System, p. 40 (research carried out in 2004).

⁷⁵ Code of Criminal Procedure, Articles 166(6) and 167(1). There is an ambiguity as to whether the three-hour limit for notifying the prosecutor begins with the actual apprehension or after the three-hour limit for deciding whether to treat the child as a suspect or release him/her.

⁷⁶ Code of Criminal Procedure, Article 479(1).

⁷⁷ Ibid., Article 479(2).

⁷⁸ Ibid., (regarding the negligence of defence counsel).

The second group are unaccompanied foreign children held there pending repatriation and unaccompanied Moldovan children received after repatriation from abroad. Moldova has entered into six agreements with other countries concerning the repatriation of unaccompanied children.

Two kinds of files are opened for children admitted to the facility: one contains the reason for admission – usually a signed statement by a police officer – and the other, a case file prepared by a social worker, includes information on the child's home, interviews with the child and the like.

The files of all the children present at the time of the assessment mission were reviewed by the team. They included two Moldovan sisters being repatriated for reunification with their families; a child in the care of a grandmother who had been hospitalized; two abandoned children; a 16-year-old girl expelled from home by her mother; a boy expelled from home by his father; and a boy below age 14 who had committed a theft, but did not want to be sent to the special school.

Admission to the centre is not regulated by law, but by regulations approved by the Ministry of the Interior.⁷⁹ During the demonstrations against the government that took place in April 2009, some children were detained arbitrarily in the temporary placement centre (as well as in other police facilities) without prompt notice to their parents. This does not appear to reflect the usual practice of the centre, but it does illustrate the danger inherent in the absence of legal admission criteria. UNICEF issued a statement expressing concern about the situation of children detained or sought in connection with demonstrations in the centre of the capital and requested that children detained in relation to the protests are accorded their full rights under the law.⁸⁰

4) Diversion and restorative justice

The police are obliged to refer all cases of juveniles suspected of an offence to the prosecutor, provided the juvenile is old enough to be prosecuted. They have no discretion to take measures that could be considered diversion.

Under the Code of Criminal Procedure replaced in 2003, prosecutors had discretion to refer to the Commission on Minors cases where there was no serious threat to society, or to order supervision.⁸¹ The Commission, in turn, could place juveniles in the 'special school'. This was rarely done in practice.⁸² Under the new Code of Criminal Procedure and the Criminal Code, this has been replaced by discretion not to prosecute first-time juvenile offenders for offences that are not serious, if it appears that "correction may be achieved without holding him/her criminally liable."⁸³ The prosecutor's decision to exercise this discretion must be confirmed by the decision of an investigating judge "to exempt the juvenile from criminal responsibility."⁸⁴ This decision may be accompanied by placement in a special school or medical facility, or measures such as supervision.⁸⁵

⁷⁹ Regulations of 31 May 2002, cited in *Juvenile Justice in the Republic of Moldova – Evaluation Report 2002–2003*, p. 25.

⁸⁰ UNICEF Moldova media release, 16 April 2009.

⁸¹ Code of Criminal Procedure, Article 5.1, cited in *Juvenile Justice in the Republic of Moldova – Evaluation Report 2002–2003*, p. 41.

⁸² Ibid.

⁸³ Code of Criminal Procedure, Article 483(1), referring to Article 54 of the Criminal Code. This applies specifically to 'minor' and 'less serious' offences punishable, if the offender is an adult, by sentences of five years or less. See Criminal Code, Article 16. (Article 55 also gives judges discretion, in cases of minor offences, to "release from criminal responsibility" and impose an administrative sanction such as a fine, but this practice resembles an alternative sentence more than diversion.)

⁸⁴ Code of Criminal Procedure, Article 483(2).

⁸⁵ According to Article 483(1) of the Code of Criminal Procedure, the imposition of some such measure is mandatory, while according to Article 54 of the Criminal Code, it is optional. Since the measures in question – the "compulsory educational measures" identified in Article 104 of the Criminal Code – include warnings, this apparent discrepancy may be of little practical importance.

In addition, Article 109 of the Criminal Code provides that reconciliation “removes criminal liability” for certain offences. This Article applies when the offender has a prior record. In 2006 it was amended so that juveniles may benefit even if the offence is a serious one.⁸⁶

A pilot project on mediation began in 2004. The Law on Mediation was adopted in 2007.⁸⁷ It provides that, in criminal matters, mediation may be requested by the victim or by the accused, or may be suggested by the prosecutor or by the court, at any stage of proceedings. Agreement to participate in mediation is voluntary and does not suspend proceedings.⁸⁸ The procedure is the same whether the accused is a juvenile or an adult, except that an educator or psychologist must assist when a juvenile is involved.⁸⁹ Mediators are trained by the National Institute of Justice and a Council of Mediators is appointed by the Minister of Justice. Fifty-eight mediators have been certified. In criminal cases, the mediator’s fees are paid by public funds. In the cases covered by Article 109 of the Criminal Code, a mediation agreement “removes criminal responsibility.”

During a field trip, the assessment team spoke with the Community Justice Centre, an NGO that provides mediation in cases in which juveniles are charged with an offence. Of the five cases handled in 2009, mediation had been successful in three cases (one involving theft and two involving fights), and the cases consequently did not proceed to trial. The team was favourably impressed by the way mediation in cases involving juveniles was being implemented. The Community Justice Centre is one of 17 such centres established throughout the country, as a result of a pilot project on mediation supported by UNICEF, SIDA and the Dutch foundation ICCO (Interchurch Organization for Development Cooperation).

The assessment team was informed that, in 2008, prosecutors investigated 1,629 offences committed by juveniles, but decided to prosecute only 1,100 juveniles. It is not clear to which extent.⁹⁰

5) The detention of accused juveniles before and during legal proceedings

Article 477 of the Code of Criminal Procedure provides that accused juveniles may be detained “only in exceptional cases” when charged with committing a serious or exceptionally serious offence.⁹¹ The possibility of release under supervision must be considered in every case.⁹² The General Prosecutor’s Office informed the assessment team that, in practice, only juveniles accused of violent crimes (e.g., rape, homicide) are detained before trial. This is difficult to confirm in the absence of data on the characteristics of detainees and the charges against them.

Alternatives to detention before trial and during legal proceedings include release under the supervision of a parent or guardian, bail and house arrest.⁹³

The maximum length of detention before trial is four months, for accused juveniles.⁹⁴ However, this limit does not apply to detention during trial and appeal. The only limit applicable to juveniles

⁸⁶ Law No. 184-XVI of 29 June 2006, Article 1.17 (but not an ‘extremely serious’ crime).

⁸⁷ The Law on Mediation was adopted on 14 June 2007 and entered fully into legal force on 1 January 2009.

⁸⁸ Law on Mediation, Articles 2(3) and 25(2).

⁸⁹ *Ibid.*, Article 32(3).

⁹⁰ A decision under Article 54 can be considered diversion.

⁹¹ The category of ‘serious’ offences, as indicated above, includes more than 110 offences.

⁹² Code of Criminal Procedure, Article 476.

⁹³ *Ibid.*, Articles 175, 184, 188.

⁹⁴ *Ibid.*, Article 186(4) (under the previous Code it was six months for juveniles aged 16 or 17 years).

detained during those stages of proceedings is the same applicable to adults, that is, that the time be “reasonable.”⁹⁵

Data on the average length of confinement of juveniles before and during trial and appeal are not published. In one of the two detention facilities visited by the assessment team, the population included one juvenile detained for more than a year. Staff of the other facility stated that the usual duration of detention of juveniles is from four months to a year.

The number of accused juveniles deprived of liberty has declined significantly during the last decade. From 2000 to 2002, the average number of juveniles ordered to be detained was 178; from 2003 to 2005 the average fell to 119 per year; and in 2006 it was 84.⁹⁶ In 2008, 82 juveniles were detained before trial (i.e., about 8 per cent of the 1,011 juveniles prosecuted that year).⁹⁷ A few weeks before the assessment mission, the number of juveniles confined in detention facilities was 59 boys and 2 girls, twice the number in correctional facilities for sentenced juveniles.⁹⁸

The assessment team does believe that further steps are necessary to ensure that the total length of detention does not exceed six months, in accordance with the views of the Committee on the Rights of the Child.⁹⁹

Four pretrial detention centres have units for accused juveniles and those on trial, or whose conviction is being appealed. Two of them were visited by the assessment team.

The Chisinau pretrial detention facility

The assessment team visited the juvenile and the women’s sections of a pretrial detention facility in the capital. The centre, built in the nineteenth century, is in poor repair. Its capacity as a whole is 630, and the population is 1,100.

The juvenile section consists of five cells on one side of a corridor in a small separate building. The cells on the other side house public officials and civil servants (e.g., police, prosecutors, members of Parliament) awaiting trial. The walls to the cells are made of metal, with only a small opening, and the detainees eat meals in their cells. Opportunities for contact between detained boys and adult detainees are therefore practically non-existent.

The capacity for juvenile detainees is 50 – five cells with a capacity of ten persons each. The population at the time of the visit was 33 boys and one girl detained in the women’s section. (The staff explained that when there is more than one girl, they are detained in a separate cell in the same area as boys.) Only one correctional officer is assigned specifically to the juvenile unit. The personnel roster includes a psychologist, but none was assigned to the unit at the time of the visit.

There is a classroom on the same corridor as the cells. Refurnished with the support of UNICEF, it is pleasant and well equipped, in stark contrast to the cells. Only two teachers willing to give classes in the centre have been identified, however, so only two classes (maths and geography) are offered weekly. About half the detainees participate. The remainder of the time the classroom is used as a TV room. There is also a room on the corridor containing a table tennis table and bench for sit-ups.

⁹⁵ Ibid., Article 20(2).

⁹⁶ Committee on the Rights of the Child, Second and third periodic reports of the Republic of Moldova, CRC/C/MDA/3, Table 38.

⁹⁷ Interview with representatives of the General Prosecutor’s Office.

⁹⁸ Unpublished data provided by the Department of Penitentiary Institutions for 1 May 2009.

⁹⁹ Children’s rights in juvenile justice, General Comment No. 10, CRC/C/GC/10, para. 83.

Detainees have the right to spend two hours 'outdoors' daily. The facilities used for this are in effect outdoor cells about 40m² with a grate in the place of a roof, connected by a tunnel to the building where the juvenile unit is located. For security reasons, detainees have access to the TV room, the recreation room and the roofless cells in small groups (i.e., cell by cell).

One cell was visited briefly. It contained eight detainees, five bunk beds, and a small table and bench on which a pot of soup was placed. The table was too small to allow more than one person to be seated, at best. In one corner of the cell there was a toilet and sink separated from the rest of the room by a low wall and a curtain. Another had inbuilt shelves where bowls and cups were stored. There was bedding, but no furniture for keeping personal belongings. No electronic equipment was seen.¹⁰⁰ Decoration consisted mainly of one or two religious icons. There was a window and the room was well lit, but the overall impression was one of overcrowding and unsanitary conditions.

Disciplinary problems occur with certain regularity (five incidents in the month preceding the visit). There had been 14 injuries during 2009, including one concussion resulting from a fight. Discipline is enforced by confinement in an isolation cell, and one juvenile was in the cell at the time of the visit. It contained only a rudimentary toilet, dilapidated stool and wooden pallet for sleeping, which is folded up against the wall during the day. There was a window, and an electric light. Prisoners in isolation are entitled to two hours per day in 'open air'. The maximum period of isolation is seven days, but the usual period is three days.

The adolescent girl was detained in a cell with four adult women. The cell was smaller than the cells in the juvenile unit and seemed crowded, but was much cleaner and had a small television, a bowl of fruit and more decoration. The girl indicated that she was happy to be in the women's unit.

Detention prior to trial may not exceed four months, but there is no limit to detention during trial and appeal. Of the 33 juvenile detainees present, one had been in this facility for more than a year. Those who reach age 18 while in detention are transferred to the adult section.

The head of the medical staff declared that detainees are given a medical exam on entering the facility. Addiction to drugs or alcohol is not common, but almost all detainees smoke cigarettes. Although the law prohibits the use of cigarettes to persons under age 18, the staff considers it would be futile to ban smoking by juvenile detainees when adults have cigarettes. According to some staff members, many of the juvenile detainees, perhaps as many as one third, have symptoms of brain damage, mental retardation or mental illness.

The assessment team believes that highest priority should be given to the creation of a new detention facility in the capital, exclusively for accused juveniles.

The Balti pretrial detention facility

Built in 1812, the Balti pretrial detention facility is the oldest in Moldova. Conditions in the juvenile unit nevertheless are better than those of the larger detention centre in Chisinau.

The population of the facility as a whole at the time of the visit was 460, including 15 boys and one girl under age 18. Eight years ago, according to the Director, they had 70 juvenile detainees.

There are three cells for male juvenile detainees, on a corridor where cells for adults are also located. The cells are large and roomy, and contain six bunk beds, a toilet, a sink, two windows, a table and

¹⁰⁰ The assessment team did not enter the room because the detainees objected to their presence.

benches. The doors are wooden, not steel, and there are curtains on the windows. A television is moved from cell to cell within the juvenile unit, as a reward for good behaviour.

Classes are given five days per week. There is a well-equipped weight room, in addition to unroofed cells used for being 'outdoors', and a room with table tennis. Juveniles have the right to use these facilities two hours per day.

The usual length of confinement ranges from four months to one year, for juveniles. At the time of the visit, no juvenile had been detained in the facility for longer than nine months. The 'mobile team' of lawyers has helped reduce the length of detention.

A medical doctor indicated that the most frequent health problems were psychological difficulties, such as insomnia. She estimated that half of the juvenile detainees suffered from psychological disorders.

Most disciplinary problems are resolved by discussion. Extra cleaning duty also is used as a punishment. The isolation cell is rarely used; some seven to eight months prior to the assessment mission when two boys beat a third boy, they were punished with three days in the isolation cell.

A representative of the Ombudsman who has visited this facility indicated that detainees' complaints focused on the poor quality of services provided by lawyers, not on conditions or treatment by the staff.

6) The adjudication and sentencing of juvenile offenders

Specialized judges and prosecutors

In 2004, the Supreme Court adopted a decision on the proceedings concerning juvenile offenders, which led to the appointment of 48 juvenile judges. A similar decision was taken by the General Prosecutor's Office, with the designation of 45 prosecutors. Consequently, there are at least one designated judge and one designated prosecutor responsible for cases involving accused juveniles in each trial court.¹⁰¹

Designated juvenile judges and prosecutors have received training in child rights, as indicated above. It should be noted, however, that the judge designated to handle juvenile cases only deals with the trial phase of proceedings; pretrial proceedings, including the decision as to whether to order detention, are the responsibility of the investigating judge. Since trial courts are courts of general jurisdiction, and juvenile cases constitute roughly 10 per cent of all criminal cases, most designated juvenile judges spend most of their time handling ordinary criminal cases and civil cases. In four out of ten trial courts, the number of juvenile cases was less than one per month, on average, during 2008, and only four courts tried an average of one juvenile case per week.¹⁰²

This suggests that, although efforts have been made to give accused juveniles access to specialized prosecutors and judges, the degree of specialization is limited. In 2006 and 2007, a programme was carried out, with the support of OSCE, to monitor criminal trials in order to evaluate compliance with due process.¹⁰³ It would be useful to monitor proceedings concerning juvenile offenders, as well as cases involving child victims and witnesses, to see what impact the designation and training of judges

¹⁰¹ There are 42 trial courts.

¹⁰² Data provided by the Superior Council of the Magistracy.

¹⁰³ Organization for Security and Co-operation in Europe, Preliminary Findings on the Experience of Going to Court in Moldova, OSCE, Chisinau, 2006; Analytic Report: Observance of Fair Trial Standards and Corresponding Rights of Parties during Court Proceedings (April 2006–May 2007), OSCE, Chisinau, 2008.

and prosecutors has had on the treatment of children and juveniles involved in criminal proceedings. The assessment team believes that serious consideration should be given to the creation of one or more specialized courts to deal only with cases involving children and juveniles, as the outcome of such a study would help inform decisions as to what steps should be taken with regard to further specialization.

Due process and specialized procedures

The principal guarantees of due process applicable to all accused persons and defendants, regardless of age, are set forth in chapter II of the Code of Criminal Procedure and chapter I of the Criminal Code. These standards meet the basic requirements of international human rights law. Moreover, Article 7(1) of the Code of Criminal Procedure provides, "Criminal proceedings shall be carried out in strict compliance ... with international treaties to which the Republic of Moldova is party," which includes the Convention on the Rights of the Child. The fifth paragraph of this Article adds, "If during proceedings the court finds that the legal provision to be applied is contrary to international treaties on human rights and fundamental freedoms to which the Republic of Moldova is party, the court shall directly apply international provisions..."¹⁰⁴

The Code also establishes a number of guarantees applicable specifically to juveniles. Article 434, for example, provides, "Court proceedings involving juveniles shall as a rule not be public."

Most of the provisions concerning juveniles are contained in a chapter on 'Proceedings Involving Juvenile Offenders'.¹⁰⁵ This chapter is applicable to persons under age 18 at the time of the offence, even if they have reached the age of majority at the time of trial.

The presence of the juvenile's parent or guardian is mandatory in criminal proceedings against juveniles.¹⁰⁶ They also have the right to be present whenever their child is questioned before trial.¹⁰⁷ If the actions of a parent or guardian "are damaging to the interests of the child," he/she may be replaced by another guardian appointed by the court.

Juveniles may not be questioned for more than two hours at a time, or more than four hours per day.¹⁰⁸ The presence of a defence attorney and a teacher or psychologist is required during any questioning (e.g., by the prosecutor during the investigation) or legal proceeding.¹⁰⁹

Article 475 lists circumstances that the court is required to establish in addition to the facts of the case (i.e., elements of the offence). They include the age of the accused, his/her "degree of intellectual, will and psychological development, character and temperament, interests and needs; the influence on the juvenile by adults or other juveniles; [and] the reasons and conditions which contributed to the commission of crime."¹¹⁰ These matters are to be established before trial. In addition, "If it is found that the juvenile suffers from a mental disorder, which is not related to a psychic illness, it shall also be established whether he/she was fully aware of the commission of the perpetration."¹¹¹

¹⁰⁴ Article 1(3) of the Criminal Code also provides that international norms prevail over any incompatible provision of the Code, and may be applied directly.

¹⁰⁵ Code of Criminal Procedure, chapter I of title 3, Articles 474 to 487.

¹⁰⁶ Ibid., Article 480. See also Article 78, which describes in detail the procedural rights of the parent or guardian.

¹⁰⁷ Ibid., Article 480(2).

¹⁰⁸ Ibid., Article 479(1).

¹⁰⁹ Ibid., Articles 479(2) and 481.

¹¹⁰ Ibid., Article 475(1).

¹¹¹ Ibid., Article 475(2).

The provisions of the Code of Criminal Procedure that came into force in 2003 go far in meeting the requirements of Article 40 of the Convention on the Rights of the Child.

The right to legal assistance

The presence of a defence attorney is required, as indicated above, during any legal proceeding and at any time when a juvenile is questioned as a suspect or accused person.

Until recently, representation of suspects and defendants unable to pay for legal services was ensured by a system of assigned counsel. In 2008, a publicly funded Legal Aid Service became operational. There are five offices, one for the geographical jurisdiction of each court of appeals. At the time of the assessment mission, the Legal Aid Service had nine lawyers contracted on a full-time basis, all in the capital. The average caseload of a public defender is around 10 cases per month. In the rest of the country, the Legal Aid Service maintains a roster of attorneys in private practice who can be hired on a case-by-case basis.

Emergency services (e.g., representing persons apprehended by the police during questioning) are provided to all on request, without prior evaluation of their ability to pay. Approximately one third of the clients are under age 18, and UNICEF has made a commitment to support the hiring of 10 lawyers to handle juvenile cases on a full-time basis.

The Legal Aid Service is financed through the budget of the Ministry of Justice. Fees are lower than those that can be earned in the private sector, but they have increased.¹¹² The functioning of the system is overseen by the National Free Legal Aid Council, which meets monthly, adopts regulations and reviews reports on the caseload and services provided as well as complaints about the quality of services. The Council, intended to ensure the independence of the service, includes a representative of the bar, a representative of a human rights NGO and representatives from the Ministry of Justice, the Ministry of Finance and the Superior Council of the Magistracy.

Sentencing – custodial sentences

An amendment to the Criminal Code adopted in 2006 provides that juveniles convicted of crimes that are not serious shall not be given custodial sentences unless “it is established that an educational measure is not sufficient for the minor’s correction.”¹¹³ This amendment also lowered the maximum sentence that may be applied to a juvenile offender (for a single offence) to 12 years and 6 months.¹¹⁴

In addition, changes to the Criminal Code made in 2009 reduce sentences for certain crimes. The maximum penalty for theft, for example, was reduced from three to two years, and the maximum sentence for robbery, from five to three years. These amendments benefit juveniles as well as adults.

The measures can be considered steps towards compliance with the ‘last resort’ and ‘shortest appropriate period of time’ principles, set forth in Article 37(b) of the Convention on the Rights of the Child. In the view of the assessment team they do not comply fully with these principles, however. The principle that convicted juveniles should not be sentenced if an educational measure would be appropriate should be recognized in broader form: convicted juveniles should not be given

¹¹² Attorneys assigned to a case earn some US\$ 15 per day, about half of which is deducted for taxes. Full-time public defenders earn from € 600 to € 700 per month.

¹¹³ Law No. 184-XVI of 29 July 2006, Article I.7, adding a new para. 3 to Article 75 of the Criminal Code. This provision applies to ‘minor’ and ‘less serious’ offences (i.e., those punishable by sentences of five years or less if the offender is an adult).

¹¹⁴ Ibid., Article I.9, amending para. 1 of Article 84 of the Criminal Code. The maximum sentence that may be imposed on a juvenile for multiple offences is 15 years. Ibid., Article I.10.

a custodial sentence if a non-custodial sentence of any kind appears likely to prevent re-offending, regardless of the gravity of the crime. Similarly, custodial sentences should not be longer than the period necessary for an offender to complete a programme of rehabilitation or demonstrate changes in attitude and behaviour that indicate he/she is ready to return to the community. The maximum sentences that may be imposed on juveniles in most countries in the region are shorter than 12 years and 6 months.

During the last five years the number of juveniles given custodial sentences has fallen sharply, from 194 in 2004 to 100 in 2008.¹¹⁵ The percentage of convicted juveniles given custodial sentences rose sharply during the same period, because the number of convictions fell dramatically, from 1,774 in 2004 to 445 in 2008.¹¹⁶ The decline in the number of juveniles given custodial sentences is due in part to an amnesty, in 2008.

Alternative sentences – probation

The main alternative sentence used in Moldova, as in most countries, is ‘conditional suspension of the sentence’, which is the equivalent of probation. This sentence is available for juveniles and adults alike, on condition that the crime is not a serious one and the offender has no prior convictions.¹¹⁷ In deciding whether to impose it, the judge must take into account both the “circumstances of the case and personality of the offender.”¹¹⁸ Probation is for a fixed term of between one and five years.¹¹⁹ If the probationer’s conduct has been exemplary after serving one half of the sentence, the Probation Service may request the court to cancel the conviction and criminal record.¹²⁰

Other alternative sentences include community service and fines.¹²¹ Community service may not be imposed on convicted juveniles below age 16.¹²² In 2008 fines were imposed on approximately 10 per cent of convicted juveniles, and community service on nearly 25 per cent.

Some convicted juveniles reject sentences of community service because it is considered demeaning, and there is some reluctance on the part of local authorities to offer placements because of hostility towards offenders. Yet many sources interviewed considered that increased use of community service sentences is, nevertheless, positive. At present, community service is seen as an alternative way of repaying one’s debt to the community, a form of punishment, rather than as a way of learning skills and the value of work while reconciling with the community. Increased use of community service is a positive step, in the view of the assessment team, and further efforts should be made to develop this as a viable and productive alternative to prison sentences.

¹¹⁵ *The situation of children in the Republic of Moldova*, Table 10. (The number of custodial sentences was higher in 2005 and 2006 – 224 and 227, respectively; and 124 in 2007.)

¹¹⁶ *Ibid.*

¹¹⁷ Criminal Code, Article 90(1) and (4) referring to intentional crimes having a maximum sentence of five years and unintentional crimes punishable by a maximum sentence of seven years. (The maximum sentence for these crimes would be less, if the offender is a juvenile.) Article 90(3) provides that reparation of damages is a requirement, but not for juveniles.

¹¹⁸ *Ibid.*, Article 90(1).

¹¹⁹ *Ibid.*, Article 90(5). (The conditions that may be imposed as part of a probation sentence are listed in para. 6 of this article.) If the offender’s conduct has been exemplary, probation may be concluded earlier.

¹²⁰ *Ibid.*, Article 90(8).

¹²¹ *Ibid.*, Article 62(1)(a) and (d).

¹²² *Ibid.*, Article 67(4). Community service may be between 60 and 240 hours, to be served at no more than four hours per day.

7) Conditions and treatment of juveniles serving sentences in correctional facilities

There is one correctional facility for juvenile offenders in Moldova. It is for males only; convicted girls given a custodial sentence serve it in the women's prison. Convicted boys may serve sentences in the juvenile facility until they reach age 23, at which time a court must decide whether to approve their transfer to an adult facility and, if so, to what kind of facility. No data are available on the number of persons convicted as juveniles who are serving sentences in adult facilities.¹²³

The juvenile correctional facility

The juvenile correctional facility is part of a facility that also includes an adult prison. The combined capacity of both is 250, and the combined population at the time of the visit was approximately 100.

The juvenile unit had a population of 40, including 14 persons convicted as juveniles who were over age 18. Most juvenile inmates have from two to five prior offences that received non-custodial sentences. The exception is rapists and homicides who are given custodial sentences even if they do not have prior offences. Most homicides by juveniles are committed in the course of thefts, often while the perpetrator is intoxicated.

The staff designated to work with the juvenile unit consisted of nine social workers and psychologists, eleven teachers of academic subjects and seven vocational education teachers. Vocational training includes carpentry and metal working.

The role of social workers includes assisting prisoners to remain in contact with their families and coordinating the evaluation of the prisoner's home when he/she becomes eligible for early release. The psychologists are not qualified to provide therapy. They interview juvenile prisoners upon arrival (when juveniles are kept in 'quarantine' for 14 days) and advise the 'unit chiefs' on how to handle each inmate.

There are 17 different programmes for juvenile prisoners, including health education, prevention of violence and preparation for release. Some are offered by NGOs. A monthly newsletter is prepared by the juvenile inmates. The Institute for Penal Reform offers legal assistance once a month. The staff of the Ombudsman for Children also visits regularly. A priest comes on a weekly basis and other religious groups from time to time.

Although the facility is located close to the northern border, more than three hours from the capital, most juvenile prisoners receive visits from their family – often, however, from grandparents or siblings, because their parents are abroad. A building is set aside for family visits, where prisoners and family members can stay together for a few days. It contains a kitchen and several bedrooms of different sizes.

Juvenile prisoners can work in the kitchen, perform maintenance or work in the community. Work in the community (for private employers) is compensated at 100 Lei (approximately US\$ 7) per day – a good wage for a young person in Moldova. Those who work in the cafeteria receive a reduction in their sentence as well as financial remuneration.¹²⁴

Discipline includes confinement in an isolation cell for a period of up to seven days. This sanction had been applied thrice during the five months preceding the assessment mission. The psychologist visits juveniles in punishment cells the second day of their confinement, at the latest, but not daily

¹²³ A representative of the Department of Penitentiary Institutions informed the assessment team that, in 2008, 23 prisoners had been transferred from the juvenile facility to an adult prison.

¹²⁴ Each day working in the kitchen is worth three days of the sentence.

unless she considers there is some specific reason to monitor the inmate's well-being. The isolation cells are larger and better maintained than those in the detention centre in the capital. An adult prisoner in isolation with whom the assessment team spoke had reading material.

All juvenile prisoners share a large dormitory. Despite the number of prisoners housed there, it did not appear crowded. There was ample light, one television, various radios and decoration (mostly posters) on the walls. Cats appeared to roam freely throughout the building. The facility as a whole is very spacious, with attractive green areas. In marked contrast to many facilities that house both juveniles and adults, most of the facility seemed devoted to the juveniles (e.g., separate buildings for the school and shop). The adult facility was surrounded by a three-metre-high wall, like a high security prison within a low security prison. However, since the prison includes a farm on which adult prisoners work, there is probably some contact between juveniles and adults.

A representative of the Ombudsman indicated that no complaints had been received about ill-treatment in the juvenile unit.

The women's prison

The women's prison has a capacity of 220, and a staff of approximately 100, including 75 positions for 'certified' professionals. The population, at the time of the assessment mission, was 260, including two prisoners under age 18. One was 16 years of age, and had already served two years of her sentence. Both were serving sentences for homicide.¹²⁵ None of the adult women were serving a sentence for a crime committed while below 18 years of age.

The prison offers remedial and secondary schooling, computer courses, sewing, life skills training and group and individual counselling. Prisoners may work producing uniforms or work on the farm. Work is paid. An individual treatment plan is prepared during the prisoner's first month in the facility, and reviewed with the prisoner annually. One of the girls visits the psychologist almost daily. Neither receives visits from her family, but one corresponds with a sister.

There are two main regimes at the prison: 'closed' and 'general'. New prisoners are housed in cells on arrival for months (but not more than one third of the sentence, if it is a short one). If their behaviour is good, they are then transferred to the general regime, where they live in dormitories without bars on the windows and whose doors are not locked at night. They can spend unlimited time in the yard and gardens during the day. The cells and dormitories corresponding to these regimes are located on different floors of one building, which has been renovated recently and is clean and well furnished. No effort is made to separate prisoners below age 18 from adult prisoners, because the number of juvenile prisoners is so small that this would not be in their interest.

The cells and dormitories are well furnished. There are photos, rugs, plants and cats. The prison is situated in a rural area, but unlike the juvenile prison, centrally located. There is a view of the surrounding hills from within the facility, and birds can be heard singing. There is a volleyball court outdoors, but no indoor gym for winter use.

The regulations concerning disciplinary sanctions are the same as those applicable throughout the system, but confinement in an isolation cell is not applied to adolescent prisoners or to mothers living with their children. Transfer from the 'general' to the 'closed' regime is used as a disciplinary measure.

¹²⁵ One killed her grandmother during a theft committed together with older children, and the other killed the 'boyfriend' of the grandmother with whom she lived.

Early conditional release

Juvenile prisoners may be released on 'probation' after serving part of their sentence. Eligibility for possible release attaches after serving one third of the sentence for an offence that is not serious; half of the sentence for a serious crime; and two thirds of the sentence for an extremely serious crime.¹²⁶

A commission whose members include representatives of the prison, the local prosecutor and local government decides whether to recommend prisoners for early release. The decision is taken by a court. In practice, not all eligible prisoners are recommended, but all recommendations are accepted.

8) Probation

In 2007, the name of the service responsible for supervising the enforcement of criminal sentences was changed to 'probation'. A Law on Probation was adopted the following year, and gave the service additional functions.¹²⁷ Besides supervising offenders sentenced to probation (i.e., given 'conditional sentences'), the functions of the Probation Service include preparing background reports on accused offenders and supervising convicts given certain non-custodial sentences (e.g., community service) as well as prisoners released conditionally. The number of persons below age 18 being supervised by the Probation Service at the end of 2008 was approximately 1,000, and 170 new cases were added to the caseload during the first four months of 2009. In each office, one officer is assigned to the preparation of pre-sentencing reports on juveniles.

When a juvenile is put under the supervision of the Probation Service, an evaluation is made and an individual plan is adopted. The methodology used is simple ('talking to children') and is still being developed, but it does include home visits and outreach to the parents of juvenile probationers.

The assessment team was not provided with information on the average caseload. In one probation office visited, the caseload was 150 persons, including five juveniles. There were two probation officers, and one vacant post. The staff was familiar with the situation of the five juveniles.

9) Underage offenders¹²⁸

Prior to 1994, the Commissions on Minors had competence to investigate cases of children involved in 'socially dangerous' or 'antisocial' acts.¹²⁹ The former were defined as "acts that would have been regarded as a criminal offence had it not been for the minor age of the persons who committed them;" antisocial acts were not defined.¹³⁰ Children over age 11 found by a Commission to have been involved in 'socially dangerous' or 'antisocial' acts could be placed in the school for children with deviant behaviour ('special school'). The 1994 Law on Child Rights deprived the Commissions of this competence, in a provision that states, "Referral of a child to special education institutions is done only in conformity with a court decision based on the application of the relevant bodies under the authorities of the local public administration."¹³¹

¹²⁶ Criminal Code, Article 93(5). 'Extremely serious' crimes include murder, aggravated assault, and rape in certain circumstances.

¹²⁷ This law was adopted on 14 February 2008 and came into force on 13 September 2008.

¹²⁸ This term is used in this series of assessments to refer to children below the minimum age for prosecution ('minimum age of criminal responsibility') who have been involved in conduct identified as an offence in the Criminal Code or other relevant legislation.

¹²⁹ Article 17(a) and (b) of the 1967 Regulation of Commissions on Minors, cited in *Juvenile Justice in the Republic of Moldova – Evaluation Report 2002–2003*, p. 8.

¹³⁰ Article 17(d) of the Regulation of Commissions on Minors, para. 4 of the 1998 Regulation of the Inspectorate of Minors indicates that antisocial behaviour includes begging and fortune telling in exchange for money. See *Juvenile Justice in the Republic of Moldova – Evaluation Report 2002–2003*, p. 8.

¹³¹ Law on Child Rights, Article 29(1).

Since entry into force of the Law on Child Rights, the population of the special school has fallen by approximately 90 per cent.

The school for children with deviant behaviour ('special school')

The special school in Solonet is situated some 150 kilometres north of Chisinau, close to the border with Ukraine. It is located in a complex of five large nineteenth century buildings, once the home of a rich landowner. The smallest building is used for the administrative services. One houses an infirmary; another, dormitories and study rooms; another, classrooms; another, the kitchen and cafeteria; and yet another, a gymnasium, library and workshops. The infrastructure is not in good repair, but did not seem to be dangerous or unhealthy. The conditions of the infrastructure are not significantly worse than some other schools in rural Moldova, and conditions in the administrative building are similar to those in other buildings.

During the first years after independence, the population of the school reached 300; at the time of the visit it was 38 boys aged 11–16 years. The staff comprises 55 persons, including nine teachers, nine 'educators', a part-time doctor, a full-time nurse, and three security staff; there is neither social worker nor psychologist. Teachers (and other staff) include both men and women.

The classrooms appeared reasonably well furnished and equipped, although the materials are old. The curriculum is the same followed by other schools, up to ninth grade (i.e., the last year of mandatory schooling). Students who complete the ninth grade often transfer to a vocational school, and reportedly there are no difficulties in obtaining admission for them. Other activities include a choir, sports and knitting. A library contains some daily newspapers and periodicals for young people, in both Russian and the national language, and a large collection of literature and reference books. There is a computer room, with computers, desks and chairs donated by a local bank. Both Russian and the national language are taught. There is no chapel, and the village priest visits only on holidays. A missionary group also visits from time to time.

Students do not wear uniforms, and their heads are not shaved. The visit coincided with the last day of the school year, and some students wore white shorts and ties. The atmosphere was relaxed. Students approached the Director spontaneously to speak with him. There is a students' counsel, which makes suggestions and discusses matters of concern with the staff.

The facility is surrounded by a fence that was part of the original estate. It is not topped by wire, and there are no bars on the windows of the buildings. The students sleep in spacious dormitories, and each has a small piece of furniture to keep personal belongings. There are rugs throughout the facility, curtains, posters and the occasional piece of student artwork. The furnishings are old and drab. The sports facility contained some equipment. Wood and metal workshops have fallen into disuse for lack of maintenance and materials, and the band no longer exists because the instruments are too old.

Students sometimes leave the facility for field trips, and receive visits from groups of students, sports teams or cultural groups from the community. Those who have made progress in rehabilitation may receive permission to visit their homes for periods of 10 to 30 days. Eleven had received permission for home visits at Easter.

The school has a farm that produces fruit, vegetables and milk, most of which is consumed by the students. Students work up to four hours per day and are not compensated.

A nurse who was interviewed indicated that the infirmary has sufficient equipment and medication to care for routine health problems. Respiratory infections are the most common problem in winter, and

minor injuries (sprains, cuts) in the summer. There have been no cases of self-injury in recent years, and no students suffer from sexually transmitted diseases. None are mentally retarded or require medication for psychological problems.

The 1994 Law on Child Rights deprived the Commission on Minors of authority to place children in the special school, and required a court order. All students have been involved in criminal activity – mostly theft – while under the minimum age for prosecution. The matter is usually referred by a juvenile inspector onto the Council for the Protection of the Rights of the Child, which replaced the Commission on Minors. The Council investigates the situation of the family and, if it considers placement appropriate, refers the matter to the district court.

Several judges, prosecutors and lawyers in the capital asked about the procedures for placement in the special school expressed uncertainty as to the applicable law. The assessment team therefore consulted four files during the visit to the school, and saw that the decisions are based on Article 29 of the 1994 Law on Child Rights, Article 71 of the Family Code and Articles 228–241 and 257 of the Code of Criminal Procedure. The most relevant paragraph of Article 29 provides, “Referral of a child to special education institutions is done only in conformity with the court decision based on the application of relevant bodies under the authorities of the local government administration.”¹³² Article 71 of the Family Code provides, “On the guardianship authority’s request, the court can decide on taking a child away from his/her parents, without depriving them of parental rights, if the child living together with his parents is dangerous for his/her life and health, and entrusting the child to the guardianship authority.” The decisions on file also indicated that both the children and parents had been heard at the court proceedings, although it did not appear that they had legal assistance.

The Statute of the school, adopted in 2004, provides that the minimum stay is six months, and the maximum three years. In addition, students in principle may not remain after reaching age 16. Decisions as to releasing students are taken annually, at the end of the school year. The council of teachers decides which students have made enough progress in rehabilitation to return to their homes (or if they have no home, a residential facility for children). They make recommendations to the Council for the Protection of the Rights of the Child in the municipality where the special school is located, which takes a decision after seeking information about the child’s family and home from the respective councils. The process also may be triggered by a request from the child’s family, instead of a recommendation of the school staff. The Council sometimes does not accept the recommendations of the school, in particular when the report indicates that the child’s family was not found or is dysfunctional. Before reaching a decision, the Council visits the school and listens to the child. In 2008, 20 children were released, 17 to their parents and 3 to other facilities. The Director expected to release 20 more children in 2009.

The school keeps in touch with released students for two years, through the intermediary of the local councils. The Director indicated that none of the 20 students released in 2008 had re-offended.

The evaluation team considers that procedures concerning admission to school should be reviewed, with a view to ensuring full compatibility with the rights of the children concerned. Although the school does not resemble a secure facility, placement involves deprivation of liberty in the sense that students are not free to leave at will and participate in activities in the community only on special occasions.¹³³ Consequently, Article 37 of the Convention on the Rights of the Child is applicable,

¹³² Law on Child Rights, Article 29, para. 1.

¹³³ The most relevant definition of liberty is that contained in Rule 11(b) of the Havana Rules: “The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.”

“No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.”

This provision applies regardless of whether the deprivation of liberty is based on the criminal law, or not.

Article 71 of the Family Code provides a weak legal basis for placement in the special school. It authorizes separation of a child from his/her parents, but does not authorize deprivation of liberty. And, although the placement in residential facilities of younger children involved in crime may be warranted in some circumstances, it cannot be justified as a measure designed to protect their life or health.

Since procedures concerning children who do not have criminal liability are not criminal in nature, the full ranges of guarantees that must be respected in criminal proceedings are not applicable. However, Article 37(d) of the Convention on the Rights of the Child suggests that the right to a lawyer must be respected in any proceeding where deprivation of liberty is at stake, regardless of the nature of the proceeding.¹³⁴ The legislation also should incorporate the principle that deprivation of liberty should not be imposed except as a ‘last resort’ and, if imposed, should be used only for the ‘shortest appropriate period of time’.¹³⁵ Furthermore, while the practice apparently is to offer the child an opportunity to be heard before a decision is taken, the modalities of the child’s participation in the proceeding (including the right to legal advice and assistance) should be regulated. Indeed, it might be useful to explore the possibility of consensual admission to the school. The consent of both parents and child would be relevant, because parents as well as child often need to make changes in their lifestyle, and prior agreement to the duration and aims of the placement may enhance the probability of success. Recognition of this option need not preclude the possibility of involuntary placement.

Periodic review

Consideration also should be given to revising the regulations governing the school in some respects. The staff indicated that confinement in an isolation cell is allowed as a disciplinary measure, although it is not used in practice. The United Nations Rules on the Protection of Juveniles Deprived of their Liberty indicates that solitary confinement is a form of cruel, inhuman or degrading treatment, which must be strictly prohibited.¹³⁶ The Rules also indicates, “Juveniles should be provided, where possible, with opportunities to pursue work, with remuneration ... but should not be required to do so” and “Every juvenile who performs work should have the right to an equitable remuneration.”¹³⁷ The assessment team realizes that recent cuts in the budget of all government agencies due to the world economic crisis make it difficult to change the policy regarding remuneration at this time, but the matter should be taken under consideration because remuneration for freely chosen work helps to develop respect for the value and dignity of labour.

¹³⁴ “Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court...” (In this context, it would be illogical to recognize the right of the child to legal assistance after placement, but not in the proceeding that may lead to placement.)

¹³⁵ Convention on the Rights of the Child, Article 37(b).

¹³⁶ United Nations Rules on the Protection of Juveniles Deprived of their Liberty, Rule 67. (Article 39(a) of the Convention on the Rights of the Child prohibits cruel, inhuman and degrading treatment, as do many other international treaties.)

¹³⁷ Ibid., Rules 18(b) and 46.

PART III. UNICEF's Support to Juvenile Justice Reform

1) Strategy

No document containing a global strategy for juvenile justice reform in Moldova exists. A strategy can be inferred from the programme documents of the 2003–2005 and 2008–2011 juvenile justice projects. The first project had three components: legal reform, policy development and advocacy; capacity-building (training); and “alternatives to deprivation of liberty, social reintegration and legal aid to children...” The ultimate objective was defined as ensuring respect for the rights set forth in the Convention on the Rights of the Child with regard to children in the juvenile justice system, taking into account the recommendations made by the Committee on the Rights of the Child in 2002.¹³⁸ Five ‘key strategies’ were identified, viz. advocacy, law reform, capacity-building, technical assistance to government and civil society and ‘monitoring and response’.¹³⁹ Concrete objectives include the creation of specialized police stations for juveniles; the establishment of a ‘computerized juvenile justice information system’ and comprehensive case monitoring (from arrest through the serving of sentences); the development of ‘pretrial and post-trial diversion programmes’; and the elaboration of a ‘comprehensive Juvenile Justice Code’.

The strategy was flawed in some important respects. Several of the goals were not accomplished, for reasons that probably could have been anticipated. For example, since a new Criminal Code and Code of Criminal Procedure were ready for adoption, it was unlikely that the relevant actors would agree to draft a comprehensive juvenile justice law. The relatively low number of juvenile offenders taken into police custody and the brevity of police detention suggest that the creation of separate police stations for juveniles was not a realistic aim.

The project also appears to have been based, to some extent, on poor information concerning the factual situation and unsupported hypotheses. The project document states, for example, “the number of convicted adolescents doubled in 2000...”, while official data indicate that the number of convictions was 1,531 in 1999 and 1,702 in 2000.¹⁴⁰ The statement, “Very poor knowledge of legal issues among teenagers leads in many cases to infringements of the criminal and administrative law”, is an example of a questionable hypothesis.

The entry into force of the legislation adopted in 2002 led to the modification of the project through the incorporation of significant new goals and activities, such as a pilot school-based prevention programme, a residential centre for street children that also was conceptualized as prevention, and a pilot project concerning probation for juveniles. This was a positive response to new opportunities.

The second project was based on a legal and factual ‘situation analysis’ of the results and lessons learned from the 2003–2005 juvenile justice project and an assessment of opportunities and constraints.

¹³⁸ Committee on the Rights of the Child, Concluding observations to the initial report of the Republic of Moldova, CRC/C/15/Add.192, p. 10; see also pp. 7-8.

¹³⁹ *Ibid.*, p. 10.

¹⁴⁰ Committee on the Rights of the Child, Initial report of the Republic of Moldova, CRC/C/28/Add.19, para. 391 and Second and third periodic reports of the Republic of Moldova, CRC/C/MDA/3, Table 38.

The project has three 'priority areas' and three 'secondary areas':

1. Continued legal reform
2. Development of a probation service
3. Provision of effective legal assistance
4. Provision of services to children in detention
5. Prevention of juvenile delinquency
6. Training of juvenile justice professionals.

Three 'main goals' are identified:

1. 30 per cent reduction in the 'total number of children in detention'
2. 50 per cent reduction in the length of pre-sentence detention of children
3. 100 per cent legal representation for all children deprived of liberty.

The stated objectives are broader:

1. Support the completion of juvenile justice reform in legislation, policy and capacity-building;
2. Further develop alternatives to the deprivation of liberty, before and after sentencing, through probation, community service work and mediation;
3. Further develop legal and psychosocial assistance for 'children in conflict with the law', child victims and child witnesses;
4. Develop appropriate prevention services and programmes.

Justice reform was one of the objectives of the United Nations Development Assistance Framework (UNDAF). UNICEF participated in a thematic group on justice with other United Nations agencies. Coordination with bilateral and regional donors and international and national NGOs, such as ABA/ROLI, NORLAM and OSCE, was on an *ad hoc* basis.¹⁴¹

NGOs played a large part in the implementation of the 2003–2005 project, but they have a smaller role in the 2008–2011 project. The Institute for Penal Reform, the main civil society counterpart in the first project, played a valuable role in research, in advocacy and in the implementation of the pilot project on legal and social assistance. There was also a valuable spin-off benefit in terms of developing the capacity of young professionals who worked for the organization on these projects. The decision to shift emphasis on support to governmental counterparts is due, in part, to the influence of the Paris Declaration on Aid Effectiveness and to legitimate aims concerning sustainability and ownership. However, in countries in transition in Central and Eastern Europe, civil society also tends to be weak. Support should be given to civil society organizations as well as state bodies not only because they sometimes are more efficient, but also because strengthening their capacity and encouraging government-civil society cooperation is a legitimate long-term objective that contributes to the consolidation of democracy.

2) Planning

The first project was less comprehensive than the second. It did not address prevention, the rehabilitation of convicted juveniles serving sentences (except through training of correctional staff) and post-release services. Some preventive activities were incorporated into the project as implementation proceeded. One activity supported had limited impact, while the other had better

¹⁴¹ The American Bar Association Rule of Law Initiative (ABA/ROLI), the Norwegian Mission of Rule of Law Advisors to Moldova (NORLAM) and the Organization for Security and Co-operation in Europe (OSCE).

results, according to the independent evaluation of the project.¹⁴² The evaluation also recommended that prevention be incorporated into the second project, which was done.

The evaluation of the 2003–2005 project concluded with a series of recommendations concerning future UNICEF support to the development of juvenile justice in Moldova. The second project incorporated the activities recommended by the evaluation, with some additions and modifications.¹⁴³ Consequently the project is more holistic, in particular in addressing the need for more coherent prevention policies and programmes.

There are still some gaps, however. Emphasis on diversion and alternative sentences seems to come at the expense of attention to the programmes applied in correctional facilities and services for juveniles leaving correctional facilities and returning to the community. Support to correctional facilities for juveniles is largely limited to access to education, the development of psychosocial programmes and ‘improvement of physical conditions’. These activities appear to focus more on improving conditions in facilities than on developing the capacity to assist offenders prepare for successful reintegration into society and the community.

Accountability for violating the rights of children is an important facet of juvenile justice that is not addressed directly by either project. This is, of course, a sensitive issue, but one that cannot be overlooked when the use of violence by police is amply documented. Some of the legal reforms that have been made are designed to prevent violence against juvenile suspects, and of course training also addresses this issue. But a comprehensive plan to bring juvenile justice into compliance with international standards should contain activities designed specifically to combat this problem, where it exists.

For the most part, the plans adopted appear to have been realistic. One specific objective that was not met was support to the juvenile unit in the main detention centre in the capital. This was to have been done once a new centre was built, which has not yet happened. In retrospect, it appears that a prolonged delay might have been foreseeable because of the economic interests involved in selling the land on which the present facility is located and selecting the site for a new centre.

The first project also failed to establish a computerized, inter-agency database on juvenile justice because of resistance from some sectors, in particular the Ministry of the Interior. Such resistance has occurred in many countries and should have been foreseen. It is important because it deprives legislators and policy makers of the information needed to make well-informed decisions in the process of establishing a juvenile justice system compatible with the obligations that Moldova has assumed under international law.

The failure to anticipate the impact of the global economic crisis, which is having a negative effect on the consolidation of some new institutions (e.g., probation) and on investments in the judicial and correctional systems, can hardly be faulted. The failure to anticipate the political crisis that emerged shortly before the assessment mission may be considered a setback, but fortunately that crisis has not had a major impact on the implementation of the second project, thus far.

The non-sustainability of the National Council for the Protection of the Rights of the Child and its Juvenile Justice Working Group appears to be a more serious failure, which probably was

¹⁴² Evaluation of UNICEF Project: Reform of the Juvenile Justice System in Moldova, p. 4.

¹⁴³ For example, the project document calls for improvements to the physical conditions of juvenile units in detention and correctional facilities, which was not among the recommendations made by the evaluation. Project Proposal: Reform of the Juvenile Justice System in Moldova, p. 16.

predictable. The absence of an interministerial body responsible for adopting policies on juvenile justice and coordinating the activities of the relevant ministries and other public institutions, such as the judiciary and the General Prosecutor's Office, makes implementation more difficult and fragmented. Whether the Council and the Working Group can be brought back to life is a significant test of the government's commitment to the rights of children. It may be here where the present political crisis will have a significant impact, and where UNICEF's ability to react appropriately to unforeseen obstacles beyond its control will be put to the test.

The objectives of both projects were defined in terms that were reasonably clear. The three 'main goals' identified in the second project, while clear, merit further comment. The first goal (30 per cent reduction in the 'total number of children in detention') seems arbitrary, especially because it gives the impression that it includes both convicted and unconvicted juveniles. It is not based on any analysis of compliance with the 'last resort' principle, so there is no underlying hypothesis as to which children being detained before or during trial, or serving custodial sentences, should not be deprived of liberty. The arbitrariness of this goal is highlighted by the fact that it could be attained either by reducing the number of juveniles deprived of liberty, or by reducing the length of deprivation of liberty. This suggests that it is not clear what the authors really wished to achieve.

The second goal (50 per cent reduction in the length of pre-sentence detention of children)¹⁴⁴ seems desirable and, indeed, it is difficult to imagine a situation in which it would not be desirable to reduce the length of detention by half. The problem is that there is no baseline on the average length of detention in such facilities. Recent changes in the law limit the duration of detention before trial to four months, but the real issue seems to be the duration of trials and appeals, especially as they affect juveniles who are detained. Anecdotal data suggest that there are still cases in which juveniles spend a year or more in detention centres.

The third goal (100 per cent legal representation for all children deprived of liberty) is legitimate, but fails to recognize that all juveniles accused of an offence have a right to legal assistance, regardless of whether or not they are deprived of liberty. There is no apparent reason for the distinction between those who are deprived of liberty and those could be deprived of liberty, depending on the outcome of proceedings.

An independent evaluation of the second project, carried out towards the end of the first year of implementation, drew attention to the lack of ownership by the national authorities. While this comment refers to implementation rather than planning, it implies a limited sense of ownership by government – and by civil society – of the process of developing a juvenile justice system that respects the rights of children. The fact that the content of the second project so closely follows the recommendations made by the international consultant who evaluated the first project, and the silence of the second project (in contrast to the first) on the process leading to the adoption of the goals, appear to confirm this inference.

3) Management

Implementation of the 2003–2005 project diverged substantially from the project as approved. Originally, 44 per cent of the budget was allocated to advocacy, policy development, law reform and data management; 38 per cent to capacity-building (training); and 18 per cent to services (diversion, alternative sentences and legal-social aid). In reality, only 9 per cent of the budget was spent on each of the first two components, and 82 per cent on pilot projects.¹⁴⁵

¹⁴⁴ Project Proposal: Reform of the Juvenile Justice System in Moldova, pp. 3 and 4.

¹⁴⁵ Evaluation of UNICEF Project: Reform of the Juvenile Justice System in Moldova, p. 20.

For the most part, these changes can be considered appropriate responses to changed circumstances and, to some extent, to unfounded presumptions in the project itself. Some of the activities envisaged in the first component (in particular law reform) were carried out at a lower cost than anticipated, while others (in particular the creation of a comprehensive computerized data management system) proved impossible.¹⁴⁶ Opportunities that had not been anticipated arose, in particular a request from the government to help develop a probation system. UNICEF's willingness to adjust its plans to respond to these obstacles and opportunities was an example of good management.

UNICEF also agreed to support two projects on prevention: a school-based project proposed by an NGO and an open residential facility for street children established by the municipal government of the capital. The independent evaluation of the project concluded that the decision to support the former was 'premature' because it was not based on research on the causation of offending nor on a national plan for the prevention of offending. The assessment team agrees with this observation, which in our view applies to the decision to support both prevention projects. The failure to evaluate the impact of these experiences was a lost opportunity for learning from them.

The independent evaluation of the 2008–2011 project carried out in October 2008 concluded that UNICEF was too directly involved in managing implementation, and should encourage more direct involvement of governmental counterparts.¹⁴⁷ It also found that UNICEF's financing of a project manager ('Project Implementation Unit') based in the Ministry of Justice was an effective arrangement, which facilitated good cooperation between UNICEF and this counterpart.¹⁴⁸ A third finding was that some of the smaller counterparts had "fragmented visions about project implementation." The assessment team believes that the problems concerning fragmentation and ownership are related to the fact that the National Council for the Protection of the Rights of the Child and its Juvenile Justice Working Group are inactive. Projects on juvenile justice necessarily involve a number of ministries, agencies, institutions and organizations, and it is difficult for any single ministry to ensure the active participation of all partners without a strong inter-agency coordination body.

UNICEF agreed with these findings and has taken steps to respond to them. UNICEF continues to provide funding and technical assistance, but the Ministry of Justice has taken a more pro-active role, including responsibility for coordinating with other implementing partners. These developments are too recent to assess their impact.

4) Evaluation

An independent evaluation of the first juvenile justice project (2003–2005) was carried out in 2006 by a foreign expert.¹⁴⁹ An independent evaluation of the first phase of the second project also was done, by a national expert.¹⁵⁰ No evaluations of specific activities were made.

Some activities may be evaluated as part of a broader, comprehensive project evaluation. The evaluation of changes in the law from the perspective of their conformity with international obligations is an example. A separate evaluation of some specific activities would have been appropriate,

¹⁴⁶ Ibid.

¹⁴⁷ Caraseni, G., Review Report: UNICEF Project on the Reform of the Juvenile Justice System in Moldova, UNICEF, 29 October 2008, pp. 3 and 10.

¹⁴⁸ Ibid., p. 8.

¹⁴⁹ Malby, S., Evaluation of UNICEF Project: Reform of the Juvenile Justice System in Moldova, Children's Legal Centre and UNICEF, Chisinau, mimeo, September 2006.

¹⁵⁰ Caraseni, G., Review Report: UNICEF Project on the Reform of the Juvenile Justice System in Moldova, UNICEF, 29 October 2008.

however. For example, it would have been helpful to evaluate training, a major component of the first project, separately.

The evaluation of the first project was well done, although the conclusions regarding prevention seem rather weak. The evaluator found the project implemented in schools “only partly relevant” because many offenders do not attend school.¹⁵¹ This is no doubt true, but the project nevertheless might be considered useful if it reduces offending in the substantial minority of offenders who are enrolled in schools, a question which was not addressed. In contrast, the evaluation concluded that the activities of a project for street children implemented by the Chisinau municipal Department for the Protection of the Rights of the Child were “very relevant,” even though the number of beneficiaries was small. These conclusions do not seem to be based on an objective evaluation of the impact of the project in question.

The evaluation of the first year of implementation of the second project makes some important recommendations concerning the management of the project. One, mentioned above, concerns a shift of responsibility from UNICEF to government counterparts. Another concerns the need for evaluating training activities. A third important recommendation relates to the appropriate response to a change in the project environment, namely, the creation of the National Council for Legal Assistance. The evaluation also suggests that UNICEF should cease supporting the renovation of classrooms and psychologists’ offices in detention centres although, paradoxically, it also quotes a juvenile detainee who thanks UNICEF for this support because it made him “feel more like a human being.”¹⁵²

The recommendations made by this evaluation are valuable, and UNICEF has responded to at least one, by supporting the National Council for Legal Assistance. The assessment team agrees with the need to evaluate training, but recommends that the impact of training should be estimated by monitoring the way institutions are working now, in addition to evaluations by the trainers themselves (see below). The assessment team has reservations about the tacit implication that UNICEF should not have supported renovation of certain parts of juvenile detention facilities, but agrees that no further work of this kind is needed at this point.¹⁵³

The present political crisis has implications for the recommendation that UNICEF step back and encourage government counterparts to take a more active role in managing the implementation of the project. Governmental ownership of UNICEF-supported projects is always desirable. In this case, the assessment team believes it should be linked to the revival of the Juvenile Justice Working Group. The assessment team also believes that cooperation between authorities and civil society, on both the national and municipal levels, should not be taken for granted but should be actively encouraged.

¹⁵¹ Evaluation of UNICEF Project: Reform of the Juvenile Justice System in Moldova, p. 4.

¹⁵² Review Report: UNICEF Project on the Reform of the Juvenile Justice System in Moldova, p. 7.

¹⁵³ US\$ 96,000 was spent on renovating classrooms, providing schoolbooks and similar investments designed to allow juvenile detainees and prisoners to participate in schooling. In some facilities the return on this investment was small, because factors ranging from attitudes of detainees to difficulty in retaining teachers limited the number of juveniles who took advantage of them. In other facilities, however, detainees responded more positively. Given the modest amount of the investment, the assessment team considers that this intervention was not well planned but was not *a priori* inappropriate.

PART IV. Conclusions and Recommendations

The following are the main conclusions and recommendations of the assessment team. The conclusions are presented in two parts, the first on positive developments and the second on challenges. The recommendations are also presented in two parts: general recommendations and those addressed to UNICEF Moldova.

POSITIVE DEVELOPMENTS

1. Juveniles deprived of liberty

The number of juveniles serving sentences has fallen by more than half since independence, from 262 in 1993 to 119 in 2008.¹⁵⁴

The number of juveniles detained while awaiting trial, sentence or appeal has decreased significantly in recent years, from 182 in 2001 to 129 in 2008.¹⁵⁵

The number of juveniles confined in the 'special school' for children with deviant behaviour while below the minimum age for prosecution has fallen by almost 90 per cent during the period 2001–2008.¹⁵⁶

2. Law reform

Important changes have been introduced in the legislation concerning juvenile offenders. Changes made by the Criminal Code and Code of Criminal Procedure adopted in 2002 include the following:

- Juveniles may not be detained before trial unless they are accused of a serious offence;
- Pretrial detention may not exceed four months;¹⁵⁷
- Factors such as the juvenile's age, needs and mental and emotional maturity, and the circumstances of the offence, including motives and the influence of others, must be taken into account before and during trial;¹⁵⁸
- Custodial sentences are no longer mandatory for convicted juveniles having committed a prior offence;
- Juvenile prisoners are eligible for early release after serving from one third to two thirds of their sentence.¹⁵⁹

Further changes were made by amendments to these Codes adopted in 2006. They include:

- The length of time a juvenile apprehended by the police may remain in police custody was reduced from 72 hours to 24 hours;
- Responsibility for investigating offences by juveniles was transferred from the police to the prosecutor;

¹⁵⁴ This does not include a very substantial additional decrease later in 2008 due to an amnesty. These data do not include prisoners convicted as juveniles who have been transferred to adult prisons after reaching age 18 and, inversely, include an unknown number of juveniles allowed to remain in the juvenile facility after reaching age 18.

¹⁵⁵ It has been much lower after amnesties, and was 61 at the time of the assessment mission.

¹⁵⁶ The population of this school may also include some juveniles who were prosecuted, but sentenced to this 'educational measure' under Article 75(3) of the Criminal Code.

¹⁵⁷ Code of Criminal Procedure, Article 186(4).

¹⁵⁸ Ibid., Article 475.

¹⁵⁹ Ibid., Art.91(6).

- Convicted juveniles may not be given a custodial sentence if an alternative sentence would prevent re-offending, unless the offence is classified as extremely serious;¹⁶⁰
- The maximum sentence that may be imposed on a juvenile offender may not exceed half of the sentence that could be imposed on an adult convicted of the same offence.

The Law on Mediation and the Law on Probation adopted in 2007 and 2008, respectively, also have had beneficial consequences for juveniles. For example, for juvenile offenders successful mediation may remove criminal responsibility for all but extremely serious crimes.

3. Specialized judges and prosecutors

In each district, at least one judge and one prosecutor have been designated to handle cases involving juvenile offenders.

4. Juvenile police

The juvenile police, which have existed since before independence, have all been trained in child rights. Successful completion of training is required.

5. Training

A training manual for judges, prosecutors and police has been developed and is being used. It is based on interactive methods, and covers both legal and psychosocial aspects of juvenile justice. Training has been incorporated into the curricula of the National Institute of Justice, which trains judges and prosecutors, and the Police Academy. All judges and prosecutors responsible for juveniles have received training. Many correctional staff in facilities or units for juveniles also have received training.

6. Underage offenders

Children under the minimum age for prosecution (aged 14 or 16 years, depending on the offence) may no longer be placed in the 'special school' by the decision of an administrative body, but only by the decision of a court.

7. Prevention of offending

In Chisinau, the municipal Department for the Protection of the Rights of the Child provides many forms of assistance to vulnerable families and children, helping to prevent offending by children.

8. Police custody and the investigation of offences

Juveniles suspected of an offence may not be kept in police custody for more than 24 hours. Parents must be informed immediately. Prosecutors are informed promptly and are responsible for investigating the offence. They must place charges and, if they believe that detention for purposes of investigation is necessary, seek a judicial order, within 24 hours. Previously, juveniles – like adults – could be detained for 72 hours without a court order. Juvenile suspects and accused have the right to a lawyer during questioning.

9. Diversion

First offenders under age 18 may be 'diverted' from the justice system if they are charged with a minor offence and if the prosecutor and investigating judge agree that prosecution is not necessary

¹⁶⁰ These are intentional offences punishable by sentences of more than 12 years (when the offender is an adult), including murder, aggravated rape, assault or robbery, and certain drug offences.

to prevent re-offending.¹⁶¹ Diversion is voluntary, and results in the imposition of an 'educational measure', such as a warning, supervision, restitution or therapy.

10. Mediation

A Law on Mediation, including mediation in criminal matters, has come into force and mediators have been trained and certified. Referral of cases involving juveniles to mediation has begun and results are positive. Successful mediation before or during trial removes criminal responsibility.

11. Detention before trial

Detention of juveniles during the investigation (i.e., by judicial order between accusation and trial) may not exceed four months.¹⁶²

12. Legal assistance

A publicly funded legal assistance programme for persons accused of an offence was established in 2008, and full-time public defenders devoted exclusively to the cases involving juveniles were expected to be recruited soon.

13. Alternative sentences

Sentences to community service are recognized. From 2006 to 2008 almost one quarter of all convicted juveniles have received this sentence.¹⁶³

A Probation Service has been established to supervise and provide assistance to juveniles (and adults) given 'conditional' or suspended sentences.

From 2006 to 2008, the percentage of convicted juveniles given some form of alternative sentence varied from 78 per cent to 83 per cent.

14. Sentencing (custodial sentences)

The length of sentences that may be imposed on juveniles for most offences was reduced by one half in 2006.

15. Conditions in detention centres and correctional facilities

Most of the correctional staff with whom the assessment team spoke seem highly motivated and committed to the rights of children. Conditions and policies in most of the facilities visited are, in many ways, compatible with the rights of children.

CHALLENGES

1. Data

Although some data on offending and juvenile justice are compiled and published by the National Bureau of Statistics, there is no authority concerned with juvenile justice (or criminal justice in general) that compiles and analyses information of this kind. Data on some important issues are neither collected nor published. Examples include:

¹⁶¹ Code of Criminal Procedure, Article 483.

¹⁶² Ibid., Article 186(4).

¹⁶³ The situation of children in the Republic of Moldova in 2008, Table 10.

- the number of cases diverted (Articles 54 and 109 of the Criminal Code)
- the number of accused juveniles deprived of liberty
- the length of 'pre-sentence' detention
- early release
- re-offending
- the number of persons convicted as juveniles in adult prisons.

2. Prevention

There is a lack of programmes designed to assist children at a higher risk of offending.

3. Research

There is little research and analysis on the causes of offending and on the effectiveness of measures designed to prevent offending or re-offending.

4. Diversion

With the exception of mediation, diversion usually does not involve referral of the juvenile to a community-based programme designed to address the underlying causes of offending and assist the child to avoid re-offending.

5. Detention during trial and appeal

There is no time limit on trials or appeals or on detention during trial and appeal. Data on the duration are not available, but some cases of detention for a year or more are still reported. Conditions in the pretrial detention facility where most juveniles are detained are inhuman, and disciplinary sanctions violate international standards.

6. Underage offenders (children under the 'age of criminal responsibility')

The law and procedures concerning children involved in criminal conduct who are too young to be prosecuted as juvenile offenders are poorly defined. In particular, the compliance with the 'last resort' principle is not required and the right to legal assistance in such proceedings is not recognized.

7. Coordination

The Juvenile Justice Working Group, which made valuable contributions to the development of juvenile justice, has become inoperative.

8. Accountability

In July 2008, the United Nations Special Rapporteur on torture stated that ill-treatment during the initial period of police custody is widespread. Various sources informed the assessment team that the use of violence against juveniles by the police has not been eliminated. However, authorities were unable to cite any cases in which investigations have led to the identification of officers responsible for such abuse and the imposition of sanctions.

9. Conditions in 'pre-sentence' detention facilities, the special school and the juvenile prison

- Conditions in the juvenile unit of the Chisinau pretrial detention facility are incompatible with minimum international standards.
- Moldovan legislation and practice are incompatible with international standards barring the use of isolation or solitary confinement as a disciplinary measure for juveniles.

- Labour in the 'special school' – unlike labour in the juvenile prison – is not compensated.
- Physical conditions in the juvenile prison, the two pre-sentence detention facilities visited and the special school are far inferior to the conditions in the women's prison.

10. Evaluation

The effectiveness of some measures introduced in recent years has not been evaluated, such as the designation and training of specialized judges and prosecutors, and training of correctional staff.

GENERAL RECOMMENDATIONS

1. Data

Data on offending by children and juvenile justice should be published annually. New indicators should be developed that will permit more complete assessment of compliance with Moldova's obligations under the Convention on the Rights of the Child and relevant European norms, and provide the information needed to make policy decisions and evaluate the impact of policies in place, as well as new policies or changes in the applicable legal standards.

2. Research

Research should be carried out on to the causation of delinquency in Moldova, with a view to designing pilot programmes of secondary and tertiary prevention. Research should focus not only on socio-economic factors that correlate with reported offending, but also on the interrelationship between different risk factors, the protective factors that help children and adolescents in high-risk situations avoid offending, and the risk and protective factors related to different kinds of offences and patterns of offending. Consideration also should be given to the possibility of undertaking research on unreported offending, which is useful in evaluating law enforcement policies and ensuring that prevention policies are designed optimally.

3. Coordination

The Juvenile Justice Working Group should be reactivated, to assist in implementation of the 2008–2011 juvenile justice project.

4. Accountability

The responsible authorities should take prompt administrative and, when appropriate, criminal action in response to violations of the rights of children by public officials, including in particular cases referred to them by the Ombudsman. Public defenders should assist their clients to bring cases of abuse to the attention of the appropriate authorities.

5. Prevention and diversion

Priority should be given to the establishment of pilot programmes for community-based secondary prevention, based on research concerning the causes of offending.

Priority also should be given to establishing a broader range of community-based programmes for tertiary prevention, directed at children under age 14 involved in criminal conduct, children under age 16 involved in minor crimes and children 'diverted' from the judicial system, and to broadening the options for alternative sentences. Examples might include after-school programmes or group homes.

6. Assistance in reintegration

A programme to assist juveniles released from correctional facilities should be developed and tested. The Probation Service may be the most appropriate body for implementing such a programme, which should help released juveniles reintegrate into their families and access education and/or employment.

7. Chisinau juvenile pretrial detention facility

Closure of the juvenile unit in the Chisinau pretrial detention facility should be a high priority. The number of juvenile detainees (30+) is sufficient to justify the creation of a separate facility specifically for juveniles. It is highly unlikely that any new facility designed for a population of approximately 1,000 adults and some 30 juveniles would provide appropriate conditions for the detention of the latter.

Before building a new facility specifically for pre-sentence detention of juveniles, however, consideration should be given to the opening of a facility for juveniles in the capital that would have separate sections for those awaiting trial and those serving sentences.

8. Regulations regarding juveniles deprived of liberty

The use of isolation cells as a disciplinary measure for juveniles should be eliminated. The right of children in the special school to receive some compensation for work performed should be recognized.

9. Monitoring of legal proceedings

One of the main issues concerning the development of juvenile justice in Moldova, as in many other countries of the region, concerns the value, utility and feasibility of specialized judges and prosecutors as opposed to specialized courts. A similar question arises about the value and feasibility of specialized defence lawyers. A study of proceedings before designating juvenile judges and prosecutors, similar to the reports based on the monitoring of criminal proceedings carried out in 2006 and 2007, would help evaluate the effectiveness of the training provided to these professionals and the extent to which the designation of judges and prosecutors to handle juvenile cases, as part of a larger caseload of civil and criminal cases, is useful in ensuring that accused juveniles are treated in accordance with the relevant international and European standards. Such a study could and should assess the performance of the lawyers representing juveniles, and the adequacy of the physical environment. The assessment team also recommends that the study include monitoring of legal proceedings in which children are victims or witnesses – an issue that was incorporated into the design of the project but has received too little attention thus far.

10. Specialized juvenile/children's judges/courts

Whether the designation of especially trained judges and prosecutors to handle cases involving juveniles is the best approach for ensuring the rights of juveniles involved in criminal proceedings or merely a step in the right direction, given the number, nature and distribution of cases arising in Moldova and the resources presently or potentially available, is a question on which authorities interviewed by the assessment team hold different views. Independent monitoring of the proceedings involving specialized judges and prosecutors will shed valuable light on this question. Without prejudging the results of such a study, the assessment team considers that the number of cases involving accused juveniles handled annually in the different sections of Chisinau would make it feasible and cost-effective to establish a specialized court there. Consideration should be given to establishing such a specialized court as the next step in the development of a juvenile justice system, in keeping with the recommendations made by the Committee on the Rights of the Child in 2002 and 2009.

RECOMMENDATIONS FOR UNICEF

1. UNICEF should continue to support:

- the public defenders
- the Probation Service
- the Ombudsman for Children
- the National Institute of Justice
- the training of correctional staff, especially psychologists and social workers.

2. UNICEF should provide technical assistance and other appropriate support:

- Conduct research on the causation and prevention of offending and re-offending, and on the development of programmes and pilot projects to be implemented in the community and in existing correctional facilities;
- Monitor legal proceedings concerning juveniles accused of offences and other legal proceedings in which children are involved (e.g., as victims);
- Create a more robust system for compiling, analysing and disseminating data on offending and on the functioning and impact of juvenile justice;
- Develop a plan to restructure the correctional system in order to ensure full compliance with the relevant international standards; and
- Conduct a feasibility study on the creation of one or more full-time juvenile judges or juvenile courts, or children's courts, in particular as a way of reducing the length of time juveniles are detained in pre-sentence facilities.

3. Since substantial progress has been made towards the goals of the present juvenile justice project less than halfway through the duration of the project, consideration should be given to expanding the activities supported to certain issues closely related to the aims of this project, in particular:

- The rights of children deprived of their liberty in facilities for children with mental disabilities or psychological conditions;
- The rights of children involved in criminal legal proceedings as victims or witnesses;
- Any legal issues identified by research on the causes and prevention of offending.

Annex 1. Data collection and analysis

One of the aims of this assessment is to ascertain whether the information corresponding to global and regional indicators exists; identify problems or difficulties concerning the use or definition of such indicators; and explore the availability of other indicators of particular relevance. The assessment reveals that data corresponding to most of UNODC and TransMONEE indicators are available, despite a significant number of problems regarding the definitions or relevance of the indicators, as presently defined. Data on some important indicators such as the average duration of pretrial detention (confidential), contacts with families, diversion and aftercare are not compiled at present. This gap should be remedied in order to facilitate monitoring of the relevant national and international standards.

The indicators and corresponding observations of the assessment team are as follows:

1) National data collection system and international and regional indicators

(a) *Crimes committed by juvenile offenders*

The TransMONEE matrix defines this indicator as the “number of crimes committed by persons aged 14–17,” disaggregated by the kind of crime, i.e., violent, property or other.”¹⁶⁴

The National Bureau of Statistics’ publication *The situation of children in the Republic of Moldova in 2008* contains a table on the number of crimes committed by persons under age 18, as well as a table on the number of persons under age 18 who have committed crimes.¹⁶⁵ The former is disaggregated by nine categories of crimes: murder, included attempted murder, severe bodily injuries, rape, burglary, robbery, theft (by far the largest category), fraud, hooliganism and drug offences. The latter contains data about the number of juveniles who committed some of these offences (burglary, robbery, theft, hooliganism and drug offences) and is disaggregated by age (14–15 and 16–17 years).

The data in these two tables cover the years 2004–2008. In two of these years the number of juvenile offenders is greater than the number of offences committed by juveniles, and in the other three years the number of offenders is greater than the number of offences. Both tables show a strong decrease.¹⁶⁶

In 2008 the National Bureau of Statistics published a special report containing data on offending by juveniles disaggregated by offence (the nine categories mentioned above, and ‘other’) and by the sex of the offender.¹⁶⁷ It covers the period 2003–2007, but only data for 2006 and 2007 are disaggregated by the type of offence. The percentage of girl offenders ranged from a low of 7.4 per cent in 2007 to a high of 9.6 per cent in 2005.¹⁶⁸

(b) *Children in conflict with the law/children arrested*

The term ‘arrest’ is defined by the UNODC-UNICEF Manual as “placed in custody by the police ... or other security forces because of actual, perceived or alleged conflict with the law.” ‘Conflict

¹⁶⁴ The UNODC-UNICEF Manual does not include this indicator. (See United Nations, *Manual for the Measurement of Juvenile Justice Indicators*, Office on Drugs and Crime (UNODC) and UNICEF, New York, 2007.)

¹⁶⁵ *The situation of children in the Republic of Moldova in 2008*, Tables 7 and 8.

¹⁶⁶ A 45 per cent decrease in crimes by juveniles and a 52 per cent decrease in the number of juvenile offenders.

¹⁶⁷ National Bureau of Statistics, *Women and Men in the Republic of Moldova*, Chisinau, 2008. These are also disaggregated by ‘urban/rural’.

¹⁶⁸ *Ibid.*, p. 266, Table 9.1.

with the law' is, in turn, defined as having "committed or [being] accused of having committed an offence," although the definition adds that, "Depending on the local context," the term may also mean "children dealt with by the juvenile justice or adult criminal justice system for reason of being considered to be in danger by virtue of their behaviour or the environment in which they live." The TransMONEE matrix defines this more clearly as the "number of children/juveniles taken into police custody (following arrest on suspicion of having committed an offence)..."

In Moldova, when a child is taken to a police station, the responsible officer must prepare and sign a record of the reasons within three hours. If he/she is released before this, no record of the event is made. The assessment team is not aware of any published data on the number of juveniles 'apprehended' by the police, but the General Prosecutor's Office provided the team information regarding 2008. In that year, prosecutors opened 1,630 investigations of juvenile suspects, including 103 juveniles who were apprehended by the police. This illustrates the fallacy of considering that arrest is a valid indicator of 'children in conflict with the law'.

(c) Children in detention

The UNODC-UNICEF Manual describes this indicator as "children detained in pretrial, pre-sentence and post-sentencing in any type of facility (including police custody)." This indicator is defined by the TransMONEE matrix as "the total number of children/juveniles in conflict with the law in closed correctional/punitive institutions or open/semi-open institutions at the end of the year."

The annual publication of the National Bureau of Statistics does not contain data on this indicator. The Bureau's special publication on women and men contains data on the number of juveniles serving sentences in correctional facilities for the years 2003 and 2004, disaggregated by sex.¹⁶⁹

The Department of Penitentiary Institutions publishes data on the number of persons in preliminary detention facilities and correctional facilities on the first day of the year.¹⁷⁰ This information is disaggregated by facility, and thus identifies the number of persons in the juvenile correctional facility and juvenile units of preliminary detention facilities.¹⁷¹

These data do not accurately identify the total number of persons under age 18 confined in such facilities, because they do not take into consideration girls confined in women's facilities and do not include boys who remain in juvenile facilities after reaching age 18. The Department also compiles (but does not publish) monthly spreadsheets with a more detailed breakdown of the number of persons in each detention and correctional facility, disaggregated by age (over or below 18 years) and sex.¹⁷² This information includes the number of juveniles in the prison hospital.

The data on juvenile offenders published by the Department of Penitentiary Institutions are disaggregated by age (14, 15, 16 and 17 years of age).¹⁷³

¹⁶⁹ Ibid., p. 274, Table 9.22. The figure for girls serving custodial sentences ranged from a low of 2 in 2004, to a high of 14 in 2006; the figure for boys from a low of 33 in 2004 to a high of 124 in 2006. It is not known whether this refers to the number of persons admitted to correctional facilities during the year, or the number present at some specific date.

¹⁷⁰ Available on the website of the Department of Penitentiary Institutions: <http://www.penitenciar.gov.md/ro/statistica.html>, accessed 31 January 2010.

¹⁷¹ Ibid., Tables 1 and 3.

¹⁷² 'Form No. 1'.

¹⁷³ Department of Penitentiary Institutions: <http://www.penitenciar.gov.md/ro/statistica.html>, accessed 31 January 2010, Table 11.

(d) Children in pretrial or pre-sentence detention

The TransMONEE matrix defines this indicator as “the number of children who are placed in pretrial detention during the year.” The UNODC-UNICEF Manual describes it as including children deprived of liberty while awaiting trial and convicted juveniles awaiting sentencing, but not those who are sentenced and awaiting the outcome of an appeal.

The data on juveniles ‘confined’ in preliminary detention facilities can be extracted easily from the data compiled and published by the Department of Penitentiary Institutions (see above). Data on the number of juveniles ‘placed’ in preliminary detention during the year are not published, however.

(e) Duration of pretrial detention

Data on this important indicator are not compiled at present. This gap should be remedied as a matter of priority in order to facilitate monitoring of the relevant national and international standards.

(f) Child deaths in detention

The Department of Penitentiary Institutions has such data but does not publish them.

(g) Separation from adults

The UNODC-UNICEF Manual defines this indicator as “the percentage of children in detention not wholly separated from” adult prisoners.¹⁷⁴

Three separate contexts must be considered. Police stations do not have facilities allowing separation of juveniles from adults. Children apprehended by the police may not be detained in police stations for more than 24 hours. Presumably, all apprehended juvenile suspects have some contact with adult suspects in police stations, although juveniles ‘picked up’ by the police for minor matters not of a criminal nature or involving a very minor crime are taken directly to the ‘reception centre’ reserved exclusively for children. Data on the number of juvenile suspects apprehended by the police are not published, but the number appears to be relatively small.¹⁷⁵

Juveniles detained while awaiting trial, sentencing and appeal are held in separate units of detention facilities where most of the population are adults. Girls are detained with women detainees. Boys are confined in separate units, but the structure of the facilities is such that the measures necessary to ensure separation aggravate conditions of detention. (For example, time spent ‘outdoors’ is spent in a cell open to the sky rather than a courtyard.) Juvenile and adult detainees are transported to court in the same vehicles.

Girls given custodial sentences serve them in the women’s prison. Due to the small number of girls serving such sentences (two, at the time of the assessment mission), separation from women prisoners is not feasible. This is especially so because, in the women’s prison, prisoners whose conduct is good are not confined in cells but sleep in dormitories and spend most of the day in open areas.

The correctional facility for boys is located in a large rural facility that includes a unit for adult prisoners. Here it is the adults who are separated from the juvenile prisoners, in a separate building that could be called a prison within a prison. There appears to be a high degree of separation, but some contact no doubt occurs.

¹⁷⁴ The TransMONEE project does not include this indicator. (See Moestue, H., *Lost in the Justice System: Children in conflict with the law in Eastern Europe and Central Asia*, UNICEF Regional Office for CEE/CIS, Geneva, May 2008, Appendix 2.)

¹⁷⁵ The number was 103 in 2008, according to information provided to the assessment team by the General Prosecutor’s Office.

In addition, as in most countries of the region, juvenile prisoners who turn 18 years before completing their sentence, and juvenile offenders who turn 18 years before sentencing may remain in the juvenile facility. At the time of the assessment mission, more than one third (14 out of 40) of the population of the juvenile facility were juvenile offenders over 18 years of age.

For these reasons, few juvenile prisoners and detainees are ‘wholly separated’ from adult detainees and prisoners. Depending on how these criteria are interpreted, one could conclude that either boys in preliminary detention facilities and/or boys serving sentences in the juvenile correctional facility meet the criteria. Both figures are published.

(b) Contact with parents and family

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

Data on this indicator are neither published nor collected systematically by any of the institutions in which juvenile offenders are or may be confined.

(i) Convictions

The TransMONEE matrix describes this indicator as “the number of juveniles convicted during the year,” disaggregated by sex, age and type of crime, i.e. violent, property, or other.¹⁷⁶

The National Bureau of Statistics’ annual publication on children contains data on the number of juveniles convicted, disaggregated by seven types of crime: murder, rape, theft, robbery, burglary, hooliganism and drug offences.¹⁷⁷ This information is not disaggregated by sex or age cohort.

(j) Custodial sentences

The UNODC-UNICEF Manual describes this indicator as “the percentage of sentenced children who receive a custodial sentence,” i.e., confinement to an open, semi-open or closed facility. The TransMONEE matrix limits this to children aged 14–18 years.

Disaggregated data on sentences imposed on juvenile offenders, including custodial sentences, are published by the National Bureau of Statistics.¹⁷⁸ They are not disaggregated by crime, sex, age, prior criminal record or other relevant criteria. Data on the juvenile population of the correctional system are, however, disaggregated by offence. In 2008, more than half of this population was serving a sentence for homicide or rape.¹⁷⁹ This was due in large part to an amnesty of non-violent juvenile offenders; in 2007, 22 per cent of juvenile prisoners were serving sentences for one of these two offences.¹⁸⁰

Prisoners can be released after serving part of their sentence, and may be pardoned, but data on juvenile prisoners benefiting from these possibilities are not compiled systematically.

(k) Alternative sentences

The TransMONEE matrix requests information on the kind of sentences imposed on convicted juveniles. The twelve categories used are: committal to a penal institution; committal to an

¹⁷⁶ The UNODC-UNICEF Manual does not include this indicator.

¹⁷⁷ See *The situation of children in the Republic of Moldova in 2008*, Table 9.

¹⁷⁸ Ibid., Table 10.

¹⁷⁹ Ibid., Table 11 (10 homicides and 3 rapes out of 24 juvenile prisoners).

¹⁸⁰ Ibid., (5 homicides and 26 rapes, out of 141 prisoners).

educational/correctional institution; pre-sentence diversion; formal warning/conditional discharge; apology; fine/financial compensation; community service or corrective labour; supervision order; probation order; postponement of sentencing; release from sentencing; and other.

Regional or global indicators inevitably do not correspond exactly to the kinds of sentences recognized by national legislation. In Moldova, data on the number of persons under age 18 convicted of an offence are disaggregated by six types of sentences: prison, fine, conditional sentence (i.e., probation), exemption from criminal responsibility, community service and other.¹⁸¹ Prior to 2006, probation was by far the most common sentence. Since 2006, when sentences to community service were introduced, about 25 per cent of all sentences imposed on juveniles are community service, and approximately 40 to 50 per cent are probation.

Exemption from criminal responsibility, also translated as ‘annulment of punishment’, means replacement of a ‘criminal’ sanction with an ‘educational measure’, which includes warnings, parental supervision orders, restitution, psychological treatment and placement in a special educational institution.¹⁸² Such sentences are rarely imposed.¹⁸³

(l) Pre-sentence diversion

The UNODC-UNICEF Manual defines this indicator as “the percentage of children diverted or sentenced who enter a pre-sentence diversion scheme,” but adds that it is intended to measure “the number of children diverted before reaching a formal hearing.” This is somewhat confusing, and the Manual recognizes that what constitutes diversion “will need to be identified in the local context.”¹⁸⁴

In Moldova, the police have no discretion to divert cases involving juvenile (or adult) offenders. Prosecutors do have such discretion, since 2003, although their decisions must be approved by the investigating judge. As indicated in the assessment report, they can decide not to prosecute first-time offenders if the crime is not a serious one and if they conclude that ‘correction’ may be achieved without taking the case to court. Furthermore, reconciliation with the victim before or during trial (i.e., before sentencing) ‘removes criminal responsibility’.

Although data on diversion are not published, data on the number of investigations opened are available. Information provided to the assessment team by the General Prosecutor’s Office indicated that the number of investigations opened is about 50 per cent higher than the number of juveniles prosecuted. In other words, in about one third of the cases investigated, a decision is taken not to prosecute.¹⁸⁵ Unfortunately, the reasons for this decision are unknown: in how many cases does the prosecutor decide that the evidence is insufficient to prosecute, and in how many is there reconciliation, or a decision that the interests of justice can be served without trial (i.e., diversion)?

(m) Aftercare

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

¹⁸¹ Ibid., Table 10.

¹⁸² See Code of Criminal Procedure, Articles 485–487; Criminal Code, Articles 93 and 104.

¹⁸³ Less than one per year, on average, from 2005 to 2008.

¹⁸⁴ It is unclear why the percentage of offenders diverted should be calculated with reference to the number ‘diverted or sentenced’, rather than the number accused, or prosecuted.

¹⁸⁵ See below.

In any event, no data are available. The reason appears to be that such programmes are weak and their importance is not recognized.

2) Other relevant data and information

Children admitted to the 'temporary placement centre'

The criteria for admission to the temporary placement centre operated by the Ministry of the Interior are very vague, as indicated in the assessment report. Most children admitted are not 'children in conflict with the law', in the sense that they are not "dealt with by the juvenile justice system."¹⁸⁶ The temporary placement centre is part of the grey area that is both child protection/child welfare and delinquency prevention.

Data on the number of children admitted to this centre have been published at least since 2006.¹⁸⁷ They identify seven groups of children, some of which appear to be defined in terms of the reason for admission, while others describe the child's social/educational background.¹⁸⁸ The number of repeat admissions – about one third of the total – is stated. The publication of these data is a positive development, particularly from the perspective of transparency. The value of the information would be enhanced, however, by the use of clearer and additional indicators (e.g., age, sex, reasons for admission, duration of stay).

Investigations opened

The General Prosecutor's Office compiles data on the number of investigations opened annually regarding juveniles suspected of participating in an offence. This information is useful, particularly when cross-referenced with data on offending by juveniles and convictions of juveniles. It would be more useful, however, if the reasons for the gaps between these indicators were identified. In 2008, for example, 1,502 offences committed by 1,554 juveniles were reported; 1,629 investigations concerning juvenile suspects were opened, and 445 juveniles were convicted. One obvious question raised by these data is the following: Why is the number of investigations opened greater than the number of reported offences by juveniles?

The General Prosecutor's Office also informed the assessment team that, of the 1,629 investigations opened, 1,011 were prosecuted. Why was it decided not to prosecute in 618 cases? In how many cases did the prosecutors decide that evidence of responsibility for an offence was insufficient? In how many cases did the prosecutors decide to divert the case for other reasons? In how many cases was prosecution abandoned due to successful mediation? In how many cases was prosecution abandoned due to flight of the accused?

Published data do not either shed light on the difference between the number of juveniles prosecuted and the number of convictions. In how many of the 576 trials that did not end in conviction did the court decide that an accused juvenile was innocent? In how many did the juvenile abscond? And how many of these cases were simply pending at the end of the year?

A proper understanding of how the juvenile justice system is working requires the compilation, publication and analysis of data on these and similar indicators. This is particularly important when new procedures and dispositions are being introduced.

¹⁸⁶ See the definition used by the UNODC-UNICEF Manual, cited in section (b) of this annex.

¹⁸⁷ The number of admissions ranged from a low of 1,459 in 2006 to a high of 1,680 in 2008.

¹⁸⁸ 'Begging or vagrancy' and 'lost' are examples of the former, while 'pre-schooler', 'primary school student' and 'secondary school student' are examples of the latter.

Data on trials of juvenile cases

The Supreme Court of Justice compiles data on the number of cases involving accused juveniles handled by each trial court in Moldova, as well as the number of juveniles convicted, by court.¹⁸⁹ Data are also published annually on the caseload of each court, indicating the number of cases received, pending and resolved in different ways, including data on the length of time cases are pending. Unfortunately, these data are not disaggregated by the kind of case and thus shed no light on the handling of cases involving accused juveniles (or other cases involving children).¹⁹⁰

Repeat offending

Although many juvenile justice professionals expressed concern regarding the number of juveniles who are repeat offenders, no data on this problem – either information concerning the repeat offending by juveniles or the number of juvenile offenders to go on to offend as adults – could be found. Information on this phenomenon is essential to play prevention and rehabilitation strategies and to evaluate their effectiveness once they are in place. It is also needed to inform law and policy on diversion and sentencing.

Disaggregation by ethnicity

Data on offending and offenders are not disaggregated by ethnicity.

Data on crimes against children

The annual publication of the National Bureau of Statistics on children contains a table presenting data on 'crimes committed against children' for the years 2004–2008. Data are disaggregated by six categories: homicide, intentional severe injuries, rape, robberies, burglaries and 'other'.¹⁹¹ This is a welcome development, although the value of the data would be greatly enhanced if disaggregated by other factors, such as the age and sex of the victim; whether the offender is a child, adolescent or adult; the existence of a family or other relationship between the victim and the offender; the place in which the offence occurred; and the outcome of legal proceedings.

¹⁸⁹ Spreadsheet provided by the Supreme Court of Justice to the assessment team. A summary of the data is available in *Bulletin of the Supreme Court of Justice, No.3*, March 2009.

¹⁹⁰ Ibid.

¹⁹¹ See *The situation of children in the Republic of Moldova in 2008*, Table 13.

Annex 2. List of persons interviewed

Public officials

- N. Esanu, Deputy Minister of Justice
 V. Cojocaru, Deputy Director, Department of Penitentiary Institutions
 V. Popa, Director, Probation Service
 V. Zubic, Deputy Minister of the Interior
 M. Popovici, Head, Juvenile Inspectors' Department
 P. Corduneanu, Chief, General Department of Public Order
 V. Sotchi, Chief, Department of International Relations and European Integration
 G. Pulisca, Chief, Police station in Centru district in Chisinau
 I. Druta, Director, Temporary Placement Centre for Minors
 I. Serbinov, Deputy Prosecutor General
 M. Rosioru, Chief of Department, General Prosecutor's Office
 R. Popov, Chief of Department, General Prosecutor's Office
 T. Plamadeala, Ombudsperson
 R. Botezatu, Vice-President, Supreme Court and member, Superior Council of the Magistracy
 E. Fistican, Director, National Institute of Justice (and Justice of the Supreme Court)
 D. Ganu, psychologist, member of the National Council for the Protection of the Rights of the Child
 G. Chirilia, Director, Rusca Prison for Women
 T. Plamadeala - Grigoras, psychologist, Rusca Prison for Women
 A. Boico, Director, Solonet 'special school'
 I. Frumuzachi, Director, Lipcani juvenile correctional facility
 V. Petrachi, Chisinau pretrial detention facility
 T. Nicolaeva, psychologist, juvenile unit, Chisinau pretrial detention facility
 A. Negu, Head, juvenile unit, Balti pretrial detention facility
 S. Morori, Head, Educational, psychological and social services, Balti pretrial detention facility
 N. Chiloru, social worker, Balti pretrial detention facility
 E. Seerbuco, teacher, Balti pretrial detention facility
 O. Sternioal, designated juvenile judge, Buiucani district court
 I. Hirbu, Chief Judge, Telenesti
 G. Ursan, investigating judge, Telenesti
 G. Popa, district judge, Telenesti
 S. Lazar, judge, Telenesti district court
 V. Stihii, judge, Telenesti district court
 V. Stavila, Chief Prosecutor, Telenesti

C. Rodica, probation officer, Telenesti

L. Alina, probation officer, Telenesti

R. Todua, Chief of Police, Telenesti

M. Trofimciuc, Juvenile Inspector, Telenesti

S. Chifa, Head, Chisinau municipal Department for the Protection of the Rights of the Child

V. Railean, Chief, Law Department, Chisinau municipal Department for the Protection of the Rights of the Child

I. Ciobanu, social assistant, Chisinau municipal Department for the Protection of the Rights of the Child

L. Darii, Coordinator, Legal Aid Service

I. Ciobanu, Public Defender

Civil society

I. Dolea, Director, Institute for Penal Reform

M. Burlacu, President, Mediation Council

N. Mogildea, Director, Community Justice Centre, Telenesti

C. Gavriiliuc, Director, Child Rights Information and Documentation Centre

V. Jereghi, Director, Moldovan Institute for Human Rights

International agencies/organizations

A. Yuster, Representative, UNICEF

S. Blanchet, Deputy Representative, UNICEF

T. Colin, Child Protection Officer, UNICEF

S. Lupan, Assistant Programme Officer, UNICEF

S. Hanganu, Manager, UNDP 'Strengthening the Capacity of the National Institute of Justice' project

I. Sörman Nath, Swedish International Development Cooperation Agency

I. Cuza, Soros Foundation

Annex 3. List of documents consulted

Legislation

- Constitution of the Republic of Moldova, 29 July 1994¹⁹²
- Criminal Code, Law No. 985-XV of 18 April 2002¹⁹³
- Code of Criminal Procedure, Law No. 122-XV of 14 March 2003¹⁹⁴
- Law on Child Rights, No. 338-XIII of 15 December 1994
- Family Code Nr. 1316-XIV from 26 October 2000 (extracts).
- Code on Execution of Criminal Law Sanctions (Chapter 14)

Government documents

- National Bureau of Statistics, *The situation of children in the Republic of Moldova in 2008*, No. 08-06/126, 2009¹⁹⁵
- National Bureau of Statistics, *Women and Men in the Republic of Moldova*, Chisinau, 2008
- Action Plan on the Protection of Children's Rights and Prevention and Combating of Juvenile Delinquency for 2008–2010
- Assessment Report Boarding School for Children with Deviating Behavioural Patterns From Solonet Village, District of Soroca, Ministry of Education and Youth, UNICEF and European Union, Chisinau, 2007
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