ASSESSMENT OF JUVENILE JUSTICE REFORM ACHIEVEMENTS IN TAJIKISTAN
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UNICEF Regional Office for Central and Eastern Europe and Commonwealth of Independent States

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We cannot expect good behaviour by prisoners unless we ensure good conditions in the prison.

A representative of the Prison Department

Note on the Assessment Mission

The assessment mission took place from 25 to 30 April 2011. The team was composed of Dan O’Donnell, international consultant, and Galina Derevenchenko, national consultant. Support was provided by Nargis Karimova and Siyma Barkin Kuzmin of UNICEF Tajikistan.

The aims of the assessment included: documenting strategic lessons regarding international support for the development of juvenile justice and experiences that can be useful in addressing policy issues, identifying good practices and resources (laws, programmes, training materials etc.) and providing UNICEF Country Offices with recommendations about their efforts to support the development of juvenile justice systems compatible with the Convention on the Rights of the Child and related international standards.

Meetings were held with representatives of the Ministry of the Interior, the Ministry of Justice, the Supreme Court, the Office of the Prosecutor General, the Commission on Child Rights and the Child Rights Departments of Dushanbe and Sino District. The assessment team also met with representatives of the Organization for Security and Co-operation in Europe (OSCE), the Open Society Institute, Helvetas (a Swiss organization for development cooperation) and the ‘Child Rights Centre’, a national NGO.

Visits were made to the juvenile prison colony, the Dushanbe pretrial detention centre, the Dushanbe reception and referral centre, the special school, the community-based centre for juvenile offenders and children at risk in Sino District, and the Girls’ Support Service. Permission was received to visit the women’s prison, but the visit was not undertaken due to lack of time.

The team made an overnight trip to Khujand, in northern Tajikistan, where it held meetings with the head of the Child Rights Department, the head of the juvenile police and a judge, and visited a community-based centre for assisting juvenile offenders and children at risk.

In August 2011, Mr. O’Donnell returned to Tajikistan to evaluate the implementation of the Juvenile Justice Alternatives Project (2010–2014) funded by the Swiss Agency for Development and Cooperation (SDC). The third part of this report is based on that mission.
Background

The Republic of Tajikistan became independent from the Union of Soviet Socialist Republics (the former USSR) in 1991, and civil war broke out the following year. The most intense fighting was during 1992 and 1993. A peace agreement was concluded in 1997, and implemented in 2000. A Constitution was adopted in 1994, and amended in 2003 to allow the re-election of the President, who has been in office since 1994. The Majlisi Oli or national legislature is bicameral. For administrative purposes the country is divided into two provinces (Sughd and Khatlon), the Gorno-Badakhshan Autonomous Oblast (GBAO) and 13 districts under ‘Republic Subordination’ governed by the national authorities.

The population of Tajikistan was 6.9 million in 2010, of which 3.05 million (44 per cent) was below age 18.1 Approximately 80 per cent of the population is Tajik. Uzbeks are the largest ethnic minority.

Tajikistan is the poorest country in Central Asia, with a per capita Gross National Income (PPP) of US$ 2,060 in 2010.2 Most of the population (74 per cent) is rural and the economy is based largely on agriculture, although 93 per cent of the land is mountainous and less than 6 per cent is suitable for farming.3 Eleven per cent of the population lives abroad, many as migrant workers, and remittances are an important source of income.4 In 2009, 46.7 per cent of the population was living in poverty, as compared to 96 per cent in 1999.5

Offending by juveniles has declined since independence, according to data provided by the government to the TransMonEE Database.6 Between 1991 and 1996, offending declined by 40 per cent, from 1,528 offences to 912.7 The following year, it fell by another 35 per cent, to 594. Since then, it has fluctuated between a high of 644 offences in 2005 and a low of 415 offences in 2009.8 About 75 per cent of all reported offences by juveniles are theft.9

Tajikistan ratified the Convention on the Rights of the Child in 1993. Its initial report on the implementation of the Convention was submitted to the Committee on the Rights of the Child (‘the Committee’) in 1998 and examined in the year 2000.10 A second report was submitted to the Committee

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2 Ibid., Table 7.
7 This coincided with the civil war.
8 Data provided to UNICEF by the Ministry of the Interior indicate a much higher number of offences in 2010 – 563 (see Annex 1: (a) Crimes committed by juvenile offenders).
9 Between 73 per cent and 77 per cent during the years 2005–2010, according to data provided to the assessment team by the Ministry of the Interior.
in 2008 and examined in 2010. In its concluding observations on the second report, the Committee welcomed certain developments, such as the establishment of the Expert Group on Juvenile Justice within the Commission on Child Rights, the appointment of some juvenile judges, the approval of alternatives to pretrial detention and the efforts of the Children’s Legal Centre/Children’s Rights Centre. However, it also expressed concern about the lack of juvenile courts and special procedures for the adjudication of juveniles, the frequent arrest and confinement of children below age 14, and detention or imprisonment for minor offences. The Committee recommended that a juvenile justice system fully compliant with international standards be established and, in particular:

- that children below age 14 be protected and not treated as offenders;
- that deprivation of liberty be used only as a measure of ‘last resort’ and for the ‘shortest appropriate period of time’;
- that legal assistance be ensured through the assignment of a sufficient number of trained lawyers and probation officers to juvenile courts;
- that children in detention be always separated from adults;
- that regular contact between children and their families be ensured; and
- that juvenile justice personnel receive specialized training.


12 Concluding observations on the second periodic report of Tajikistan, CRC/C/TJK/CO/2, supra, para. 72.

13 Ibid., para. 73.
Executive Summary

In Tajikistan, most children in conflict with the law do not receive appropriate support for their return to the community as law-abiding citizens. Pretrial detention is not used only for serious crimes as the Code of Criminal Procedure requires, and juveniles detained in pretrial detention facilities or police cells outside of Dushanbe are not separated from adults. No data are available on the length of pretrial of juveniles in practice. In 2008, an NGO reported that detention before trial is often prolonged unnecessarily. Most trial courts do not have a designated judge for juvenile cases, and the system of designated judges has not been successful in ensuring respect for the legal rights of accused juveniles, juvenile defendants and convicted juveniles. Prisoners in the juvenile prison colony must use military postures. There are no organized cultural or recreational activities, and there is no vocational education. Psychological treatment is not provided, and solitary confinement is used as a disciplinary measure. There is no independent procedure for examining complaints.

New codes adopted in 1998 have, however, brought juvenile justice into greater harmony with international standards. Some data suggest that the changes in legislation and training had positive consequences, whereas recent data suggest that their impact may be weakening. While the number of convicted juveniles decreased sharply in 2006 and 2007, it increased in 2009 and 2010; while the number of juveniles serving prison sentences declined drastically from 2007 to 2009, it has grown since then. There was a substantial upsurge in the percentage of convicted juveniles given prison sentences in 2010, and the population of the juvenile prison colony in 2011 was 50 per cent higher than in 2009.

<table>
<thead>
<tr>
<th>Year</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Convicted juveniles</td>
<td>543</td>
<td>452</td>
<td>385</td>
<td>358</td>
<td>398</td>
<td>418</td>
<td>382</td>
</tr>
<tr>
<td>Percentage prison sentence</td>
<td>19%</td>
<td>23%</td>
<td>8%</td>
<td>43%</td>
<td>31%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Juvenile prison population</td>
<td>107</td>
<td>69</td>
<td>61</td>
<td>49</td>
<td>79</td>
<td>99</td>
<td></td>
</tr>
</tbody>
</table>

These developments cannot be explained by an increase in violent crime by juveniles. Between 1991 (when Tajikistan became independent) and 1997, juvenile offending declined by 61 per cent. During the last decade, it has fluctuated between a high of 644 offences in 2005 and a low of 415 in 2009. Most offences are theft – in 2010, juveniles reportedly committed 519 offences, including 380 thefts (73 per cent) of which 22 were crimes against the person.14

The scarcity of data makes it impossible to know how some provisions of the new codes are applied in practice. Anecdotal evidence suggests that some important safeguards, such as the requirement that only juveniles accused of serious crimes may be detained before trial, are not sufficiently respected. There is also evidence that diversion has decreased since 2009.

A number of institutions and programmes have been established, restructured or strengthened during the last decade. The local Commissions on Minors’ Affairs have been transformed into Commissions on Child Rights;15 and linked to new Child Rights Departments/Units that provide some social assistance to children at risk and their families. During the past six years, a network of community-

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14 See Annex 1: (a) Crimes committed by juvenile offenders.
15 The literal translation of the name of the Commission is ‘Commission on Child Rights under the Government of Tajikistan’; many English language documents refer to it as the National Commission on Child Rights.
based centres to prevent offending and support social reintegration has been established. These centres are now in the process of being transferred to local governments and the Departments of Education. The ‘special school’ has become a semi-open facility, and a child may no longer be placed there without a court order or consent of the child and his/her parents. Girls are no longer placed in the school. In 2009, a new residential facility was opened for girls who are victims of or at risk of sexual exploitation or abuse.

The implementation of many of the changes that have been made in juvenile justice remains controversial, however. A recent survey shows that, while the services provided by community-based centres benefit the children referred to them, the number referred is small and the impact of these centres on the prosecution of juveniles (i.e., diversion) has not been significant. The effort to take this project to scale and transfer responsibility to the government has met with serious difficulties.

The juvenile prison colony offers few organized activities other than basic education. The capacity to assess the requirements of prisoners and provide programmes adapted to their needs is almost non-existent, and conditions in parts of the facility are substandard. Although material conditions in the juvenile section of the pretrial detention centre have improved, many detained juveniles are first offenders charged with minor offences.

Data on reoffending are very fragmentary but, given the weakness of rehabilitation programmes in the prison, it would be surprising if imprisonment had a positive impact on reoffending. While there is some anecdotal evidence that referral to community-based programmes for the prevention of reoffending was beneficial, ironically, the number of referrals to them has fallen.

In short, significant advances have been made, but their impact on the functioning of the system – and children – has been limited. Part of the explanation of this paradox appears to be the weakness of the Commission on Child Rights and the poor commitment of more powerful bodies such as the ministries of Justice and Education. Many prominent figures in different ministries and official institutions are committed to the rights of children and juvenile justice, but they have had difficulty in making their voices heard on issues such as structural reforms and the allocation of resources. The development of juvenile justice is a long-term process and the path is rarely smooth, especially when resources are scarce and competing demands are many. The difficulties and disappointments encountered should be kept in perspective, and can be overcome by continued political, material and technical support, and adoption of a strategy that takes into account lessons learned.

Some of those lessons – further described in this report and the Mid-Term Evaluation of the Juvenile Justice Alternatives Project (2010–2014) – are the following: changes in law and training have not brought practice sufficiently into compliance with international standards (which is why the creation of at least one specialized court is recommended); juvenile justice cannot fully comply with the rights of children by reforms that focus only on one or two areas (e.g., diversion); monitoring the impact of reforms is difficult without appropriate indicators and a transparent and comprehensive data management; and reform can succeed only when there is sufficient commitment by the most relevant ministries or an interministerial coordination mechanism with enough authority to ensure conformity with comprehensive plans by all concerned.

Insofar as legislation is concerned, the new Criminal Code, the Code of Criminal Procedure and the Criminal Executive Code have brought juvenile justice into greater harmony with international standards. The maximum prison sentence that a convicted juvenile may receive is seven years if he/she is 14 or 15 years of age, and ten years if he/she is 16 or 17 years of age; probation and educational measures may be imposed on juveniles convicted of offences of minor or medium gravity; courts
must consider applying a non-custodial sentence, suspended sentence or educational measure before imposing a prison sentence; only a judge may order detention before trial and, in principle, only those accused of a serious offence may be detained; juveniles may be questioned only in the presence of an attorney, and may not be interrogated for more than four hours per day and two hours at a time; and cases of first offenders charged with a minor offence may be diverted.

Some provisions of the new codes are not compatible with international standards, however. The right of the police to hold juveniles in custody for 72 hours without a court order and authorization of solitary confinement as a disciplinary measure are examples. There are no juvenile or children’s courts, and only a few courts have judges specially designated to cases of accused juveniles.

Tajikistan has submitted two reports to the Committee on the Rights of the Child. In 2009, the Commission on Child Rights adopted a National Plan of Action for Juvenile Justice System Reform (2010–2015), intended in part to ensure fulfilment of the recommendations made by the Committee in 2000 in its concluding observations on Tajikistan’s initial report. The Plan is based on internationally recognized principles and most of the objectives it sets are appropriate. Implementation was weak during the first 18 months, however. In principle, the Commission on Child Rights is responsible for the overall coordination of child rights including the execution of the Plan. In 2011, the Ministry of Justice established a small Juvenile Justice Unit with a mandate that includes coordination. In 2010, after examining Tajikistan’s second periodic report, the Committee welcomed certain developments, but it also expressed concern about the lack of juvenile courts and special procedures for the adjudication of juveniles, the frequent arrest and confinement of children below age 14, and detention or imprisonment for minor offences.

The recommendations made by the assessment team include the following:

- The number of juvenile first offenders accused or convicted of theft that are detained and sentenced to prison should be analysed. The legislation and practice should be amended to bring them into greater harmony with the ‘last resort’ principle. Consideration should also be given to amending the provisions of the Criminal Code and the Code of Criminal Procedure concerning diversion along the lines suggested by the National Plan of Action for Juvenile Justice System Reform.
- The legislation should be amended to bring it into compliance with other international standards, such as reducing the duration of police custody to 24 hours; prohibiting solitary confinement; requiring the confidentiality of legal proceedings regarding juveniles; and banning the detention of convicted juveniles in pretrial detention facilities.
- The policies of the juvenile prison colony should be reviewed and programmes strengthened, taking into account the experience of other countries in the region; prisoners should be given opportunities to join cultural, artistic, sport, religious and recreational groups; the participation of the community in the rehabilitation of prisoners should be encouraged; training in life skills should be introduced; one or more regimes should be established for prisoners with good behaviour and progress in rehabilitation; and technical assistance should be sought to develop the capacity to identify and treat psychological and behavioural disorders.
- The criteria and procedures for placement in the ‘special school’ should be reviewed to ensure compliance with the ‘last resort’ and ‘shortest appropriate period of time’ principles; the forms of assistance that could be provided to parents in order to avoid placement should be identified; and a mechanism should be set up to guarantee children’s free and informed consent to placement.
• Prevention, in particular the capacity to provide psychosocial help and support to children at risk and their families, should be given greater priority in the allocation of resources. A strategy should be prepared to develop the capacity to offer psychological services in the juvenile prison colony and in community-based programmes in order to prevent offending and support social reintegration.

• Consideration should be given to establishing a juvenile or children’s court on a pilot basis, as per the National Plan of Action for Juvenile Justice System Reform.

• The views and experiences of children having had contact with juvenile justice should be surveyed by an independent research body, in cooperation with the relevant ministries, agencies and organizations, to assess the extent to which the basic rights of children are respected, and the extent to which contact with different institutions and programmes is seen by children as beneficial or counterproductive in terms of offending, rehabilitation and social reinsertion.16

• The Commission on Child Rights should assess the reasons for the poor implementation during 2010 and 2011 of the National Plan of Action; identify appropriate steps to address them; and consider the possibility of revising the Plan taking into account the delay in implementing many activities and the results of the present assessment.

• Data on offending by children and adolescents and the workings of the institutions and programmes related to juvenile justice should be compiled and published annually.

• A programme or mechanism should be developed to monitor the long-term impact of measures adopted to prevent offending and reoffending and to rehabilitate offenders; to enable policy makers to render informed decisions about the utility of investments in various measures and institutions; and to provide practitioners with information that will help them take effective measures in individual cases.

• Insofar as diversion is concerned – one of the main thrusts of reform efforts during nearly a decade – the Mid-Term Evaluation of the Juvenile Justice Alternatives Project recommended that plans to further expand the network of community-based centres should be abandoned in order to concentrate on the consolidation of the existing facilities; and work of the 13 existing centres should be refocused on the prevention of reoffending.

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16 Subsequent to the assessment mission, a survey of the experiences and views of children who had been referred to the community-based centres for the prevention of offending and reoffending was carried out. A similar survey of the experiences of children placed in the special school and special vocational school, juvenile prison colony and children registered by the police would be helpful.
PART I. The Process of Juvenile Justice Reform

1. Policies and strategies

A National Action Plan for the Protection of the Rights and Interests of the Child for the Period 2003–2010 was adopted in 2003, in response to the recommendations made by the Committee on the Rights of the Child after examining Tajikistan's initial report on the implementation of the Convention. Noting the lack of juvenile courts and ‘contradictions and shortcomings’ in the legislation, the Plan called for law reform and action on the prevention of offending and rehabilitation of juvenile offenders. Specific goals included: reducing the number of violations of the rights of juvenile suspects by the police during investigations; creating a separate unit of police officials to investigate offending by juveniles; setting up a juvenile reception and referral centre in Kurgan Tube; ensuring the separation of girls from women in the women’s prison; and opening a separate residential facility for girls. One of the most important goals – creating a separate unit of specialized police investigators – has not been met. There is no baseline to assess progress towards the related goal of reducing violations of the rights of suspects by the police. The goal of opening a separate residential facility for girls has been met, in a sense, although not in the way envisaged.

A National Plan of Action for Juvenile Justice System Reform (2010–2015) was adopted by the Commission on Child Rights in 2009, with the explicit aim of implementing the Convention on the Rights of the Child and the recommendations made by the Committee on the Rights of the Child in its concluding observations on Tajikistan’s initial report, as well as the country’s other relevant international obligations. The Plan has four main objectives:

- to create a child-friendly, child-rights compliant juvenile justice system in law and practice;
- to improve the coordination and monitoring of the juvenile justice system;
- to create effective rehabilitation and reintegration programmes in the community;
- to develop the rehabilitation services in closed facilities; and
- to assist offenders to reintegrate successfully into society after release.

The principles that underlie the Plan include diversion, deprivation of liberty as a ‘last resort’, and recognition of prevention, rehabilitation and reintegration as the aims of juvenile justice. The Commission is responsible for coordinating implementation.

The Plan has limitations. The timetable for the implementation of many activities is not indicated. Most of the goals are appropriate, but some are unrealistic. The goal of preventing the deprivation of liberty for non-violent crimes is one example. International standards do not provide that juveniles accused or convicted of non-violent crimes may never be deprived of liberty. The Beijing Rules indicates, “Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response.” Deprivation of liberty for non-violent crimes may be appropriate, as a ‘last resort’, in certain circumstances. The criterion for determining what disposition would be appropriate, in accordance with the ‘last resort’ principle, is whether a community-based sentence, or sentence to prison or special school, would be most likely to prevent reoffending.

\[18\] See, e.g., Objective 2, Activities 6 and 9.
\[19\] United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), Rule 17.1(c), emphasis added.
Of course, the standards contained in the Convention on the Rights of the Child are minimum standards binding on all States. Many States adopt standards in national law, which give children more rights or greater protection than the minimum required by international law, and this is very positive. However, in a country like Tajikistan, where first offenders charged with theft are still sent to prison, aiming too high can be a strategic error that generates unnecessary opposition to reforms that would bring the law into compliance with minimum international standards.

The goal of ‘replication of the rehabilitation and reintegration model (such as Juvenile Justice Alternatives Projects) in 32 areas of Tajikistan’ was inappropriate, as well. The impact of the existing community-based centres for prevention and rehabilitation had been insufficiently documented at the time the Plan was adopted, and the difficulties that could (and did) affect the process of transferring centres to the government were underestimated.

The implementation of activities scheduled for the first year and a half was limited. The cost of implementation had not yet been calculated, for example, and coordination mechanisms are not operating effectively. This is due, in part, to a decision by UNICEF to shift the focus of its cooperation from the Commission on Child Rights to line ministries. Other activities planned for 2010 that were not carried out include a review of the presentation of reports, a review of the handling of cases of underage offenders, a review of conditions in all detention centres, and the adoption of a charter redefining the nature and purposes of the ‘special vocational school’. One activity planned for 2010 that was implemented ahead of schedule was the start of a new residential facility for girls (see below).

2. Law reform

At independence, the treatment of juvenile suspects, accused juveniles and juvenile prisoners was governed mainly by the Criminal Code, the Code of Criminal Procedure and the Criminal Executive Code. Juvenile justice is still based primarily on these codes, although the codes in force at independence have been replaced by new ones.

A new Criminal Code was adopted in 1998. In 2004, it was amended to ban the imposition of the death penalty and sentences of life imprisonment on juveniles, introduce the sentence of community service and prohibit the deprivation of liberty for first-time, non-serious juvenile offenders. Another amendment provides that if a convicted juvenile compensates the victim, a term of imprisonment may be replaced by a fine. This provision applies to some 40 offences, including theft, destruction of property and a number of economic offences. Its impact is limited by the fact that fines may be imposed only on juveniles who have their own income.

A revised Code of Criminal Procedure was adopted in 2009 and entered into force in 2010. The protection of human rights is explicitly recognized as one of the objectives of the Code, but it does not directly incorporate international human rights standards into national law. The Code makes several important improvements in juvenile justice. It recognizes the right of prosecutors, and police inspectors with the consent of a prosecutor, to divert cases of first offenders accused of minor offences. It sets out the right of a child to have legal assistance as from the moment of arrest and

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21 Ibid., Objective 2, Activities 10 and 11, and Objective 4, Activities 22, 26 and 28.
22 Ibid., Objective 2, Activity 19.
23 Second periodic report of Tajikistan, CRC/C/TJK/2, supra, para. 585.
24 Criminal Code, Article 49.8.
25 Code of Criminal Procedure, Article 432.
not to be questioned unless a lawyer is present. Detention before trial is limited to two months, but this can be extended to six months when the accused is a juvenile.

Some recommendations intended to bring the law into greater harmony with international standards were not accepted, however. A proposal to require juveniles in police custody to be brought before a judge within 24 hours, as recommended by the Committee on the Rights of the Child, is one important example. Proposals that diversion be made available for offences of moderate gravity and repeat offenders were not accepted either. A proposal that the length of legal proceedings, including pretrial stage and trial, should be limited to six months – another recommendation of the Committee on the Rights of the Child – was not approved.

A new law on the execution of sentences (lit.: Criminal Executive Code) was adopted in 2001, replacing a law dating to 1970. It recognizes the principle of equality, the principle of legality, the principle of humanity, the principle of democracy, and the principle of individualization of treatment. The principle of humanity establishes that restrictions on the rights of convicted persons may not exceed those needed to achieve the goal of the sentence. The principle of democracy provides for the participation of the family and civil society in the rehabilitation of convicted offenders. The principle of individualization provides that the personality and conduct of prisoners shall be taken into account in the execution of sentences. The right to personal security is acknowledged, and torture and cruel, inhuman and degrading punishment are prohibited. The right to make complaints to administrative authorities, the courts, prosecutors, NGOs and international human rights bodies is recognized. Other rights include the right to health care, to legal assistance, to meetings with families, to compensation for damages suffered in prison, and to religious freedom. Some provisions of the Code are not compatible with international standards, however. Failure to exempt juvenile prisoners from solitary confinement as a disciplinary measure is an example.

3. Administrative reform/restructuring

In 2006, the Plenum of the Supreme Court issued a decree calling for the designation in every district court of an experienced judge who should be the only person responsible for dealing with juvenile cases. The assessment team was informed that, in practice, this decree has been implemented only in two courts.

26 Ibid., Articles 49 and 227(3).
27 Ibid., Articles 112(1) and 427(3). (The extension may be longer if the accused is an adult, in certain circumstances. See Article 427(3) and (4).)
29 Proposed Amendments, supra, p. 6; cf. Article 432.1.
30 Proposed Amendments, supra, p. 8.
31 Criminal Executive Code, Articles 8-11 and 13. The principles of equality, humanism and democracy are also recognized by the Criminal Code, in Articles 5, 9 and 10.
32 Ibid., Article 10.1
33 Ibid., Article 11.
34 Ibid., Article 13. See also Articles 12.1 and 14.3.
35 Ibid., Articles 20 and 10.2. See also Article 16.2.
36 Ibid., Article 16.3.
37 Ibid., Articles 16.5, 16.7, 16.8, 16.9, and 21.
38 Ibid., Article 120.3.
In 2009, the juvenile police department (lit.: Inspection on Minors) of the Ministry of the Interior was transformed into a Directorate for the Prevention of Offences Amongst Youth and Minors comprising four departments, including one for the prevention of offending by children and adolescents and one that operates the reception and referral centres. In some parts of the country, juvenile police officers sometimes undertake other functions, in addition to working with juveniles.

Child Rights Departments and Units were established in 2008 to provide assistance to children and their parents, in cooperation with the Commissions on Child Rights. They form part of local governments, and the Secretary of the Commission is ex officio head of the Child Rights Department/Unit. The model regulation for departments and units provides that their activities are to be guided by the Convention on the Rights of the Child and other international instruments recognized by Tajikistan, as well as by national law. In principle, their staff includes, in addition to the head, an attorney who represents civil society, and a social worker. Their many functions include:

- making decisions on the institutionalization and deinstitutionalization of children;
- coordinating support to families with a view to ensuring the right of children to be raised by their families and to a healthy development;
- monitoring living conditions in institutions for children;
- monitoring the treatment of children by guardians and tutors;
- supporting the social reintegration of children released from residential institutions;
- providing identity documents to children without them;
- raising public awareness of child rights; and
- ensuring the development of juvenile justice.

4. Allocation of resources

The assessment team received little information on the budgets of institutions and programmes related to juvenile justice. It is nevertheless clear that pay scales make it difficult to recruit experienced professionals, in particular for prevention and rehabilitation services or programmes. The budget of the special school, for example, includes a salary of somoni 100 (US$ 22) per month for a psychologist. It is also evident that the budgets of Child Rights Departments/Units are insufficient to ensure they have the professional staff needed to provide services to children and families at risk.

5. Training and capacity-building

In 2005–2006, the Swedish International Development Cooperation Agency (SIDA) sponsored a programme at the Tajik State National University that led to the establishment of a programme in social work. The government has not yet adopted criteria for recognizing professional social workers, however, and the first class of the undergraduate social work programme that the university opened in 2008 will not graduate until 2013. The social workers employed by programmes and facilities for children are either paraprofessionals, or professionals in other areas who have received some in-service training.

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39 One is responsible for the prevention of offending by youth (i.e., persons aged 18–30 years).
40 Regulation of the Commission on Child Rights, Annex to Government Decision No. 377 of 1 August 2008 ‘On Safeguarding Protection of the Rights of the Child’, Section 2. (The functions of departments and units are identical, the only difference being that departments have more staff than units. Each adopts its own regulation based on the model regulation.)
41 Ibid., Section 1, para. 3.
42 Ibid., Section 1, para. 5.
43 Ibid., Section 2, paras. 1, 2, 5, 6, 7, 9, 11, 12 and 18.
Since 2004, a considerable amount of training activities on children’s rights have been organized for judges, the police, prosecutors and the staff of the juvenile prison colony, the special school, the special vocational school and other facilities for juveniles and children at risk. Most such activities have been conducted on an ad hoc basis and were relatively short. Many have been carried out with the support of international agencies such as UNICEF, OSCE and the Open Society Institute. In recent years, national experts and NGOs such as the Child Rights Centre have participated in the training of public servants.

Training for judges and police officers has been institutionalized. The Judicial Training Institute holds an annual two-week in-service training course that includes a two-day component on juvenile justice. More than half the judges in the country have participated in this training.\(^4\) The curriculum of the Police Academy includes a 34-hour course on juvenile justice for new officers, and three other courses also contain modules on issues related to juvenile justice.\(^5\)

In 2008, the Commission on Child Rights adopted Child Protection Procedures for all closed facilities for juveniles. The staff of all such institutions reportedly has received training in the implementation of this policy.

Most of these training activities have not been evaluated independently. In August 2011, an attempt was made to organize a focus group to evaluate the training of judges, but only two of the four judges who attended had participated in the course mentioned above.\(^6\) Although the results of the evaluation were positive, they have limited reliability given the small size of the group and other factors.\(^7\) There is some anecdotal evidence that the training has not been as effective as one would expect. For example, a representative of the Ministry of Justice indicated that some judges still “make mistakes” and give juveniles sentences that are disproportionate to the offences committed. Other sources also expressed the opinion that judges do not yet apply the provisions of the new Code of Criminal Procedure concerning juveniles properly.

6. Accountability

The Office of the Prosecutor General has a specialized department to monitor the implementation of legislation regarding children. It sometimes carries out inspections of the juvenile prison colony, pretrial detention facilities and other facilities for children and adolescents. Little information is available on the results of these monitoring activities.

The Commission on Child Rights has a mandate to receive complaints about violations of the rights of children and to oversee the residential facilities for children, but most of the complaints are about mistreatment of children within the family.

A Commissioner for Human Rights was appointed in 2009.\(^8\) This institution is not accredited by the International Coordinating Committee of National Institutions for the Protection and Promotion of

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\(^5\) Ibid., p. 7. (‘Investigation’, 10 hours related to juveniles; ‘Criminal Law’, 16 hours; and ‘Criminology’, 8 hours.)

\(^6\) This was part of the mid-term evaluation of the project.


\(^8\) The office [lit.: Institute of Human Rights Commissioner] was established the previous year.
Human Rights, which requires compliance with the Paris Principles. A small unit, specialized in economic, social and cultural rights, has been established, and one staff member is assigned to matters concerning the rights of women and children. Some cases involving torture of suspects and prisoners have been examined, but none of them concerned juveniles.

7. Coordination

The National Commission on Child Rights was established in 2001, with a mandate to coordinate the implementation of the Convention on the Rights of the Child. It is chaired by the Deputy Prime Minister. It is a collegial body and has no full-time staff. In 2003, the Commission set up an Expert Group on Juvenile Justice, composed mainly of representatives of various ministries and public institutions and agencies. The Expert Group prepared a report on children in conflict with the law that was published by UNICEF in 2005. The Group was then disbanded, and no other inter-agency body dedicated specifically to juvenile justice has existed since.

The Ministry of Justice established a Juvenile Justice Unit in March 2011, but the role it will assume was unclear at the time of the assessment mission. It reportedly had three staff members at that moment.

8. Data and research

The Ministry of the Interior compiles detailed data on crimes committed by juveniles (as well as crimes against children), disaggregated by the age and sex of the offender and the place, nature and circumstances of the crime. The Council of Justice reportedly has annual reports that include data on cases involving convicted juvenile offenders, disaggregated by 21 types of offences. The Office of the Prosecutor General informed the assessment team that data on criminal justice are forwarded annually to the State Statistics Committee. However, such data apparently are not disaggregated by the status (juvenile/adult) of accused persons and defendants.

Child Rights Departments/Units reportedly send quarterly reports on activities to the National Commission on Child Rights, which presumably contain information on children below the minimum age for prosecution involved in criminal activity as well as children referred for antisocial behaviour, and the action taken. These data are not published, however.

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PART II. The Juvenile Justice System in Tajikistan

1. Prevention

This report does not intend to assess primary prevention, i.e., policies and programmes designed to benefit broad sections of the population such as poor families. It intends to assess secondary prevention, i.e., programmes and services designed to assist individual children or groups of children considered to be at a higher risk of offending because of their behaviour, experiences or circumstances, and their families.51

In Soviet times, responsibility for secondary prevention lay primarily with the Commission on Minors’ Affairs and juvenile police. Special schools also played an important role. All three institutions still exist in Tajikistan, in slightly different forms.

The national and local Commissions on Minors’ Affairs have been transformed into Commissions on Child Rights. Their structure and composition has changed little, however. The National Commission is a collegial body composed of representatives of various ministries and civil society, with no offices or staff of its own. The local Commissions are also collegial bodies, whose functions include acting as a kind of administrative tribunal for cases involving children and their families.52 Their mandate has evolved, but it still includes the protection of children from involvement in offences and antisocial actions.53 The local and regional Commissions now work in close collaboration with Child Rights Departments/Units, which have a small number of staff that provide services to children and their families. This is a positive development, even though the capacity of these teams is limited. An evaluation of their capacity and needs would be useful. The assessment team also recommends that linkages be made between the staff of the Child Rights Departments/Units and qualified child psychologists who could oversee the work of service providers on a regular basis and be available for consultation and referral whenever necessary.

Under a new regulation adopted in 2008, children who have committed an offence may be placed in the special school only by a court order (which the Commission can request).54 Children with problem behaviour may be placed in the school by the Commission with their consent and that of their parents.55 The Director of the special school believes that too many children are being placed at the request of single parents, often parents of large families. A representative of the Prosecutor General’s Office informed the assessment team that, as recently as 2010, it “identified some children placed in the school illegally by Commissions on Child Rights.” There do not seem to be safeguards to ensure that the consent of children is given freely, nor that alternative forms of support to such families are exhausted before placement is approved.56 These problems should be addressed, to ensure that placement is consensual and used as a ‘last resort’.

The juvenile police have been transformed, as indicated above, from a department to a Directorate comprising four departments.57 A considerable amount of training in prevention has been provided, but the impact of training is undermined by the fact that many officers leave the juvenile police when an opportunity to do so arises.

51 It also, of course, assesses tertiary prevention, i.e., prevention of reoffending.
52 Regulation of the Commission on Child Rights, supra, Articles 5.e, 10.d, 10.e, 12.k, 13–16 and 18–20.
53 Ibid., Article 5.g and 5.j.
54 Ibid., Article 15.f.
55 Ibid., Article 10.e. (This includes children who have been involved in criminal conduct while too young to be prosecuted.)
56 Articles 18 and 21 do provide that the child must be heard.
57 One is responsible for the prevention of offending by young adults over age 18.
The work of the juvenile police focuses mainly on primary prevention. In 2010, the ministries of the Interior, Education and Culture signed a joint plan on prevention of juvenile delinquency that calls for meetings with schoolchildren and parents, TV programmes, sport competitions and summer camps, as well as raids on internet cafes and raids to capture street children or runaways and return them to their homes.

The main form of individual prevention consists of ‘registration’, i.e., putting children on a list of persons at risk of offending or reoffending and supervising them until the police conclude that the risk has been reduced, at which time the child is deregistered and supervision ceases. There are two kinds of registration: one designed to prevent reoffending by children aged 14–18 years and one to prevent offending by children aged approximately 10–18 years. Registration reportedly involves the preparation of individual plans and regular meetings with the child, his/her family and teacher. In some cases, the police refer registered children to community-based centres for offenders and children at risk (see below). A responsible adult, such as a teacher, is sometimes designated to provide advice and emotional support.

The impact of the preventive work accomplished by the juvenile police has not been documented, nor has an effort been made to hear the views of children who have been registered and their families or teachers. In the absence of such information, it is not possible to assess the usefulness of registration. It may well have a beneficial impact in some circumstances, although there is also anecdotal evidence of negative consequences (stigmatization and discrimination, including by law enforcement officers).

Supervision and encouragement to respect the law, avoid antisocial behaviour and attend school are insufficient to reduce the risk of offending. Data from countries where more research on the causes and prevention of offending has been conducted suggest that many children at risk can be helped by psychosocial interventions, which require skills and knowledge beyond those of police officers. Yet, to date, efforts to strengthen the capacity of the juvenile police have taken precedence over efforts to improve the capacity of Child Rights Departments, which were created to provide psychosocial assistance. The assessment team believes that the effectiveness of interventions by the juvenile police and Child Rights Departments should be evaluated. It is also of the opinion that future efforts to enhance capacities for the prevention of offending should be based on a holistic and objective analysis of the needs for the kinds of services the relevant institutions are best suited to provide.

2. The parameters of juvenile justice

Persons below age 14 may not be prosecuted for any crime; persons aged 16–18 years at the time of an offence may be prosecuted as juveniles for any crime, under special sections of the Criminal Code and the Code of Criminal Procedure. Persons aged 14–15 years may be prosecuted for some twenty offences, including homicide, kidnapping, assault, rape, theft, robbery, production or trafficking of drugs, terrorism and aggravated hooliganism. There are no circumstances in which a person may be prosecuted as an adult for offences committed while below age 18. These provisions of the law are in accord with international standards as interpreted by the Committee on the Rights of the Child.

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58 Criminal Code, Article 86 and Code of Criminal Procedure, Article 424.
59 Criminal Code, Article 23(2).
3. Police, the apprehension of suspects and the investigation of offences

In general, persons may be arrested only if a court has ordered their arrest, or they are found in the act of committing a crime, after identification by a witness to the crime, in possession of the fruits of a crime or physical evidence of participation in a crime, or if there is other evidence of participation in a crime and the person tried to escape or has no permanent residence or identification papers. A person arrested in these circumstances must be released within 12 hours if charges are not filed. If charges are filed, the accused may be detained for 72 hours. Prompt presentation to a judge is an essential safeguard against arbitrary deprivation of liberty and ill-treatment, and the Committee on the Rights of the Child considers that juveniles deprived of liberty should be brought before a judge within 24 hours.

A person arrested must be informed of the reasons for arrest within three hours of apprehension, and the prosecutor must be informed of the arrest within 12 hours. An adult member of his/her family must also be informed within 12 hours. The Committee on the Rights of the Child considers that parents should be informed immediately when a juvenile is deprived of liberty.

A juvenile suspect or accused may not be questioned for more than four hours per day and may not be interrogated for more than two hours without a break, nor may a juvenile be questioned without the presence of his/her lawyer. If the juvenile is below age 16, a psychologist or teacher must be present, as well. These requirements comply with international standards.

4. Diversion

The Beijing Rules defines diversion as the discretion of police or prosecutors to dispose of cases of juveniles involved in criminal conduct without recourse to formal legal proceedings or trial. It may, but does not necessarily, require a voluntary agreement by the offender to participate in community service, pay reparations or attend a community-based programme for the prevention of reoffending.

The Code of Criminal Procedure recognizes the principle that prosecutors have an obligation to prosecute every case in which there is sufficient evidence that a crime has been committed. There are, however, exceptions to this principle. Insofar as juveniles are concerned, Article 432 gives a prosecutor, or an investigator with approval of a prosecutor, discretion to “dismiss” criminal

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61 Code of Criminal Procedure, Article 92.1.
62 Ibid., Article 92.2.
63 Ibid., Article 92.3. (The same time limit applies to persons arrested pursuant to a court order. See Article 95.3.)
64 General Comment No. 10, CRC/C/GC/10, supra, para. 83.
65 Code of Criminal Procedure, Article 94.
66 Ibid., Article 100.1.
67 General Comment No. 10, CRC/C/GC/10, supra, para. 83.
68 Code of Criminal Procedure, Article 429. (Adults may be questioned eight hours per day, four hours at a time. See Article 199.7.)
69 Ibid., Article 227.3.
70 Ibid., Article 430.
72 Ibid., Rule 11.3 and 11.4.
proceedings and apply “informal correctional measures” if he/she concludes that the offender may be “appropriately corrected without criminal punishment.” This may be done only if the juvenile is a first offender accused of a minor offence and if the juvenile or his/her parent(s) do not object. The measures that may be imposed include a warning, compensation of the victim, orders restricting activities or imposing certain conditions, and supervision by a parent or “juvenile body.” If the juvenile “systematically fails to observe” the measure(s) imposed, the prosecutor may nullify the order dismissing the case and forward the indictment to the competent court for trial.

Article 89 of the Criminal Code also recognizes the discretion of judges to release juveniles accused of a minor offence from criminal liability without trial, if it is a first offence and the judge believes that imposing one of the measures mentioned above would suffice to prevent reoffending.

As these procedures are limited to minor offences, they are not applicable to cases involving theft, the most common offence committed by juveniles. More importantly, they are rarely applied in practice. Some cases of minor offences are diverted to the Commissions on Child Rights. Although the Regulation of the Commission recognizes this practice, the legislative basis for it is unclear, and there are no data on how often this occurs.

There are other exceptions to the principle that all crimes must be prosecuted that apply to any offender, regardless of age. Most of them are based on conciliation or compensation of the victim. Article 26 of the Code of Criminal Procedure provides that a case may not be prosecuted if the victim and the accused have reached an agreement, and the case must be dismissed if the prosecution has begun. Articles 72 and 73 of the Criminal Code provide that first offenders who have committed a crime of moderate gravity may be exempted from criminal liability if they have compensated the damage caused. Article 74 of the Criminal Code provides that an offender may be exempted from criminal responsibility if he/she, or the crime, no longer represents a danger due to changed circumstances. The decision to exempt from criminal liability on any of the grounds mentioned above may be rendered before trial, by a prosecutor or an investigator with the consent of a prosecutor, or later, by a judge. It requires the consent of the accused and can be contested by the victim. There are no data on the application of these provisions, but they reportedly are not applied to juveniles, in practice.

The National Plan of Action for Juvenile Justice System Reform approved by the government in 2009 comments that the revised Code of Criminal Procedure adopted the same year “is not fully in compliance with international standards [because] its provisions on diversion need to be

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74 Ibid., Article 432.1.
75 Ibid., incorporating by reference Article 82(2) of the Criminal Code. (The term ‘juvenile body’ apparently is a reference to the Commissions on Child Rights.)
76 Ibid., Article 432.2.
77 The English translation of Article 89.1 is not accurate. It should read, “A minor who has committed a petty misdemeanour for the first time may be released from criminal responsibility if rehabilitation seems to be possible by measures of an educational character.”
78 See, e.g., Regulation of the Commission on Child Rights, supra, Article 15.e.
80 Article 72 of the Criminal Code applies only to first offenders; in contrast to Article 73 where agreement of the victim is not required.
81 Code of Criminal Procedure, Articles 28.1 and 29 (referring to Article 72 of the Criminal Code); Article 30 (referring to Article 73 of the Criminal Code); and Article 31 (referring to Article 74 of the Criminal Code).
82 Code of Criminal Procedure, Article 28.2 and 28.3.
strengthened significantly in order to provide the police and prosecutors with the discretion to apply
diversionary measures in all juvenile cases, rather than only in cases involving minor offences."\(^83\)
The limits on discretion to divert found in Articles 432 and 89 do not seem to be the main obstacle
to diversion, in practice, and the position that diversion should be authorized in all cases involving
juveniles may be unrealistic. However, the existing restrictions preclude diversion for the offences
most frequently committed by juveniles (theft), and it makes little sense forbidding diversion when
a judge or prosecutor is convinced that voluntary participation in activities intended to prevent
reoffending would be effective. The assessment team also agrees that it would be desirable to amend
the law to authorize diversion to community-based programmes for the prevention of reoffending
explicitly and to require prosecutors and judges to consider whether diversion is appropriate when
the preconditions for diversion exist.

5. The preliminary investigation and detention before trial

A preliminary investigation is mandatory in cases in which the suspect is a juvenile.\(^84\) It should
normally be completed within two months, although this may be extended to six months.\(^85\) The
preliminary investigation ends with an ‘indictment’ or an order dismissing the charges.\(^86\) Indictments
are prepared by investigators and forwarded to prosecutors, who must review and approve, amend,
or dismiss them within seven days.\(^87\)

In general, any person accused of an offence punishable by more than two years of imprisonment
may be detained before and during the trial, if there is evidence that the accused may try to flee or
interfere with the investigation or legal proceedings.\(^88\) However, juveniles may be detained “only in
exceptional cases for committing a very severe crime.”\(^89\) Very severe crimes are those punishable by
a prison sentence of 12 years or more and are rarely committed by juveniles.\(^90\) It appears that this
norm is not respected in practice. The Head of the pretrial detention centre in Dushanbe informed the
assessment team that most of the 10 juveniles in detention were accused of theft, which normally is
punishable by three to five years of imprisonment.\(^91\)

Only a judge may order detention before trial.\(^92\) Circumstances to be taken into account in deciding
whether or not to detain an accused before trial include the nature of the offence and the age,
character and family status of the accused.\(^93\) Alternatives to detention include a personal recognizance
or guarantee, bail and, if the accused is a juvenile, supervision.\(^94\) Supervision involves a written
commitment by the child’s parent, other relative or guardian, a staff member of an orphanage, the

\(^{84}\) Code of Criminal Procedure, Article 157. See also Article 160.
\(^{85}\) Ibid., Article 164.1 and 164.5.
\(^{86}\) Ibid., Article 165.
\(^{87}\) Ibid., Articles 246 and 248.
\(^{88}\) Ibid., Articles 90.2 and 111. (In certain circumstances, such as lack of identity documents or lack of a permanent address, an
accused may be detained even if the crime is not punishable by a term of two years of prison. See Article 111.1.)
\(^{89}\) Code of Criminal Procedure, Article 427(2).
\(^{90}\) Examples include murder, treason, espionage, sabotage, armed rebellion or trafficking large quantities of drugs. See
Criminal Code, Articles 113, 200, 305, 308 and 312.
\(^{91}\) Criminal Code, Article 244.1. (Theft is punishable by 12 years or more if the amount is very large or the offender has
committed multiple prior offences. See Articles 244.5 and 21.3.)
\(^{92}\) Ibid., Article 104.2.
\(^{93}\) Code of Criminal Procedure, Article 102.2.
\(^{94}\) Ibid., Articles 101.2 and 102.1.
institutions where the child has been living, or any other ‘trustworthy’ individual. The accused has the right to be heard in judicial hearings on pretrial detention.\(^{96}\)

If the detention of a suspect not yet accused of a crime is required, the order is valid for a maximum of 10 days.\(^{96}\) Orders for the detention of accused persons are valid for two months, in principle; they may be extended to six months if it is not possible to complete the investigation during the first two months.\(^{97}\) No data are available on the length of pretrial detention of juveniles in practice. In 2008, an NGO providing services to accused juveniles reported that detention before trial is often prolonged unnecessarily by the negligence of investigators.\(^{98}\)

There are six pretrial detention centres. In May 2011, the total number of juveniles in pretrial detention was 27.

**The pretrial detention centre in Dushanbe**

The pretrial detention centre in the capital was visited briefly by the assessment team on 29 April 2011. At the time of the visit, it had a population of nearly 1,000 persons, including approximately 25 adult women and 10 juvenile boys. There is no separate section for adolescent girls, who are detained together with women. The centre contained a series of relatively small one- and two-floor buildings separated by lawns. The general appearance was neat and clean. The staff reportedly includes a psychiatrist who screens juvenile prisoners.

The juvenile section was in the process of renovation, with funds provided by UNICEF, as part of a plan to ensure separation of detained boys from adult detainees. The section contained five 2-room units. The rooms were approximately 3x5 metres. Each unit includes a living room and a bedroom designed to accommodate six persons. The units have windows. The doors are solid metal. The space for the daily ‘walk’ is, in effect, a 3x5 metre cell with metal grating instead of a roof.

The Director was unwilling to allow the assessment team to visit the area where juveniles were being detained during the renovation of the juvenile section, although he indicated that they were separated from adult detainees. He stated that most of the 10 juvenile detainees were accused of theft, most were first offenders, and none had been detained for more than three and a half months. He also indicated that the maximum size of the juvenile population was 50 during the four and a half years he had worked in this centre.

The assessment team believes that, when renovation is completed, the living units for juvenile boys detained in the centre will be more than adequate. Although the renovation of the juvenile section of this centre is a positive step towards the implementation of international standards, the detention of juveniles together with adults persists in pretrial detention facilities throughout the rest of the country.

International standards recognize the right of juveniles deprived of liberty to “daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided.”\(^{99}\) This right is not met by a two-hour ‘walk’ in a 3x5 metre cell.

\(^{95}\) Ibid., Article 47.6.

\(^{96}\) Ibid., Article 103.

\(^{97}\) Ibid., Article 112.1 and 112.3. (When the accused is an adult it may be extended to 12 or 18 months in exceptional circumstances. See Article 112.3 and 112.4.)

\(^{98}\) Legal Representation Report 2008, Child Rights Centre, p. 6 [undated mimeo].

\(^{99}\) United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), Rule 47.
with four walls, a metal door and no roof. Enjoyment of the right to daily exercise requires “adequate space, installations and equipment.” The difficulty in creating a suitable space for outdoor exercise and recreation is a disadvantage inherent in confining a small number of juveniles in a facility having a much larger adult population, especially when the facility is located in an urban area. Although international standards require that convicted persons be separated from those detained during legal proceedings, the rights of juveniles awaiting trial could probably be accommodated more easily and satisfactorily in a separate section of the juvenile prison colony than in a separate section of the pretrial detention centre for adults.

The Code of Criminal Procedure allows offenders who have been sentenced to a term of imprisonment to remain in the pretrial detention centre for four months if a co-defendant is on trial. No information is available on how often this happens to juveniles. Because conditions in this centre are worse than those in the juvenile prison colony, the assessment team believes that confinement in a pretrial detention facility after conviction would be incompatible with the rights of convicted juveniles.

6. The adjudication of juveniles

The right to treatment that takes into account the child’s age

The Committee on the Rights of the Child has recommended,

… States parties establish juvenile courts either as separate units or as part of existing regional/district courts. Where that is not immediately feasible for practical reasons, the States parties should ensure the appointment of specialized judges or magistrates for dealing with cases of juvenile justice.

The Code of Criminal Procedure provides that, during the investigation and prosecution of juvenile cases, “special attention should be paid to establishing ... the age of the minor,” the juvenile’s living conditions, the conditions in which he/she was raised, the reasons for committing the crime and the circumstances of the crime. In 2006, the Plenum of the Supreme Court issued a decree calling for the designation by every district court of an experienced judge to handle juvenile cases. The assessment team was informed that, in practice, this decree has been implemented only in two courts. The Prosecutor General has informed UNICEF that specific prosecutors have been assigned to juvenile cases, but they are not specialized in juvenile justice.

Principles of due process

The Code of Criminal Procedure acknowledges most of the basic rights and principles recognized by international human rights law, including the right to be tried by a competent, independent and impartial court; equality before the law; the presumption of innocence; the right not to be obliged to testify against one’s self or a close relative; the principle of equality between prosecution

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100 Ibid.
101 Code of Criminal Procedure, Article 75.1.
102 General Comment No. 10, CRC/C/GC/10, supra, para. 93.
103 Code of Criminal Procedure, Article 90.1.
104 Efforts to obtain a copy of this decree were unsuccessful.
105 Code of Criminal Procedure, Articles 8, 17 and 21.3.
106 Ibid., Article 16.
107 Ibid., Articles 15 and 21.2.
108 Ibid., Article 12.5.
and defence, the right to a fair trial, the right to a defence and to be informed of one’s rights; and the right to appeal. Persons whose rights have been violated during a criminal investigation or criminal proceedings have the right to compensation.

Confidentiality of proceedings

The right to privacy of an accused juvenile must be respected at all stages of legal proceedings, according to the Convention on the Rights of the Child and the Beijing Rules. The Committee on the Rights of the Child recommends that all States parties “introduce the rule that court and other hearings of a child in conflict with the law be conducted behind closed doors.” The Code of Criminal Procedure provides that criminal proceedings shall be open to the public. Article 273 allows exceptions for cases involving defendants below age 16 and certain other circumstances. The reasons for a decision to bar the public must be given. This does not satisfy the requirements of the Convention, as interpreted by the Committee.

The right to be present during proceedings

The participation of the accused during trial is mandatory. The Code of Criminal Procedure provides that a juvenile defendant may be removed from the court “during the consideration of matters that may have a negative impact on him/her,” but when the accused returns the judge must inform him/her of what has taken place and give the defendant an opportunity to question any witness who has testified in his/her absence.

The right to be represented by an attorney

The Convention on the Rights of the Child recognizes the right of every child accused of an offence to “legal or other appropriate assistance in the preparation and presentation of his or her defence.” The national law recognizes the right to legal assistance of every person who is arrested or accused of an offence. The participation of a defence counsel is mandatory and may not be waived if the suspect, accused or defendant is a juvenile. If a lawyer is not retained by the juvenile or his/her family, the investigator, prosecutor or judge may designate a member of the Bar Association to represent him/her. The law indicates that an investigator, prosecutor or judge may ‘permit’ a parent or other close relative of a suspect or accused to act as his/her lawyer, but the assessment team was informed that this is not done in practice.
A senior representative of the judiciary indicated that the quality of legal services provided by attorneys appointed to represent juveniles is often poor. Experienced lawyers try to avoid taking such cases, and appointed lawyers are frequently young and inexperienced. The Child Rights Centre has a staff of eight lawyers and provides free specialized legal assistance to accused juveniles in most parts of the national territory. During the last year, they provided legal assistance in 78 cases involving juveniles.124

The right to be tried without delay

The Convention on the Rights of the Child provides that legal proceedings against juveniles accused of a crime must be resolved “without delay.”125 The Committee on the Rights of the Child interprets this to mean that the time between accusation and a final decision should not exceed six months.126

The Code of Criminal Procedure provides that, in principle, the preliminary stage of criminal proceedings should not last more than two months.127 This time limit may be extended, however.128 Once trial has been scheduled, it should start within 14 days, or 30 days in exceptional cases.129 There is no limit to the duration of the trial stage of criminal proceedings, or the appellate stage. The above applies to all proceedings, regardless of whether the accused is a juvenile or an adult.

7. Sentencing and other dispositions

Two kinds of dispositions may be imposed on convicted juveniles: sentences and compulsory educational measures. ‘Compulsory educational measures’ involve deprivation of liberty in the form of placement in a facility that is not part of the correctional system, either a special educational institute or a medical/educational establishment.130

Alternative, non-custodial sentences

According to the Criminal Code, five kinds of sentences may be imposed on convicted juveniles: fines, community service, correctional labour, restrictions on activities and imprisonment.131 ‘Fines’ may be imposed only on juveniles who are employed or own property.132 ‘Community service’ may be imposed for a period of 40 to 160 hours, two or three hours per day, depending on the age of the offender.133 ‘Correctional labour’ consists in a deduction from wages that, in principle, may be imposed only on persons who are employed.134

124 In addition, legal advice was provided to 63 juveniles and referrals to other services were made in 42 cases.

125 Convention on the Rights of the Child, Article 40.2(b)(iii).

126 General Comment No. 10, CRC/C/GC/10, supra, para. 83.

127 Code of Criminal Procedure, Article 164.1.

128 Ibid., Article 164.4.

129 Ibid., Article 271.

130 Criminal Code, Article 90.

131 Ibid., Article 87.

132 Ibid., Article 87(2). (Enrolment in school is obligatory until age 16, but the minimum age for employment – presumably part time – is 15 years, or 14 with parental permission. See Second periodic report of Tajikistan, CRC/C/TJK/2, supra, para. 89.)

133 Second periodic report of Tajikistan, CRC/C/TJK/2, supra, para. 585.

134 Criminal Code, Article 87(4). (The management of the special school informed the assessment team that some juveniles given a sentence of community service are placed there; another source indicated that this is not accurate. Since placement in the special school involves a deprivation of liberty, this practice, if it exists, would seem incompatible with the Code.)
Compulsory educational measures may be imposed on juveniles convicted of committing a crime of minor or medium gravity, if the court concludes that rehabilitation or ‘correction’ will be possible in a special educational institution.\textsuperscript{135} This procedure is known as “release from sentence” or “exemption from punishment.”\textsuperscript{136} The length of placement may not exceed the maximum term of imprisonment for the offence committed.\textsuperscript{137} If the offender reaches age 18 before, he/she is released unless he/she has not completed basic education (grade 9).\textsuperscript{138} Early release is possible if an offender has been “corrected.”\textsuperscript{139} In either case, the decision is made by a court, on motion of the Commission on Child Rights. The offender and his/her family have the right to be heard, but their participation is not required.\textsuperscript{140}

The Code of Criminal Procedure requires the court to consider, before sentencing, whether a convicted juvenile is eligible for an educational measure, a non-custodial sentence or a suspended sentence.\textsuperscript{141}

\textit{Custodial sentences}

The maximum term of prison that may be imposed on a juvenile offender depends on his/her age, the offence committed and the existence of aggravating or mitigating circumstances. The maximum sentence for a ‘petty misdemeanour’ – a crime punishable by a sentence of two years of imprisonment when committed by an adult – was reduced to one year for juveniles by an amendment to the Criminal Code adopted in 2004. Crimes of medium gravity, including simple theft, are punishable by a sentence of up to three years, as compared to five years for adult offenders.\textsuperscript{142} The maximum sentence that may be imposed on a juvenile aged 14–15 years convicted of a single serious or ‘especially serious’ offence is seven years, and the maximum sentence that may be imposed on a juvenile aged 16–17 years convicted of such an offence is ten years.\textsuperscript{143} However, a juvenile aged 14–15 years may be sentenced to ten years of imprisonment if convicted of multiple offences and a juvenile aged 16–17 years may be sentenced to twelve years of imprisonment for multiple offences.\textsuperscript{144} Sentences may be reduced after part of the sentence has been served (see below). Aggravating circumstances include recidivism, the commission of a crime by an organized group, and the commission of crimes against children; mitigating circumstances include the commission of a crime due to “difficult individual, family or other circumstances.”\textsuperscript{145} The Director of the juvenile prison colony informed the assessment team that the longest sentence being served by any prisoner was seven or eight years.

Data provided to the assessment team indicate that both the number of juveniles given prison sentences and the percentage of convicted juveniles fell sharply in 2008 and rose substantially in 2010.\textsuperscript{146} The reason for this increase is unknown, but it cannot be attributed to an upsurge in serious violent crime.\textsuperscript{147} Since data are provided on an \textit{ad hoc} basis and are not published, their reliability is uncertain.

\textsuperscript{135} Criminal Code, Article 90; Code of Criminal Procedure, Article 437.
\textsuperscript{136} Ibid.
\textsuperscript{137} Code of Criminal Procedure, Article 437.2.
\textsuperscript{138} Ibid.
\textsuperscript{139} Ibid.
\textsuperscript{140} Ibid., Article 437.3 and 437.4.
\textsuperscript{141} Ibid., Article 435.1.
\textsuperscript{142} Criminal Code, Article 87(6)(b); compare with Article 244(1). (In the English translation of the Code, these offences are referred to as misdemeanours.)
\textsuperscript{143} Ibid., Article 87(6)(c) and (d).
\textsuperscript{144} Ibid., Article 88(2) and (3).
\textsuperscript{145} Ibid., Articles 62(1)(a), (c) and (g), and 61(1)(e).
\textsuperscript{146} No data are available for 2009.
\textsuperscript{147} The number of juveniles convicted of murder, rape and serious bodily injury was lower in 2010 than in 2008.
Probation

When a court decides to impose a prison sentence, it may decide to suspend the execution of the sentence and order probation if the convicted person is a first offender and the offence is of minor or medium gravity. The criterion for ordering probation is the conclusion that it appears to be possible to rehabilitate the offender by imposing conditions on his/her conduct without requiring the sentence to be served. The conditions that may be imposed include restitution of the damage caused, finding employment or studying, receiving treatment for alcohol or drug abuse, and avoiding certain places. Probation may be imposed for a period of one to five years. These provisions apply to juveniles and adults alike. Supervision of probation is the responsibility of the local law enforcement bodies, which in practice is the juvenile police, when the probationer is a juvenile.

Data provided to the assessment team indicate that few juvenile prisoners serve their full sentence.

Most of the juveniles released before serving their full sentence and who were not paroled either benefited from an amnesty or had their sentences commuted to ‘correctional labour’ (withholding of wages). In September 2011, most of the population of the juvenile prison colony (86 out of 90) benefited from an amnesty.

8. Community-based diversion and rehabilitation centres

In 2004, a non-custodial, community-based programme for the rehabilitation of juvenile offenders was established on a pilot basis in Sino, the district of the capital with the highest incidence of juvenile offending. A juvenile justice assessment prepared in 2006 described it in these terms:

It was designed by the Children’s Legal Centre (UK), which also trained the programme staff, and implemented by a local NGO ‘Nasli Navras’ (New Generation) that had experience

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148 Criminal Code, Article 71(1) and (2).
149 Ibid., Article 71(1).
150 Ibid., Article 71(5).
151 Ibid., Article 71(3).
152 Ibid., Article 71(9).
153 Data provided by the Board of Correctional Affairs.
154 These are often referred to as Juvenile Justice Alternatives Projects (JJAPs).
working with street children. In addition to rehabilitation of convicted juvenile offenders, the programme admits juvenile offenders diverted by the police, prosecutor or Commission on Minors’ Affairs, and provides preventive services to adolescents in the community. The programme works closely with a coordinating committee consisting of representatives of the police, court, office of the prosecutor and local Commission on Minors’ Affairs. The services offered consist of a package that includes remedial education, vocational training, life skills training, family counselling and free medical care, provided for a period of three to six months. Participants live at home and attend the programme after school. Since it was established, assistance has been provided to 84 juveniles of whom only 4 have subsequently committed a new offence.\textsuperscript{155}

Information obtained by the assessment team in 2011 indicates that the staff usually includes a small number of paraprofessional ‘social workers’, a part-time psychologist and, in some cases, a lawyer. In principle, an individual work plan is prepared for each child, and the agreement of the child and his/her parent(s) is sought.\textsuperscript{156} Plans are reviewed monthly.

The programme was considered a success, and 13 new centres have been established: one in Firdavsi District of Dushanbe, in 2005; one in Khujand, in northern Tajikistan, and another in Ghafurov, in 2007; one in Isfara, in 2008; seven in Bokhtar, Kuljaib, Panj, Panjakent, Quabodian (Kabodiyan), Rasht and Shugnon, in 2010; and two in Kanibadam and Kurgan Tube, in 2011.\textsuperscript{157} The process of transferring established centres to local authorities began in 2009.

The centres were designed to provide services to children aged 10–18 years and, in particular, to prevent placement in special schools, encourage the diversion of offenders aged 14–18 years from prosecution, and provide a community-based rehabilitation programme for convicted offenders given alternative sentences. Consequently, although often described as an alternative sentence/diversion programme, in fact it has three similar but distinct functions: to provide preventive services to underage offenders and children at risk, ensure community-based rehabilitation for children diverted from legal proceedings, and prevent reoffending for convicted juveniles given non-custodial sentences.\textsuperscript{158} All three objectives are important, but it is necessary to distinguish them in order to understand the impact of these centres on the functioning of juvenile justice. Information on the composition of the caseload is not reported regularly and, in some centres, it is not recorded accurately, which makes it difficult to know with certainty which functions are being served in practice.

Data provided to the UNICEF assessment team in 2006 indicated that half the participants had been referred to the centres by a court, one quarter by the police or a prosecutor, and another quarter by the Commission on Minors’ Affairs. This suggests that, at that time, the main purposes of the centres were diversion and rehabilitation of offenders given an alternative sentence, and less than half of the beneficiaries were children who committed an offence while too young to be prosecuted or children involved in antisocial behaviour who might have been placed in a special school.


\textsuperscript{156} A survey of children who had attended this centre and the centre in Khujand found that less than half of the parents interviewed had had any direct personal contact with the staff of the centre.

\textsuperscript{157} The number of centres is based on information provided by the staff of the UNICEF Country Office, which considers an office to be established when agreement has been reached with the local authorities to create a centre; not all of the centres ‘established’ are operational.

\textsuperscript{158} The UNICEF Regional Office for CEECIS uses the term ‘diversion’ in the sense it is used by Beijing Rule 11, i.e., a discretionary decision not to prosecute juveniles who admit participation in an offence on the grounds that prosecution would be unnecessary or counterproductive. It follows that a child cannot be diverted if he/she has not been involved in criminal conduct or is too young to be prosecuted.
The Director of the Sino centre informed the assessment team that prosecutors only refer cases of children below age 14 and that none of the children enrolled in the centre at the time of the mission were serving an alternative sentence. Four children had been referred by the Child Rights Department. One had been sent by the juvenile police and one by a criminal investigator (detective). The grounds for referral included theft (three cases), fighting (one case) and refusal to attend school (one case).

Information provided by the Khujand centre indicated that, of thirteen children referred in 2010, two were thieves below age 14 referred by the juvenile police and the remainder were placed by the Child Rights Department – four for antisocial behaviour and seven for offences. Whether these samples are representative of the caseload of the other centres is not known.

This information suggests that the functions served by the centres have shifted since 2006, when half of the cases reportedly were referred by courts. At present, there are almost no referrals by courts and prosecutors. This implies that the main functions being served are prevention of reoffending by children too young to be prosecuted and, to a lesser extent, prevention of offending by assisting children involved in antisocial behaviour.

The community-based centre in Khujand

On 30 April 2011, the assessment team visited a community-based centre in Khujand, a city of some 200,000 in northern Tajikistan. This centre has three functions: to provide community-based assistance to juvenile offenders and children with antisocial behaviour, remedial education to school leavers to facilitate their return to the school system, and emergency shelter for up to three months to children at risk.

The centre was established by the local NGO ‘Helping Hands’ in 2007, with support from UNICEF. It was the third centre of this kind to be opened, and the first outside of the capital. Since May 2010, it is financed and operated by the local government. During the pilot phase, the staff included two social workers, one psychologist and two care providers. The psychologist works part time since the handover to the government.

Three juveniles were referred to the centre during the first four months of 2011, all by the Child Rights Department. One was a 14-year-old girl accused of taking money from other children by threat of force, a crime for which a person aged 14 years cannot be prosecuted. The others were boys aged 16 and 17 years, involved in theft. Thirteen children were referred to the centre in 2010: four for antisocial behaviour such as truancy; two for offences committed while below age 14; and seven were offenders. The two underage offenders were referred by the police and the others by the Child Rights Department. The centre’s efforts to help the two children referred by the police were not successful. After repeated offences, they were sent to the special school.

The impact of the centres

Data provided by the UNICEF Country Office on ‘children in detention’ during the years 2004–2010 suggest that the number of children referred to community-based centres had little or no impact on
the number of children deprived of liberty prior to 2009. There was a significant decrease in the total number of children deprived of liberty in 2009 and 2010. The reasons for it are unknown, but it seems unlikely that it could be attributed to the centres, because the number of referrals to them fell by more than half in 2009.

<table>
<thead>
<tr>
<th>Year</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
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<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>‘Children in conflict with the law’ or ‘registered offences’</td>
<td>502</td>
<td>488</td>
<td>437</td>
<td>520</td>
<td>554</td>
<td>467</td>
<td>415</td>
<td>530</td>
<td>545</td>
</tr>
<tr>
<td>Children in closed facilities</td>
<td>245</td>
<td>244</td>
<td>236</td>
<td>250</td>
<td>265</td>
<td>243</td>
<td>171</td>
<td>175</td>
<td>200</td>
</tr>
<tr>
<td>Children given alternative sentences</td>
<td>9</td>
<td>32</td>
<td>57</td>
<td>100</td>
<td>No data</td>
<td>No data</td>
<td>239</td>
<td>264</td>
<td></td>
</tr>
</tbody>
</table>

The number of beneficiaries is smaller than expected. In 2006, UNICEF indicated, “It is envisaged that as the project becomes more established and the project staff more experienced, it would deal with approximately 200 cases per year.” The maximum number of children referred to the original centre – which has handled more cases than any other – was 49, in 2006. The total number of beneficiaries of the nine centres that were operational in 2010 was 107 – an average of one juvenile per centre per month.

The claim that the activities of the centres have led to a marked decline in offending in the districts where they provide services appears to be based on a reduction in the two districts (Sino 1 and Sino 2) where the first centre was opened late in 2004. There was a decrease of almost one half between 2005 and 2007, and the number of offences reported in 2008 and 2010 was at the same low level as in 2007. There was no similar reduction in offending on the national level between 2005 and 2007, although there was a decline of about 20 per cent nationally in 2008. In Firdavsi District, where a centre became fully operational in 2006, reported offending by juveniles diminished by almost one half the following year. This effect was short-lived, however. Reported offending in the district began to grow in 2008. In 2009 and 2010, it was 40 per cent higher than before the centre opened. In brief, the available data do not support the conclusion that there has been a steady reduction in offending in districts where a centre has been established.

Data provided by the UNICEF Country Office indicate that only 13 of 472 beneficiaries (less than 3 per cent) have ‘reoffended’. There are no data on the number of juveniles referred for offending who have reoffended, or what criterion for ‘reoffending’ is applied to children who have been referred for

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163 Data on Juvenile Justice Projects, UNICEF, Dushanbe [undated mimeo].
164 From 114 in 2008 to 47 in 2009.
165 This includes the juvenile prison colony, the special school and the special vocational school but not the pretrial detention centres.
167 Reported offending spiked in 2009, with 102 offences.
169 In 2009, 83 reported offences by juveniles, and 89 in 2010.
170 These two centres are the oldest and have had the largest caseloads.
171 Data on Juvenile Justice Projects, UNICEF, Dushanbe [undated mimeo].
antisocial behaviour rather than offending. Furthermore, there is no specific criterion regarding the length of time reoffending/non-offending is monitored. One centre informed the assessment team that children who complete the programme are followed up for three months. Another indicated that they are followed up for six months. Both periods are too short to be a meaningful indicator of success.

The survey of children referred to centres and their parents

In 2011, a survey was carried out of children who had been referred to two centres and their parents, in an effort to assess the impact of the centres. Twenty-nine children were interviewed – 11 who had attended the Khujand centre and 18 who had attended the Sino centre. Nine were girls. Ten were below age 14 at the time of referral. Nineteen of the children had been referred before 2009, some as early as 2004.

All the children save one indicated that they enjoyed attending the centres. One reason was that the teachers at the centre – unlike those in their schools – treated them well and were attentive and kind. They expressed appreciation for help in learning to read and write as well as ‘training clubs’ that offered driving, computer use, cooking, embroidery and English. They also indicated that participation in sports contributed to build their self-confidence. Most children reported that interaction with the staff helped them develop a more positive attitude towards life, improve their relations with parents and make new friends. Twenty-four of the 29 children interviewed returned to school; 26 are living with their families. The parents or caretakers of the children surveyed were interviewed, as well. They all agreed that their children had enjoyed attendance. Many parents of older boys noticed an improvement in their children’s behaviour and attitude towards adults, whereas parents of younger children mentioned school attendance as a positive change. Most identified behavioural and psychological changes in children as the most significant outcomes of their children’s visits to the centres. Parents of children referred before 2009, when placement based on offending was more common, expressed appreciation for the fact that their children did not reoffend. Parents of girls valued sewing and embroidery classes because they are a valuable source of income, including after marriage when many women cannot work outside of the home. Some parents and caretakers manifested gratitude for the social-legal assistance received, such as help in obtaining birth certificates. The survey thus confirms that the centres provide services that have a positive impact on the lives of children and are appreciated by them.

In general, the number of children referred to the centres is falling. In 2010, the total number of children referred was lower than in 2008, although the number of centres had almost doubled. The average number of referrals per centre in 2010 was about half what it was two years earlier. There are three exceptions, as the table below shows: Khujand, where the number of referrals seems to be stabilizing, and Ghafurov and Isfara, where it is increasing.

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172 The exception was a boy who said that he was sent to a centre ‘by mistake’.

173 Children living in poverty were especially grateful for the opportunity to take part in sports, use computers and participate in other activities that they otherwise would be unable to afford.

174 Girls are traditionally made to stay at home after grade 9 and sometimes start peddling in the street to earn money, an administrative offence that is one of the main reasons for the referral of girls to the centres.
The reasons for referral have changed too, according to data provided to UNICEF by the centres. The number of referrals by courts and prosecutors has fallen sharply, and the number of children referred because of involvement in crime has decreased, as well. In the Sino centre, for example, 30 per cent of the referrals made in 2008 were for offending, and only 3 per cent of the referrals made in 2009 were for criminal offences.

In effect, this signifies a shift away from the original purpose of the centres, i.e., to offer programmes aiming to prevent reoffending to juveniles diverted or given alternative sentences, to the prevention of offending. This shift coincided with the transfer of the centres to the government but, curiously, none of the authorities interviewed recognized that a change in policy regarding the purpose of the centres had occurred.

The survey of children and parents confirms that, since 2009, most referrals are unrelated to the prevention of reoffending and focus on children who do not attend school. It is noteworthy that most children appreciate access to remedial education and compare the positive attitude of the teachers employed by the centres to the attitudes of teachers in ordinary schools. Many parents expressed the view that the services provided by the centres should be accessible to all teenagers and not only those who have committed offences.

Although the assessment team has been unable to determine why the grounds for referral have shifted away from the prevention of reoffending, it is clear that this has coincided with the transfer of responsibility for the centres to the government. There does not seem to be any valid reason for this shift, mostly because there is some evidence, including the information provided by parents, that referral to the centres did help prevent reoffending. It is appropriate to use the centres to prevent offending, as well as reoffending. However, referral in order to provide remedial education and vocational training because such programmes are unavailable in schools, or because teachers in the school system are uncaring and poorly motivated, is not the best use of the centres. The fact...
that they are now being used mainly for this purpose points to the need to improve the quality, and perhaps the nature, of the services provided by public schools. The centres should be used to assist children who have offended, those who are at risk of offending for reasons that are not limited to unwillingness to attend school, and those who need the kind of personal attention and psychosocial assistance that goes beyond what schools should be expected to provide.

9. Juvenile correctional facilities

There is only one juvenile prison colony in Tajikistan, located in the capital. Girls convicted of an offence who receive prison sentences are confined in the women’s prison. Lack of time prevented the assessment team from visiting the women’s prison, where two adolescent girls were serving sentences.

The juvenile prison colony

On 26 April 2011, the assessment team visited the juvenile prison colony in Dushanbe. With a capacity of approximately 200, the population of the prison was 91 at the time of the visit. The prison had a staff of 57, including 19 non-uniformed staff and 4 teachers. Uniformed staff consisted of a medical doctor and a nurse.

Juvenile prisoners are allowed to remain in the facility until the age of 20, if their conduct is good. The population comprised some twenty prisoners over age 18. The youngest was 14 years old. The Director estimated that 80 per cent were serving sentences for theft, and stated that only six were repeat offenders. Most of the others were serving sentences for crimes of violence, including rape, murder and injuring other juveniles during fights. The longest sentence being served was seven to eight years; the shortest was one year. Some 20 per cent of the prisoners were from the capital and 30 per cent from Sughd Province, in northern Tajikistan.

The Criminal Code indicates that juveniles who are recidivists must serve their sentences under a ‘strict’ or ‘special’ regime, whereas first offenders sentenced to prison are under the ‘general’ or ‘ordinary’ regime. In practice, the population is divided into four groups: prisoners under the ‘strict’ regime; recently arrived prisoners, who are kept in a separate part of the prison for the first two weeks; and two groups of juveniles under the ‘ordinary’ regime.

The facility has two main areas, in addition to the entrance building. One consists of three buildings separated by a large courtyard. The courtyard contains a pavilion, under which there were several rows of benches and a large television. One three-floor building contains three very large dormitories. Bunk beds occupied about half the space. Bedding included pillows. A coat rack and small cabinets for prisoners to keep personal belongings were the only other furniture. Several large windows with bars and curtains allow a view of the courtyard. There was a clock on the wall, and a bulletin board with the daily schedule and documents listing the rights and duties of prisoners. One had a mirror on the wall. The dormitories were clean but spartan; no other furnishings, such as radios, televisions or posters, were seen. The doors are of solid metal. There are offices on each floor for guards or monitors, but the team was informed that they are not present in the building at night. Toilets are located outside of the dormitories.

In the building holding the dormitories, there is also a library with a small collection of books and other publications, and a room with a large number of desks with benches. Although the furniture seemed quite new, it was designed for small children. The building reportedly includes a small prayer room, but it was not shown to the assessment team.

175 Criminal Code, Article 87(7)b.
176 The team counted 13 bunk beds in one dormitory and 17 in another.
The school is located in a one-floor building on another side of the courtyard. It contains eight small classrooms, an office and storage rooms. The classrooms have windows; they were decorated with posters and other materials related to the subject taught. The corridor was narrow and dark, the toilets old and rudimentary, and the floors in poor repair.

A one-floor building on yet another side of the courtyard contains the kitchen, cafeteria and medical clinic. Seven prisoners were employed in the kitchen. They allegedly receive some payment for their work but do not attend school. The kitchen and cafeteria appeared clean and well lit. The cafeteria had windows with curtains but lacked decoration. The medical clinic is quite large and comprises two bedrooms for sick prisoners. The examination rooms were closed, and no medical staff was present.

In this part of the prison, there is also a large gymnasium that was being renovated with the assistance of the Child Rights Centre. The only sports equipment in evidence at the time of the visit was one goal for football (soccer) and two baskets with backboards for basketball.

The other main part of the prison, located between the entrance and the larger area described above, consists of an empty pool, a garden with some trees, an open area, a dormitory for newly arrived prisoners, a garage and a punishment cell. The dormitory for newly arrived prisoners has a low ceiling and is much smaller than the dormitories in the main part of the prison. Bunk beds occupied almost all the space in the room.

The punishment cell has stone walls, four metal bed frames attached to the walls and a solid metal door. A barred transom above the door with a bare light bulb on the outside was the only source of light. Outside of the cell, there is a small office with a desk and chair where a guard reportedly is stationed 24 hours per day when a prisoner is confined in the cell. Just opposite the cell and guards station is a roofless cell where prisoners may be placed during the two hours per day they have a right to be out of their cell. A toilet and washroom are located within a short distance. The use of solitary confinement as a disciplinary measure for juvenile prisoners was abandoned in 2002 but restored in 2010. Placement is for a maximum of seven days. The Director informed the assessment team that it had been used once during the preceding three months, for a prisoner who started a fight.

The entrance area includes a corridor that comprises several bedrooms for visiting families and an unfurnished room intended as a kitchen. Furnishings in the bedrooms were minimal.

Prisoners attend school during the morning, with the exception of those recently arrived and those who work in the kitchen. There is no vocational training programme and no organized sport, cultural or other recreational programme. There is no opportunity for employment other than work in the kitchen. The Director indicated that none of the prisoners had mental health problems except one who suffers epilepsy. This appears to indicate that the medical staff does not screen effectively for mental disorders and needs training in mental health.

Prisoners in the ‘ordinary’ regime have the right to unlimited short visits and six long (three to four days) visits per year. Those in the ‘strict’ regime have the right to four long family visits per year. The Director indicated that all but 10–15 prisoners receive visits from their families, although most do not visit often because of the cost of travel.

The prisoners wear black uniforms and have shaved heads. All of those seen during the visit to the premises, except those in the medical clinic, were standing in military formation.

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177 The 2001 Criminal Executive Code expressly authorizes confinement of juveniles in ‘disciplinary isolator’ for seven days, although it appears to indicate that juveniles must be allowed to attend class during this time. See Article 144.b.
The assessment team is unable to compare conditions in the juvenile prison colony with conditions at the time of the 2006 assessment mission, because permission to visit it was not granted at that time. The transparency of the prison administration is a positive development. The fact that the Child Rights Centre has access to the prison to provide legal and social assistance to prisoners is another welcome development.\textsuperscript{178}

The most serious problem is the lack of programmes to support the psychosocial growth of juvenile prisoners, especially those who have been raised in an atmosphere of neglect, exploitation and abuse, and to help them develop the values, attitudes and social skills necessary for their successful reintegration into society. The only organized activity offered at present is education according to the national curriculum. The administration has expressed interest in developing vocational training to equip prisoners with skills that will help them integrate into the labour market on release. Indeed, the Criminal Executive Code obliges each prison to establish a vocational training programme.\textsuperscript{179}

Two other kinds of programmes are needed, as well. One consists of organized cultural and recreational activities that would provide adolescent prisoners with opportunities to develop their personality and self-confidence. Research on offending by adolescents has identified success in such activities as a “protective factor” that can help offset criminogenic influences.\textsuperscript{180} The creation of “amateur organizations” is, in fact, envisaged by Article 116 of the Criminal Executive Code. Cost should not necessarily be an insurmountable obstacle to organizing such activities – the Code also allows for cooperation with civil society in this area.\textsuperscript{181} Indeed, the administration is mandated to organize a panel composed of representatives of civil society and public enterprises to support the facility, but this has not been done in practice.

The other kind of programme consists of interventions designed to diagnose and treat psychological conditions that contribute to offending. In many countries, the preparation of a psychological profile is part of the intake process of juvenile facilities and is used to help determine the kinds of treatment or services to be provided during imprisonment. Research indicates that internationally recognized disorders, such as mild mental retardation, hyperactivity, depression, anxiety, and post-traumatic stress disorder, are more prevalent amongst juvenile offenders than the general population of adolescents.\textsuperscript{182} There is also evidence that certain forms of treatment, such as cognitive therapy, can help reduce the risk of reoffending. The Criminal Executive Code provides a legal basis for such activities: Article 115 provides that “psychological-pedagogical methods” shall be used in rehabilitating prisoners and specifies, “Individual work shall be carried out on the ground of examination of personality of the convicted person.”

Introducing such services into the juvenile prison will be difficult, due to the shortage of qualified child psychiatrists and psychologists specialized in adolescent psychopathology.\textsuperscript{183} Therefore, a

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\textsuperscript{178} This initiative was supported by UNICEF.

\textsuperscript{179} Criminal Executive Code, Article 149.2.

\textsuperscript{180} (Success as a protective factor.)

\textsuperscript{181} Criminal Executive Code, Article 114.1.

\textsuperscript{182} For definitions of these disorders, see World Health Organization, \textit{The ICD-10 International Classification of Mental and Behavioural Disorders. Clinical descriptions and diagnostic guidelines}, WHO, Geneva, 1993, especially F43.1, Post-traumatic stress disorder, F70, Mild mental retardation, and F90–98, Behavioural and emotional disorders with onset usually occurring in childhood and adolescence. The Director of the special school commented that most of the children in placement who have aggressive behaviour were affected by the civil war. This may indicate the presence of post-traumatic stress disorder.

\textsuperscript{183} See Grisso, T., \textit{Double Jeopardy: Adolescent offenders with mental disorders}, University of Chicago Press, Chicago, 2004, pp. 129–130, on the dangers of screening and services provided by unqualified professionals or paraprofessionals who lack adequate training, supervision and support.
strategy should be developed to improve the capacity to provide such services, which are needed not only in the juvenile prison but also in other facilities and community-based programmes.

The fact that juvenile prisoners are classified into separate regimes is, in principle, positive. However, the two existing regimes are determined at sentencing and based on the nature of the offence and prior record of the offender. This prevents their use to reward good behaviour, punish unacceptable behaviour, and prepare the prisoner for release. In some juvenile prisons in the region, for example, prisoners who are not dangerous and show signs of progress in rehabilitation are allowed to work or attend classes outside of the prison.

Most of the juvenile prisons in the region allow prisoners to dress, groom themselves and move about in ways that are not strictly regimented; in other words, to behave in a manner that resembles, to a limited extent, the freedom of juveniles in the community. Consideration should be given to abandoning the practice of shaving the heads of juvenile prisoners, obliging them to wear prison uniforms, and requiring the use of military postures. Similarly, consideration should be given to adopting a regulation that allows prisoners to decorate their dormitories, subject to appropriate restrictions.

Finally, international standards equate the use of solitary confinement as a disciplinary measure in juvenile prisons with “cruel, inhuman and degrading treatment.” This practice should be abolished without delay.

**Parole**

Juveniles serving a prison sentence are eligible for parole after serving part of their sentence. The minimum that must be served is one third of a sentence of three years of imprisonment or less, one half of a sentence of three to seven years, and two thirds of a sentence of more than seven years.

Sentences may also be reduced by “mitigation.” The portion of the sentence that must be served before mitigation ranges from one quarter to one half, depending on the gravity of the crime. Reduction of the sentence may be combined with parole.

**Post-release assistance**

The Criminal Executive Code recognizes the obligation to provide social assistance to persons released from correctional facilities, including transportation home; clothing, if necessary; assistance in arranging employment and housing; and support for the “elimination of consequences of serving a sentence.” Offenders below age 16 are to be accompanied to their home. Those below age 18 shall normally be sent to their parents. If this is not possible, the Child Rights Department “shall undertake measures to find employment or place of study as well as to provide housing and living conditions.” Exceptionally, if returning the juvenile to his former place of residence would be inappropriate, the Child Rights Department in which the prison is located may decide, after hearing

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184 United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), Rule 67. See also General Comment No. 10, CRC/C/GC/10, supra, para. 89.

185 Criminal Code, Article 91.

186 Ibid., Article 91.

187 Ibid., Article 92.

188 Ibid., Article 92.4.

189 Criminal Executive Code, Article 211.

190 Ibid., Article 211.4 and 211.5.
the juvenile, to place him/her elsewhere.\footnote{Ibid., Article 211.5.} The duty to provide social assistance is vested jointly in several bodies, according to the Code, including the local government, public and private employers, law enforcement bodies and Child Rights Departments.\footnote{Ibid., Article 212. See also Regulation of the Commission on Child Rights, supra, Article 10.e.}

Some Child Rights Departments/Units make an effort to assist offenders returning from prison or another facility for offenders, but their capacity to provide services is limited. The Head of the Department in Khujand, for example, informed the assessment team that because reincorporation into their family and community had involved significant psychological problems for some released juveniles, they had been referred to a community-based programme for children with disabilities in the absence of other sources of psychological assistance. A study on a small sample of eleven children released from the special school found that two had run away from their homes, two could not be located because the addresses they had given the school were wrong, and three had returned to the school because their families refused to receive them.\footnote{Report on influence of closed institutions on further ability of a child to reintegrate into family and society, Child Rights Centre, 2008, p. 7.}

10. Underage offenders, the special school and the Girls’ Support Service

Prior to 2008, responsibility for making decisions regarding children who became involved in crime while too young to be prosecuted lay with the Commissions on Minors’ Affairs. In 2008, these Commissions were replaced by the Commissions on Child Rights, whose mandate includes the “consideration of materials/cases concerning minors [who] commit illegal actions prior to attaining the age of criminal responsibility” as well as “cases of behaviour deviating from legal rules or moral norms and cases of antisocial actions.”\footnote{Regulation of the Commission on Child Rights, supra, Article 5.l.} However, as they no longer have authority to place such children in ‘the special school’, they can only request a court to approve such placement. This is confirmed by the Code of Criminal Procedure, which provides that “involuntary commitment of a person to a medical or educational facility shall only be permitted under a judge or court decision.”\footnote{Code of Criminal Procedure, Article 11.2. (There is some ambiguity as to whether the same rule applies to children below age 14.)} The Commission may apply educational measures other than placement in the special school without referring the matter to a court.\footnote{Regulation of the Commission on Child Rights, supra, Articles 15.f and 21.e.} Its Regulation does not define these measures, but it is understood that it includes reprimands, orders to apologize and compensate the victim, placement under parental supervision and referral to community-based centres for the prevention of offending\footnote{See Second periodic report of Tajikistan, CRC/C/TJK/2, supra, para. 608.} (see below). The child and his/her parent(s) or guardian must be present when cases concerning the involvement of a young child in criminal conduct are considered.\footnote{Regulation of the Commission on Child Rights, supra, Article 18.}

The special school

The assessment team visited the special school on 29 April 2011. The school, located in the capital, is similar to other schools in appearance. The main building has three floors. The upper floors, where dormitories are located, were under renovation and were not visited. The ground floor contains classrooms. Some dormitories were also located there temporarily. The assessment team visited one, which comprised several bunk beds and a table with a television that was in use. It had windows with curtains, rugs on the floor, and the walls were decorated with drawings made by the students.
Another building contains the kitchen and cafeteria. The open space between the buildings consists of some gardens, benches, a sports field and some other quite old equipment for gymnastics and table tennis.

Only boys are placed in the school since 2009, when an open centre for girls was established in Dushanbe (see below).

In 2005, a report by the Expert Group on Juvenile Justice found that, although some improvements had been made in nutrition and sanitary conditions, the quality of education in the school was ‘very low’ and there was no ‘training in life skills’. The report also criticized the fact that the school was a closed facility, child offenders were not separated from children placed for other reasons, and there were very few female staff, which was seen as a risk factor for girls living in the school.199

When the present director was appointed, in 2007, the population of the school was above capacity and some of the children were confined there illegally. The Director told the assessment team that he had made an effort to “change the atmosphere in the school” and implement a “new approach.” Nearly all the staff was replaced and a criminal investigation into charges of sexual abuse began.200 Girls were transferred to a new separate facility in 2009. During the first two years of this process of transition, a British social work expert mentored the staff. A study visit to a special school in St Petersburg was supported by UNICEF. The population of the school fell to between 28 and 35 students. A new regulation, drafted in 2005, was finally adopted in 2009.

At present, the school has a staff of 43, including 14 teachers. A psychologist from the National University reportedly visits daily. The Director stated that about 10 students had mental health problems, the most common being ‘aggression’.

At the time of the assessment visit, the population of the school was 80 boys aged 11–15 years. Approximately 50 were from the capital. The Director expressed regret that the population had increased in 2010 and attributed it to the existence of a draft law on parental responsibility that, in his opinion, makes parents fear sanctions for failure to control their children. Truancy and theft are the most common reasons for placement. The Director estimated that the population included 5–10 boys over age 14 referred by the court for offences. Some children were placed at the request of parents who cannot control them, especially single mothers. Placement of students below age 14 must be authorized by the local Child Rights Department; placement of students over age 14 who are offenders may be authorized by a court.201 The maximum length of stay is three years, and the minimum is six months. Many students do not stay more than six months, according to the Director.

The school can now be considered a semi-open facility. Some of the students attend classes in the community on subjects not available in the school.202 Many students return home for the weekend. The school pays the cost of transportation for home visits once a month. Before the annual school holiday period, the staff meets with parents to determine whether they are willing to receive their children during the vacation period. Those who do not return to their homes are sent to a summer camp.

Many important changes have been made in the school since the 2006 assessment mission, but some observers believe that the school serves no useful purpose, or that its negative consequences for 199 Children in Conflict with the Law in Tajikistan: Report of the Expert Group on Juvenile Justice of the National Commission on Child Rights, published by UNICEF Tajikistan as Child Research Digest No.5, Dushanbe [undated].

200 No staff members were prosecuted, however. At least one benefited from an amnesty.

201 In principle, the school is intended for boys below age 14, but some older boys who are illiterate are placed there for remedial education not available in the special vocational school for older boys.

202 Music and computer, for example.
children outweigh the benefits for children and society. The assessment team is unable to endorse this view, at least in the present stage of development of juvenile justice. There are two reasons for this. One is that there are some children below age 14 who are habitual offenders and have not responded to community-based prevention programmes. The Head of the juvenile police in Khujand cited the example of a group of three children (one was 11 years old; another was 13 years old) who committed 30 recorded thefts in 2010 – nearly 40 per cent of all thefts by juveniles in the city. If community-based programmes are unable to stop habitual offenders below age 14 from reoffending, it may be necessary to remove them from the community both to protect the community and to provide more intensive rehabilitation services. As long as there are younger children who need to be removed from the community for such reasons, a semi-open residential school that provides such services is the most appropriate kind of placement. Placement in the school is stigmatizing and, of course, involves separation of the child from his/her family. These considerations, however, do not outweigh the need for some form of residential placement for habitual young offenders who do not respond to community-based programmes.

Some of the students in the special school are placed for insufficient reasons – the Director himself stated that this is so. The criteria and procedures for placement should be reviewed, in the light of data on the reasons for and the duration of placement. The fact that some students are placed in the special school for insufficient reasons is not, however, a valid argument for closing the school, as long as a significant legitimate need for placement also exists. It may be that, in time, programmes for the prevention of offending will become strong enough to reduce the number of younger children who are habitual offenders to the point that the special school is no longer needed, but there is no evidence to suggest that this point has been reached yet.

The other reason that the assessment team feels unable, at the present time, to take a position on whether the school should be closed is the lack of reliable data, either on the views of students about their experiences in the school or on the effectiveness of the services offered by the school to prevent reoffending and give these children a new sense of purpose and the social skills needed to lead a healthier life in the community. Data of this kind are essential to make informed policy decisions, and priority should be given to the establishment of data collection mechanisms.

The special vocational school

There is one special vocational school in Tajikistan, located in Dushanbe. It is a closed facility for boys aged 14–18 years who have committed offences. In 2006, it was transferred from the Ministry of Labour and Social Protection to the Ministry of Education. Since it was not possible to visit this school during the assessment mission, it was visited by the local consultant on 21 May 2011.

The premises of the school are quite large. The infrastructure, built some 60 years ago, consists of a secondary school, a dormitory and an administrative building. The school building and dormitory were in the process of restoration at the time of the visit. The second floor of the dormitory was in very poor condition, so that students are obliged to live on the first floor only.

With a capacity of 120 or more, the population was 36 boys at the time of the consultant’s visit (11 were scheduled for release upon completion of the academic year, in June). This is lower than the
population in 2010 (48 boys) but higher than the population in 2006 (30 boys) when the first UNICEF assessment took place. At the time of the consultant’s visit, 22 per cent of the boys were from Sughd Province, 22 per cent from Khatlon Province, 16 per cent from the capital, and the remaining 40 per cent from the rest of the country.

Placement usually lasts from one to three years. Most of the boys at the time of the visit (60 per cent) had been placed by the decision of the Commission on Child Rights and 40 per cent by the decision of a court. The main reasons were petty theft and school non-attendance. The Commission on Child Rights reviews cases of children placed in the school not less than once every two months. Placement under sentences of correctional labour is shorter (several months) and involves work in the garden and cleaning the grounds.

The staff of 28 includes 10 teachers, 4 tutors, 4 vocational trainers, 2 cooks and 1 nurse, in addition to the director, deputy director and two other administrators. A new director was appointed some 18 months prior to the assessment mission. There is no social worker or psychologist on the staff, although some students manifest symptoms of psychological problems requiring professional attention. The deputy director assumes some of the responsibilities of a social worker, conversing with children and their parents, providing orientation, and so on. Some employees have received training in child rights through activities organized by UNICEF and the Children’s Legal Centre (UK).

The services offered include secondary education, vocational training and, as indicated above, informal counselling. Students may choose one of the vocational courses offered: welding, information technology, and hairdressing. The equipment available is insufficient – there are ten computers, for example, and only two sets of welding equipment. Free time (mostly in the evening) is spent watching TV and playing football. There is no limit to the number of visits students may receive, and some 20–30 per cent of them are allowed to visit their families on weekends. At the time of the consultant’s visit, the boys were casually dressed and seemed at ease, moving freely within the grounds of the school.

Support for reintegration into families and community is largely limited to Dushanbe, due to the lack of funds to cover travel to meet families in other parts of the country. When the families of released boys refuse to receive them, the Commission on Child Rights is responsible for finding an alternative residence.

The idea of transforming the special vocational school into a multipurpose open residential facility was proposed by the Expert Group on Juvenile Justice in 2004, and recently endorsed by the National Plan of Action for Juvenile Justice System Reform. The Ministry of Education has never agreed to this proposal, however.

This school has a specific role under the law in force. Only juveniles accused of minor crimes may be diverted before trial or released from criminal liability and given educational measures. Juveniles accused of crimes of medium gravity (those punishable by two to five years of imprisonment) can be ‘released from punishment’ and sent to the special vocational school for a period of up to three years, or

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204 Data on the population of the special schools are not published regularly.
205 As indicated above, one source questioned whether placement for this reason occurs.
206 Prior to 2009, UNICEF supported reintegration activities in all regions.
208 Code of Criminal Procedure, Article 432; Criminal Code, Article 89.
until they reach age 18.\footnote{Criminal Code, Article 90.} This involves a deprivation of liberty, but it does not involve a conviction, and it is available for juveniles accused of simple theft. Consequently, placement in the special vocational school by a court is, in principle, a disposition that has advantages for convicted juveniles. Since juveniles who commit serious offences and represent a clear danger to society can be sentenced to the closed juvenile prison colony, the proposal that this school be transformed into an open or semi-open facility is logical and would fill a gap in the range of options for the treatment of offenders.

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty provides,

> Open detention facilities for juveniles should be established. Open detention facilities are those with no or minimal security measures. The population in such detention facilities should be as small as possible. The number of juveniles detained in closed facilities should be small enough to enable individualized treatment.\footnote{United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), Rule 30.}

The advantage that this school offers in the present scheme of dispositions would cease to exist if diversion were to be made available for crimes of moderate gravity, as it should be. Whether the special vocational school also offers advantages in terms of the nature and quality of the services it provides, is a separate question. To answer it, the views of children who attend or have attended the school should be surveyed, and the impact of attending the school on their lives in terms of reoffending or successful reintegration into the community should be studied. If the impact of placement in the school is not more beneficial than probation or referral to a community-based centre, then there would be no reason for it to exist.

Insofar as the placement of children for other reasons is concerned – who make up more than half the student body – the same concerns and recommendations that apply to the special school are equally relevant.

**The Girls’ Support Service**

The assessment team visited the Girls’ Support Service on 29 April 2011. The Service is a residential facility that was established in 2008 by the National Committee on Women’s and Family Affairs (an autonomous governmental body), the Child Rights Centre and the Children’s Legal Centre (UK). Operational since 2009, it has a staff of 20. It was opened largely to receive girls removed from the special school (see above), but now offers a wider range of services. In addition to residential care, it runs a ‘day centre’ programme, and supports ‘satellite’ NGOs in ten other cities as well as a hotline. The Service also has two apartments for independent living. It assists girls aged 10–18 years who are victims of sexual abuse or exploitation, as well as girls at risk of sexual exploitation, abuse or trafficking.

The Service is located on the fourth floor of a building that also houses an orphanage for women aged 15–25 years operated by the Committee on Women’s and Family Affairs. The premises are surrounded by a wall, and there is a guardhouse at the entrance. The grounds are well cared for and contain flowerbeds and trees. The dormitories are clean and well furnished, with windows, and doors made of wood. The walls are decorated with paintings and drawings, including some made by residents. There is a living room containing a television. In appearance and furnishings, the residential space could be compared with a good guest house. The staff seemed competent and highly motivated.

The day centre provides a wide range of services to residents as well as girls from the community, including remedial education, activities designed to foster emotional and psychological development, health counselling, and cultural activities such as dance and assistance in finding employment. An
individual plan is prepared for each child, taking into account her needs, the situation of her parents and the support available from the community. The girls’ files are confidential. Girls enrolled in this programme who are not in residence attend five days a week. The plan is revised on a monthly basis in a case conference in which programme staff, the girl, parents, teachers and, if necessary, a medical doctor and psychologist participate. At the time of the visit, 15 girls were enrolled in the day centre.

The residential facility housed 10 girls at the time of the visit. The youngest was 12 years old; the oldest was 16 years old. Although girls from any part of the country may be admitted, most are from the capital, Khatlon Province and GBAO in south-western and eastern Tajikistan, respectively. The normal duration of a stay is six months or more, depending on the needs of the individual. Many are referred by the juvenile reception and referral centre in the capital (see below) or the network of NGOs in the interior of the country; some are placed by a court. An ‘admissions panel’ decides whether to accept the girls referred. The consent of the family and the Child Rights Department is required for admission of girls not placed by a court. Each girl has an assigned social worker and ‘welfare worker’. The residential facility could be considered semi-open. Two residents attend secondary school outside of the facility, but otherwise residents are not permitted to leave unaccompanied by a staff member.

Support is provided for a minimum of three months to each girl who leaves the Service to ensure that she is safe and to monitor her relationship with her family and community. Assistance in obtaining legal documents such as birth certificates or identity cards is provided as needed. In some cases, the Service’s lawyers represent girls who are victims of sexual exploitation as civil parties in criminal proceedings. The hotline provides advice to local service providers as well as to girls.

At present, the Service is funded by international agencies. The municipal government has agreed to take over the management and financing of the Service as of April 2012.

Neither the quality nor the impact of the services provided by this programme has been evaluated independently. Nevertheless, the assessment team was impressed by conditions in the facility, the range of services offered, the methodology used and the apparent professionalism and dedication of the staff. It remains to be seen whether the integrity of the programme will be maintained when it is transferred to the municipal government.

The aims of this programme are defined in terms of sexual exploitation. There is no doubt that sexual exploitation is closely linked to offending by girls. Many girls who are abused or exploited in their homes run away, becoming more vulnerable to sexual exploitation and participation in offending. However, sexual exploitation or abuse is not the only reason that girls run away from home; some girls who become involved in offending live at home. In short, while this programme no doubt helps protect beneficiaries from participation in crime, it is not its main objective, and it is not designed to respond to all girls who participate in offending or are at risk of offending. It can still be considered an example of an approach and a package of services that could be used more widely to prevent offending and reoffending.

11. Reception and referral centres

The juvenile police operate two centres for the temporary placement of children aged 3–18 years separated from their families, known as ‘reception and referral centres’. In 2007, the catchment area for the reception and referral centre in the city of Khujand was expanded to the whole region.

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211 The identity card every person is required to have is called ‘passport’.

212 Also referred to by various documents as temporary isolation centres, juvenile reception centres, temporary welfare centres, centres for the adaptation and rehabilitation of minors and Pryomniks.

213 The National Plan of Action for Juvenile Justice System Reform calls for the establishment of a third centre. See Objective 3, Activity 18.
In 2005, new regulations prepared by the Working Group on Juvenile Justice were approved. They recognized the rights of children and the obligation to return children to their families within 30 days if safe and appropriate to do so. In 2008, the National Commission on Child Rights adopted a Child Protection Policy applicable to all closed facilities for children, and the following year it approved a complementary instrument entitled ‘Child Protection Procedures for the Republican Reception and Referral Centres for Children and Teenagers’.

Some documents state that the reception and referral centre in the capital has been transformed from a ‘closed detention centre’ to a ‘child-friendly welfare centre’ providing preventive services.214 This is not accurate. Children placed in this centre are not allowed to leave at will, and the main purpose of placement is simply to provide children with a suitable place to stay while arrangements are being made to return them to their families, or place them in the special school or other appropriate residential facility. The only services that are offered on a non-residential basis are a camp that functions during the annual school holiday.

The centre has become more child friendly. Material conditions have improved, and remedial education is provided. The residential building contains two bedrooms for girls, with rugs, cabinets and curtains on the windows, in addition to beds. Bedrooms for boys are located on the same corridor, and boys and girls use the same bathrooms. At the time of the visit, some of the children were playing in the yard. The atmosphere in the centre seemed relaxed and informal.

Data provided to the assessment team indicate that the number of children placed in this centre more than doubled between 2007 and 2010, from 288 to 603. At the time of the visit, the population included a 16-year-old girl who refused to attend school, a 16-year-old boy who had run away from home, a 14-year-old Roma boy found begging, and two boys aged 12 and 14 years from other regions who were placed for truancy. The centre has a staff of 25, including 20 professionals, not counting teachers who work for the Department of Education.

The assessment team believes that there is a need for a shelter that can temporarily house children who have run away from home while the reasons they left home are investigated or parents are located, especially in a country where a large part of the adult population works abroad. The team does not share the view that temporary placement in a home for orphans and abandoned, neglected or abused children is certainly more appropriate than placement in a home operated by the police. From the child’s perspective, the treatment and conditions provided are no doubt more relevant than the identity of the organization that operates a shelter.

However, the assessment team has doubts about the necessity and appropriateness of housing adolescent boys and girls in the conditions described above, especially considering that a new residential facility specifically for girls was established in 2009. It is not sure either that the demand for short-term placement is sufficient to justify the resources allocated to this facility. More information about the caseload attended to and about the views of children and their parents would be useful in making plans for the future of this facility.

PART III. UNICEF’s Support to the Development of Juvenile Justice

UNICEF’s involvement in the development of juvenile justice in Tajikistan began in 2004, with its support to the Expert Group on Juvenile Justice established by the National Commission on Child Rights and to a community-based centre for diversion and alternative sentences. The evaluation of the juvenile justice reform carried out in 2006 concluded that the step-by-step strategy pursued by UNICEF was appropriate and had been “moderately successful.”

2007–2009

In 2007, UNICEF received a grant of US$ 1.8 million from the Swedish International Development Cooperation Agency (SIDA) for a project aimed at supporting social welfare and child protection reform. The project was intended to benefit children in conflict with the law, children in residential care and children with disabilities.

The results of this project most relevant to juvenile justice included:

- the transformation of regional and local Commissions on Minors’ Affairs into Commissions on Child Rights and the establishment of Child Rights Departments/Units in eight districts;
- input into the preparation of the revised Code of Criminal Procedure adopted in 2009;
- the creation of three new community-based centres for the prevention of offending and reoffending in Sughd Province;
- the renovation of the special section for juvenile boys in the pretrial detention centre in the capital;
- the adoption by the National Commission on Child Rights of complaints procedures for the juvenile prison colony, the special school, the special vocational school and the reception and referral centres; and
- the adoption of new regulations for the special school and the reception and referral centres.

The strategy followed from 2007 to 2009 was a good one, in some respects. The support to law reform, while only partially successful, addressed important issues that deserved priority. The transformation of Commissions on Minors’ Affairs into Commissions on Child Rights and the establishment of Child Rights Departments/Units helped reduce the placement of children in the special school and, more generally, gave local authorities a better understanding of the needs of children at risk and children involved in antisocial behaviour. The three new community-based centres provided services to some 104 children during these three years; an average of more than two children entered each centre per month. The reforms of the special school, the pretrial detention centre and the juvenile reception and referral centres were needed. Efforts to transform the special vocational school were not successful, but the effort was one that deserved to be made.

The project failed to address some significant issues. The recommendation concerning the need to strengthen legal assistance to accused juveniles and juveniles deprived of liberty made by the 2006 Thematic Evaluation was not addressed, nor was the situation of girls at risk or involved in offending. No activities concerning the juvenile prison colony were planned; this is understandable because, at that time, the authorities were not willing to grant access to it.

215 Thematic Evaluation of UNICEF’s Contribution to Juvenile Justice System Reform in Montenegro, Romania, Serbia and Tajikistan, supra, p. 130.
216 Ibid., p. 143.
Another important gap was the failure to address issues concerning the availability of data. The lack of relevant and reliable data has made it difficult to assess objectively the impact of efforts to bring the juvenile justice system into greater compliance with international standards. For example, claims have been made about decreases in offending in districts where community-based centres have been established, but data on offending are disaggregated by the district, only in the capital. Data on the population of the juvenile prison colony and the special school are not disaggregated by the district of origin, which makes it difficult to assess the impact of community-based programmes on the number of children sent to closed institutions.

Some of the reported results of the project have turned out to be illusory or unsustainable, at least so far. The Supreme Court’s decision asking each trial court to designate a judge to handle all juvenile cases has had very little effect. The complaints procedures for closed facilities for juveniles do not address the most serious issues concerning their operation, such as deprivation of liberty in the temporary isolation centre for up to 30 days without a court order, or the use of solitary confinement in the juvenile prison. On balance, however, the accomplishments of the 2007–2009 project outweigh the limitations.

2010–2014

In 2010, UNICEF received a grant of US$ 1.09 million from the Swiss Agency for Development and Cooperation (SDC) for a Juvenile Justice Alternatives Project, the first project in Tajikistan specifically and exclusively concerning juvenile justice. The project is based in part on the National Plan of Action for Juvenile Justice System Reform (2010–2015) adopted by the Commission on Child Rights in 2009, and in part on an evaluation of the community-based centres carried out in 2008. The most important specific goal is to extend the coverage of such centres to 32 districts – half the country – by March 2014. The ultimate goal is to bring the juvenile justice system as a whole into compliance with international standards by the same date. Other specific goals include the establishment of early intervention services in schools in 32 districts and the introduction in reception and referral centres of preventive services for children at risk on a non-residential basis.

Activities listed in the project document include training and capacity-building of judges, prosecutors, police officers, social workers, and the staff of Child Rights Departments. A training needs assessment focusing on judges, prosecutors and the police was undertaken in 2011. The failure to mention training for the staff of the juvenile prison is unfortunate and should be corrected.

A more significant gap – identified by the 2011 training needs assessment conducted by the UNICEF Regional Office – concerns capacity-building in the area of child and adolescent psychology. While the need to train social workers has been recognized for several years, the importance of upgrading the capacity of psychologists has not. Psychologists form part of the interdisciplinary teams employed in community-based centres and are used by the special school but not by the juvenile prison or pretrial detention facilities. Although rehabilitation of juvenile prisoners is supposed to be based on individual treatment, there is no psychological screening or evaluation.217 Psychological assessments of accused juveniles should also be taken into consideration in the background report to be prepared during legal proceedings.218 Child and adolescent developmental psychology is poorly developed, and training in the psychology of juvenile offenders is non-existent.

The project emphasizes diversion and the prevention of reoffending through community-based programmes rather than the treatment of juveniles in closed facilities, whether special schools, pretrial

217 See Criminal Executive Code, Articles 13, 114(4) and 115(3).

218 Article 88(1) of the Code of Criminal Procedure calls for reports on the living conditions, upbringing, mental development, health and other circumstances of juveniles to be taken into account in sentencing, and the National Plan of Action calls for development of capacity and guidelines regarding such reports; such information should be available at an earlier stage of proceedings so it could influence decisions on diversion.
detention facilities or prisons. This is understandable, to some extent, because community-based programmes are always preferable to deprivation of liberty and because diversion and community-based programmes for the prevention of reoffending are novel ideas that require sustained advocacy, training, technical assistance and monitoring. However, even though the population of the juvenile prison has declined during the last decade, the number of juveniles receiving prison sentences annually remains higher than the number referred to community-based centres.219

The treatment provided in the prison colony for boys is deficient in many respects. (Little information is available about the conditions in which girls are confined and the situation in pretrial detention facilities outside of the capital.) It is not possible to bring the juvenile justice system into compliance with international standards without addressing issues concerning juveniles deprived of liberty. The main needs – at least in the juvenile prison colony – do not concern material conditions but the programme, policies and staff capacity. Recent contacts with prison officials suggest that there is some interest in cooperating in this area. Several of the improvements that are needed require implementation of the measures envisaged by the existing legislation on prisons.220

A Mid-Term Evaluation of the Juvenile Justice Alternatives Project (2010–2014) was carried out in August 2011.221 The only targets that were achieved during the first two years of the project concerned the expansion of the network of community-based centres. During 2009 and 2010, responsibility for the five pre-existing centres was transferred to the local authorities; during 2010 and 2011, nine new centres reportedly were established.222 The evaluation concluded that three of the older centres (Khujand, Ghafurov and Isfara) and two of the newer ones (Panjakent and Panj) appeared to be working well, but two of the older centres were in difficulty, if not in crisis, and half of the newly established centres were not yet operational. There also appeared to be significant differences in the caseload of the centres. For example, all the children referred to one of the new centres were diverted offenders, whereas all those referred to another were sent for antisocial behaviour rather than offending.

The Mid-Term Evaluation recommended that plans to expand the network to 32 centres by 2014 should be abandoned and that efforts should focus on consolidating the functioning of the existing centres. The precise reasons for the difficulties encountered were not clearly identified, but they seem to include a combination of the following:

- failure to anticipate the difficulties involved in transferring responsibility for administration from the centres to local authorities and/or unrealistic expectations regarding the capacity or commitment of the Ministry of Education to monitor the functioning of the centres;
- lack of clarity as to the purpose of the centres (prevention/diversion/rehabilitation of convicted juveniles given non-custodial sentences);
- lack of clarity on the part of judges and prosecutors regarding their authority to divert or otherwise refer accused or convicted offenders to the centres;
- failure to coordinate the process of transferring existing centres to local governments and establishing new ones, due in part to the strategic decision on the part of UNICEF to shift cooperation from the Commission on Child Rights to line ministries.223

The problems experienced are also due in part to the design of the project. Its aims were influenced to a large extent by an evaluation of the centres carried out in 2008, when the process of transferring the

219 In 2010, 104 children were referred to the community-based centres, and 178 were sentenced to deprivation of liberty.

220 See Criminal Executive Code, Articles 113 (vocational training), 114 (cooperation with social, charitable and religious groups), 115 (treatment to be based on an examination of the psychology of the prisoner) and 116 (interest groups).


222 The oldest centre, in Sino District, is run by an NGO but administrative responsibility has been transferred to the local authorities.

223 UNICEF’s policy regarding cooperation with the Commission on Child Rights changed subsequent to the assessment mission.
centres to the government had scarcely begun. The evaluation was prepared by the NGO that provided assistance in establishing the centres, but it does not seem to be as objective as one could wish.

The falling number of referrals became increasingly apparent in 2008 and 2009, but it was not taken into account in the design of the SDC project. The Final Report on the 2007–2009 project concluded that the Sino, Firdavsi and Khujand centres were “working at full capacity,” although the number of referrals to Sino had fallen by 70 per cent between 2007 and 2009 and the number of referrals to Firdavsi had fallen by 90 per cent between 2008 and 2009. The Final Report called the decision of the local authorities in Firdavsi to assume responsibility for financing the centre a “good practice,” while recognizing that the centre’s Steering Committee had ceased to meet due to the difficulties related to the transfer of responsibility for the centre.

The project’s strong emphasis on two aspects of juvenile justice, combined with a lack of objectivity with respect to the experience of the pilot projects on which one of these components was based, had a significant negative impact on the implementation of the present project during the first 21 months. Several factors also raise warning signs regarding the feasibility of the second large component – to establish school-based early intervention in schools, in half the country. They include the Ministry of Education’s poor understanding of early intervention and its disinterest in the process of transferring the community-based centres to ‘centres for additional education’.

The picture is not all negative. At least three of the centres seem to be working well, and the first-ever meeting of all centres with the corresponding Commissions on Child Rights took place in October 2011. Hopefully, the meeting will help determine the reasons some centres are more successful than others, and what needs to be done to put this process back on track.

The Mid-Term Evaluation makes four strategic recommendations:

- The process of increasing the number of community-based centres should be suspended, and efforts should focus on consolidating the functioning of the centres already established.
- Within the overall objective of bringing the whole system into compliance with international standards and the National Plan of Action for Juvenile Justice System Reform, concrete activities should be broadened, in particular by establishing a juvenile court in Dushanbe, reforming the programmes and policies of the juvenile prison colony, and enhancing the capacity of its personnel to offer psychological assistance.
- A more balanced approach should be taken to cooperation with the Commission on Child Rights and line ministries.
- The capacity to monitor implementation and data indicators should be supported and developed; data management systems should be upgraded to become more transparent and generate the kind of information needed to evaluate the impact of new programmes and reforms.

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224 The evaluation mission took place in April 2008, the same year that the first centre to be established under local government was opened.

225 For example, the criteria underlying the claim that less than 3 per cent of the children who attended the centres reoffended are not explained.


227 Final Report to SIDA, supra, pp. 14 and 15.

228 The Ministry’s consistent refusal to transform or close the special vocational school is another reason. (The ‘centres for additional education’ are also known as out-of-school centres or extracurricular education centres.)
PART IV. Conclusions and Recommendations

ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

1. Offending by juveniles has fallen by some 60 per cent since the year after independence, according to official data. 229

2. A National Plan of Action for Juvenile Justice System Reform (2010–2015) was adopted by the Commission on Child Rights. The main objectives of the Plan and the activities envisaged are appropriate.

3. The 1998 Criminal Code and the 2009 Code of Criminal Procedure establish new alternative sentences for juveniles; prohibit prison sentences for first offenders convicted of minor crimes and crimes of medium gravity; recognize the discretion of police and prosecutors to divert cases of first offenders charged with a minor offence; limit detention before trial to six months; and require the presence of a lawyer during questioning of a juvenile suspect or accused juvenile.

4. The Criminal Executive Code adopted in 2001 also recognizes several important principles and rights.

5. In 2006, the Supreme Court issued a decree calling for the designation in every trial court of an experienced judge to handle cases involving juveniles.

6. The importance of social work – and to a lesser extent psychological assistance – in the prevention of offending and rehabilitation of offenders is recognized. Governmental and non-governmental programmes and facilities employ persons with some social work training, and the Tajik National University has opened a five-year programme leading to a degree in social work.

7. Hundreds of civil servants and other professionals and paraprofessionals working in the area of juvenile justice have participated in various kinds of training activities in recent years.

8. The National Commission on Child Rights has a mandate to coordinate the activities of the principal ministries and other public institutions involved in juvenile justice, as well as the activities of the Commissions on Child Rights on the local and regional levels. It has a good understanding of juvenile justice issues and has adopted strong policy documents and guidelines. In March 2011, the Ministry of Justice established a Juvenile Justice Unit with a mandate that includes coordination, in cooperation with the Commission on Child Rights.

9. The Ministry of the Interior compiles detailed data on offending by juveniles and the Council of Justice collects information on the trials and sentencing of juveniles.

10. The minimum age for the prosecution of juveniles complies with international standards, and persons below age 18 may not be prosecuted as adults.

11. Prosecutors, and investigators with the approval of a prosecutor, may divert cases of first offenders accused of a minor offence.

12. Juvenile suspects and accused juveniles may not be questioned for more than two hours at a time, or four hours per day, and may be interrogated only in the presence of their attorney. The

229 From 1,331 in 1992 to 519 in 2010. (For 1992, see TransMonEE Database; for 2010, see data from the Ministry of the Interior.)
preliminary investigation should normally be completed within two months, and this period may not be extended beyond six months.

13. Only a judge may order detention during the preliminary investigation and, in principle, an accused juvenile may not be detained unless he/she is accused of a serious offence. The juvenile section of the pretrial detention centre in the capital has been renovated and allows separation of juvenile boys from adult detainees.

14. The maximum sentence that may be imposed on a convicted juvenile for a single, serious offence is seven years for a juvenile aged 14–15 years, and ten years for a juvenile aged 16–17 years. Probation and educational measures may be imposed on juveniles convicted of offences of medium gravity such as theft. Courts are obliged to consider the imposition of a non-custodial sentence, suspended sentence or educational measure before imposing a prison sentence.

15. Community-based centres for the prevention of offending and rehabilitation of offenders exist in fourteen districts, providing the authorities with the possibility of diverting cases or imposing alternative sentences in the knowledge that assistance in prevention and rehabilitation is available in the community. A survey of children who have participated in activities in two such centres indicates that they appreciate the assistance provided, most live with their families and return to school after completing the programme.

16. The juvenile prison colony is not overcrowded, and the facilities are clean. It is located within the capital, and the right to family visits complies with international standards. Most prisoners attend school within the prison. Abuse, exploitation, and peer violence have not been reported.

17. Child Rights Departments have a mandate to assist released juveniles reintegrate into their families and community, and some make an effort to do so.

18. The residential facility for girls who are victims or at risk of sexual abuse and exploitation, although not specifically intended to prevent offending, provides services that are helpful to girls at risk of offending as well as those at risk of exploitation and violence.

19. The special school has been transformed into what could be considered a semi-open facility, and the administration appears to be committed to respecting the rights of children, including the right not to be separated from their families unnecessarily. Psychological assistance is provided.

20. Conditions in the Ministry of the Interior’s juvenile reception and referral centre in the capital have improved.

21. The Commissioner for Human Rights (Ombudsman’s office) plans to begin monitoring institutions in which juveniles are detained or imprisoned during 2012.

CHALLENGES

1. Implementation of the National Plan of Action for Juvenile Justice System Reform (2010–2015) was very limited during the first eighteen months.

2. The legislation in force allows juveniles to be held in police custody for 72 hours before they are presented to a judge and provides that trials are usually public.

3. The Code of Criminal Procedure establishes limits for certain stages of criminal proceedings, but there is no overall limit for the duration of proceedings.

5. The decree of the Supreme Court requiring each trial court to designate one judge to handle cases involving juveniles, while it may have had some positive effect on the adjudication of accused juveniles and respect for their rights during the pretrial stage of proceedings, has not brought practice into compliance with key international standards such as the ‘last resort’ principle.

6. There are limited positions for psychologists and social workers in government facilities and programmes for juveniles, and low pay makes it difficult to recruit experienced professionals. The specialization of child and adolescent psychology is not recognized, and social work practitioners working in the area of juvenile justice at present are paraprofessionals. Criteria for the recognition of professional social workers have not yet been adopted, and the first class to complete the university course in social work will not graduate until 2013.

7. The impact of the training provided has not been assessed. Most of the institutions in charge of the training of professionals who work in the field of juvenile justice – police investigators, prosecutors, correctional staff and others – have not incorporated modules on child rights and related issues (e.g., the prevention of offending, adolescent psychology) into their curricula. There are no clear standards regarding professional qualifications for persons employed in such functions.

8. Although the Ombudsman plans to begin monitoring conditions in facilities for juveniles, no complaints mechanism or mechanisms are presently operational in the juvenile prison colony, the special school and other facilities where children and adolescents are deprived of liberty. The results of monitoring by the Office of the Prosecutor General’s Unit of the observance of legislation regarding children and adolescents are not publicly available.

11. The Commission on Child Rights lacks full-time staff. Although it has produced good policy documents and guidelines, it has not been effective in coordinating the implementation of the policies adopted, in particular the National Plan of Action for Juvenile Justice System Reform (2010–2015).

12. The data on offending compiled by the Ministry of the Interior, the data on the involvement on younger children in crime compiled by the Commission on Child Rights, and the data on adjudication and sentencing of juveniles compiled by the Council of Justice are not published.

13. Boys continue to be placed in the special school by decision of the Commissions on Child Rights for insufficient reasons, in violation of the ‘last resort’ principle. Most of the population of the special vocational school are boys who have not committed an offence and have been placed by the Commission on Child Rights pursuant to procedures that do not contain sufficient safeguards of due process. Material conditions in the special vocational school are substandard.

14. Juveniles not accused of serious crimes are detained before trial, in practice, although the Code of Criminal Procedure only authorizes the detention of juveniles accused of a serious offence.

15. The new juvenile section in the pretrial detention centre in Dushanbe does not have adequate space for daily exercise, and juveniles detained in pretrial detention facilities or police cells in other parts of the country are not separated from adults.

16. Convicted juveniles may be held in pretrial detention facilities for four months after conviction if another person who participated in the same offence is on trial.
17. If a prosecutor believes that an accused juvenile may be corrected without prosecution, he/she may not divert the case and impose informal educational measures unless the accused is a first offender and the offence is a minor one.

18. Most trial courts do not have a designated judge for juvenile cases, and the system of designated judges has not been effective in ensuring respect for legal rights of accused juveniles, juvenile defendants and convicted juveniles.

19. The legislation does not recognize the principle that legal proceedings regarding accused juveniles shall be confidential. There is no legal limit to the duration of legal proceedings.

20. Although the right to be represented by an attorney is acknowledged and, apparently, respected, the quality of representation is often poor.

21. The functioning of the community-based centres for the prevention of offending and reoffending is not monitored, and follow-up of children who have attended the centres is not done systematically. The number of referrals to most centres has fallen, and the percentage of referrals for antisocial behaviour, as opposed to offending, has increased. The reasons for this are unknown, and the authorities have made no effort to identify them. Many centres are unable to offer the full range of services they were designed to provide.

22. Prisoners in the juvenile prison colony have shaved heads, wear uniforms and are obliged to use military postures. The residential part of the prison is devoid of decoration, and the dormitory for newly received prisoners is too small. There are no organized cultural or recreational activities, and no vocational education. The mental health of prisoners is not evaluated, and psychological treatment is not provided. Solitary confinement is used as a disciplinary measure, and conditions in the disciplinary cell do not meet international standards. There is no independent procedure for examining complaints.

23. Resources needed to assist released juveniles reintegrate into their community and family are inadequate.

24. The effectiveness of efforts by the juvenile police and community-based programmes to assist children at risk of offending has not been assessed; the capacity of Child Rights Departments/Units to provide such services directly is very limited.

RECOMMENDATIONS

1. The Commission on Child Rights and the newly established Juvenile Justice Unit under the Ministry of Justice should assess the reasons for the poor implementation of the National Plan of Action for Juvenile Justice System Reform (2010–2015) during 2010 and identify appropriate steps to address them. They should also revise the Plan taking into account the delay in implementing many activities and the results of the present assessment. UNICEF should consider supporting the implementation of the Plan, in particular by developing mechanisms to improve monitoring, coordination, planning (e.g., annual plans within the framework of the 2010–2015 National Plan of Action) and costing.

2. A survey should be undertaken on the views and experiences of children who have come into contact with the juvenile justice system. It should be carried out by an independent research body, in cooperation with the Commission on Child Rights and the relevant ministries, agencies
The main purposes of the survey should be to assess the extent to which the basic rights of children are respected, and the extent to which placement in residential facilities and participation in non-residential programmes are seen by children and juvenile offenders beneficial or counterproductive in terms of the attitudes, values and skills related to offending, rehabilitation and social reinsertion. Information of this kind is essential to understand the impact of decisions made by the authorities with respect to juvenile offenders and children at risk. Consideration should also be given to including parents in the survey.

3. A programme or mechanism should be developed to monitor the long-term impact (e.g., four to five years) of the measures taken; dispositions should be adopted to prevent offending/reoffending and rehabilitate offenders, including placement in the special school and special vocational school, registration by the juvenile police, referral to community-based prevention/diversion/rehabilitation centres, sentences to the juvenile prison, probation, and imposition of alternative sentences. Information should be available on the effectiveness of such services and the measures needed to make informed decisions about investments in juvenile justice and to provide practitioners with data that will help them determine which measures are most likely to have the desired results for children in different circumstances. It would also help reach decisions about possible changes in the legislation (e.g., extending to more offences of medium gravity and to repeat offenders the discretion to divert).

5. A core set of indicators on offending by juveniles and on juvenile justice should be identified and agreed by the concerned ministries and other bodies. Data on offending by children and adolescents and the workings of the institutions and programmes related to juvenile justice (police, prosecutors, courts, prisons, special schools, community-based centres) should be compiled and published annually to enable policy makers to make informed decisions based on a holistic understanding of how juvenile justice is functioning. The issuance of such information shall also facilitate the participation of civil society in juvenile justice and contribute to public awareness of issues concerning offending and the administration of justice.

6. A medium- or long-term strategy is needed to improve the capacity to provide psychological screening and treatment in the juvenile prison and community-based programmes in order to prevent offending and promote social reintegration. In the interim, the capacity of the Child Rights Departments and related residential facilities to provide psychosocial assistance and the need for such assistance should be assessed; the feasibility should be considered of establishing linkages between the staff of the Departments, relevant institutions and qualified child psychologists, in order to monitor the work of service providers, give advice and accept referrals when necessary.

7. Consideration should be given to establishing juvenile courts (those whose competence is limited to cases involving accused juveniles) or children’s courts (having competence for offences committed by juveniles and other cases involving children) in cities where the number of such cases is sufficient to justify this measure. In the short term, priority should be given to the creation of such a court on a pilot basis, as envisaged by the National Plan of Action (2010–2015).

8. The criteria and procedures for placement in the special school and special vocational school should be reviewed, after an analysis of the reasons for and the length of placement in practice. Consideration should be given to explicitly requiring application of the ‘last resort’ and ‘shortest appropriate period of time’ principles; to identifying the forms of assistance that could be provided to single parents to avoid placement at their request; and to establishing procedures to

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230 A survey of children who attended two community-based centres was carried out after the assessment mission.
ensure that children’s consent to placement is based on a clear understanding of their options. The possibility of closing the special vocational school or transforming it into another type of facility should be examined, as recommended by the Expert Group on Juvenile Justice in 2005.

9. An independent, effective, transparent and child-friendly mechanism for receiving and investigating children’s complaints regarding juvenile justice should be established by the Ombudsman or other appropriate body.

10. The legislation in force should be amended to bring it into greater harmony with international standards and the recommendations of the Committee on the Rights of the Child, including:
   - the duration of police custody without a court order should be reduced to 24 hours;
   - the use of solitary confinement as a disciplinary measure should be prohibited;
   - the confidentiality of legal proceedings regarding juveniles should be recognized;
   - the provision allowing convicted juveniles to be kept in pretrial detention facilities for several months should be eliminated.

11. An analysis should be made of the number of juvenile first offenders, accused or convicted of theft, who are detained before trial and given prison sentences; if necessary, the legislation should be amended to bring it into greater harmony with the ‘last resort’ principle and Beijing Rule 17.

12. The impact of the handover of community-based centres to local governments on the capacity and quality of services provided should be monitored in a transparent fashion, as should the process of starting up the centres established in 2010 and 2011. The creation of new centres should be frozen until the existing centres provide the full range of services they were designed to give, their caseload has stabilized at an acceptable level, and they include a sufficient number of children diverted from prosecution or placed by judicial disposition.

13. The policies of the juvenile prison colony should be reviewed, and activities and programmes provided should be strengthened, taking into account the experience of other countries in the region. Insofar as programmes are concerned, in addition to reviving vocational training as envisaged by the National Plan of Action, efforts should be made to provide prisoners the possibility of joining cultural, artistic, sport, religious and recreational groups, possibly with the support of civil society groups. Appropriate ways of facilitating greater involvement of the community in the rehabilitation of prisoners should be developed. Technical assistance should be sought to introduce training in life skills and improve the screening and treatment of prisoners for psychological and behavioural disorders. One or more regimes for prisoners with good behaviour and progress in rehabilitation should be introduced, as envisaged by the Criminal Executive Code.

14. The possibility should be considered of extending the special residential and non-residential services for girls who are victims of or at risk of sexual exploitation and abuse to other girls who have been involved in offending or are at risk of offending. This should not be done until the transfer of the existing programme to the government has been consolidated.

15. Prevention, in particular the capacity to provide psychosocial assistance and support to children at risk and their families, should be given greater priority in the allocation of resources. Efforts should be made to develop this capacity in Child Rights Departments/Units and Social Assistance at Home Units.
Annex 1. Data collection and analysis

Data corresponding to most international and regional indicators either do not exist or are not published, and much of the data that do exist appear to be unreliable. Some improvements have been made lately – in particular efforts by the Ministry of the Interior to compile data on offending disaggregated by offence and efforts by the Judicial Council to compile data on convictions of juveniles disaggregated by offence. However, there are serious discrepancies between some existing data (e.g., the number of juveniles given prison sentences and the population of the juvenile prison). Gaps in the data that are collected (e.g., on diversion, the number of cases prosecuted, pretrial detention and custodial/alternative sentences) make it difficult to understand how the system operated in practice. Furthermore, the data that do exist are not disaggregated by criteria such as place, gender, and ethnicity.

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 or with the participation of persons aged 14 to 17” disaggregated by the kind of crime, i.e., violent, property or other. The UNODC-UNICEF Manual does not include this indicator.

Tajikistan has provided data on this indicator to the TransMonEE project for the years 1990 to 2010. However, these data do not agree with the information contained in the government’s reports to the Committee on the Rights of the Child. The 1998 report to the Committee includes data on “recorded cases of juvenile crime” for 1994 and 1995, and the 2008 report includes data on “offences committed by juveniles aged 14–18 years” (attributed to the Ministry of the Interior) during the period 2001–2003. The discrepancies are significant, as the table below shows:

<table>
<thead>
<tr>
<th>Year</th>
<th>TransMonEE</th>
<th>Reports to the Committee on the Rights of the Child</th>
</tr>
</thead>
<tbody>
<tr>
<td>TransMonEE</td>
<td>1,131</td>
<td>952</td>
</tr>
<tr>
<td>Reports to the Committee on the Rights of the Child</td>
<td>976</td>
<td>790</td>
</tr>
</tbody>
</table>

The Ministry of the Interior has recently made an effort to provide UNICEF with more accurate and recent data on crimes committed by or with the participation of juveniles from 2005 to 2011. These data are disaggregated by sex of the offender, region and five categories of crime, including murder, rape, other forcible sexual offences causing serious injury, drug offences, and theft. Crimes committed in the capital are also disaggregated by district. The following table shows the global figures as well as the figures for crimes against the person (homicide, rape, injury), and theft.

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232 See TransMonEE Database 2011, supra, Table 9.4.

233 Initial report of Tajikistan, CRC/C/28/Add.14, supra, para. 44; Second periodic report of Tajikistan, CRC/C/TJK/2, supra, para. 559.
(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 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.”

Data on children placed in custody because they are suspected of participating in a criminal offence are not published in Tajikistan, whereas data on children placed in reception and referral centres are compiled and released on request. Most of these children – but not all – are ‘in conflict with the law’ in the sense of being runaways, violating curfews etc. Data provided to UNICEF indicate that the number of children admitted to the centres more than doubled between 2007 and 2010, from 288 to 603.234

(c) Children in detention

The UNODC-UNICEF Manual describes this indicator as “children detained in pretrial, pre-sentence and post-sentencing [sic] in any type of facility (including police custody)” at any specific date.235

The TransMonEE Database contains a table entitled “Number of juveniles placed in correctional/educational/punitive institutions at the end of the year.” The TransMonEE glossary does not refer to this terminology, but it does provide a definition of ‘deprivation of liberty’, namely, “A child is deprived of liberty where he or she is placed in any form of detention or imprisonment in a public or private setting, from which the child is not permitted, by order of any competent authority, to leave at will.” It is not known whether these two concepts are intended to be interchangeable. This is of particular relevance to detention before trial, which meets the definition of deprivation of liberty, but normally would not be considered placement in a correctional, punitive or educational institution.

Tajikistan has provided TransMonEE with data on this indicator since 2000. These data indicate that, during the years 2000 to 2007, the number of juveniles in such facilities fluctuated between 710 (in 2000 and 2002) and 656 (in 2001), but fell in 2008 and 2009, to 573 and 605, respectively.

Data compiled by the UNICEF Country Office for the past five years are much lower, as this table indicates. Efforts to find an explanation for these large discrepancies have not been successful.

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<table>
<thead>
<tr>
<th>Year</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of crimes</td>
<td>608</td>
<td>619</td>
<td>493</td>
<td>563</td>
<td>519</td>
</tr>
<tr>
<td>Crimes against the person</td>
<td>33</td>
<td>26</td>
<td>18</td>
<td>22</td>
<td>18</td>
</tr>
<tr>
<td>Theft</td>
<td>460</td>
<td>469</td>
<td>459</td>
<td>373</td>
<td>421</td>
</tr>
</tbody>
</table>

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234 These data are disaggregated by sex and age group (3–7 years; 7–14 years; and 14–18 years) but not by reason for admission.

235 Manual for the measurement of juvenile justice indicators, supra, p. 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 this indicator as including children deprived of liberty while awaiting trial and convicted juveniles awaiting sentencing, but not those who are sentenced and awaiting the outcome of an appeal.

Data on this indicator are not published. In 2011, the Department of Correctional Affairs informed the UNICEF Country Office that 16 juveniles had been placed in pretrial detention during 2010, and the Ministry of Justice informed UNICEF that the juvenile population of pretrial detention facilities was 27, in May 2011.

(e) Duration of pretrial detention

No data on this indicator are published in Tajikistan.

(f) Child deaths in detention

No data on this indicator are published in Tajikistan.

(g) Separation from adults

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

No data on this indicator are published in Tajikistan. As convicted juvenile offenders may remain in the juvenile prison colony until they reach age 20, and there is no separate juvenile unit in the women’s prison or in the five pretrial detention facilities outside of the capital, the only juveniles deprived of liberty wholly separated from adults are those in the pretrial detention centre in Dushanbe, and those in the reception and referral centres, the special school and the special vocational school, most of whom are not offenders.

(h) 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.”

No data on this indicator are published in Tajikistan.

(i) Convictions

Data on this indicator are compiled by the Council of Justice, but they are not published. The Council recently provided UNICEF with the data on convictions of juveniles during the last decade (see the table below).

<table>
<thead>
<tr>
<th>Year</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Convictions of juveniles</td>
<td>351</td>
<td>487</td>
<td>520</td>
<td>480</td>
<td>543</td>
<td>452</td>
<td>385</td>
<td>358</td>
<td>398</td>
<td>418</td>
</tr>
</tbody>
</table>

These data are disaggregated by offence (24 offences and ‘other’).
(j) Custodial sentences

The UNODC-UNICEF Manual defines this indicator as “the percentage of sentenced children who receive a custodial sentence,” i.e., one of confinement to an open, semi-open or closed facility.

No data on this indicator are published. In 2011, the Ministry of Justice informed UNICEF that 179 juveniles – 43 per cent of those convicted – had received prison sentences in 2010.

It should be noted that this figure is difficult to reconcile with the data on the population of the juvenile prison colony – 91 persons in April 2011.

(k) Alternative sentences

The TransMonEE matrix requests information on the kinds of sentences imposed on convicted juveniles. The 12 categories used are: committal to a penal institution; committal to an educational/correctional institution; pre-sentence diversion; formal warning/conditional discharge; apology; fine/financial compensation; community service or correctional labour; supervision order; probation order; postponement of sentencing; release from sentencing; and other. The language used in this definition is misleading, because some of these dispositions – pre-sentence diversion, postponement of sentencing – obviously are not sentences.

No data on this indicator are published. In 2011, the Ministry of Justice informed UNICEF that 43 per cent of the juveniles convicted the previous year received prison sentences. This does not include accused juveniles who were diverted, or juveniles given educational measures instead of a sentence.

(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,” adding that it is intended to measure “the number of children diverted before reaching a formal hearing.” This is somewhat contradictory, and the Manual recognizes that what constitutes diversion “will need to be identified in the local context.”

No data on this indicator are published, and it appears that data on diversion are not compiled.

Data on the number of children placed in community-based centres sometimes referred to as diversion/rehabilitation centres are available, but they are recorded in such a way that it is not possible to know how many of them are diverted. Data apparently are not recorded on cases diverted without referral to such a centre.

(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 those released from pretrial detention.

No data on this indicator are published in Tajikistan.

236 Hearings often occur before trial begins, which means that diversion before any hearing takes place would be only part of ‘pre-sentence diversion’. And it is unclear why the percentage of offenders diverted should be calculated with reference to the number diverted or sentenced, rather than the number accused or prosecuted. In addition, diversion can consist of a mere warning, without entry into a programme.
2. Other relevant data and information

*Recidivism*

No data on this indicator are published in Tajikistan. Data on juveniles given prison sentences in 2006–2008 indicate that the percentage of reoffenders ranged from 2 per cent to 17 per cent.

*Ethnicity*

No data on this indicator are published in Tajikistan.

*Juveniles prosecuted*

No data on this indicator are published in Tajikistan.

*Begging and vagrancy*

No data on this indicator are published in Tajikistan.
Annex 2. List of persons interviewed

Council of Justice
K. Khamidova, Director, Judicial Training Centre under the Council of Justice
Z. Azizov, Chairman, Council of Justice

Ministry of the Interior
A. Tagoymurodov, Deputy Minister
K. Azimov, Head, Board on Prevention of Crimes and Offences among Youth and Adolescents
S. Tyuryaeva, Head, International Legal Investigation Group
L. Zokirov, Director, Reception and Referral Centre
B. Kasimov, Head, Unit for Prevention of Crimes and Offences among Youth and Adolescents, Khujand

Supreme Court
I. Yusupov, First Vice-Chairman, Supreme Court
T. Kodirov, Chairman, Board on Family Affairs

Ministry of Justice
A. Imomov, Head, Department on Economic, Social and Civil Legislation
M. Muborakqadam, Deputy Head, Board of Correctional Affairs
B. Kurbonov, Director, Juvenile Prison Colony for boys

Prosecutor General’s Office
S. Davlatov, Head, Board on Supervision over the Observance of Legislation regarding Minors and Adolescents under the Prosecutor General’s Office

Commission on Child Rights
D. Mirsaidova, Deputy Chair, Commission on Child Rights
M. Salomova, Head, Child Rights Department, Dushanbe
M. Salimova, Head, Child Rights Department, Bobojon Ghafurov District, Sughd Province
A. Holmirzoev, Deputy Head, Regional Child Rights Department, Sughd Province

Ministry of Education
N. Boboev, Director, Special School

Community-based projects
S. Rahmatov, Director, Juvenile Justice Alternatives Project, Sino District, Dushanbe
T. Ergasheva, Director, Community-Based Centre, Khujand
S. Kasimova, Director, Girls’ Support Service, Dushanbe

Civil society
T. Jalolov, Director, NGO ‘Child Rights Centre’
A. Kolesnikova, Lawyer, NGO ‘Sarchashma’, Khujand
UNICEF
H. Gao, Representative
N. Karimova, Child Protection Officer

Other international organizations
N. Bozorova, Head, Legal Programmes, Open Society Institute
K. Sanginov, Law Programme Coordinator, Open Society Institute
A. Crowley, Human Rights Officer, Organization for Security and Co-operation in Europe (OSCE)
E. Conkievich, Director, Helvetas
Annex 3. List of documents consulted

Legislation

Criminal Code of 21 May 1998

Criminal Executive Code of 6 August 2001

Code of Criminal Procedure of 3 December 2009

Regulation of the Commission on Child Rights, Annex to Government Decision No. 377 of 1 August 2008 ‘On Safeguarding Protection of the Rights of the Child’

Regulation of Child Rights Departments [undated mimeo]

Other official documents


Child Protection Procedures for the Republican Reception and Referral Centre for Children and Teenagers, National Commission on Child Rights, 2009


Complaints Procedures for Closed Institutions for Children [undated mimeo]


237 Unofficial translation by the American Bar Association Rule of Law Initiative.

Written replies by the Government of Tajikistan to the list of issues prepared by the Committee on the Rights of the Child in connection with the consideration of the second periodic report of Tajikistan, published in 2009 as United Nations document CRC/C/TJK/Q/2/Add.1

**United Nations documents**

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

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