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FOREWORD

UNICEF is pleased to be supporting the Ministry of Justice and Home Affairs and the Juvenile Justice Working Group in the important task of reviewing and reforming Mongolia's juvenile justice system. Ensuring that the rights of children in conflict with the law are fully promoted and respected is one of the key challenges that countries face in living up to their commitments under the Convention on the Rights of the Child.

Mongolia faces many challenges in fully implementing the CRC and the transition period has given rise to a number of new problems, including rising rates of juvenile crime. Adolescence is a difficult time for all children, and history has shown that it is felt even more acutely by children growing up in societies undergoing rapid social and economic change. How the justice sector responds to these troubled youth can have a significant impact on whether they successfully make the transition to law-abiding citizens, or become embroiled in a life of crime.

The Convention on the Rights of the Child and UN juvenile justice guidelines provide an internationally agreed framework for juvenile justice reform based on the lessons learned by countries around the world as they have grappled with the issue of juvenile crime. These guidelines are grounded in the principle that, while young people must be held accountable for their actions, this must be done in a way that promotes their rehabilitation and reintegration into society. They require that State parties recognize juveniles as children, not merely criminals, and afford them special protection within the justice system.

This assessment report marks UNICEF's first major contribution to the process of comprehensive juvenile justice reform in Mongolia. It is my hope that the report will provide some useful insight into this issue, and that the Mongolian government and other stakeholders will take up the challenge of bringing the country's juvenile justice system into line with international standards.

I would like to extend my appreciation to all those who provided support to the assessment process and who shared their views on the various issues discussed in this report.

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UNICEF - MONGOLIA

1. INTRODUCTION

Throughout the world, children who come into conflict with the law as a result of being accused or suspected of committing a crime are at greatest risk of having their fundamental rights violated. For this reason, UNICEF has adopted the promotion and protection of the rights of children who come into conflict with the law as one of its global child protection priorities.

The Convention on the Rights of the Child (CRC), ratified by Mongolia in 1990, states that every child alleged as, accused of, or recognised as having infringed the penal law has the right to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others, and which takes into account the child's age and the desirability of promoting his or her reintegration and the child's assuming a constructive role in society. State parties to the CRC are obliged to establish special laws, procedures, authorities and institutions specifically applicable to children in conflict with the law, and to develop alternatives to the formal court system. In addition, Mongolia and other State parties renewed their commitment to improving the situation of children in conflict with the law at the UN Special Session for Children in 2002. The World Fit for Children plan of action approved at the session reiterates States' commitment to promoting a justice system specifically applicable to children that ensures children's rights are respected and that emphasises rehabilitation and reintegration, supporting and caring services, and restorative justice principles.

Mongolia does not currently have a comprehensive juvenile justice system. While the Criminal Code and the Criminal Procedure Code contain some special rules and procedures applicable to children under the age of 18, there are no separate or specialised courts for juveniles, no specialized justice sector officials other than the juvenile police, and no comprehensive legislative or policy statement outlining separate guiding principles that should govern the State response to children in conflict with the law. Instead, children are simply afforded some special treatment within a system designed for adults.

As a result of growing concerns about rising juvenile crime rates and the treatment of children in detention facilities, the Minister of Justice and Home Affairs established a Juvenile Justice Working Group in November, 2001. The Working Group, headed by Secretary of State Tserendorj, includes representatives from the Ministry of Justice and Home Affairs, General Prosecutor's Office, General Police Department (Crime Prevention Division), Pre-trial Detention Center, the Juvenile prison, National Board for Children, Advocates Association and the National Human Rights Commission. Its task is to develop a strategy to improve the situation of children in conflict with the law, and in particular to address concerns about children in detention facilities.

The purpose of this assessment is to provide an overview of the current situation of children in conflict with the law, and to assess Mongolian

legislation and practice against the requirements of the CRC and United Nations juvenile justice guidelines, including the UN Standard Minimum Rules for the Administration of Justice (Beijing Rules), the UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) and UN Rules for the Protection of Juveniles Deprived of their Liberty (JDLs).

The assessment is based on a review of available legislation, rules, policy documents and official statistics. In addition, interviews were conducted and information gathered from stakeholders from the Ministry of Justice, the Department of the Enforcement of Court Decision, the General Police Department (Crime Prevention Division), the General Prosecutor's Office, the National Board for Children, and academic and training institutions. Semi-structured interviews were held with front-line staff working with children in conflict with the law, including district and Aimag juvenile inspectors, police investigators, prosecutors, and judges in two districts of Ulaanbaatar (Bayanzurkh and Songinohairhan), and selected Aimags with high rates of juvenile crime (Darhan-Uul, Selenge, Orhon and Dornogobi). Government organizations, NGOs and donor agencies working with unsupervised children, children in conflict with the law, and in justice sector reform were also consulted.¹

Furthermore, in order to get young people's views about how children in conflict with the law are treated by justice-sector officials and to elicit their input and recommendations on what can be done to improve respect for their rights, focus group discussions were held with youth who had some degree of contact with the justice system. In total, 73 children (42 boys and 31 girls) from juvenile institutions, NGO and government-run shelters, and who were living on the streets participated in the discussions. Each focus group discussion consisted of 10 to 15 participants and was facilitated by a youth worker with extensive experience working with Mongolian children in difficult circumstances.

The children who participated in the focus group discussions were asked their views and opinions in four main topic areas: 1) juvenile crime and its causes, 2) children and the police, 3) knowledge of rights and access to legal aid, and 4) punishment and rehabilitation. In addition, the children in prison were asked their views about the conditions, programs and services in the institution. Discussions were structured on the "Triple A" method (Assessment, Analysis and Action). While a topic list and set of general questions was provided, these were used only as a guide, and the aim was to encourage a free-flowing discussion amongst the children.

This Assessment Report includes recommendations for both immediate and long-term legislative and policy reform aimed at improving the situation of children in conflict with the law, and ultimately reducing the rate of juvenile crime. In addition, emphasis was placed on identifying reforms that could be undertaken on a pilot basis within the existing legislative framework, and with existing resources and personnel.

¹ A complete list of reference materials and stakeholders is appended to this Report.

It is hoped that the Report will stimulate discussion amongst policy makers and assist the Working Group in the process of developing a juvenile justice reform strategy and in identifying priority areas for UNICEF's support to the reform process.

2. SOCIO-ECONOMIC CONTEXT

Mongolia is a vast, landlocked country situated between Russia and China. With a land mass roughly the size of Western Europe and a total population of less than 2.4 million, it has one of the lowest population densities in the world. Mongolia is also a land of contrasts, with urban, cosmopolitan centers, wide open steppes, stunning mountains and vast deserts. Average temperatures range from +40C in the summer to -40C in the winter.

Mongolia is divided into a capital city (Ulaanbaatar) and 21 aimags (provinces). The Capital City and aimags are in turn divided into districts or soums (rural districts), and khoroo (sub-districts) or baghs (rural sub-districts). Approximately 32.5% of the population lives in Ulaanbaatar, and there are also significant population concentrations in Darhan and Erdenet, the next largest centers. Still, over 41% of the population lives in rural areas, which can be remote and difficult to access.

Between 1924 and 1990, Mongolian political, economic, legal and cultural policies were heavily influenced by the Soviet Union. However in 1990, seventy years of a socialist, centrally planned system came to an abrupt end and Mongolia embarked on a peaceful transition to a democratic, capitalist state. Following the first multi-party elections in 1992, a new national Constitution was introduced guaranteeing the economic, social, cultural and political rights of all citizens.

Although political and economic changes have brought many benefits, it has been a difficult period of transition. The shift to a free market economy has led to a fall in real incomes, a rise in unemployment and a widening gap between rich and poor. In the initial period following the 1992 elections, many industries were privatised or collapsed, leaving thousands of people out of work. While many of the unemployed initially turned to herding, the resulting over-grazing, combined with success dzuds (dry summer followed by very cold winter) has devastated livestock. The effects of these harsh winters, combined with negative economic growth and limited access to services in rural areas, has led to increased migration to urban and peri-urban areas. Approximately 58.6% of the total population now lives in towns, and unplanned migration and urbanization have had an adverse impact on access to and quality of basic social services such as education, child care and health services. Over 36% of the population are classified as poor or very poor, and 47.9% of children are living in unemployed, vulnerable, poor and very poor families.

At same time, government expenditure on social services has been declining. Under the socialist system, significant priority was placed on building a strong social safety net to protect and promote children's health and development. Families were able to access comparatively generous government benefits and services, including direct cash transfers to parents, State-funded maternity leave, and free child care, education and health services. A comprehensive network of schools provided free education for all, including dormitories for children of herding families. Sporting activities and youth clubs and associations, such as the Young Pioneers, contributed to the positive use of leisure time and the socialization of adolescents. The combination of relative socio-economic security, close intra-familial relationships, strong attachments to school and constructive use of free time contributed to children's high self-esteem and positive participation in society.

However, with the role of the State shrinking, many of the structures that directly or indirectly protected and promoted the development of children have been weakened or dismantled. Access to and quality of health care, education, child care and social services have declined. In 2000, primary school enrolment dropped to only 75.6%, and completion rates for basic education were down from 87% in 1990 to only 64% in 1999. In the academic year 1999-2000, 56% of adolescents did not participate in any kind of academic training. Many children, particularly boys, drop out of school or are denied access because schools are overcrowded, because they lack the necessary registration documents or cannot afford basic supplies, or because they must help with herding or do other work to support their families. Poverty, increasing unemployment and weakening social services have heightened people's sense of insecurity and contributed to increases in alcoholism, family breakdown, domestic violence and homelessness. Parents struggling to make a living are often required to spend long periods away from home and are having difficulty providing appropriate guidance and supervision to their children.

These rapid changes have been felt most acutely by Mongolian's "transition generation" of adolescents, who make up approximately one quarter of the population. Adolescents everywhere face the challenge of growing up in a time of rapid global change, and Mongolian youth in particular have seen significant political, economic and social change over the course of their young lives. They are approaching adulthood in a world that is very different from the one their parents experienced, and no longer enjoy the certainty of education and guaranteed employment. At the same time, they enjoy greater freedoms and choice, and are exposed to a wider array of influences through the media and Internet. Many parents are ill-equipped to assist or support their children in these rapidly changing times and are unable to provide a secure environment within which adolescents can develop their capabilities and learn to make responsible choices.

In 2000, a Mongolian Adolescent Needs Assessment conducted by the Mongolian Scouts Association with the support of UNICEF revealed that more than one third of adolescents felt that their parents did not understand them, and a fifth felt that their parents did not care for them. A high proportion

suffered from loneliness, lack of confidence and a sense of isolation. Schools were described as unhealthy and uninviting environments where teaching methods were authoritarian rather than child centered. Few young people were able to participate regularly in youth clubs, sporting or cultural activities, and there were limited opportunities for constructive use of leisure time.

In addition, an increasing number of children are spending more and more time on the streets to escape intolerable home conditions or to make money to survive. It is estimated that there are approximately 3,700 “unsupervised” children in Mongolia’s cities. Some spend part of their time on the streets doing odd jobs, working as porters, collecting bottles or other items from garbage, or begging to support themselves and their families. Others have been forced out of their homes due to abuse or abandonment and survive the harsh winters by sleeping in apartment block hallways or in the underground manholes of the city’s sewer system, where the hot water pipes act as a source of heat. Many of these children turn to petty crime to survive. It is estimated that 80% of street children come from single-parent families and more than 50% have been abused. Children from migrant families are particularly vulnerable, since they are often denied access to basic education, health care and other social services because their parents cannot afford to pay the fee to officially register with their new municipality.

Mongolia’s social welfare system was ill-equipped to deal with these growing challenges and to provide necessary support to struggling families. During the socialist period, social work was underdeveloped or non-existent. While social welfare benefits were quite generous, social welfare services aimed at strengthening families and increasing the capacity of parents to cope with risk situation, such as parenting education, counselling and crises support, were limited or missing. Although there are social workers appointed in each bagh and khoroo, none have qualifications as social workers and they perform a broad range of administrative functions. To fill this gap, the government and various national and international NGOs responded initially with crises intervention strategies, including the establishment of emergency shelters or care centers for street children, but they are gradually shifting their emphasis to family reintegration and support services.

Despite these challenges, the Mongolian government remains committed to improving the living standards of the population within the constraints of the current economic climate. A National Poverty Alleviation Program and National Human Development Plan have been developed to reduce poverty and stimulate development. In addition, a comprehensive assessment and plan of action is being developed to improve the social welfare system and develop professional social work in Mongolia.

The interests of children have received special attention in the development process through the enactment of a National Program of Action for Children. The second, ten-year program of action has recently been approved by the Great Khural (parliament), and monitoring and implementation has been entrusted to the National Board for Children.

Mongolia has also made progress over the last decade in advancing respect for fundamental human rights. The national Constitution contains extensive human rights guarantees, and Mongolia has ratified 29 international human rights treaties, including the Convention on the Rights of the Child and its Optional Protocols, ILO Convention 138 on the Minimum Age of Employment, ILO Convention 182 on the Worst Forms of Child Labour, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. A National Human Rights Commission has been operating since January 2001, and is mandated with the promotion and protection of human rights and with monitoring the implementation of the human rights provisions of the Constitution and the international treaties that Mongolia has ratified.

In addition to these government initiatives, Mongolia has a growing and active NGO community, many of which are actively involved in promoting and protecting the rights of children.

3. LEGAL CONTEXT

Mongolia's justice system was modelled after the Soviet inquisitorial system, but it has undergone successive reforms since 1990. Currently, the Ministry of Justice and Home Affairs is responsible for coordinating policy and planning in the area of law and justice, and is also responsible for the General Police Department and the Department for Court Decisions Enforcement. An independent prosecutor's office exercises supervision over the investigation of criminal cases and the execution of punishment, and participates in court proceedings on behalf of the State. Under the Constitution, judicial power is vested exclusively in the courts and the independence of the judiciary is guaranteed.

In May, 2000 the Great Khural approved a Strategic Plan for the Justice System of Mongolia to strengthen the judiciary and improve the rule of law. The program outlines clear strategies aimed at ensuring the independence of the courts and building the capacity of judges. Furthermore, in September 2002 a new Criminal Code, Criminal Procedure Code and ancillary legislation came into effect. These new laws strengthen the adversarial system and guarantee equal participation of defence counsel and prosecutors. While prosecutors retain a strong oversight role in all aspects of investigation and court decision enforcement, decision-making authority over issues of arrest and detention has been shifted to the Courts.

Mongolia does not currently have separate criminal procedure laws or a separate court system for juveniles, and the General Police Department is the only justice sector agency with specialised juvenile officers. However, the Criminal Code and Criminal Procedure Code include some special procedures and protections that apply to all children under the age of 18 who are suspected or accused of criminal offences. The laws:

- Set a minimum age for criminal responsibility at 16 (14 in certain cases);

- Require the notification and involvement of parents at all stages of proceedings involving juveniles;
- Mandate the involvement of a defence lawyer at all stages of criminal proceedings involving juveniles;
- Provide additional restrictions on the use of pre-trial detention for children, and set a lower maximum length of detention (18 months);
- Limit the duration of interrogations of children;
- Prohibit the use of the death penalty for minors;
- Provide for compulsory measures of an educational nature as an alternative to imprisonment for juveniles;
- Allow for the deferment of prison sentences imposed on juveniles, placing them under the supervision of the police, parents or some other organisation;
- Establish 15 years as the maximum period of imprisonment for juveniles;
- Require the separation of juveniles from adults in all prisons and detention facilities.

While these provisions are significant, they essentially provide juveniles some protections within a system designed for adults, and in many respects do not fully reflect the principles of the Convention on the Rights of the Child.

The CRC requires State parties to establish special laws, procedures, authorities and institutions specifically applicable to children in conflict with the law, and sets out specific guiding principles that the justice system should adhere to when dealing with children. The CRC and UN Guidelines emphasise that, while young people must be held accountable for their actions, this must be done in a manner that gives them an opportunity to turn away from criminal activity and become reintegrated into their communities. Whenever possible, alternatives to the formal court system should be relied upon. Juvenile court trials should be held in an atmosphere of understanding conducive to the child's best interest, and in deciding on the outcome of any matter involving a young offender, juvenile courts should be guided by the principles of proportionality, the best interests of the child, the least possible restriction on the child's liberty and the right of the community to live in safety. Depriving children of their liberty, either while awaiting trial or as a sentence, should be a measure of last resort and should be restricted to the shortest possible period of time.

As will be outlined below, Mongolia's current criminal laws and procedures do not fully reflect the principles of the CRC and UN Guidelines. Overall, the system lacks a clear and coherent juvenile justice philosophy, and there is no statement of guiding principles to establish the different goals and objectives that should guide justice sector officials when dealing with children. The statement of purposes and principles outlined at the beginning of the Criminal Code emphasises protecting society and imposing criminal liability. However, the CRC requires that a very different guiding philosophy be applied to children in conflict with the law - one that emphasises accountability, but is also guided by the best interests of the child and the need to promote their rehabilitation and reintegration into society.

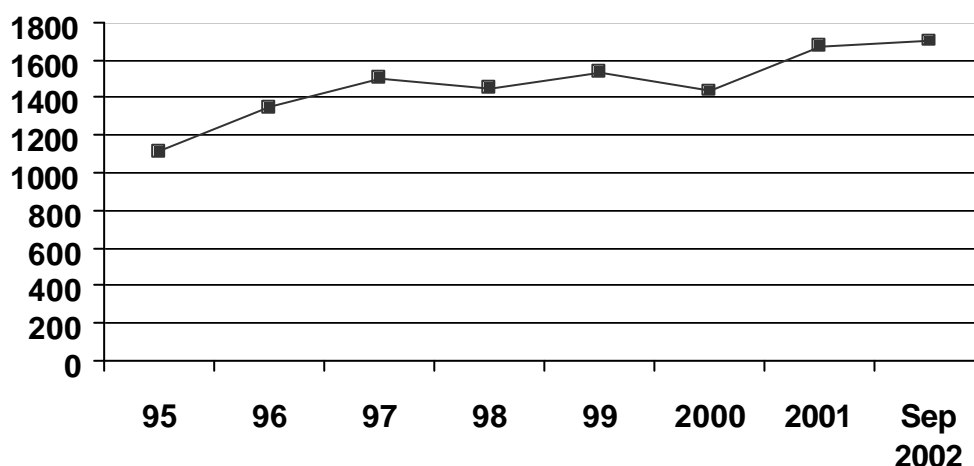
While many reforms can be initiated within the existing legislative framework, the long-term goal should be to enact separate juvenile justice legislation that is clearly and explicitly grounded in the principles of the CRC.

4. NATURE AND EXTENT OF JUVENILE CRIME

History has shown that young people are more vulnerable to coming into conflict with the law during periods of instability, transition and rapid social and economic change. International studies have revealed that young people's propensity to commit crimes is linked to a complex array of socio-economic factors. Poverty, social disadvantage, family dysfunction, abuse, low self-esteem and inappropriate policies for dealing with at-risk youth can contribute to criminal behaviour. On the other hand, socio-economic security, close family relations, attachment to school and constructive use of free time all contribute to the positive socialization of young people.

As Mongolia struggles with the transition to a market economy, it is faced with the difficult combination of increased risk factors for youth (poverty, family dysfunction, domestic violence), and a weakening in the protective factors (family, school, youth clubs) that promote the positive socialization of young people. As a result, the number of crimes committed by children has more than doubled in the last decade, rising 733 recorded juvenile crimes in 1991 to 1676 in 2001.

Number of Crimes Committed by Children 1995- Sept 2002



However, the rise in juvenile crime has been consistent with an overall rise in crime rates in the country. In general, the juvenile crime rate has remained relatively consistent at approximately 9% of total crime.

Under the Criminal Code, crimes are classified according to the social danger and the gravity of punishment to be imposed as minor, less serious, serious or grave. Minor crimes are those punishable by a fine of between five and 50 times the minimum salary, 100 to 250 hours of compulsory work or

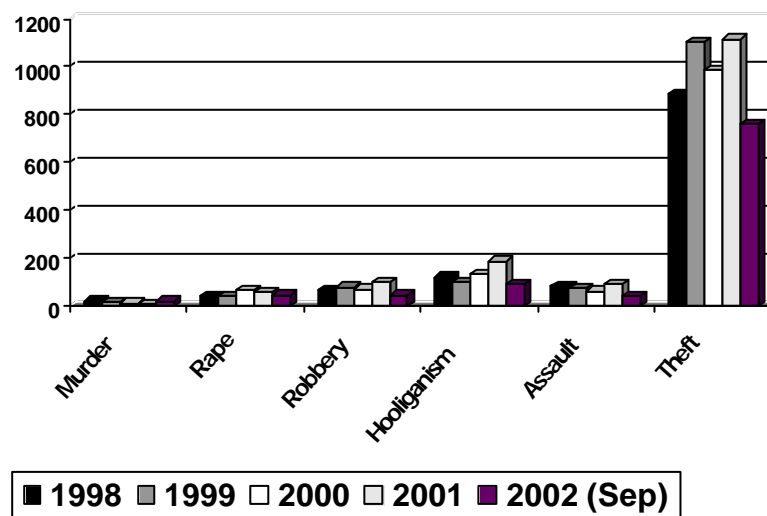
incarceration (solitary confinement) for one to three months. Minor crimes include infliction of minor bodily injury and fraud of a small amount.

Less serious crimes are those punishable by a fine of between 51 to 250 times the minimum salary, 250 to 500 hours of compulsory work, incarceration for three to six months, or imprisonment for up to five years. This includes theft, hooliganism (severe violation of public order), inflicting less severe injuries, inflicting minor injuries in a group and rape. Serious crimes are those punishable by a fine of between 251 to 500 times the minimum salary, or imprisonment for five to 10 years. This includes infliction of severe bodily injury. Grave or very serious crimes are those punishable by imprisonment of 10 to 15 years, or in extraordinary circumstances, 25 years imprisonment or by death penalty, including murder.

In addition, there are specified aggravating factors that impact on how crimes are defined and categorized. In this respect, the standards inherited from the Soviet system are often less than favourable for children. Property-related crimes are categorized relatively harshly as compared to many other countries. In addition, for many offences such as theft and hooliganism, committing the crime in a group or by a recidivist is an aggravating factor that automatically escalates the categorization of the crime. This has a detrimental impact on children, who tend to commit crimes in groups. In the first nine months of 2002, 43% of the total number of crimes committed by children were committed in groups.

The majority of juvenile crimes are property-related, rather than violent. Theft is by far the most common crime committed by young people, followed by hooliganism. In urban areas, this generally takes the form of pick-pocketing and stealing in market areas and train stations. In rural areas, it is mostly livestock theft. In addition, older children reportedly intimidate, steal and extort money from younger school children.

Types of Crime Committed by Juveniles, 1998-Sept 2002



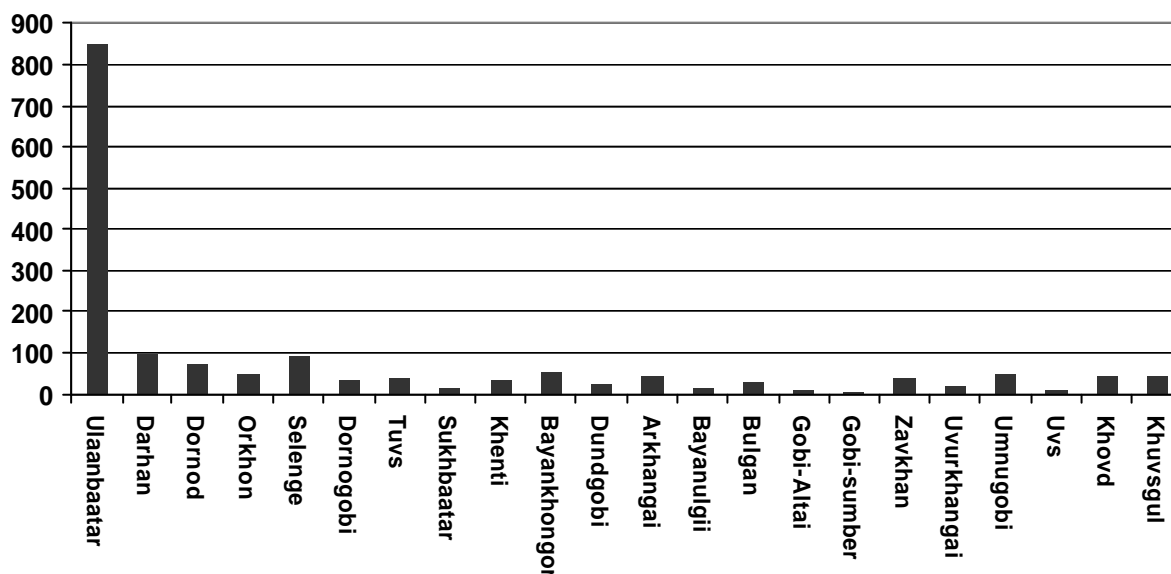
What the children said

The kinds of crimes committed by children are:

- stealing, especially pick-pocketing, snatching bags, stealing from shops and the markets, taking mobile phones and stealing spare car parts
- Taking people's belongings in the street and running away
- Robbery, intimidating school children and stealing from them
- Stealing from drunks
- Drinking and using drugs
- Burglary
- Rape
- Prostitution, trading of girls
- Imitating everything in the movies
- Murder

Juvenile crime rates are highest in urban or more developed areas, and in centers such as Darhan, Erdenet (Orkhon), and Selenge that are along the railway line.

Juvenile Crime by Aimag, 2001



Throughout the world, breaking the law is predominantly a male phenomenon, and Mongolia is no exception. Consistently, between 90 and 95% of juvenile offenders are boys.

In addition to crimes listed in the Criminal Code, children over the age of 16 may also be liable for administrative penalties under the Law on Administrative Liability. Administrative violations include minor thefts, hooliganism and public order offences. Violations can result in a fine (usually imposed against the child's parents) or "apprehension," or detention for 7 to 30 days in a police detention facility.

Child prostitution is dealt with as an administrative infraction, rather than as a criminal offence. Child prostitutes are generally fined and placed under police supervision, though if they continue to re-offend they can be subject to a period of detention under the Law on Administrative Liability. The General Police Department has a database to register known child prostitutes. In 2002, there were 61 registered girl prostitutes in Ulaanbaatar. However, a study on the Perceptions, Trends and Nature of Child Prostitution conducted by Mongolian National University in 2001, with the support of ILO/IPEC, found that between 200-250 girls in Ulaanbaatar were involved in prostitution, 42.5% of whom are 17 to 18 years old, and 57.5% between 13 and 16. The majority were living away from home without supervision and had previously suffered sexual abuse.

Juvenile inspectors also collect detailed statistics on the family circumstances and educational background of children in conflict with the law. Local and national surveys indicate that the majority of juvenile offenders are school drop-outs or have no education at all. For example, a survey conducted in Darhan revealed that 69% of children involved in crime over the last five years were school drop-outs or had no education. Many are orphaned, come from broken families, or have experienced violence, abuse and neglect.

In terms of the causes of juvenile crime, stakeholders generally agreed that the rise in juvenile crime rates was related to poverty, low standard of living, the growing gap between rich and poor, the high level of school-drop-outs, poor parental supervision, lack of good adult role models, violence and abuse at home, and lack of constructive leisure activities for children. It was noted that in many cases, children are stealing to meet their basic needs for food and clothing. In Ulaanbaatar, Darhan and Erdenet, high levels of migration were cited as contributing factors. It was noted that families moving from the countryside to urban centers often have limited resources and cannot afford to pay municipal registration fees so that their children can enter schools. Another factor is the growing number of unsupervised or street children who leave their homes due to parental alcoholism, abuse or abandonment and turn to stealing to survive. Children who are on the street are also at risk of falling under the influence of adults who draw them into criminal activity. In towns along the railway, including Ulaanbaatar, Zunharra, Sukhbaatar, Darhan, Erdenet, Sainshand and Zamin-uud, stakeholders reported high levels of unsupervised children who go from town to town on the railway, stealing to meet their basic needs. In areas close to the border, such as Sukhbaatar and Zamin-uud, it was noted that parents are often away for long periods of time trading and leave their children without proper supervision. In Erdenet, which is highly industrialized, stakeholders advised that many parents work long hours or night shifts and leave their children unattended.

What the children said

- lack of parents' love and care
- poor living standard, poverty and unemployment
- social status, unpleasant or hateful attitudes of others
- bad influences from other people
- family violence
- violence and pressure from adults or older children who demand that children commit crimes or beg for them
- curiosity, naivety
- lack of legal knowledge
- easily influenced by others
- wanting luxury life
- depression, lack of self-confidence
- teachers' and adults bad attitudes towards them, dropping out of school
- wanting to dress well or not worse than others
- having an interest in it
- friendship and jealousy
- discriminatory attitudes towards them
- wanting to become a big boss
- making wrong steps
- police send a letter to the school and call for us several times, therefore we feel ashamed in front of schoolmates and teachers and leave school for many days.
That makes us drop out and commit crimes

5. JUVENILE CRIME PREVENTION

International studies have shown that adolescence is a time when young people experiment, take risks, and struggle to define their identity and develop a sense of belonging in the community. For many, this involves challenging authority, experimenting with anti-conformist behaviours and involvement in minor criminal activity. Research has revealed that most youth commit at least one crime during their adolescence, the vast majority of which are minor, property-related offences such as theft. However, most young people mature out of this behaviour and grow up to be respectable citizens. Studies have consistently shown that between 75 to 80% of young people who commit crimes do not re-offend, and that a small minority of children (5-6%) are responsible for the majority of juvenile crimes.

The propensity to offend is linked to a complex array of socio-economic factors. International studies have revealed that poverty, social disadvantage, family dysfunction, abuse, low self-esteem and inappropriate policies for dealing with at-risk youth can contribute to criminal behaviour. On the other hand, socio-economic security, close family relations, attachment to school and constructive use of free time all contribute to the positive socialization of young people.

There is therefore a growing international consensus that addressing the root causes of youth crime is essential in reducing juvenile crime rates and achieving safer communities. Because youth crime is linked to a variety of

socio-economic factors, prevention cannot be achieved through police action or isolated law and justice programs, and must be part of a country's overall development plan. While there are no easy solutions that will completely eliminate juvenile crime, a number of lessons have been learned by countries around the world as they have grappled with the issue of juvenile crime over the last century. The strategies and approaches that have been found to be most effective at reducing juvenile crimes rates and preventing recidivism are reflected in the UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines).

The Riyadh Guidelines emphasize the need for proactive, child-centered approaches to crime prevention that are aimed at addressing the underlying social causes of youth crime. They state that successful prevention of juvenile crime requires efforts on the part of the entire society to ensure the harmonious development of adolescents, and the focus of any preventive program should be on supporting the well-being of young people from their early childhood. The best juvenile crime prevention strategy is one that is linked to broader measures to promote children's rights, to foster community development, and to address poverty and marginalization. This requires investment in education, vocational training, and job creation for young people, and requires co-operation between all government and non-government agencies, including social welfare, health, education, labour and employment, justice, NGOs, youth groups, community groups and the private sector.

The Riyadh Guidelines recommend that juvenile crime prevention plans be instituted at every level of government. Preventative action should include an in-depth analysis of the problem, well-defined responsibilities for various agencies, co-ordination between governmental and non-governmental agencies, community involvement through a wide range of services and programs, cross-sectional co-operation between different governmental and non-governmental agencies, and youth participation in the development of all crime prevention policies. Programs to prevent juvenile crime should be developed on the basis of reliable, scientific research findings, and should be periodically monitored, evaluated and adjusted. Emphasis should be placed on preventative policies that facilitate successful socialisation and integration of all children through the family, community, peer groups, school, vocational training and employment.

However, the Riyadh Guidelines caution that crime prevention programs should take into account the fact that a certain level of misconduct is a normal part of the maturation process, and that heavy-handed, punitive responses will only push children further into crime. Whether youth misconduct escalates into more serious criminal behaviour is often influenced by how juveniles are dealt with early on in their involvement with the justice system. The Riyadh Guidelines note that the predominant opinion of experts is that labelling a young person as "deviant," "delinquent" or "criminal" often contributes to the development of undesirable behaviour by young people. Studies on juvenile behaviour have shown that young people who suffer abuse at the hands of police, who are labelled as criminals, or who are subjected to imprisonment

are more likely to feel alienated and hostile towards society, and to commit further crimes. Attempts at shaming, repression or social control increase children's sense of isolation and marginalization, causing them to respond by rejecting or acting out against society. This effect is exacerbated in countries in transition, where rapid social and economic change and the breakdown in traditional family, school and State support structures have left young people at higher risk of social exclusion and alienation.

International experience has shown that, in order to prevent the stigmatisation and criminalization of young people, children who are identified as being at risk should be provided necessary and appropriate social welfare services, rather than being subjected to police monitoring and control. To avoid negative labelling, formal contact between non-delinquent children (those who may be at risk, but have not been charged with a criminal offence) and the police should be limited, and the provision of appropriate support services should be the responsibility of social welfare organisations, not the justice sector.

5.1 Legislative Provisions

Mongolia introduced a new Law on Crime Prevention in 1997. The stated purpose of the law is to organise crime prevention activities and to regulate the roles and responsibilities of the state, individuals, businesses, institutions and authorities. Under the law, crime prevention activities are based on the basic principles of respect for the law and for basic human rights, and on community approaches and community participation in crime prevention activities (Article 4). The main strategies are to identify the conditions leading to crime through data collection and analysis, to plan and implement social, economic and legal measures to eradicate the causes of crime, and to impose supervision over persons released from prison in order to prevent them from re-offending (Article 5). Crime prevention activities are divided into general measures (economic, political, legal, moral and disciplinary activities aimed at eradicating conditions leading to crime); specific measures (activities directed at eradicating specific types of crimes); and individual measures (activities aimed at preventing a specific individual from committing a crime or re-offending) (Article 6).

The Law invests the Ministry of Justice and Home Affairs with primary responsibility for crime prevention and calls for the creation of national and sub-national Crime Prevention Councils and crime prevention programs (Article 7 and 16). Local government authorities are required to develop crime prevention plans and activities in their own jurisdictions (Article 7). In implementing measures to prevent crime, the law states that local authorities should collaborate with justice officials and non-governmental organisations, and should involve citizens by appointing citizens patrols, watchmen and community inspectors (Article 12).

The Law on Crime Prevention also states that 40% of the revenue collected from the enforcement of court decisions and from traffic fines should be allocated for crime prevention activities (Article 19). This funding may only be used for: financing training and publicity activities on crime prevention

organised by law enforcement agencies and NGOs; offering incentives to patrols, guards and community inspectors; awarding bonus to citizens, business and organisations who actively participate in crime prevention activities; and reimbursing citizens who suffered material loss while participating in crime prevention activities.

In December 1999, a five-year National Programme on the Prevention of Juvenile Crime and Crimes Against Children was introduced. The stated objectives of the programme are to study and analyse the causes of juvenile crime, to organize general, specific and individual measures for the prevention of juvenile crime at all levels, to identify those who draw children into crime, and to mobilize the resources and attention of government, NGOs, businesses, citizens, families and parents to protect the interest of children and prevent crime. The main strategies identified for reducing juvenile crime include creating conditions for children to grow healthily, gain education and have a proper upbringing; improving collaboration of governmental, NGO, educational, health and social welfare institutions; organising crime prevention education and awareness activities directed at children; increasing the responsibility of parents; reducing poverty and unemployment; and identifying and addressing the causes of school drop-outs and street children.

The Programme calls for the creation of a National Council on the Prevention of Juvenile Crime and Crimes Against Children, as well as sub-councils at the aimag, soum and district level. These sub-councils are directed to develop their own local sub-programs on the prevention of juvenile crime. In addition, the national program defines the responsibilities of different government and non-governmental organisations in preventing juvenile crime. The Ministry of Science, Education and Culture is directed to conduct studies and activities on juvenile crime at all schools, to take measures to reduce school drop-outs, to organise school trainings on crime prevention and to encourage peer support to children involved in crimes. The Ministry of Social Welfare is responsible for providing social welfare measures to children in difficult circumstances. The police are required to study the causes of juvenile crime, to establish an integrated network on crime prevention, to conduct research on unsupervised children, to improve measures to identify street children and distribute them to appropriate places, to take measures to reduce the most common types of juvenile crime, and to establish adolescent police units. Aimag, soum and district governors are directed to plan and implement integrated measures to eliminate juvenile crime and to organise voluntary citizens patrol units. The Programme states that 5% of the resources allocated for crime prevention under the Law on Crime Prevention should be allocated for juvenile crime prevention activities.

Specific laws and rules have also been developed to reduce juvenile crime and to permit police to exert control and supervision over street children and children identified as being at risk of criminal behaviour. The Law on the Temporary Detention of Unsupervised Children allows the police to apprehend and detain unsupervised children for up to 14 days if their address, parents and guardians are unknown, and there is a potential threat to their life or health due to lack of parental supervision. Children who are

apprehended may be transferred to temporary detention shelters, which must provide supervision and security. In addition, decrees issued by the Ministry of Justice and the General Police Department give the police the authority to impose supervision over street children and children who have been identified as being at risk of delinquency.

Mongolia's general criminal laws also place emphasis on crime prevention. The Criminal Procedure Code states that, in the execution of any inquiry or investigation, the police, prosecutors and courts must identify the underlying causes of the crime and take measures to eliminate them (Article 22). The Law on Prosecutors gives prosecutors the power to issue a notice requiring individuals or organisations to eliminate the causes or circumstances giving rise to crime. For juvenile cases, this generally involves sending notices to schools advising them of what factors were found to have led a particular juvenile to commit a crime, and ordering them to eliminate those factors and prevent other children from committing similar crimes. Similarly, the Law on Police gives police the authority to demand that citizens, businesses, and other organizations eliminate causes and conditions affecting crime.

5.2 *Current Practices*

A National Council has been established to monitor and coordinate the implementation of the National Programme on the Prevention of Juvenile Crime and Crimes Against Children. It is headed by the Chief of the Government Secretariat and includes representatives from the Ministry of Justice and Home Affairs, General Police Department, Ministry of Social Welfare and Labour, Ministry of Science, Education and Culture, Prosecutor General's Office, Supreme Court, National Children's Center, Mongolian Youth Federation and other children's organisations. The Council meets twice per year and reviews and approves annual plans of action. The Information, Monitoring and Assessment Department of the Ministry of Justice is responsible for monitoring and conducting assessments of programme implementation at the national and sub-national level.

Corresponding juvenile crime prevention sub-councils have been established in all 21 aimags and in each district of Ulaanbaatar. They are headed by the local governor and include representatives from the local justice sector, education, health, social welfare and children's organisations. Most of the aimags have conducted local juvenile crime surveys to identify the underlying causes of juvenile crime and have developed their own juvenile crime prevention strategies. In most areas, officials from the local governor's office, police, prosecutor, judges, social workers, school officials, local children's centers and NGOs conduct integrated measures aimed at preventing juvenile crime.

Juvenile police inspectors have been appointed in each aimag and in every district of Ulaanbaatar. They are mainly responsible for juvenile crime prevention activities, but also conduct inquiries into minor and less serious juvenile crimes. There are a total of 41 juvenile inspectors in the nine districts of Ulaanbaatar, three in Darkhan-Uul, three in Orhon, four in Selenge, and one in each of the remaining aimags. In addition, each district or soum

governor's office has a children's center and a person in charge of children and youth issues, and there are social workers in each school and each khoroo or bagh. However, the social workers generally have no specific training or qualifications in social work and are responsible for a wide range of administrative duties unrelated to social welfare issues.

Although each aimag and district has its own local juvenile crime prevention strategy, there are many common activities carried out throughout the country. Special police operations are conducted to target common juvenile crimes such as theft and hooliganism, and to identify unsupervised children, child prostitutes, and children who drink. With the support of local social workers and children's organizations, the police conduct inspections of bars and other drinking establishments, patrol the markets, and check manholes, train stations and apartment blocks for stray children. Measures are also taken to control drinking and hooliganism around school graduation time. Where factors contributing to juvenile crime are identified, directives are issued to schools, bars and individuals instructing them to eliminate the cause.

Another main juvenile crime prevention strategy is to conduct legal awareness and education activities in the schools and through the mass media. Multi-media campaigns have been launched to raise awareness about the law, to issue public warnings about the consequences of crime, and to broadcast notices of specific anti-crime campaigns or activities. In addition, juvenile inspectors regularly visit schools and give law awareness lectures. In the third quarter of 2002 alone, presentations on the law were delivered 411 times by Ulaanbaatar juvenile inspectors, and 352 times by juvenile inspectors in other aimags.

Each juvenile inspector is responsible for between five and nine schools in his or her jurisdiction. They visit the schools approximately once per fortnight to give talks on topics such as the criminal code, crime prevention, alcoholism and traffic rules. The juvenile inspectors explain the laws in language the children can understand and warn them about the consequences of committing crimes. Many schools have established special law awareness classrooms or corners, and regular competitions are held to test children on their knowledge of the law.

During these school visits, some juvenile inspectors also conduct searches of students to check for knives, drugs or other illegal items. In some cases, they ask children to anonymously write down the names of classmates who have committed crimes or who they think may be delinquents. They also regularly collaborate with school social workers to identify children at risk of committing crimes.

To support police in their school-based crime prevention activities, over 135 Adolescent Police Groups have been set up in secondary schools. Darhan has also established young police clubs in local kindergartens (6-7 year olds). The main role of the Adolescent Police is to identify peers who have or are at risk of committing crimes. They are given badges and identification cards, and

assist the police in conducting school and community patrols and in searching fellow students for weapons or other illegal items. When a child is identified as being at risk, the Adolescent Police provide advice or counselling to the child and report him or her to the juvenile inspector.

All juvenile inspectors keep detailed files on children in their jurisdiction who are unsupervised or who are considered to be at risk of committing crimes. Children “at risk” are those who have not necessarily committed criminal offences, but who miss classes or have dropped out of school, who wander the streets, who have committed minor administrative offences, who are known to associate with groups or gangs, who have been identified as prostitutes, or who drink alcohol and have come to the police intoxication section. They are reported to the police by school social workers, Adolescent Police, local governors and members of the public, and are also identified through regular police patrols of the markets and bars. The police also conduct regular nightly sweeps to locate and identify street children living in manholes, train stations and apartment building hallways.

When a child is identified as being unsupervised or at risk, he or she is interviewed by a juvenile inspector and a file is opened. A standard form or card is used to record the child’s name, nickname, parents’ names, family status, level of schooling, reason for dropping out, reasons for being on the street, how they support themselves (steal, beg, collect bottles, prostitution), places they spend the night, whether they are victims of family violence, health status, use of alcohol, and their future aims. In some areas, the children are photographed and fingerprinted to facilitate criminal investigations should they commit crimes in the future.

Children who are registered as being at risk or unsupervised are placed under the supervision of the juvenile inspector for a one-year period. The local governor is notified, as is the child’s school (if they are still attending). The juvenile inspector also checks on the child’s home situation and warns his or her parents to exercise better supervision over the child. They meet with the child and his or her parents once per month to provide them with counselling on the law. In 2001, for example, individual counselling on the law was delivered to 9495 at-risk children by aimag juvenile inspectors.

In some cases, the juvenile inspectors help children to get necessary registration and documentation to enrol in school or non-formal education programs. Some children are referred to NGOs who provide food, clothing and support services. On occasion, juvenile inspectors conduct group legal awareness activities for all children under their supervision, in conjunction with local children’s centers, NGOs, lawyers, and justice sector officials.

If the child is on the street, attempts are made to locate parents and send the child home. Children who are orphaned, abandoned or whose parents cannot be located are referred to a government or NGO-run care center. If there is no care center in the area, children are referred to the local governor to arrange appropriate supervision.

In Ulaanbaatar, an Address and Identification Center was established in 1996 to hold and identify children detained under the Law on the Temporary Detention of Homeless Children. The Center, which has the capacity to hold 50 children, is under the jurisdiction of the Capital City Police Department and is staffed 24-hours per day by uniformed police officers. The Center staff conduct checks of manholes and apartment buildings two to three times per week (nightly when weather conditions are bad) to pick up children living on the street. When a child arrives, a file is opened with his or her personal details, photograph and fingerprints. They can be held at the center for up to 14 days for the purpose of confirming their identify and locating their parents. If parents are located, the child is returned home. If not, they are returned to the governor of the district they came from, or are transferred to either the government-run Labour Education and Training Center (LET) or to an NGO-run care center. World Vision has provided a social worker to the Address and Identification Center to assist with family reunification.

In addition, the Address and Identification Center identifies those of the children that they believe are at risk of crime and sends their photograph, fingerprints and other information to the police. The Center advised that approximately 20% of the children they see are categorized as being at risk. Within the last 3 years, they have referred 266 children to the criminal police department.

In addition to the government-run LET Center, there are approximately 30 NGO centers that provide care to unsupervised children in Ulaanbaatar, Darhan, Erdenet, Selenge and Dornod. The care centers provide much needed shelter and support for children without effective parental care. Some have had reasonable success at reintegrating children with their families by providing ongoing pre- and post-reunification support, but without adequate State social welfare services, this remains a challenge. Others are effectively operating as orphanages, with plans to keep the children in their care until they turn 18.

The care centers are largely staffed by educators who have limited training in dealing with troubled adolescents. Few have been able to cope effectively with a growing group of “difficult” street children – those who have been on the street for some time, who have come to distrust adults due to experiences of abuse and neglect, and who repeatedly run away from the care centers. It is estimated that there are 30 to 50 such children who resist forced institutionalisation and return to the streets. To deal with the problem, plans are being developed by the Ministry of Social Welfare and Labour and the General Police Department to build a military school in Ulaanbaatar. The school will be used to hold unsupervised children under police security until they turn 18. Military personnel will be employed to provide education, vocational training and basic military training, and after their release the children will be assigned to one of the armed forces (military, police, border guards, fire brigade). A similar school has been proposed for Darhan, where an American has established a “pilot” military shelter to which five boys from the Address and identification Center have been transferred.

5.3 *Assessment and Recommendations*

As noted above, adolescence is a time when young people struggle to define their identity, and for many this involves challenging authority and involvement in minor criminal activity. The main risk factors that increase the likelihood of juvenile offending tend to be fairly consistent throughout the world: abuse or neglect at home; poor parental supervision; divorce or family breakdown; low-income status or belonging to a marginalized or disadvantaged group; lack of education or employment opportunities; alcohol or drug problems; lack of sense of connectedness or belonging to family or school; associating with delinquent peers. As Mongolia struggles with the transition to a market economy, it is faced with the difficult combination of increased risk factors for youth, and a weakening in the protective factors that promote the positive socialization of young people.

International experience has shown that the most effective crime prevention programmes are those based on police partnerships with community authorities and citizens to effectively target and reduce known risk factors. Developing and implementing an effective juvenile crime prevention programme requires: 1) establishment of coordinating agencies at the national and sub-national level that bring together representatives from law enforcement, education, health, social services, and community groups to collaborate on efforts to tackle the causes of local crime; 2) research and local assessments to identify risk factors that contribute to juvenile crime; 3) assessment of community needs and resources to address those risk factors; 4) development of specific programs and strategies to address risk factors by enhancing protective factors; and 5) monitoring and evaluating the implementation and impact of programs and strategies. At each stage of the process, active participation should be encouraged from all relevant agencies, NGOs, community members, and children.

In recent years, Mongolia has taken significant steps towards juvenile crime prevention. National and sub-national councils have been established to develop and coordinate integrated crime prevention programmes, and research has been conducted into the risk factors contributing to juvenile crime. Local plans of action have been developed and programmes implemented with the cooperation of local governors, police, school officials, social workers, children's organisations and NGOs. Many local governors and juvenile police inspectors have demonstrated considerable commitment to crime prevention activities, and media and business organisations have been mobilised to support local initiatives.

However, a number of stakeholders have questioned the effectiveness of current crime prevention strategies, and noted that monitoring and evaluating the impact of these measures needs to be more firmly based on in-depth research, clear indicators and sound analysis. Many expressed concern that current programs do not effectively address the underlying causes of juvenile crime – although family breakdown, alcoholism, domestic violence, school drop-outs, and poor parental supervision have all been identified as risk factors that push children out onto the streets and into crime, most crime prevention activities do not adequately address these issues.

This is partly due to the fact that crime prevention and child protection are seen largely as a police issues, and the level of support from the social welfare sector is limited in many areas. Where social workers, NGOs and school officials do cooperate in crime prevention initiatives, their involvement tends to be limited to participation in traditional policing activities such as patrols or legal awareness lectures. As noted above, social work was an under-developed field during the socialist period, and although there is a network of social workers throughout the country, most do not have any professional qualifications. The lack of a clear role or mandate for social workers in the area of child protection has meant that the problem of unsupervised and at-risk children has been delegated to the police. Although many juvenile inspectors make efforts to link children at risk to appropriate government and NGO-run support services, their primary role is law enforcement and, as one inspector pointed out, they cannot solve all children's social problems. Many juvenile inspectors identified the lack of sustained support from local social workers as a main obstacle to their work.

A related problem is that the fundamental approach to juvenile crime prevention is based on individual control and surveillance, rather than social development. Social development strategies achieve crime reduction by targeting risk factors that threaten a child's healthy development and place them at risk of marginalisation, such as poor parenting, family violence, and school drop-outs. This is done through programs and services to promote inclusion of young people into mainstream society and to counteract factors that marginalize children from disadvantaged families. International research has shown that the most effective crime prevention strategies are those that promote children's development from an early age through services such as home visits by health or social workers to improve parenting skills, support and incentives for children to stay in school, volunteer mentors and tutors for marginalized or disadvantaged youth, school-based programs to reduce bullying and violence, training and support to help disadvantaged youth find jobs, and targeted youth clubs programmes in high-crime areas. These strategies must be part of a country's overall child and youth development plan, and at the primary level would mean investment and commitment to ensuring full implementation of the National Programme of Action for Children. By their nature, many of these strategies are outside the mandate of the police and require coordinated action from health, education, social welfare and justice-sector officials, as well as parents, community groups, NGOs and children's organisations.

By contrast, individual control strategies focus on identifying and tracking at-risk children and subjecting them to police monitoring and supervision. The emphasis is on deterring children from committing crimes through warnings or threats about possible sanctions, and on singling out potentially deviant children for ongoing surveillance. These strategies are the most costly form of crime prevention in that they rely heavily on police resources and require significant manpower. They have never proved to be particularly effective in preventing juvenile crime over the long term because they only target delinquent behaviour once it has arisen, and do not address the underlying

social problems that placed the child at risk. For example, monthly meetings between police and at-risk youth cannot provide sufficient levels of support and guidance to help them address their family or behavioural problems. Issuing directives to parents advising them to exercise better supervision over their child will not be effective if there are no appropriate services available to help them improve their parenting skills.

In addition, individual control strategies can exacerbate the problem by further stigmatising or marginalizing youth and labelling them as a criminal. As the Riyadh Guidelines note, research has shown that labelling a child as “delinquent” or “criminal” can have very detrimental effects, and attempts at shaming or social control increase children’s sense of isolation and marginalization, causing them to respond by rejecting or acting out against society. For example, having to report to the police station and being fingerprinted and photographed imposes a negative, criminal identity on children and increases their sense of deviancy. Being identified by teachers or peers as a possible criminal can cause an already marginalized or disadvantaged child to feel ashamed and drop out of school, placing them at even greater risk of offending.

It is therefore recommended that a number of current crime prevention activities be reassessed in light of the Riyadh Guidelines and recommendations of the UN Congresses on the Prevention of Crime and Treatment of Offenders. As the wealth of international research has shown, crime prevention is most effectively achieved through measures that address the needs of at-risk youth in a positive, constructive, and non-authoritarian manner, while being sensitive to the issue of stigmatisation and labelling. This will require a shift away from police supervision and control strategies towards a more child-centered approach to crime prevention. As will be outlined below, there are many existing programs, services and crime prevention initiatives that could be used more effectively to improve family, school and community support services for disadvantaged and at-risk children.

What the children said

- make regular tv programs to give children legal knowledge
- have people who have committed crimes in the past and have returned to normal life give awareness talks based on their real life experience
- understand children’s psychology well
- make parents and teachers treat children as children and love them and take care of them
- give children a pleasant family environment and good living conditions
- provide children with school and let them learn subjects that interest them
- do not let children drop out of school. Keep them amongst their friends and let them be influenced by good children
- teachers and social workers should have a close relationship with juveniles and become their friend and supporter
- improve the living standards in the country and take care of children
- adults should be good role models for children
- do not discriminate against children

a. Strengthening Families

Since the family is the primary unit responsible for the socialization of children, the Riyadh Guidelines state that efforts to preserve the integrity of the family should be pursued. Programs and services should be available to provide sustained support services for families at risk, to promote positive parent-child relationships, and to sensitize parents about the problems of young people. Special attention should be given to children of families affected by problems brought about by rapid and uneven social and economic change. For children who lack a stable and settled family environment, alternative placements, including foster care and adoption, should be made available.

In most countries, the main responsibility for coordinating support services for children and families at risk lies with local social workers. Interventions can begin when a child is in early infancy, for example by organising home visits by a health worker to provide counselling and parenting support for young mothers or families living in difficult circumstances. In later years, children who are identified by school authorities or police as demonstrating problem behaviours, who have dropped out of school or have poor school attendance, or who are exposed to social risk factors such as poverty, abuse or family dysfunction, should be referred to a school or community social worker for assessment and intervention. The social worker conducts an assessment of the child's needs, prepares an individualized plan of care for the child and his or her family, and coordinates appropriate support services. This may include interventions such as assigning a community volunteer to act as mentor to the child, referring the child to an NGO-run counselling or life skills course, assisting the child to reintegrate into school or to get necessary tutoring, or referring parents to counselling programs, parent support groups or income-generation and job training programs.

It is recommended that this model be adopted and that responsibility for supervising and providing support services to children at risk be shifted from the police to local social workers. Police are ill-equipped to perform the functions of a social worker, and the Crime Prevention Division has made repeated calls for greater involvement of social workers in child protection issues. Children who are at high risk of offending due to lack of appropriate parental care require sustained and intensive interventions, and this cannot be achieved through police supervision. The current practice of registering at-risk children with the police and meeting with them once per month to conduct law awareness activities does not address the underlying problems that are contributing to the child's behaviour, and can exacerbate the problem by further stigmatizing a child who is already experiencing neglect or marginalization. Although some juvenile inspectors have developed good cooperation with local social workers and NGOs, most are not making effective use of existing NGO and government support services. In most areas, social workers' involvement with at-risk children is limited to participation in law awareness activities and integrated measures to sweep markets and manholes for stray children. They should instead be playing the central role in providing support services to at-risk children and their families,

in partnership with the police, children's centers, NGOs, schools and local governors.

Mongolia's social welfare services system is currently quite weak, but the Ministry of Social Welfare and Labour, with the support of ADB, is developing a long-term reform strategy which includes the establishment of soum-level social welfare centers and extensive social worker training. In the short-term, there are many opportunities to improve the level of support services provided to disadvantaged or troubled families by making more effective use of existing resources. While the qualifications of local social workers vary, many have received in-service training with the support of organizations such as UNICEF, Save the Children-UK, and World Vision. In addition, there are many government and NGO-run programs and services that could provide support to at-risk children and their families. For example, family and child development centers have been established in many districts of Ulaanbaatar, as well as in Darhan, Dornod, Erdenet and Selenge. They provide a variety of counselling and support services to families, as well as tutoring and leisure activities for children. The Youth Policy Development Center operates throughout the country and links youth to job opportunities, education, vocational training and psychological counselling. In Darhan, the Danish Mongolian Center provides counselling and income-generation support to families with children involved in crime and divorced or alcohol addicted parents. World Vision and the Verbist Center both have programs that provide tutoring and other support to prevent children from vulnerable families from dropping out of school. In addition, World Vision and ADRA provide non-formal education and intensive tutoring programs for school drop-outs and help facilitate children's reintegration into mainstream education through partnership building with school social workers, teachers and parents.

Ensuring more systematic and effective use of these resources requires district social workers to take the lead role in coordinating social welfare services for children at risk. At minimum, social workers should be responsible for conducting surveys of available resources and programs in their community, conducting needs assessments and developing plans of care for children identified as being at risk, referring the children and their families to available programs in the community, and monitoring their progress. This will require effective partnership building between local governors, social workers, children's organizations, schools, NGOs and justice sector officials. In addition, guidelines, procedures and training on assessment, referral and case management should be provided to social workers so that they are better equipped to assess a child's needs and ensure that appropriate support services are provided.

New strategies are also needed to provide alternative care and effective support services for street children. Currently, State practices are based on police detention, registration and tracking of unsupervised children. The Crime Prevention Division noted in its 2001 report that social protection measures for unsupervised children are limited to police registration, after which the children are sent to care centers or back to their homes with no follow-up services. Fines or directives requiring parents to exercise better supervision

over their children are often issued, but the underlying problems of poverty, violence or alcoholism, though identified, are not addressed. Children returned to these same conditions merely escape back to the streets. Some are effectively integrated into government or NGO run care centers, but many children who have been on the streets for a long period of time have come to distrust adults and resist institutionalisation. These children find it difficult to integrate with the care centers' "settled" children, many of whom have been in the centers for several years. In some cases, care center staff have not been sufficiently trained to address the needs of troubled adolescents, and policies such as placing older or settled children in charge of others exposes children to abuse by replicating the "boss" system that is prevalent on the streets, and pushes children out of shelters. Because existing strategies have proven inadequate to address the needs of these "difficult" street children, there is growing support for the idea of building a military school to forcibly detain and rehabilitate street children.

While the concern and frustration over the growing street children problem is understandable, strategies based on suppression and forced institutionalisation are not the answer. International experience has shown that institutionalisation is the most expensive and least effective means of addressing the needs of street children. Furthermore, detaining children who have not been convicted of a crime in a secure environment against their will violates their rights under the CRC and the Mongolian Constitution. The CRC requires State parties to develop alternative, family-based care for children who are without adequate parental care. Deprivation of liberty, which is defined as placement in any kind of penal, correctional, educational or protective establishment from which the child cannot leave at will, may only be imposed by a competent judicial authority on children who have violated the penal law, and even then should only be used as a measure of last resort.

While there are no easy solutions to the problem of street children, many countries have developed effective out-reach and reintegration programs to support these children to become productive members of society. Experience has shown that comprehensive and sustained interventions by social welfare agencies, rather than the police, are most effective. For many street youth, the process of re-socialisation is a long one and cannot be achieved by force. Strategies that aim to build their trust, that help them to develop agreed plans for family reunification, and that provide them with skills for independent living and a lawful means of income generation have proven most successful.

It is therefore recommended that a national forum on street children be held to discuss alternative models and best practice from other countries, and to develop a new national strategy for addressing the needs of unsupervised children. Research on international best practices should be conducted in advance, and consideration should be given to inviting international speakers from municipalities that have developed innovative strategies for dealing with similar problems. In addition, focus group discussions should be held with unsupervised children in and out of shelter care to elicit their views and opinions.

b. Child-friendly schools

Apart from the family, schools are recognized as being one of the most important protective environments for children's development. The Riyadh Guidelines state that education should be promoted as a supportive framework for safeguarding the personal development of young people, particularly for those who are at risk. Schools should devote particular attention to teaching respect for the social values of the country, promoting activities that foster a sense of identity and belonging to the school community, providing positive emotional support, and avoiding psychological maltreatment and harsh disciplinary measures, particularly corporal punishment. Young people should be involved as active participants, rather than mere subjects of the educational process, and should have access to extracurricular activities of interest to them. In addition, schools should extend particular care and attention to young people from underprivileged, disadvantaged or marginalized groups and should have special programs for drop outs.

Improving access to and quality of education should be seen as a key part of Mongolia's juvenile crime prevention strategy. Schools have often been described as unhealthy and unwelcoming environments, and both the Adolescent Needs Assessment and the Study on Mongolian Peri-urban Areas conducted with the support of UNICEF revealed that authoritarian teaching practices, discrimination against migrant or disadvantaged children, poor physical conditions, and teacher abuse and alcoholism all impact children's learning experience. Addressing these issues through strategies aimed at making schools more inclusive, child-friendly and supportive environments can contribute to the reduction in juvenile crime rates by ensuring the healthy development and socialization of young people.

One issue that should be addressed as a matter of priority is the existing barriers to school entry, particularly for migrant children. The Study on Peri-Urban Areas in Mongolia revealed that children of migrant families often face difficulties in re-enrolling in school because they do not have proper school transfer or registration documents. Currently, local governors in Ulaanbaatar and other centers levy a per person fee for migrant families to obtain civil register. Many families cannot afford to pay this fee, and as a result do not have access to basic social services, including education. This policy should be reassessed in light of the clear, demonstrated link between non-attendance at school and juvenile crime. Administrative and financial barriers that bar or delay school re-entry for migrant and disadvantaged children not only deny them their right to education, but also place these children at greater risk of engaging in criminal activity.

Schools can also play an important part in juvenile crime prevention activities by developing comprehensive strategies to reduce school drop-outs and to support the reintegration of children who have left school. Significant progress has been made in recent years in reducing the drop-out rate, and continued efforts to improve school retention should be seen as an essential part of the juvenile crime prevention strategy. Non-formal education programmes for school drop-outs should be strengthened, and those who wish to be

reintegrated into general education programs should be assisted to do so. As noted above, there are many existing NGO-run programs that support children to stay in school, and that help those who have dropped out to reintegrate. Rather than reporting children with problem behaviours or poor school attendance to the police, school social workers should be responsible for referring children at risk of dropping out to these support programs.

In addition, schools should be encouraged to promote child participation and to foster environments that promote children's sense of responsibility and self esteem. One strategy that has proven successful at making schools more inclusive and child-friendly is the establishment of student-run Adolescent Development Centers (ADCs). With the support of UNICEF, ADCs have been established in 17 schools in Arkhangai and Khuvsgul aimags and in the Songinokhairhan, Chingeltei and Bayanzurkh districts of Ulaanbaatar. The ADCs are run by students, based on the principle that children should be empowered to do things for themselves and have an impact on their own environment. They are open after school hours and are accessible to all students, providing information about health, the environment, children's rights, activities of the student council and various youth initiated clubs and activities. Participation in these types of student-run initiatives helps children to develop a sense of citizenship, responsibility, self-reliance and self-confidence. In schools with ADC pilots, both teachers and students reported that the school is much cleaner since the centers were established because students have a new sense of pride and ownership in their schools and no longer write on the walls, etc. Also, in almost every pilot school, there were several adolescents who returned to school as result of initiatives taken by their peers and former classmates.

Schools can also promote respect for social values by integrating courses in law and civics into the existing school curriculum. The Ministry of Science, Education and Culture, with the support of Mongolian Foundation for Open Society (Soros Foundation), has recently developed a new law curriculum that will be incorporated into the general education curriculum throughout the country. The course has modules and textbooks for all grade levels, and will provide students with practical, participatory education about law, democracy and human rights. The objective is to promote personal development and a sense of citizens' responsibility, as well as to provide practical knowledge of the law and individual rights and responsibilities.

In light of this new program, the need for continued law awareness activities conducted by juvenile inspectors should be reassessed. Currently, a significant amount of juvenile inspectors' time is occupied by school-based law lectures, legal competitions and other awareness activities. This practice is based on the theory that teaching children about criminal law and warning them of the consequences of offending will deter them from criminal activity. However, some stakeholders questioned the effectiveness of this approach, noting that it is not lack of legal knowledge that is causing children to commit crimes. Indeed, it was clear from the focus group discussions that police law awareness activities with at-risk children have merely taught many of them to change their tactics to avoid getting caught or to reduce their criminal liability.

For example, it was noted that experienced children no longer commit crimes in groups because they know the penalty will be higher. Of even more concern is the fact that older children are now using younger ones to commit crimes, since it is now widely known that children under the age of 14 cannot be held criminally responsible.

Research on deterrence and adolescent behavioural theory has shown that knowledge of the law and possible penalties has little impact on reducing juvenile offending. Adolescents are generally prone to risk-taking, display lack of foresight and immature judgement, and generally do not think about the consequences of their actions. Therefore, activities aimed at improving children's legal knowledge or scaring them with warnings of potential penalties will not necessarily have any impact on their behaviour. Morality and responsible decision-making cannot be taught by lecturing, but are best addressed through participatory, experiential programs that promote children's problem-solving and decision-making skills.

It is therefore recommended that the juvenile inspector's regular school-based law awareness activities be discontinued. Frequent school lecturing uses up a significant amount of juvenile inspectors' limited time, and reducing emphasis on this activity could free up resources to provide more intensive interventions for high risk juveniles. Law awareness should be the primary responsibility of schools, and can be more effectively accomplished through the introduction of the new school law curriculum developed with the support of Soros. Juvenile inspectors should continue to periodically visit schools to participate in various aspects of the new law curriculum, but the objective should be to promote positive police/youth relationships, rather than to engage in law enforcement activities. In particular, random or general searches of school children should be discontinued, since this violates their right to privacy and to be free from unlawful or groundless searches.

Similarly, the activities of the Adolescent Police groups are also cause for concern. While peer to peer activities should be encouraged as a means of promoting positive peer influence, the Adolescent Police activities are based on a repressive and authoritarian approach that tends to promote marginalisation, rather than inclusion. As noted above, the Riyadh Guidelines warn against crime prevention activities that could result in the stigmatisation or negative labelling of children. Giving students the power to identify and label their peers as criminals may increase the marginalisation of troubled or at-risk children, pushing them out of school and placing them at greater risk of criminal behaviour. Having school-based police representatives conducting regular exercises to identify and denounce classmates as potential criminals sows distrust amongst students, which is often targeted at children from disadvantaged families who do not dress as well as their peers. As UNICEF's Adolescent Needs Assessment found, there is generally not a lot of trust or interaction between students in schools, and children from disadvantaged families often feel marginalized or discriminated against by teachers and peers. This is exacerbated when they are identified as being in conflict with the law. Children in the focus group discussions noted that teachers and

students treat them differently once they are suspected of a crime, and this often cause them to drop out of school.

It is therefore recommended that the mandate and activities of the Adolescent Police be substantially changed. While the police can be important partners in helping schools to develop peer-based anti-violence and anti-bullying campaigns, this is best done through constructive, non-authoritarian approaches. There are many examples of school-based peer programs that help reduce conflicts between students and promote safer schools. For example, many countries have school-based peer mediators who help resolve minor conflicts and disputes between students. The National Center Against Violence supports student-initiated clubs on non-violent conflict resolution. One school in Bayanzurkh has a student social work program, where older children act as social workers and provide tutoring and other support to younger children. In addition, MYDC has recently initiated a school-based Youth Against Alcohol campaign where students organise activities to help their peers resist the pressures to drink. These types of programs are much more effective at promoting positive social and behavioural change in children.

c. Improving Community Services and Programs for Youth

Effective juvenile crime prevention also requires a wide range of community support programs, particularly for young people identified as being at risk of becoming involved in criminal activities. The Riyadh Guidelines state that children's involvement in community activities should be encouraged, and they should have an active role to play in society. This requires community support measures for young people such as youth organisations, community development centers and recreational facilities. Sports and recreational activities should be promoted as an effective means of countering children's sense of alienation and disaffection. In addition, services should be available to address the special problems of children at risk that emphasise care, counselling, and therapy-oriented interventions rather than repression and control.

Many stakeholders, including the children in the focus group discussions, cited lack of leisure activities as a main factor contributing to juvenile crime. It was noted that, because children have no constructive way to spend their spare time, they end up wandering in the streets and getting into trouble. Most schools now operate on two or three shifts per day, making after-school activities difficult. While local children's centers run art, cultural and sporting activities and summer camps, these programs are generally fee-based, which tends to exclude children from disadvantaged backgrounds. In addition, heavy emphasis is placed on competition and talent development, rather than promoting inclusion and broad-based participation.

In many schools, the ADCs and "My Passport" campaign supported by UNICEF and MYDC have proven to be a low-cost way to motivate children to organize their own after school activities. Under the campaign, children organise and participate in activities in six areas: participation, health, development, service to others, information and communication, and

reproductive health. Certificates are awarded to schools that organise the most activities in each category. As a result of the campaign, hundreds of new school clubs were launched throughout the country. MYDC has trained social workers and teachers from schools all over the country and the campaign has been launched in 600 schools in 21 aimags this year.

In addition, broadening the availability of free, community-based leisure activities and allocating a certain number of spaces in all children's center programs for children from disadvantaged families should be seen as key strategies in the development of local crime prevention plans. In most areas, there are ample facilities, including children's centers or palaces, cultural centers, school gymnasiums, and community sports facilities to support leisure and cultural activities or other clubs for children. However, none of these facilities have regular, sustained programs specifically targeted for at-risk or disadvantaged children, and most require fees that children from poor families cannot afford to pay. Many children's centers already have a policy of waiving the fee for a certain number of poor children to attend summer camp each year. This policy should be expanded to all music, art and culture programs. In addition, school and community centers and sporting facilities should be open without fees at certain hours of the day so that children have somewhere to go after school. Accomplishing this will require a clear commitment on the part of local governors, schools, children's organisations, community members and local businesses, and should be seen as a low cost way to reduce juvenile crime and improve community safety. In one American city, for example, studies showed that when inner-city basketball courts and other recreational facilities were kept open late, calls to police reporting juvenile crime dropped by 55%.

The Riyadh Guidelines also stress the need for special programs to address the problems of at-risk children in a manner that emphasises care, counselling, and therapy-oriented interventions rather than repression and control. Thus, rather than having schools and social workers report children who display behavioural problems to the police, children should be referred instead to constructive programs that will provide them with the necessary counselling and support they need to halt the progression of negative behaviours and to promote their positive socialisation. For example, ADRA and MYDC have developed experiential, adventure-based life skills courses that promote children's personal growth through participatory adventure activities. Their summer and winter programs engage children in games and activities that build their problem-solving abilities and encourage team work and trust building. Referring at-risk children to these types of programs has been proven effective in other countries at building the self-esteem, problem solving and social competence of marginalized or disadvantaged youth and preventing them from engaging in more serious risk behaviours. By using role play and other challenging and engaging activities, children acquire practical coping skills to deal with the challenges they face in their everyday lives. Consideration should be given to expanding this model and developing partnerships with ADRA and MYDC to train juvenile inspectors, school social workers, children's organisations or other NGOs to run life skills courses based on this model.

In addition, providing at-risk children with positive peer or adult role models has also proven to be a successful way to reduce juvenile delinquency. There are currently a number of organisations, such as the Mongolian Scouts Federation, Mongolian Youth Federation, One-World Adolescents and Youth Red Cross that support young people's self-development by providing social, educational, cultural and physical activities. The greater inclusion of at-risk or disadvantaged children in these programs would provide troubled children and teens with positive peer influences and help them to develop more pro-social behaviours.

Another low-cost strategy that has proven highly effective in many countries is mentoring or Big Brother/Big Sister programs. Mentor programs pair young or early teenage children from single-parent or disadvantaged families with a volunteer adult role model. The mentor spends time with the child after school or on weekends, participating with them in sporting or other leisure activities and acting as a positive role model. Consideration should be given to establishing mentor programs in major centers experiencing high juvenile crime rates, possibly with the support of NGOs such as MYDC or the Mongolian Youth Federation.

In addition, many countries have established police or NGO-run community centers in low-income neighbourhoods to provide recreation and support services for children from disadvantaged families. The centers are generally open on a drop-in basis every day after school and on weekends. They offer sporting and other recreational activities, as well as tutoring programs, non-formal education, job-readiness training and life-skills courses. All children can attend free of charge on a drop-in basis, and those who have been identified by police or school social workers as demonstrating problem behaviours can be referred to the center for specific life skills programs. The centers are generally staffed by a combination of police officers, volunteers and social workers, and often act as a focal point for NGO programs and activities for at-risk children. They provide children with constructive ways to spend their free time, and can also help build trust and improve relations between the police and youth by allowing them to interact on an informal basis.

In some areas, juvenile inspectors have experimented with these types of activities, with much success. For example, in the Bayanzurkh district of Ulaanbaatar, juvenile inspectors used the Police Academy sports hall to provide a basketball course for unsupervised children with the support of a community volunteer. In Erdenet, juvenile inspectors held an informal evening activity with some at-risk children and found that after talking and laughing together, they began to see each other differently. Although no longer in use, police in Ulaanbaatar had converted a police parking area into a sporting club for children under their supervision and in care centers. It is recommended that opportunities to establish police community centers be explored, in partnership with local governors, children's centers, NGOs and local businesses.

d. Monitoring and Evaluation

A shift in crime prevention approach will also require new methods of monitoring and evaluating crime prevention activities. The Riyadh guidelines emphasise that programs to prevent juvenile crime should be developed on the basis of reliable, scientific research findings, and should be periodically monitored, evaluated and adjusted. Currently, crime prevention activities are evaluated on the basis of the number and frequency of activities undertaken according to annual plans of action, as well as the overall rate of juvenile crime. However, these two indicators alone may not give a clear picture of the impact or effectiveness of individual crime prevention activities and programs. As research has shown, recorded crimes are generally only part of the story, since they reflect only crimes reported or detected by the police, not actual incidents of offending. Increases in recorded juvenile crime may reflect an increase in actual juvenile offending, or may simply reflect improved police efforts to detect crimes. Furthermore, some crime prevention strategies, such as improving early childhood education and supporting at-risk mothers of small children, have been proven to have significant long-term impact on reducing juvenile crime rates, but will not show an immediate impact.

Additional tools are needed to assess what impact specific crime prevention activities have on reducing known risk factors and addressing community safety issues, and that assess their cost effectiveness. This will require the development of clear indicators by which the effectiveness of different activities can be measured. Juvenile crime statistics will provide some insight, but should also be supplemented with other tools such as impact evaluations of specific programs, self-reporting questionnaires, and victimisation surveys, such as the one conducted in Mongolia in 1996. This approach will help support policy development by giving clearer indications of what interventions are most successful and cost-effective in reducing juvenile crime.

The UN Office for Drug Control and Crime Prevention, through its affiliated Center for International Crime Prevention, UN Crime and Justice Information Network (UNCJIN) and UN Interregional Crime and Justice Research Institute (UNICRI), have generated a wealth of research on the development and evaluation of juvenile crime prevention strategies. It is recommended that opportunities for research or experience sharing be explored in order to draw on this knowledge base in refining Mongolia's crime prevention strategies and evaluation process.

Recommendations

- Conduct research on international theories and best practices in juvenile delinquency and juvenile crime prevention and develop new juvenile crime prevention strategies aimed at addressing underlying risk factors that contribute to delinquent behaviour.
- Reassess the current crime prevention activities of juvenile inspectors and adolescent police and discontinue practices that are not an effective use of resources and that contribute to the marginalisation and stigmatisation of children at risk.
- Transfer responsibility for providing support and supervision to at-risk and unsupervised children to social workers. Develop guidelines, handbooks and training for social workers on assessment, case management and referral in order to make more effective use of existing NGO and government support services.
- Hold a National Forum on Street Children to develop new strategies for effective outreach and support services for children without parental care or supervision.

6. AGE AND CRIMINAL RESPONSIBILITY

The CRC defines a “child” as a person under the age 18 years. Juvenile justice protections should apply to all children under that age. The CRC also requires that state parties establish a minimum age below which children are presumed not to have the capacity to infringe penal law. The CRC does not indicate what that minimum age should be, but the Beijing Rules recommend that when states establish an age of criminal responsibility, “the beginning of that age shall not be fixed at too low an age level bearing in mind the facts of emotional, mental and intellectual maturity”.

The purpose of setting a minimum age below which children will not be prosecuted is to recognise children’s evolving capacity to distinguish right from wrong and to understand the consequences of their actions. In its Concluding Observations on Country Reports, the Committee on the Rights of the Child has reiterated the desirability of setting the highest possible minimum age. It has emphasised that the age set for criminal responsibility should be related to children’s cognitive, emotional and social development. Countries where the minimum age of criminal responsibility has been set at age ten or below have been particularly criticised.

6.1 Legislative Provisions

Under Mongolia’s Criminal Code, the general age of criminal responsibility is 14. However, children between 14 and 16 may be subject to criminal liability for specified offences, including homicide, inflicting severe bodily injury, rape, theft in aggravating circumstances, misappropriation, robbery, deliberate destruction or damage to property and hooliganism in aggravating circumstances.

While there is no separate juvenile justice legislation, there are special provisions in both the Criminal Code and Criminal Procedure Code that apply to children who are under the age of 18. Those provisions are discussed in more detail under the relevant sections below.

6.2 *Current Practices*

Available statistics did not disaggregate data on the basis of age, so it is unclear how many children between the ages of 14 and 16 have been subject to criminal liability. Although there are a limited number of crimes for which children between 14 and 16 are held liable, the list includes many crimes that are frequently committed by children. For example, the aggravating circumstances that can reduce the age of liability for theft and hooliganism include committing the crime in a group, which is a common element of delinquent behaviour throughout the world.

A number of children, particularly those who are unsupervised, lack identification documents to establish their age. In these cases, juvenile inspectors contact the local governor's office where the child was born to obtain information about their date of birth. Where documentation cannot be located, a medical examination is conducted to determine the child's age.

In many cases, children who are below the age of criminal liability are nonetheless subject to police interrogation. In some cases, this is because the child's age is not determined until after the case registration or inquiry stage. Police investigators also noted that, even if they know that a child cannot be subject to criminal liability, they conduct interrogations with the child to identify the underlying causes of the crime.

Children involved in crime while under the age of criminal responsibility are taken under the supervision of juvenile inspectors for one year on the grounds that they are "at risk." A file is opened on the child, including his or her personal details, photograph and fingerprints. The juvenile inspector notifies the local governor and the child's school, and issues directives to various organisations and individuals to eliminate the causes that led the child into criminal activity. The juvenile inspector meets with the child once per month to provide counselling and advice on the law, and in some cases meets with the child's parents.

6.3 *Assessment and Recommendations*

Mongolia's age of criminal responsibility is generally consistent with international standards and the principles of the CRC. However, the current response to children under the age of criminal liability raises some concerns.

Many stakeholders expressed concern that a growing number of children under the age of 14 are committing crimes. The children who participated in the focus group discussions reported that younger children, particularly those living in care centers or manholes, are bullied, tortured or threatened into committing crimes for older children or adults because it is widely known that they cannot be held criminally responsible. It was also reported that some

parents are known to live off the proceeds of crimes committed by their young children.

As noted above, engaging in minor misconduct is a natural part of growing up and most children mature out of this behavior. International studies have consistently shown that the vast majority of children (70-80%) never re-offend, and the fact of being caught by the police is enough, without any further intervention, to deter them from committing further crimes. For these children, formal contacts with justice sector officials, particularly the police, should be limited so as to avoid the process of negative labeling. However, for some children, early offending behavior is a sign of broader problems such as violence or abuse at home, family dysfunction, or lack of parental care and supervision. Appropriate early interventions targeting these risk factors can help promote positive socialization and prevent the child from progressing to more problem behaviours. The most effective strategies are those that provide sustained support to the child and his or her family through parenting skills courses, mentoring, and life skills programs. For children who lack a stable and settled family environment, alternative placements, including foster care and adoption, should be made available.

Although the current practice of subjecting children to police supervision and issuing notices to their schools is well-intentioned, it risks labeling or stigmatizing these children and pushing them further into crime. It is therefore recommended that the practice of imposing police supervision over children under the age of criminal responsibility be discontinued. For the majority of under-age offenders, a single warning from the police is enough to prevent them from committing any further crimes. Since they are at a low risk of re-offending, subjecting them to police supervision is not an effective or efficient use of police resources.

For children who are at high risk of offending due to lack of parental care, sustained and intensive interventions are required, and this cannot be achieved through police supervision. Although many juvenile inspectors do make efforts to refer children to care centers or non-formal education programs, the police are ill-equipped to perform the functions of a social worker. Monthly meetings with a police officer are not sufficient to address the child's problems, and can contribute to the stigmatization of a child who is already experiencing neglect or marginalization. It is therefore recommended that unsupervised or high risk children under the age of criminal responsibility be referred to a social worker for assessment and referral to appropriate government and NGO support services. Guidelines, procedures and training on assessment, referral and case management should be provided to social workers so that they are better equipped to assess a child's needs and ensure that appropriate support services are provided.

For young children without parental care, options for alternative family-based care should be explored. Where young children are placed in care centers, measures should be taken to ensure that they are protected from abuse and exploitation. From the focus group discussions with children, it was clear that younger children and those who are physically smaller face bullying, threats

and physical abuse from older children in the care centers. In some cases, they are threatened or tortured into committing thefts at the command of older children. Others run away from the care centers and go back to the streets to avoid threats and abuse. In some cases, this abuse is reinforced by care center policies that place older residents in charge of younger ones, thereby reinforcing the “boss” system that is prevalent amongst street children. Staff training and additional protective measures should be introduced to ensure that young children without adequate parental care have a safe and healthy environment in which to grow and develop.

Recommendations

- Discontinue the practice of subjecting children under the age of criminal responsibility to police supervision.
- Instead, refer children who exhibit risk factors (eg unsupervised, abused, or history of violence) to a social worker for assessment and referral to appropriate government and NGO support services. Develop clear referral guidelines and procedures to ensure that the child and his family receive sustained support such as parenting skills courses, mentoring, life skills programs, school reintegration, and non-formal education.
- Develop safe, alternative family-based care options for children without adequate parental supervision. Ensure that measures are taken to protect younger children in care centers from abuse and exploitation by older residents.

7. DIVERSION

In a growing number of countries, programs have been introduced to provide constructive ways of dealing with juveniles in conflict with the law without relying on the criminal courts. “Diversion” means taking measures other than initiating a criminal case to deal with incidence of juvenile crime. Diversion can range from a simple police warning to writing an apology letter or performing community service work. Increasingly, it is becoming the common response for first-time offenders or juveniles who commit minor crimes. The nature of diversionary measures varies from country to country, but the most common ones include: police caution, apology to victim, compensation to victim (actual or symbolic), return of stolen item, repair of damage done, participation in a Family Group Conference or mediation program, work for the victim, community service work, and participation in a life skills or other rehabilitative program.

The aim of diversion is to give young people the chance to take responsibility for their actions without getting a criminal record. The advantage of this approach is that it imposes immediate, meaningful consequences on the juvenile and provides a much faster response to youth crime than proceeding through the investigation and court process. Diversion also prevents first-time or minor offenders from being labelled as criminals, which often becomes a self-fulfilling prophecy. It also enables the police and courts to focus their resources on more serious cases.

Diversion is an effective way to hold juveniles accountable for their behaviour, but in ways that reintegrate them into society, rather than increasing their sense of isolation and marginalization. Strong social disapproval is directed at the criminal act, without degrading or stigmatising the young person or separating him from the community. In other words, the act, but not the person, is denounced as bad. Instead of being shamed, labelled, or imprisoned, juveniles are given the opportunity to show that they can accept responsibility, make amends and demonstrate positive behavior. Studies on the impact of diversion have revealed that juveniles who have benefited from programs based on constructive, community-based solutions rather than punishment and alienation are more likely to accept responsibility for their actions and understand their impact on others.

The concept of diversion is entrenched in the CRC, the UN Standard Minimum Rules for Non-Custodial Measures, and the Beijing Rules, which all require State parties to establish measures for dealing with children accused of committing crimes without resorting to judicial proceedings, provided that human rights and legal safeguards are fully respected. The Beijing Rules state that police, prosecutors and other agencies dealing with juvenile cases should be empowered to dispose of juvenile cases, at their discretion, without recourse to formal hearings, in accordance with criteria established for that purpose. In order to facilitate discretionary disposition of juvenile cases, the Rules state that efforts should be made to provide for community programs, such as temporary supervision and guidance, restitution and victim compensation. However, the CRC and UN Guidelines require that any diversion programs adhere to the following principles:

- Diversion should only be used where children freely admit to the crime and agree to the diversion program. Young people who assert their innocence are entitled to full due process rights before any sanction is imposed;
- Diversion programs should seek to promote the dignity and well-being of the child, and the development of his or her sense of self worth and ability to contribute meaningfully to society;
- Programme content, programme conditions and the period of time that a child is required to attend a diversion programme should take account of the age and maturity of the child;
- Imprisonment, corporal punishment and public humiliation may not be elements of diversion. Diversion should not subject children to measures that are disproportionate to the offence, or that are more onerous than sentences they would have received by the court;
- Diversion programmes should not be exploitative, harmful or hazardous to a child's physical or mental health;
- Programmes should, where possible, include an element which seeks to ensure that the child understands the impact of his or her behaviour on others, including the victims of the offence;
- Where possible and appropriate, diversion programmes should impart useful skills; and
- Diversion programmes should not interfere with a child's schooling.

Countries use a variety of different mechanisms to decide which juveniles get diverted and what programs or activities the juvenile must undertake to repair the harm done. For example, in many US and Australian jurisdictions, the police can choose to mediate a settlement between the victim and the juvenile rather than initiate a criminal case. A meeting is held at the police station with the victim and the juvenile, and the police mediator helps the parties reach an agreement on what can be done to make amends (apology, repair of damage done, work for victim, etc). In Germany, Slovenia and the Netherlands, the prosecutor has the authority to suspend a prosecution and instead require the accused to repair or compensate damage, make a contribution to charity, or perform community service work. Slovenia's Criminal Procedure Code also permits the out of court settlement of minor crimes through mediation. If the mediation agreement is implemented within the time limits stipulated, the prosecutor dismisses the case. In New Zealand, all juveniles except those charged with very serious offences are referred to a Family Group Conference for a mediated resolution between the victim, the accused and community members. In Uganda, specified minor offences are dealt with by informal, community-based village courts rather than the formal juvenile court, allowing for greater family and community involvement.

Diversion programs do not require the creation of new and costly structures or institutions - they generally make use of resources in the school or community and are considerably cheaper than resorting to the formal justice system. They have proven to be highly effective at reducing juvenile recidivism by making young people take responsibility for their wrongdoings. Police, social workers, local governors and NGOs can all play a role in resolving juvenile crimes without resorting to the formal justice system.

7.1 Legal Provisions

There is currently no specific legal framework for diversion or for dealing with children accused of committing crimes without resorting to formal criminal proceedings. Neither the Criminal Code nor the Criminal Procedure Code address the issue of diversion or provide any alternatives to the formal court system. The police have very limited discretion as to whether to register a case once it has been determined that all the legal elements of an offence are present, and there is no provision for the issuing of police cautions or warning.

However, the new Criminal Code does state that, where a first-time offender who has committed a minor or less serious crime has compensated or redressed the damage, the charges may be dismissed (Article 68). Similarly, Article 69 of the Criminal Code and Article 208 of the Criminal Procedure Code state that if the victim of a minor crime reconciles with the accused and the damage has been redressed, the charge can be dismissed. The Criminal Procedure Code also states that prosecutors, on their own initiative or on the recommendation of an investigator, can terminate a case on the basis that the suspect or accused has reconciled with the victim (Article 208 and 209).

In addition, many common offences committed by juveniles, including minor thefts, assaults, hooliganism and other public order offences, can be dealt with under the Law on Administrative Liability, provided the damage or injuries

inflicted are minor (under 3000 tugrug). Penalties for administrative offences include fines of between 100 and 50,000 tg or apprehension for between 7 and 30 days. Prosecutors exercise supervision over the imposition of administrative liability, and an order of apprehension must be approved by the court.

7.2 *Current Practices*

Justice sector stakeholders advised that, for assaults involving only minor injuries, public drunkenness, or thefts and hooliganism involving damage of less than 3000 tg, the police generally impose an administrative penalty on the juvenile rather than initiating a criminal case. In most cases, this means that a fine is imposed on the child's parents, and it is extremely rare for apprehension to be used on children. One juvenile inspector noted that some parents ask for apprehension because they want to punish the child rather than pay a fine themselves, but the courts generally will not approve it.

Stakeholders advised that the reconciliation provision of the Criminal Code is generally used for assault cases where the victim has no complaint. In addition, in many juvenile cases, criminal proceedings are either not initiated or are withdrawn if damages have been paid to the victim or the stolen item has been returned.

While there were no statistics available on the use of administrative penalties, a national survey conducted by the Advocates Association revealed that out of 273 juvenile cases dealt with by advocates in the first five months of 2002, 35 were dismissed at the case registration stage (some because the child was under the age of criminal responsibility), and administrative liability was imposed in 17 cases.

7.3 *Assessment and Recommendations*

Despite the absence of clear diversion provisions under Mongolia's Criminal Code, it appears that in practice many minor, first-time juvenile offenders are dealt with without initiating or proceeding with criminal charges. However, because the only available options require payment of a fine or damages, whether a child can benefit from these alternatives depends to a large extent on the financial status of his or her parents.

It is recommended that police and prosecutors be given much broader discretion to deal with juvenile cases without initiating criminal proceedings, even if the legal elements of a crime are present. As noted above, in many countries police cautions or referral to diversion programs are becoming the primary options for dealing with first-time offenders accused of minor or less serious crimes. Studies have shown that for most first-time offenders, getting caught is generally enough to deter future offending, and additional involvement in the justice system through participation in the court process or police supervision does not provide any rehabilitative benefit, and in some cases may even increase the chances of re-offending through the process of negative labelling. Diversion reduces the number of juveniles clogging up the system with minor investigations and ineffective and unnecessary supervision

orders. It also allows justice sector resources to be focused on the small portion of juveniles who are repeat or high-risk offenders.

One option suggested was to expand the use of administrative, rather than criminal liability for children who commit minor crimes. However, the range of penalties currently available under the Law on Administrative Liability is quite limited, and the only ones applicable to juveniles are fines or apprehension for seven to 30 days. For administrative liability to be an effective diversion option, a greater range of responses, such as apology, restitution, community service, or referral to a rehabilitation program should be available, and any response that involves deprivation of liberty should be prohibited. In addition, mechanisms would have to be in place to ensure that children's due process rights are respected, and that they have the right to effectively challenge an administrative penalty before a judicial authority.

Another option that has proven to be a highly cost efficient and effective way of dealing with the majority of first-time offenders is the police caution. Police cautions are essentially a stern warning to the juvenile that his or her behaviour was unacceptable, and that any future misbehaviour will result in more serious consequences. The warning can be given directly to the child, or the child and his or her parents can be requested to attend the police station to talk to a senior police officer. International research has shown that, for the majority of first-time offenders, a police warning is enough, without any further follow-up, supervision or sanction, to prevent most young people from re-offending. For example, studies in New Zealand and Australia have found that between 70 and 85% of children who were given police warnings did not commit another offence.

While there is currently no specific legislative provision on police cautioning, in practice police often issue warnings to a juvenile and his or her parents in conjunction with imposing an administrative fine. Although there are no statistics on the issue, juvenile inspectors advised that most children who have been subject to administrative penalties do not re-offend. International studies would suggest that the warning alone would be sufficient to deter children from re-offending, without imposing the burden of a fine on their parents.

It is therefore recommended that juvenile inspectors be given greater authority to issue warnings, rather than initiating a criminal case or imposing administrative liability on minor, first-time offenders. Juvenile inspectors are generally in a good position to assess whether a young person is at high risk of re-offending, or whether a caution would be enough to prevent further criminal conduct. Clear guidelines could be developed, in conjunction with the General Prosecutors Office, to define what types of crimes are appropriate for cautioning, and what factors the police should consider in exercising their discretion. Under the Criminal Procedure Code, any decision not to register a case is subject to the review of the prosecutor, and this oversight authority could be used to ensure that police cautions are used fairly and appropriately.

The effectiveness of police cautions on minor, first time offenders could be tested within the existing legislative framework by using the Law on Administrative Liability. Police already issue warnings to juveniles and their parents when imposing an administrative fine. As noted above, a police warning is recognized internationally as an effective deterrent for most first-time offenders, and there is no evidence of a connection between the amount of a fine and the degree of its deterrent effect (or in other words, higher fines have not been shown to decrease the likelihood that a juvenile will re-offend). Therefore, a policy could be established, on a pilot basis, of imposing only minimal or nominal fines (for example, less than 1000 tg) on juveniles, together with a clear warning from the police that any further offending will lead to a harsher penalty. If the pilot results show that a warning is sufficient for deterring most minor, first-time offenders, then the Law on Administrative Responsibility and the Criminal Procedure Code could be amended to permit police cautioning of juveniles in specified circumstances.

For some juveniles, something more than a caution may be required to hold them accountable and to help them understand the consequences of their actions. In these cases, juvenile inspectors or prosecutors should be empowered to mediate an appropriate settlement between the victim and the juvenile, or to refer the juvenile to a diversion program rather than initiating a criminal case. However, in order to maximise the use and effectiveness of diversion, most countries have developed alternative ways to hold juveniles accountable for their actions that do not necessarily require cash compensation for damages. Juveniles generally do not have their own means of paying for damages, and alternatives that rely heavily on the payment of fines and cash compensation operate to the disadvantage of young people whose parents cannot afford to pay.

Currently, the Mongolian system for diverting juveniles from the criminal justice system is based on payment of fines or compensation of damages. As some stakeholders pointed out, the disadvantage of this approach is that it does not hold the juveniles personally accountable for what they did (since it is the parents who pay), and it places significant pressure on families with limited financial resources. It also deprives juveniles from disadvantaged families of the opportunity to have their cases dealt with outside the formal criminal process. A number of stakeholders were quite frank in noting that the children who come before the courts and who end up in prison are those whose parents could not afford to pay the damages. This approach is costly to the State, which must pay the cost of police inquiries,

I was an ordinary child and used to attend school. One day I stole something from my friend's apartment together with my two girlfriends. But one of the girls was released because she stole from her home and her mother said she had no complaint. The other girl, who was the initiator, had a brother who was a friend of a policeman so using their friend they managed to release her. They said she made amends for her damage. Both of my girl friends are attending their school now, but I am here in prison. The girls who did the stealing with me are in the sun, but I'm sentenced to 2 years in prison. It's not fair.

court proceedings, and police supervision for juveniles who pose no real threat to society.

It is therefore recommended that programs and strategies be developed for resolving minor or less serious cases outside the criminal justice system, without necessarily requiring cash compensation of damages or the payment of large fines. In the long term, this will require a significant shift in the State and public philosophy towards young offenders. Mongolia's justice system is based very firmly on the principle of compensating victims for their losses. The public perception of offenders can be quite harsh, and most stakeholders were of the view that victims would be unlikely to agree to any resolution that does not include full compensation for their damages. In addition, Mongolian culture is based on a tradition of nomadism, and there is a limited sense of community and an absence of traditional community structures or dispute resolution mechanisms, such as traditional leaders or village courts, that are used to facilitate diversion in many countries. Nonetheless, there are opportunities within the existing legal framework to reduce the number of juveniles processed through the formal court system.

One option suggested by some prosecutors is to use the reconciliation provisions of the Criminal Code more expansively to resolve minor or less serious crimes outside the court process. There are no clear guidelines on what constitutes "reconciliation", but currently cases are dismissed only if the victim has no complaint or damages have been paid. However, redressing the damage caused by a crime does not necessarily require the payment of money, and many countries have developed alternative ways for juveniles to make amends for the harm caused to the victim.

In many countries, juvenile police have taken the lead role in mediating settlements between juveniles and victims. This is seen as part of the general shift towards community-based policing, where the police take on a role of assisting community members to resolve disputes, rather than simply imposing justice on offenders. In Mongolia, the current practice is for police to inform victims of their rights and of the reconciliation provision, but they do not take steps to encourage a resolution, and do not currently see themselves as having a pro-active role to play in mediating settlements. However, instead of simply waiting to see if a juvenile's parents pay the damages, juvenile inspectors could be trained to promote the settlement of minor and less serious cases using police mediation models that have proven successful in other countries.

Mediated settlements can include a wide range of creative solutions that hold juveniles accountable for their actions and satisfy the needs of the victim. International experience has shown that, with the support of a trained police mediator, many victims will agree to a resolution that does not necessarily involve cash compensation. For example, where the case does not involve financial loss, requiring the juvenile to apologise to the victim or to write an essay about the impact of the crime may be acceptable. Juveniles can also be required to repair the damage they caused, to perform free community service work, or to provide some service to the victim as a way of expressing

remorse. For example, a group of boys who painted graffiti on a building could be required to scrub it off and re-paint the wall. A youth who stole a small amount of money from an elderly woman could compensate for the crime by shovelling snow at her house for a certain period of time.

These options require juveniles to face their victims, to take responsibility for what was done, and to demonstrate that they are capable of positive behaviour. They reduce discrimination against juveniles from disadvantaged families, who are at risk of suffering more serious penalties for their crimes simply because their families cannot afford to pay compensation. They also ensure that the juvenile, rather than the parents, takes responsibility for the harm that was caused. Provided the victim and juvenile agree that these measures are sufficient to redress the crime, the Criminal Code provision on reconciliation could be used to dismiss the case.

Where victims do insist on payment for damages, appropriate alternatives should be developed to allow juveniles to earn money to pay for compensation. A number of stakeholders stated that there should be mechanisms to allow juveniles to make amends for their crimes through work. It was suggested that NGOs could play a role in providing work opportunities for young people to help them earn money to pay for damages. Local government authorities could also participate in this type of scheme by reserving small work projects, such as cleaning up local parks, for juveniles earning money to pay compensation. This would be different from existing forced labour provisions, since the work would be performed with the consent of the juvenile, as part of an agreement between the police, the juvenile and his parents, and the victim.

It is therefore recommended that a diversion program based on these principles be instituted on a pilot basis. Agreed guidelines and procedures could be developed by the police, the General Prosecutor's Office and the courts to allow juvenile inspectors to mediate settlements between victims and juveniles for specified crimes. If the juvenile fulfils the requirements of the agreement, then the case would be withdrawn pursuant to the reconciliation provisions of the Criminal Code. If the juvenile fails to live up to the agreement within the specified time period, then the inquiry process can proceed.

The guidelines should clarify who will make the final decision with respect to diversion, what consideration should be taken into account in deciding whether to divert a case, who will be responsible for monitoring, and what kinds of activities can and cannot be used as diversion. Effective monitoring and follow-up is also essential. For diversion to serve its purpose, juveniles must be held to the agreements they make. For law enforcement officials to have confidence in the diversion process, they must be assured that the agreement is being carried out, and that they will receive timely reports on the juvenile's progress.

The guidelines should also ensure that the requirements of the CRC and Beijing Rules (listed above) are observed, particularly the requirements that diversion only be used with the free and informed consent of the young

person, that it must not impose consequences that are disproportionate to the offence or more onerous than the sentence they would have received by the court, and that it not involve humiliation, degradation, or harmful work.

Community consultation and awareness activities will also be required to combat the perception that cautions and other alternative measures are not adequate punishment for young people who commit crimes, and to build support for the use of community service and other forms of restitution. Advocacy and participatory awareness activities at the local level can help influence community thinking about juvenile crime and foster support for more child-friendly responses.

If the pilot proves to be successful, then legislative amendments could be introduced to add detailed police caution and diversion provisions to the Criminal Procedure Code, and to expand the types of sanctions available under the Law on Administrative Liability.

Recommendations

- Develop a pilot diversion project in one or more areas based on the police mediation model and relying on the reconciliation provisions of the Criminal Code
- Develop guidelines for the diversion pilot based on the principles of the CRC, with the agreement of the police, General Prosecutor's Office and courts.
- Train juvenile inspectors to conduct mediations
- Monitor, assess and disseminate results of pilot diversion programs
- Amend the Criminal Procedure Code to include provisions on diversion and police cautioning
- Expand the types of sanctions available under the Law on Administrative Liability to include options such as police caution, apology and community service work, and to prohibit the penalty of apprehension

8. ARREST AND PRE-TRIAL DETENTION

International experience has shown that, of all phases of the justice system, it is on arrest and immediately thereafter that youth are at greatest risk of being mistreated or having their fundamental rights violated. Apprehension and detention are the most severe preventive measure that can be used during the investigation stage, and they are widely recognised as being inappropriate for children because they separate them from their families, expose them to physical abuse and to criminal elements, and often involve the denial of other rights such as access to education and health care. Pre-trial detention can also violate a child's right to be presumed innocent until proven guilty, particularly where detention is essentially used as a form of punishment or to facilitate investigations. For these reason, the CRC and UN Guidelines contain detailed provisions designed to protect and promote the best interests of children who are suspected or accused of committing crimes.

The CRC states that children suspected or accused of a crime have the right to be presumed innocent until proven guilty and to be informed promptly of the charges against them. Children must also be guaranteed the right to legal or other appropriate assistance and to have the matter determined without delay. State parties must ensure that the arrest and detention of children is done in conformity with the law, and is used only as a measure of last resort and for the shortest appropriate period of time. Where detention is used, the CRC states that children deprived of their liberty must be treated with humanity and respect for their dignity, and in a manner that takes into account their age. In particular, the CRC requires that children in detention be separated from adults and have the right to contact with their family through correspondence and visits, except in exceptional circumstances. Children should be provided prompt access to legal assistance, as well as the right to challenge the legality of the deprivation of liberty before a competent judicial authority. State parties must also ensure that detention does not deprive children of their other rights under the CRC, including the right to education, to adequate nutritious food, to health care, to be protected from abuse and exploitation, and to engage in leisure and recreational activities appropriate to their age.

The Beijing Rules state that children must be guaranteed basic procedural safeguards, such as the presumption of innocence, the right to be notified of charges, the right to remain silent, the right to counsel and the right to the presence of a parent or guardian at all stages of the proceedings. When a child is arrested or detained, his or her parents must be notified immediately, or within the shortest possible period of time. In addition, any contacts between law enforcement agencies and a juvenile must be managed in such a way as to respect the legal status of the juvenile, to promote his or her well-being and to avoid harm to the child. Arrest and detention pending trial shall only be used as a measure of last resort and for the shortest possible period of time. Whenever possible, alternatives such as close supervision, placement with a family or in an educational or home setting should be used.

The UN Minimum Rules on the Protection of Juveniles Deprived of their Liberty (JDL's) include detailed provisions that apply to juveniles held in any kind of detention facility. They state that juveniles detained under arrest or awaiting trial are presumed innocent and must be treated as such. Detention before trial must only be used in exceptional circumstances, and all efforts should be made to impose alternative measures. When detention is used, courts and investigators must give the highest priority to expediting the process to ensure the shortest possible period of detention. The detention facility must keep an individual file for each juvenile in detention, and no juvenile should be admitted without a valid commitment order or be kept past the expiry of the warrant. Children detained at the pre-trial stage must be separated from convicted juveniles, and should have opportunities to pursue work and to continue their education or training.

The JDL's also state that the design and physical environment of detention facilities for juveniles must ensure due regard to the need of juveniles for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure activities. During sleeping

hours, there should be regular, unobtrusive supervision of all sleeping areas in order to ensure the protection of each juvenile. Every juvenile should be provided with separate and sufficient bedding, which should be clean when issued and changed often enough to ensure cleanliness. In addition, the detention facility should ensure that each juvenile has personal clothing suitable to the climate, and the right of every juvenile to have personal effects must be fully recognised and respected. Sanitary installations should be provided to enable juveniles to comply with their physical needs in privacy and in a clean and decent manner. In addition, juveniles should be provided with food that satisfies dietetic, health and hygiene standards.

The JDL's also state that every juvenile should have the right to a suitable amount of time for daily exercise, in the open air when weather permits, and should also be given additional free time for daily leisure activities. All disciplinary measures constituting cruel, inhuman and degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, and solitary confinement. Reduction of diet or restriction on family contact shall not be used as forms of punishment. In addition, measures of restraint or force should only be used in exceptional cases where all other control methods have failed, and only if necessary to prevent juveniles from inflicting self-injury, injuries to others or serious destruction of property. The carrying of weapons by personnel should be prohibited in any facilities where juveniles are detained.

Additional guidance is also provided by the UN Standard Minimum Rules for the Treatment of Prisoners, which state that accommodations in detention facilities must meet all requirements of health, with due regard paid to climatic conditions, minimum floor space, lighting, heating and ventilation. Windows must be large enough to enable prisoners to read or work by natural light and should allow fresh air. Artificial light sufficient for prisoners to read or work must be provided. Every detainee must have at least one hour of suitable exercise in the open air daily if the weather permits. In addition, adequate bathing and shower facilities must be provided so that every prisoner may have a bath or shower at a temperature suitable to the climate and as frequently as necessary according to the climate. Detainees are to be provided with water and toiletries necessary for health and cleanliness, and their clothing must be kept clean and in proper condition. Each detainee must be provided with a separate bed and separate and sufficient bedding. Instruments of restraint such as handcuffs, chains, irons and straightjackets shall never be applied as punishment. Instruments of restraint may only be used as a precaution against escape during a transfer, or by order of the director in order to prevent a prisoner from injuring himself or others or from damaging property.

8.1 Legal Provisions

Both the Mongolian Constitution and the Criminal Procedure Code guarantee that everyone charged with an offence has the right to be presumed innocent until proven guilty according to the law. In addition, the Constitution guarantees the right to personal liberty and safety, and states that no one may be searched, arrested, detained, prosecuted, or subjected to restrictions on

their liberty except in accordance with procedures and on grounds determined by law. The Constitution prohibits torture, inhuman, cruel, or degrading treatment, and states that where a person is arrested his or her family and counsel shall be notified of the reasons for the arrest within a period of time established by law.

There are several provisions in Mongolian law that grant a variety of officials the power to apprehend and temporarily detain children who are suspected or accused of committing administrative infractions or criminal offences.

The Law on the Temporary Detention of Unsupervised Children, enacted in 1994, allows the police to detain children under 16 for up to 14 days if their life and health are in danger and their address, parents or guardians are unknown.

Under the Law on Police, the police may take a person suspected of a crime into their custody for up to six hours in order to clarify their identity or address. In addition, the Law on Administrative Liability (which applies to all children over the age of 16), grants local governors, authorized police officers, boarder guards, public order inspectors, or government inspectors the authority to detain a person who has committed an administrative infraction for up to six hours if detention is considered necessary to interrupt the commission of the act or for the purpose of registering the offence. Where it is necessary to prevent the offender from causing serious harm, compulsory detention may be imposed for up to 72 hours, provided official notice is sent to the Court. In addition, the police have the authority to compulsory detain a person for 72 hours if the administrative offence was occasioned by alcohol consumption, or committed by a person who is mentally disabled and whose identity is unknown.

One of the penalties that may be imposed for an administrative infraction is apprehension for a period of 7 to 30 days. However, apprehension can only be imposed with the approval of the court.

With respect to individuals suspected or accused of a criminal offence, the new Criminal Procedure Code introduces significant new limitations on police powers of arrest and pre-trial detention. Provisions under the old law permitting a suspect to be detained without charges for 14 days have been eliminated, and a suspect may now only be subject to temporary detention by the police for 72 hours. In addition, the Code states that suspects may only be arrested if they have attempted to escape or there is sufficient evidence to suspect them of a serious or very serious offence (Article 59.1). In general, arrest can only be instituted on the basis of a warrant approved by the Court (Article 59.2). However, in instances not permitting delay, the police may apprehend a suspect without warrant, but they must deliver notice of the apprehension to the prosecutor and court within 24 hours (Article 59.6). The Court must, with 48 hours of receiving notice, issue a decision to sanction the pre-trial detention of the suspect, or order his or her release (Article 59.6).

The Criminal Procedure Code also states that suspects, upon arrest, must be informed of the reason and grounds for the arrest, of their right to have defence counsel, to defend themselves, to file a complaint with the court, and to refuse to give testimony against themselves (Article 10, 59). If the suspect is a juvenile, his or her parents, guardian or defence lawyer must be notified within 12 hours of arrest or confinement (Article 366.2).

The Law on Police outlines the methods of force that police may use during an arrest, when an individual fails to obey or resists a lawful demand by the police, and for the purpose of transporting a suspect, accused, or convicted person. Permissible measures include the use of handcuffs and leg irons, self-defence grips or holds, rubber clubs, tear gas, and guns with rubber bullets. The Law prohibits the use of firearms as a means of enforcement against juveniles, unless there is no other means to avert an attack and the attack may cause serious detriment to the life or health of the police officer or some other person, or where the juvenile resists arrest with a firearm.

The Criminal Code also states that a “measures of restraint” may be applied to a suspect or accused during the inquiry or investigation stage where there are grounds to believe that he or she may escape, hinder the investigation, or commit further crimes. The possible measures of restraint that may be imposed are:

- Signed promise not to depart: a written agreement from the suspect or accused that he or she will not move from their address without permission and will attend whenever summonsed (Article 64);
- Personal surety: a written obligation from at least two trustworthy adults who take responsibility for the suspect or accused and guarantee that he or she will attend when summonsed. The two sureties must have permanent residences and be employed. If the suspect or accused escapes from the investigation, the sureties can be fined between one and four times the monthly minimum wage, and can be required to pay for all the expenses associated with locating the accused (Article 65 and 77).
- Bail: money or valuables deposited in a special account by the suspect or accused him/herself, or by another person or organization. The amount is determined based on the classification of the crime and the personal character and property status of the accused. If the accused fails to appear when summonsed, the bail deposit is forfeited to the State (Article 67);
- Placement under supervision of parent or guardian: juveniles may, in addition to these provisions, be handed over to the supervision of a parent, guardian or other care giver. The person must sign a written undertaking to guarantee that the juvenile will appear when summonsed, and ensure the juvenile’s proper behaviour. In the event that the undertaking is breached, the person may be required to pay for all the expenses associated with locating the juvenile (Article 367).
- Confinement under guard, or pre-trial detention.

The Code states that, in determining whether it is necessary to apply a measure of restraint, the classification of the crime as well as the accused’s personality, age, family situation, health conditions and any other relevant

circumstances must be taken into consideration (Article 63). The use of detention as a measure of restraint must be approved by the court (Article 62.2 and 68.3), and the accused's lawyer has the right to be present and to make submissions to the court on decisions with respect to arrest or detention (Article 41).

Under the new Criminal Procedure Code, juveniles may only be arrested or subjected to pre-trial detention if they are accused of a serious or very serious offence, and they have violated previous measures of restraint or there are grounds to believe that they may escape, hinder the investigation or commit another crime. (Article 366.1). The juvenile's parents or guardian must be notified within 12 hours of his or her arrest or confinement (Article 366.2). Juveniles may be detained for up to 14 days during the preliminary inquiry stage, and an additional one month for investigation. If, due to the complexity of the case, additional time for the investigation is required, the Court can extend the period of detention, but the total period of detention cannot exceed 18 months for juveniles, and 24 months for adults (Article 69). Juveniles must be detained separate from adults (Article 366.1).

Conditions in pre-trial detention facilities are governed by the Law on the Detention and Arrest of Suspects and Accuseds, which states that detention shall not involve cruel, inhumane or degrading treatment (Article 3). According to the law, detention centers are required to keep a personal file for each detainee, which includes the warrant of detention, date of release, photo, list of temporarily confiscated items, personal background of the detainee, health conditions and weight, and notes of any activities such as visits by a prosecutor or investigator, or medical treatment received (Article 15). Upon arrival, detainees must be advised of their rights and obligations, of the internal rules of the detention center, and of their right to file complaints (Article 17).

The Law on the Detention and Arrest of Suspects and Accuseds also includes specific requirements with respect to the physical environment of detention facilities. Cells must have metal doors with a small peep hole, a wooden floor or wooden bed, humidity control, and be kept at a temperature of 18C (Article 13). Each detainee must be allocated a space of 2.5 square meters, and be provided their own blanket, bowl and spoon (Article 24). Daily nutrition of 3400 calories per day must be provided, and detainees have the right to purchase additional food or other necessities (Article 23). In addition, detainees must be provided with conditions to meet sanitary and hygienic requirements and opportunities for leisure. They have the right to meet with their attorney, to keep books, newspapers, magazines and sanitary items in their cell, to get medical services, to be provided with necessary bedding and nutrition, to use stationary, to perform religious rituals and to receive short visits. (Article 17).

The Law on the Detention and Arrest of Suspects and Accuseds states that, while detainees have the right to meet privately with their attorney, they can only meet with relatives or other people with permission, and in the presence of a guard (Article 19). Communications by letter are also regulated and monitored. However, the new Law on the Execution of Court Decisions states

that detainees have the right to receive packages, to have an unlimited number of short visitations and eight long visits per year, and to use a pay phone at their own expense (Article 107).

The Law on the Detention and Arrest of Suspects and Accuseds states that detainees are to be allocated to cells according to the crimes they committed and their character. Recidivists must be separated from first-time offenders, and juveniles separated from adults. Detainees may be kept in solitary confinement and barred from communicating with other detainees, at the investigator's or prosecutor's discretion (Article 32).

A separate provision on the rights of juveniles in detention states that they must be detained in a cell with improved sanitary conditions, and are entitled to a higher food ration and to go outside the cell in the fresh air daily for a minimum of one hour (Article 31). Although the Law on the Execution of Court Decisions states that juveniles must be provided with general education, this applies only to juveniles in jail, not detention centers.

Provisions dealing with punishment and discipline state that juveniles who violate detention center rules, do not comply with a legitimate order, or disrespect a detention center official may be imprisoned in a disciplinary cell for up to seven days. Discipline may only be imposed based on the decree of the head of the detention center, and juveniles have the right to challenge the disciplinary penalty with the prosecutor or court. Detainees in the disciplinary cell are kept in solitary confinement and their rights to correspondence, to meeting with anyone except a lawyer, investigator, prosecutor or judge, to purchase additional food, and to read books and magazines is restricted. They are entitled to fresh air for 15 minutes per day.

In addition, both the Law on the Temporary Detention of Suspect and Accuseds states that detention center staff may use force, including rubber clubs, tear gas, handcuffs, straightjackets, and guard dogs, in the event that a detainee attacks an employee, attempts to escape, or to harm himself or others. Detention center staff may carry firearms while on duty, and may use firearms against detainees in specified circumstances. While there are no specific limitations on the use of firearms or other means of force against juveniles under the Law on the Temporary Detention of Suspect and Accuseds, the Law on the Execution of Court Decisions states that firearms may only be used against a juvenile when an attack by the juvenile causes serious danger to the health and life of others, during the arrest of an armed juvenile, and in the event of mass disorder. While firearms may be used against adults if they attempt to escape, this is excluded from the permissible uses of firearms against children (Article 140). However, it is unclear whether the new Law on the Execution of Court Decisions applies to pre-trial detention facilities.

The General Prosecutor's Office is responsible for supervising detention facilities and ensuring that they comply with the law. Prosecutors have the right to enter detention facilities at any time, to meet with detainees, to access personal files and other information relating to the detainees, and to review

complaints. The Law on Prosecutors states that a prosecutor can enter any arrest and detention center, meet with individual detainees and immediately release anyone illegally detained (Article 12).

8.2 *Current Practices*

In Ulaanbaatar, unsupervised children under the age of 16 who are apprehended are taken to the police-run Address and Identification Center, where they can be held for up to 14 days. The Center is a secure facility, staffed by uniformed police officers. It has one social worker provided by World Vision. The children taken to the center are fingerprinted and photographed and a file is opened containing detailed information about their identity and background. Children whose parents can be located are sent home, and others are referred to a government or NGO care center, or to their local governor.

Children suspected of criminal or administrative offences may also be held for up to six hours in police or railway authority custody cells in order to confirm their identity. Children who are found intoxicated in public places are taken to special police sobering centers, where they can be held for up to 72 hours. While children are supposed to be held in separate cells, there are reports of them being mixed with adults.

Children who are subject to arrest under the Criminal Procedure Code are held in 72-hour police lock-ups. Although they are supposed to be kept separately from adults, many facilities do not have enough cells to segregate children when conditions are crowded. It is too early to tell how the new arrest provisions of the Criminal Procedure Code will impact on police practices, but they have been heavily criticised in the past for over-using their arrest and temporary detention powers. Both the Human Rights Needs Assessment and National Human Commission of Mongolia's Annual Report for 2002 contend that the police regularly detain people without legal grounds and hold them past the 72-hour period. Although the new law requires a court-approved decree for arrests, it does give police fairly wide discretion to arrest without warrant where delay is not possible. One stakeholder noted that, since there is no Supreme Court commentary on this provision, it is unclear how it is to be applied and the police are using it quite liberally.

With respect to pre-trial detention, both the police and prosecutors advised that it is not their policy to detain children, and that in general, children are placed under the supervision of their parents. However, it was noted that children who repeat crimes many times or have no one to impose proper supervision over their behaviour will often be detained. One investigator advised that all children charged with serious and very serious offences are detained because otherwise they would escape or pressure the victims. Another noted that detention is used to facilitate proof of the case and to identify additional crimes committed by the juvenile. It is also the general practice to detain juveniles who commit crimes in a group if all of the co-accuseds have not been located. The juveniles who are caught will be detained until the others are found to prevent them from interfering with the investigation.

Statistics reveal a fairly high level of reliance on pre-trial detention, even for very minor offences. A national survey conducted by the Advocates Association revealed that, in the first five months of 2002, 26 children were subjected to pre-trial detention for minor crimes, 70 for less serious crimes, 44 for serious crimes, and 21 for very serious crimes. Of the eight girls in the women's prison in 2002, two had been held in pre-trial detention for less serious crimes, and six for serious crimes. Information from the Gants Hudag detention center indicated that, between 1999 and 2001, approximately 150 to 170 children were detained at the center², 97% of whom were charged with theft, 29% robbery, 10% hooliganism, 5% rape and 7% other crimes. Only 15% were repeat offenders.

Children are kept in detention and can't be released on bail if they don't have money and a passport. Only those who confess their guilt or pay for their crimes are released on bail.

-16 year old boy

In some cases, children are detained because their identity cannot be confirmed or because they are from another jurisdiction. In centers along the railway line, there are a growing number of children who travel from town to town on the train. Many of them are homeless or without registered addresses. They are often detained when charged with an offence so that they will not escape to another jurisdiction. Most stakeholders agreed that children who do not have identification documents or a permanent address will be detained during the investigation.

Many stakeholders expressed the concern that dealing with unsupervised children is a major challenge, and that there is often no option but to detain them because they have no one to take care of them. One juvenile inspector noted that many children are sent to the Gants Hudag pre-trial detention center because they are unsupervised. These children either do not have a home, or their relatives do not want to take them under their supervision. It was estimated by Gants Hudag detention center that 26 to 30% of the children detained there are unsupervised. The Advocates Association survey revealed that, in the first five months of 2002, 18 unsupervised children were detained for minor crimes in Ulaanbaatar alone. Most people agreed that an unsupervised child who has committed one or more acts of stealing and who has no identity documents would be subject to pre-trial detention.

In some cases, unsupervised children subject to police investigations have been released under the supervision of NGO-run care centers. However, many care centers will not take children in conflict with the law out of concern that they will negatively influence the other children, or because they do not

² No detailed statistics were provided on the number of children subject to pre-trial detention, and this figure appears to be under-estimated. The survey conducted by the Advocates Association showed that 55 children were subject to pre-trial detention in Ulaanbaatar in the first 5 months of 2002 alone. The fact that there are consistently between 40-60 juveniles at Gants Hudag at any given time, and that the average length of pre-trial detention is only 3 months would suggest that there are likely over 100 children detained at Gants Hudag over the course of a year.

want to assume financial liability if the child escapes. Investigators and prosecutors also expressed concern that care centers cannot impose sufficient security over the children or ensure that they do not run away.

There were no statistics available on the average length of time children are held in pre-trial detention, but stakeholders advised that children are generally held for two to three months. Statistics on the girls sentenced to prison in 2002 revealed that they spent, on average, 101 days in pre-trial detention prior to being sentenced to jail. The length of pre-trial detention may be longer if there are factors that complicate the investigation, such as repeated acts or crimes committed in a group. While some stakeholders advised that priority is placed on completing investigations of children in pre-trial detention, others stated that in practice the investigation does not happen any faster.

There are currently police lock-up and pre-trial detention facilities in each aimag, and one large pre-trial detention facility in Ulaanbaatar at Gants Hudag. Until September of this year, pre-trial detention facilities were under the jurisdiction of the police, and have been subject to substantial criticism by both national and international human rights organisations. However, responsibility has now been shifted to the Ministry of Justice, Department of Court Decisions Enforcement, which also has responsibility for prisons. The Department acknowledges that there are many problems to be overcome at the detention centers and is trying to address human rights concerns. Its immediate priorities have been improving the quality of food, reducing overcrowding and improving staff respect for human rights. In recent months food rations have been increased, bedding is changed more often and the practice of requiring detainees to stand and face the wall whenever the door is opened has been discontinued.

However, there is much work to be done. In its 2002 Annual Report, the National Human Rights Commission of Mongolia (NHRCM) criticized both the police holding and pre-trial detention facilities as failing to meet the basic standards of human decency. The Report noted that, although the Law on the Detention of Suspects and Accused has been in force for two years, many of the detention facilities fail to meet the minimum standards set by the law, and none comply with international standards. The NHRCM Report concluded that the majority of temporary detention and arrest facilities in the country are instruments of torture, coercion and the infliction of mental and physical suffering.

Reports from the NHRCM's survey teams revealed that detention facilities throughout the country lacked proper windows, ventilation, lighting, and bedding. Many were overcrowded, and the average space per person ranged from 0.66 to 1.8 square meters, which is well below the statutory minimum. Food rations varied, but in all areas surveyed the daily nutritional intake was below the required amount, with a low of 619 calories per day in Khentii.

In some jurisdictions, such as Erdenet and Bayanzurkh District, detention cells are in the basement and there is no natural light. When the NHRCM visited the Bayanzurkh detention center last year, there were two cells with

adults and juveniles mixed together. Cells have bare cement floors and a wooden platform for detainees to sleep on. Because air circulation is poor, there was an unpleasant smell in the cells. All detainees share a single toilet that they are allowed to use twice per day. The cell designated for juveniles had 9 detainees, which meant there was 0.96 square meters per person in the cell, and 0.69 square meters per person on the wooden platform.

Conditions at the main pre-trial detention center in Gants Hudag are also cause for concern and lead Mary Robinson, former UN Commissioner for Human Rights, to publicly criticise the center during her official visit to Mongolia in August 2000. Although the construction of a new building in March 2002 has greatly improved conditions for the male juveniles, the layout of the new wing is the same as the old facility and fails to address many of the problems identified by national and international experts. The boys are currently detained in 14 cells along a single, separate corridor. While there is a row of windows along the corridor, the cells are on the interior wall and have no natural light. As prescribed by legislation, the cells all have a solid metal door, which is kept closed at all times. There is a narrow observation slot in the door through which some natural light penetrates, as well as a lightbulb that shines in from the corridor. At the time of UNICEF's last visit in mid-morning, the cells were very dark, with insufficient light for reading or other activities. The boys are only permitted outside their cells for 30 minutes per day. In the summer, there is a small bare enclosure for them to walk around in, and in the winter they do exercises in the corridor outside their cells. There are no activities, books or games for the children while they are in their cells.

Each cell has a cement floor, a shared wooden platform for sleeping, and a basin and toilet behind a partial partition. There are generally between four to six boys per cell, depending on the total number of detainees. At the time of our visit the cells had no mattresses and there were insufficient blankets for all the boys. The Center generally has between 50 and 90 male juvenile detainees, though in November there were only 40.

Girls who are detained at Gants Hudag are still in the older section of the institution with the adult women. Conditions there are much worse, and the building is in a state of disrepair. Although the girls are supposed to be kept in one cell separate from the adult women, there are reports that they are generally mixed and that this had led to physical abuse of younger girls. Water, sanitation and heating facilities are very poor, and the girls lack basic hygiene supplies.

In all of the detention facilities, there is virtually no physical or mental stimulation for the detainees. The Head of Gants Hudag noted that conditions are very difficult for the children because they have nothing to do all day and no books, magazines or games to pass the time. While there is a small classroom near the boys' wing built by Save the Children – UK, it has not been used for some time and contains only dated Russian books. Because the time the boys are in the facility is short, there are no formal or non-formal education programs provided.

What the children said

- police use adults or "boss" children in detention centers to beat us and make us confess. If we say anything we will be under more pressure.
- when we feel cold, hungry and frightened we will confess to crimes we haven't committed just to get out of that place
- police promise not to put us in pre-trial detention or punish us if we confess, but in fact they cheat us.
- children are kept in the detention center for at least 2 months and the normal is 4 or 6 months. This is a very difficult time and in prison it is better.
- investigators only visit 1 or 2 times a month while we are in detention. There is no possibility to contact our families.
- children from rich families don't suffer much in detention because they are released quickly or the bosses take care of them.
- sometimes children in detention go on a hunger strike to be released.

The pre-trial detention centers, particularly Gants Hudag, have a well-known reputation for torture and abuse, and one of the main reasons for the change in responsibility was persistent claims that detainees' human rights were being flagrantly violated by the police. Human rights organisations have recorded numerous complaints that pre-trial detention staff beat and tortured detainees in order to obtain confessions, and that the practice was to place recidivists in cells with first-time offenders to frighten and intimidate them. In some cases, older boys were used by guards to control or beat confessions out of younger boys.

The new head of Gants Hudag advised that, since the change-over in responsibility, the Center has developed strategies to reduce these practices and to secure the rights of detainees. The Center, rather than investigators, classifies detainees and allocates them to cells according to the seriousness of their crime and their criminal history. In addition, although some of the old guards have chosen to remain, there has been a significant change in staff, and it is anticipated that there will be a complete staff change over time. While there is no specific training for guards on dealing with children in detention, they have been instructed to work with juveniles more humanely.

However, even with improved staff policies, the conditions in which the children are held place them at high risk of abuse. The children are kept locked together behind closed doors for all but 30 minutes per day with little to do and little supervision. This is not only emotionally and psychologically difficult for children, but also exposes them to abuse by cellmates. The children in the focus group discussions advised that there is a ranking system amongst the boys in each cell that determines where they sleep and who is in charge. Each cell has a "boss" who is in charge of the others, and younger or smaller boys are often subjected to abuse.

8.3 Assessment and Recommendations

Of all aspects of the juvenile justice system, it is Mongolia's arrest and pre-trial detention practices that are of greatest concern. Conditions in pre-trial detention facilities have drawn strong criticism from national and international

human rights organisations, and in its comments on Mongolia's fourth periodic report in March 2000, the UN Committee on Economic, Social and Cultural Rights stated that it was "deeply concerned about all aspects of detention before trial." Although there have been some positive changes in direction in the last few months, both law and practice still fail to meet the basic requirements of the CRC and UN Guidelines.

One major concern is that there are insufficient limitations on the use of arrest and temporary detention of children. The CRC and UN Guidelines emphasise that children should be taken into custody only as a measure of last resort. This is generally interpreted to mean that children should be detained by the police only in exceptional circumstances and where they have been charged with serious crimes. However, as the NHRCM noted, there are currently a variety of different officials with the power to arrest and temporarily detain citizens, and the grounds for arresting a person and taking them into custody are quite vague and thus prone to multiple interpretations by the police. Although the new Criminal Code limits police powers of arrest and temporary detention in criminal matters to children who commit serious or very serious crimes, the Law on Administrative Liability and the Law on the Temporary Detention of Homeless Children both permit children to be taken into police custody for minor administrative infractions, for public drunkenness, and for being homeless.

Another concern is the lack of separate, comprehensive rules governing arrest and use of force against children. While there are some limitations on the use of firearms against children, there are no special rules on the use of other measures of restraint, and no explicit requirement that no more than the minimal amount of force necessary be used. A number of stakeholders noted that beatings and abuse of children is common, particularly by lower ranking police. In addition, although police are obligated to inform children of their rights upon arrest, there is no requirement that this be done in language and in a manner that children can understand. The children who participated in the focus group discussion stated that most children do not know what their rights are and the police do not give them any advice about their rights.

It is recommended that new rules be introduced to govern the arrest and use of force against children. These rules should state explicitly that children must be treated in a manner that takes into account their age and legal status, that promotes their well-being, and that avoids harm to the child. Physical force and restraints should only be used as a last resort, and to the minimum extent necessary. In addition, the rules should require that police explain children's rights to them using simple language that they can understand. Parents should be notified immediately upon arrest or detention, or as soon as reasonably possible, and the twelve hour period specified in the legislation should be treated as maximum time limit, not the norm.

It is also recommended that the Criminal Procedure Code provisions on the arrest of children be amended to state explicitly that the temporary detention of children in police lock-ups should be used only in exceptional circumstances, and for the shortest possible period of time. Furthermore, in

order to be consistent with the new limitations in the Criminal Code that prohibit arrest and detention for anything but serious or very serious crimes, the Law on Administrative Liability should be amended to prohibit children from being taken into custody for administrative infractions.

In addition, children should not be subjected to police custody due to drunkenness or because they lack parental supervision. The Beijing Rules and JDL's emphasise that children should not be detained as a substitute for more appropriate child protection or social welfare measures. While there may be circumstances where children who are intoxicated need to be taken off the streets for their own safety, they should be taken home to their parents or provided some other form of emergency shelter, rather than being placed in police detention facilities. Similarly, street children whose health or safety is at risk should be placed in the care of social welfare officers for identification and placement, rather than being detained by the police. It is therefore recommended that the Law on the Temporary Detention of Homeless Children be repealed. Instead of being subjected to police detention, street children should be turned over to the care of social workers, and responsibility for the Address and Identification Center should be shifted from the police to social welfare authorities. The center should be staffed by social workers, rather than uniformed police officers, and its role should be to provide counselling, support and family reintegration services to street children, rather than to impose secure detention.

With respect to children subject to criminal investigation, the new Criminal Procedure Code contains several new measures designed to limit the use of pre-trial detention. Decisions about imposing a measure of restraint and extending periods of pre-trial detention are now made by judges, rather than prosecutors, and children cannot be subject to pre-trial detention for minor or less serious crimes. In addition, although the requirements for release on bail or with sureties are quite restrictive, additional provision is made for children to be placed under the supervision of their parents or some other organisation without having to meet the financial requirements. While it is too early to see the full impact of these provisions, the head of Gants Hudag advised that the number of juveniles detained in the center had decreased significantly since the new Code came into effect in September.

However, Mongolia's pre-trial detention practices remain cause for concern and fail to fully reflect the principles of the CRC and UN Guidelines. There is no explicit statement or practice of detaining children only as a measure of last resort, and for the shortest possible period of time. Although the new Code limits the use of pre-trial detention to serious and very serious cases, the NHRCM has pointed out that this includes 70% of the crimes listed in the Criminal Code. While the 18-month limit for pre-trial detention is a marked improvement over the previous three year limit, it is still well in excess of international standards. Furthermore, although a juvenile's lawyer has the right to be present and make submissions when the Court makes its decision, the juvenile and his or her parents have no right to attend personally.

Concern was also expressed that decisions about pre-trial detention are highly subjective and there is little guidance as to how the Code provisions should be interpreted and applied to juveniles. It was noted that pre-trial detention is often imposed based solely on the classification of the offence, and it is generally used in all cases where the minimum legal requirements are met, with little consideration of other factors. The tendency is still to impose pre-trial detention for reasons related to expediting or facilitating the investigation, rather than for protecting the public from serious threat. Code provisions allowing pre-trial detention where there are grounds to believe that the juvenile may escape, hinder the investigation or commit another crime are generally interpreted very broadly. Thus, juveniles who commit crimes in groups are detained because they may hinder the investigation by speaking to their co-accuseds. A juvenile who has committed a crime before or is accused of committing the crime more than once will be detained on the grounds that he or she is likely to commit an offence again. In making these determinations, insufficient consideration is given to proportionality between the degree of threat the juvenile poses to society, and the physical and psychological harm that would be caused to the young person by keeping him or her in detention.

The UN Guidelines stress that pre-trial detention should be used only in exceptional circumstances, and that decisions about detention should be based on a highly individualised assessment of the juvenile's background and family circumstances. Juveniles, because of their youth and vulnerability to abuse, are entitled to special consideration for pre-trial release. Consideration should therefore be given to amending the Code to include more detailed provision on the pre-trial detention of children. Specifically, the Code should clearly state that detention should be used only as a last resort, and only where all other measures have been considered and determined to be insufficient to prevent the juvenile from absconding and to protect the public from a serious risk of harm. In addition, rules or commentaries should be developed for investigators, prosecutors and judges to provide greater guidance on what special principles and criteria should be applied in making decisions or recommendations about the pre-trial detention of juveniles.

In many countries, "risk assessment instruments" have been developed to standardize the decision-making process and ensure that detention is used only when necessary. Risk Assessment Instruments are used to evaluate the public safety and flight risk of a juvenile and to guide police or prosecutors in deciding whether to recommend detention or some other form of supervision. They are essentially standardised forms used to help justice sector officials assess and rate the degree of risk a juvenile poses, based on a full assessment of his or her criminal history, family circumstances and level of parental supervision, education and employment, peer relations, ties to the community, personality or behaviour, and general attitude. This process helps ensure that all relevant factors are fully considered and given appropriate weight, and also reduces some of the subjectivity in the decision-making process.

Reducing over-use of pre-trial detention also requires the development of a broad range of viable options to appropriately supervise children who are under police investigation. In many countries, over-reliance on pre-trial detention results from lack of alternatives, leaving police, prosecutors and courts with only two choices: place the juvenile under the supervision of his or her parents, or lock them up in a detention center until the investigation is complete. The lack of other options leads to overuse of detention for children from disadvantaged or troubled families. Most juveniles accused of property-related offences pose no great threat to the public, but they often face detention because the police cannot identify a responsible adult to supervise them. This means that children are effectively being deprived of their liberty because of poverty or the failings of their parents. Spending time in overcrowded, harsh pre-trial detention centers further alienates and marginalizes these youth and pushes them further into a life of crime. This is not only detrimental to the child, but also extremely costly to the State. Furthermore, since imprisonment has been proven to increase the likelihood of recidivism, the overuse of pre-trial detention can be harmful to society as a whole, by exposing the public to higher crime rates.

In order to counter-act this trend, the CRC and UN guidelines require countries to develop a variety of pre-trial supervision options so as to maximize a juvenile's chances of being released during the investigation. The use of effective detention alternatives helps to reduce overcrowding in detention centers and ensures that youth who do not pose a danger to society are supervised through less costly programs. In most cases, secure detention is an excessive and very costly response to juveniles who simply require some level of additional supervision or structured activity in order to keep them out of trouble.

Many countries have developed a "continuum" of options, with varying levels of supervision and security. The degree of supervision imposed in each case depends on an individualized assessment of the youth's potential danger to the community and the risk that he or she will fail to appear when summonsed. Decisions are based on the principle of using the least restrictive option possible. A typical continuum of pre-trial supervision options includes:

- release with conditions;
- release under supervision of a parent or other responsible adult, with or without conditions;
- mentoring;
- home detention with intensive monitoring and supervision;
- day or evening reporting centers; and
- shelters or foster care for youth who need 24-hour supervision or have no home to return to
- secure detention.

Designing detention alternatives this way encourages officials to match the degree of restriction to the risks posed by the youth. It also ensures cost-efficiency by reserving costly secure detention facilities for juveniles who pose the greatest risk to public safety. By establishing new alternatives, countries

can reduce overcrowding, lower operating costs, and prevent further criminalisation of young people.

It is recommended that the Criminal Procedure Code be amended to provide a broader range of measures of restraint for juveniles. Currently, the only options being applied to juveniles are detention or release under the supervision of a parent or other guardian. This places many children at risk of being detained because they are homeless or do not have adequate parental supervision. Developing more viable and effective community-based supervision programs would help reduce the number of children being held in costly, pre-trial detention facilities, without compromising criminal investigations. The options outlined below have proven highly effective at maintaining appropriate levels of supervision over children subject to police investigation. A number of the alternatives could be introduced, on a pilot basis, within the existing legislative framework.

Parental Supervision with Conditions: Placing a young person under the supervision of their parents is one of the most common forms of pre-trial release for juveniles. In the majority of cases, parents are able to provide sufficient guidance to ensure that their child does not re-offend and attends when summonsed. Where parents are unable or unwilling to effectively supervise a young person, juvenile inspectors and defence lawyers should actively attempt to locate another relative with whom the child can be placed, such as a grandparent, aunt, uncle or older sibling. In addition, the effectiveness of parental supervision can often be improved by giving police or judges the authority to impose conditions on the child in order to restrict his or her movements (for example, a curfew or an order to attend school or a non-formal education program). This approach has proven most successful where family members are permitted to participate in the process of developing a supervision plan for the juvenile. Having parents meet with officials and take part in deciding what conditions will be imposed ensures that they are fully aware of their obligations, and also allows them to suggest conditions that they think will help them to better control their child.

Mentor or Community Supervisor: In many cases, children are held in pre-trial custody because they come from troubled or broken homes and officials are concerned that their parents cannot provide appropriate supervision. To address this problem, some countries have introduced community mentor programs. Under these programs, the juvenile is placed under the supervision of his or her parents and assigned a volunteer mentor or community supervisor. The mentors spend between 15 and 30 hours per week with the juvenile providing supervision and support. Mentoring not only supplements parental supervision, but in many cases positively influences a juvenile's long-term behaviour by providing them a positive and supportive role model. The mentor participates with the youth in education and recreational activities, helps the juvenile find a job or get re-enrolled in school, and ensures that the juvenile attends when summonsed. The number of hours they spend together can be adjusted based on the youth's level of risk. The mentor also makes home visits and telephone calls to check on a youth's adherence to their curfew or other conditions.

It is recommended that a volunteer mentor program be introduced under the supervision of juvenile inspectors, and that students at the Pedagogical University and the law school clinic programs be trained and mobilised to act as mentors. Many of the law students already participate in crime prevention activities by providing law awareness lectures to children at risk or children under deferred sentence. Acting as mentors to children under investigation would likely be a more effective use of this resource, and would also provide them with valuable and practical work experience.

Intensive Home Supervision: Another popular option for community-based supervision of high risk juveniles or those from troubled or broken families is an intensive home supervision program. Under this model, the juvenile is released under the care of his or her parents, but is subject to varying levels of restrictions and frequent monitoring and supervision by a probation officer or social worker. Juveniles under intensive home supervision are subject to close monitoring by their assigned supervisor through frequent, random, unannounced home visits and scheduled office meetings. The juvenile is generally required to observe a strict curfew and movement outside the home is limited to pre-approved activities, locations, and times (for example, attending school or work). Many programs use a written contract with the juvenile and his or her parents to establish clear behavioral expectations and to define parents' obligations to cooperate with the program. These contracts specify curfew hours, places where the juvenile may or may not go, and expectations for school attendance or employment. Noncompliance with rules can lead to tighter restrictions, while positive performance can earn privileges or looser restrictions. Support services and enrolment in educational or other programs help prevent re-offending by keeping the juvenile busy and dealing with the underlying problems that contributed to the crime.

Mongolia does not have probation officers, and juveniles under investigation are currently subject to the supervision of juvenile inspectors. However, contacts are very infrequent, and insufficient to provide the level of monitoring and support that is required for high-risk youth. In light of their other responsibilities, it would be difficult for juvenile inspectors to provide the level of supervision required under this model. As will be discussed in the section on Sentencing below, it is recommended that Mongolia develop specialised probation officers to provide more intensive and constructive supervision for children being investigated and on deferred sentence. In the short term, it may be possible to develop partnerships with social workers and NGOs to provide support in this initiative. While juvenile inspectors would be primarily responsible for developing behavioural contracts and establishing conditions for juveniles under supervision, specially trained social workers and NGO staff could be assigned as supervisors to conduct regular home visits and to coordinate referrals to existing government or NGO-run programs, such as non-formal education, vocational training, or life skills courses. Clear guidelines would be required to ensure that supervision is structured and consistent, and that supervisors provide regular progress reports to juvenile inspectors and investigators.

Reporting Centers: The reporting center model is designed to provide intensive supervision to youth who would normally be held in detention because they are at high-risk for re-offending or lack parental supervision. Youth referred to reporting centers are those who require more intensive monitoring than a home supervision program can provide. They are often not enrolled in school and spend time on the streets, making monitoring difficult and leaving them with too much spare time.

Under the reporting center model, juveniles are placed under the supervision of their parents or a care center, but are required to attend a day or evening reporting center. The centers are run by the police, local authorities, or NGOs and provide between six and 12 hours of daily supervision and structured activities, after which the juveniles return home to their parents. The centers provide the youth with supervision, non-formal education, counseling, and recreation. The purpose is not to punish, but to promote constructive use of free time and to keep children off the street.

Many of the centers run both day and evening programs and offer a range of educational and recreational programs. Day programs provide non-formal education and counseling for out of school youth. Evening programs provide additional tutoring, life skills courses, and recreation programs for juveniles who attend general education schools. The aim is to provide supervision and structured activities during after-school and evening hours from 15:00 to 21:00 when working parents are not home. In some cases, evening programs also provide a meal and transportation home. Reporting centers not only improve supervision over juveniles by occupying their free time, but also give them access to necessary support services and provide them with an opportunity to develop positive relationships with the police and other adults.

It is recommended that reporting centers be established on a pilot basis in one or more cities with high juvenile crime rates. Study tours or other opportunities for experience sharing should be explored so that policy-makers and front-line staff can observe how the model operates in other countries. The purpose would not be to punish or detain the children, but rather to provide a space where they can spend their free time in a supervised environment. Through partnerships with local governors, children's center, and NGOs, the reporting center could provide sporting and other recreational activities, as well tutoring, non-formal education, experiential life skills courses, and referrals to health, social welfare and other support services. The center could be staffed by a combination of specially trained juvenile inspectors, social workers, student volunteers and NGO personnel.

Foster Care: In some countries, juveniles who come from very troubled homes or who do not have parental care can be placed with foster parents during the investigation period. Foster parents are responsible adults who are provided a small monthly fee to care for children in their homes. They generally receive specialized training on how to deal with youth referred by the juvenile justice system and keep in close contact with police, probation officers or trained social workers if extra support is needed. Foster care is especially effective for younger children who require the care and support of a

parental figure but cannot return to their own parents due to abandonment or abuse.

Fostering is not common in Mongolia, but consideration should be given to developing long-term strategies to build public support for the practice.

Shelter Care: Another option for juveniles who cannot be returned to their parents' care is placement in a shelter. Shelters provide an alternative for juveniles who require a residential placement because they do not have a suitable home or relative to provide supervision. They are unlocked, home-like centers located in residential areas. They generally house between 10-15 youth and are staffed by workers who have been specially trained to deal with troubled adolescents. The centers rely primarily on close, 24-hour staff supervision, trust-building and a structured, daily routine to monitor juveniles' behavior. Shelter care is used as an alternative to pre-trial detention in many countries, including Poland, US, UK, Australia, Canada, Philippines and South Africa and has shown success rates as high as 96%. In most cases, the shelters are run by NGOs on contract with the government.

Many stakeholders suggested that NGO and government-run care centers should play a greater role in providing care and supervision for children under investigation. Currently, there are an unacceptably high number of children who are held in pre-trial detention, even for minor offences, because they lack appropriate parental supervision. Addressing this issue should be a matter of priority. It was noted that, while the policy of prosecutors and judges is not to detain children, they often have no other option for street children because they have no place to live and no one to provide effective supervision. However, the UN Guidelines emphasise that detention should not be used as an alternative to more appropriate social welfare interventions. Pursuant to the CRC, it is the State's responsibility to provide alternative care for children without adequate parental care. The practice of detaining unsupervised children not only violates their rights under the CRC, but also exposes them to abuse and criminal contamination, thus placing them at greater risk of re-offending when they are released.

Under existing legislation, juveniles can be placed under the supervision of an organisation such as an NGO while they are being investigated, and this option has been used effectively in the past. However, for care centers to be an effective option, a number of problems identified by stakeholders would have to be addressed. For example, care centers are reluctant to take children under their supervision because of the requirement that they pay all of the expenses associated with re-arresting the juvenile should he or she escape. In addition, police, prosecutors and the care centers themselves expressed concern about their ability to properly monitor children in their care. While there are care centers available in most of the municipalities with high numbers of unsupervised children, most of them, including the government-run Labour Education and Training Center, stated that they would not want to integrate children in conflict with the law with their existing residents out of concern that they would negatively influence the other children. The children in the focus group discussions stated that they are sometimes abused or

discriminated against by care center staff who prefer the younger, settled children.

Despite these challenges, care centers could be an effective alternative to pre-trial detention, provided additional structure and staff training is provided. In other countries, shelters rely on low staff/resident ratios, structured daily activities and trust building between staff and the children, rather than locks and guards, to effectively supervise juveniles. However, most of Mongolia's care centers are staffed by educators who have minimal or no training in dealing with trouble adolescents. As a result, they lack the skills to properly manage problem behaviours, and in some cases their practices, such as reinforcing the "boss" system prevalent amongst unsupervised children, can exacerbate the situation and push children back out onto the street. Young people who have been on the streets for lengthy periods of time often suffer from emotional problems due to abandonment, neglect and physical and sexual abuse. Most have come to distrust adults and display a number of behavioural problems that can be difficult for untrained staff to handle. However, with proper training and guidelines, care centers can provide effective monitoring and supervision. An example of the effectiveness of trust building is the World Vision Open Zone model located next to the juvenile prison. Although the children live in a ger with minimal security, there have been no escape attempts during the three years the program has been running, due in large part to positive peer reinforcement and the trust relationship that has been built between the children and the World Vision social worker.

While the most cost-effective approach would be to integrate children in conflict with the law into existing care centers, many stakeholders recommended that separate, specialised care centers be established. In some countries, juveniles under police investigation are successfully placed in existing shelters for street children. However, others have found that mixing pre-trial youth into a shelter with a different original mission and client population can cause problems, particularly if staff are not adequately trained. In Mongolia, most of the care centers have children from a broad age range and are effectively acting as orphanages, with some children settled in institutions for many years. Mixing troubled adolescents from the street into these centers has caused problems in the past. It may therefore be advisable to establish a separate care center to be used only for the short-term care of children under investigation. Alternatively, selected care centers with experience working with troubled adolescents, such as World Vision, could be used, provided their staff are provided additional training and guidelines.

Another strategy that could be used to improve supervision over juveniles would be to pair the care center model with a reporting center. Thus, children who are under the supervision of a care center could be required to spend a certain amount of their spare time at the reporting center, where education and recreation programs would provide them with structured activities and prevent them from spending free time on the streets.

It is therefore recommended that a pilot program be developed to place unsupervised children subject to police investigation under the supervision of agreeable care centers. Opportunities for study tours or other experience sharing should be explored so that policy-makers and front-line staff can observe a model in other countries. In addition, clear guidelines and policies should be developed in consultation with the police, prosecutors, judges, Ministry of Justice officials, National Board for Children and NGOs to clarify roles and responsibilities, and to ensure that care center operations meet the needs of the justice sector. A specialised training program should also be developed to provide care center staff with the training and skills they need to deal more effectively with children in conflict with the law.

In addition to developing new alternatives to pre-trial detention, conditions in the existing pre-trial detention facilities should be addressed as a matter of priority. While some improvements have taken place since the change-over in responsibility, the conditions in which children are detained are inhumane, unduly oppressive and do not conform to the CRC and international standards. Children who are detained at the pre-trial stage must be held in conditions that take into account their age and their status as non-convicted persons. This generally means that they are entitled to greater freedoms and privileges than convicted prisoners. However, the practice in Mongolia is to detain children under much more restrictive conditions and to strictly regulate contact with friends and family. Despite criticisms of national and international human rights organisations and prison specialists, the new detention facilities have been built on the same model as the old one. Although sanitary and nutritional conditions have improved, the children are still held in dark, concrete boxes for 23.5 hours per day with no natural light and absolutely nothing to do. There are no common areas for them to spend their time, apart from a small classroom that is not in use. It is therefore recommended that the following issues be addressed as a matter of priority:

- Children are not being properly protected from abuse by cellmates because they are locked behind a solid door all day with minimal supervision. Tensions and fighting are inevitable when children are confined together in small spaces with nothing to do.
- Children are currently permitted out of their cells for only 30 minutes per day, which is less than the legislative requirements and far below international standards.
- There is no natural light and insufficient artificial light in the cells to allow for reading or other activities.
- Children are not provided with sufficient physical or mental stimulation and have no meaningful activities inside or outside their cells.
- Conditions in many pre-trial detention centers fail to meet basic hygiene requirements.
- In some detention facilities, the requirement that children be separated from adults is not being respected, particularly for girls
- Children should not be restricted from having visits from their family
- Children have the right to education, regardless of how long they are in detention

- Guards in the pre-trial detention facilities carry firearms, in contravention of the JDL's
- The only possible punishment is solitary confinement, which is prohibited for use against children

It is recommended that comprehensive rules and guidelines on the treatment of children in pre-trial detention facilities be developed. The rules should ensure that children's rights under the CRC are respected, and that they are treated humanely and protected from abuse and maltreatment. Strategies should be developed to maximise children's time out of their cells and to provide them with meaningful activities. In particular, NGOs and local children's centers could be mobilised to visit with the children, to provide counselling, legal advice and non-formal education or literacy training, and to supply books, magazines and games for the children. Previously, detention facilities were very closed and NGO activities were limited. However, the new head of the Gants Hudag detention facility has taken a very different approach and welcomes the support of NGOs. This change in approach is commendable, and should help improve the conditions for children in the center.

In addition, pre-trial detention staff should be provided special training on children's rights, and on practical strategies and approaches for dealing with children. Currently, pre-trial detention staff do not receive any special training on working with children. However, a new training center has been established under the Department of Court Decisions Enforcement to train all prison staff, including pre-trial detention center guards. The center is in the process of revising its training curriculum and has expressed an interest in developing a juvenile justice component (see the section on Juveniles in Prison). Training for pre-trial detention staff should be considered a priority in the center's training activities.

The CRC and UN Guidelines also requires that, when pre-trial detention is used, priority should be given to expediting those cases to ensure the shortest possible duration of detention. This requires clear policies requiring investigators and inquiry officers to place priority on cases involving children, particularly when they are in pre-trial detention. The current 18-month time period for the detention of children should be significantly reduced, bearing in mind international standards and the CRC requirement that children be detained only for the shortest possible period of time. In addition, the maximum time limits set out in the Criminal Procedure Code should be strictly enforced, and should be viewed as outside time limits, rather than the norm. Prosecutors and Courts should exercise special vigilance in supervising investigations involving children, and should only extend investigation periods where there are clear and cogent reasons for doing so. Furthermore, delays in investigating crimes committed by children in groups could be reduced by making more frequent use of the Criminal Procedure Code provisions allowing the cases of co-accused to be separated. While it may be in the interest of investigators and prosecutors to deal with the case comprehensively, children have the right to have their case determined without delay, and those who

have been arrested and detained should not suffer lengthy periods of pre-trial detention because their co-accuseds cannot be located.

Recommendations

- Develop separate rules governing the arrest and use of force against children.
- Amend the Law on Administrative Liability to prohibit the detention and apprehension of children for administrative infractions.
- Revoke the Law on the Temporary Detention of Homeless Children and transfer responsibility for identifying and providing temporary care for street children to social workers.
- Develop new guidelines for police, prosecutors and judges on the special factors to be considered in making decisions about imposing measures of restraint on children
- Introduce new alternatives to pre-trial detention, including mentoring programs, reporting centers and care center supervision, on a pilot basis
- Amend the Criminal Procedure Code to reduce the maximum length of pre-trial detention for juveniles and to include special factors that must be considered in imposing measures of restraint on juveniles, including an explicit statement that pre-trial detention shall only be used in exceptional circumstances and as a measure of last resort.
- Prioritize the cases of juveniles in detention to ensure that cases are investigated and prosecuted in a timely manner.
- Improve conditions in pre-trial detention centers to ensure compliance with the CRC and UN Guidelines
- Train detention center staff on special rules and procedures for dealing with children.

9. CASE REGISTRATION AND INVESTIGATION

The police are usually the first justice sector agency that juveniles come into contact with and they can have a significant impact on young people's opinions about the justice system and the State as a whole. For this reason, the CRC and UN guidelines include specific safeguards that are intended to improve relations between the police and young people, and to ensure that their contact is managed in a manner that respects the rights of the young person.

The CRC states that children suspected or accused of a crime have the right to be treated in a manner consistent with their sense of dignity and self-worth and which takes into account their age. Children have the right to be presumed innocent until proven guilty, to be informed promptly of the charges against them, and to have the matter determined without delay. No child shall be subject to torture or other cruel, inhuman or degrading treatment or punishment, and their right not to be compelled to give testimony or to confess guilt must be guaranteed.

The Beijing Rules provide additional guidance with respect to the management of police contact with children. The Rules state that children

must be guaranteed basic procedural safeguards, such as the presumption of innocence, the right to be notified of charges, the right to remain silent, the right to counsel and the right to the presence of a parent or guardian at all stages of the proceedings. In addition, any contacts between law enforcement agencies and a juvenile must be managed in such a way as to respect the legal status of the juvenile, promote his or her well-being and avoid harm to the child. Specifically, police must not use harsh, abusive or obscene language or physical violence in their dealings with children.

The Beijing Rules also emphasise the need for specialized training for law enforcement officials involved in the administration of juvenile justice. The Rules state that, in order to best fulfil their functions, police officers who frequently or exclusively deal with juveniles must be specially instructed and trained.

Both the CRC and the Beijing Rules also stress that a child's right to privacy must be respected at all stages of the proceedings. The Beijing rules state that in order to avoid the harm that may be caused by undue publicity or by the process of negative labelling, the mass media should not publish any information that may reveal the identity of a child who is suspected, accused or convicted of a crime.

9.1 Legal Provisions

As noted above, Mongolia's Constitution guarantees the right to personal liberty and safety, and states that no one may be searched, arrested, detained, prosecuted, or subjected to restrictions on their liberty except in accordance with procedures and on grounds determined by law. The Constitution prohibits torture, inhuman, cruel, or degrading treatment, and states that everyone has the right not to be compelled to testify against him or herself.

According to the Law on Police, the criminal police service is responsible for discovering and eliminating the causes of crime and carrying out inquiries and investigations into complaints of criminal activity. In addition, the public order police are responsible for maintaining law and order in streets and public places and carrying out activities to prevent juvenile delinquency.

The Law on Prosecutors gives prosecutors responsibility for supervising the inquiry and investigation of criminal cases to ensure that all investigatory procedures are conducted in accordance with the law. Prosecutors receive and decide on complaints against investigators. They may also participate personally in an inquiry or investigation, re-investigate a case, and issue directives to investigators or inquiry officers on how to conduct an investigation and on the correct application of the law.

The actions of the police and prosecutors with respect to criminal inquiries and investigations are governed by the Criminal Procedure Code. The Code states that, in executing criminal proceedings, inquiry officers, investigators and prosecutors must observe the rights guaranteed in the Constitution (Article 8). It also sets out comprehensive procedures to be followed in the

investigation of all allegations of criminal misconduct, including a separate chapter on special requirements for proceedings involving juveniles.

The Criminal Procedure Code states that the police, upon receiving a complaint or report of a crime, have five days (extendable to up to 14 days) to verify the complaint and decide whether to initiate criminal proceedings (Article 171). At this point, the alleged perpetrator is called a “suspect.” After interrogating the suspect and reviewing the case, the inquiry officer or investigator must register a criminal case, submit a proposal to the prosecutor refusing to initiate a case, or refer the matter to the appropriate jurisdiction (Article 172).

Once a case has been registered, it then proceeds to inquiry or investigation. Under the old system, case registrations and inquiries were conducted by an inquiry officer, and then handed over to an investigator for a further investigatory period. However, under the new Code introduced in September 2002, the system has been streamlined in order to improve the efficiency and reduce delays. Now, minor and less serious crimes are investigated by an inquiry officer and then referred directly to the prosecutor. Serious and grave crimes are investigated from the first instance by an investigator (Article 28).

The Criminal Code requires inquiry officers, investigators and prosecutors to take all measures provided by law to ensure a thorough, complete and objective investigation of the case, and to collect evidence tending to both convict and acquit (Article 16.1). It also sets time limits for the completion of all inquiries and investigations. Inquiries into minor crimes must be carried out within 15 days, and for less serious crimes, within 30 days. However, these periods may be extended by the prosecutor for an additional 15 days (Article 178). The principle period for carrying out an investigation is two months, or one month if the juvenile is in detention (Article 366.4). A prosecutor can extend the time limits for an investigation, but if the juvenile is in pre-trial detention, approval of the court is necessary. The maximum time a juvenile can be detained in pre-trial detention is 18 months (Article 366.4).

During the course of the inquiry or investigation, the officer in charge of the case must arrange for an interrogation of the accused, victim and other witnesses. Accuseds who are not in pre-trial detention are summonsed by subpoena, and juveniles are to be summonsed through their parents or legal guardian (Article 143 and 368). At the beginning of the interrogation, the police are required to explain the purpose of the interrogation and advise the accused or suspect of his or her rights (Article 144.2). The testimony of the accused must be recorded, and he or she must be provided an opportunity to review the testimony and make additions or corrections at the end (Article 202).

Juveniles cannot be interrogated for longer than two hours without a break, or for more than a total of four hours in one day (Article 370). An “educator” must be present at the interrogation of a juvenile (Article 371). The juvenile’s parents or guardians may be present at the interrogation, with the permission of the investigator (Article 372). They also have the right to be present when

the materials of the case are presented to the juvenile, unless the investigator determines that this would be harmful to the interests of the minor (Article 373). In addition, it is now mandatory for defence counsel to participate in all stages of proceedings involving juveniles, including case registration, investigation and trial (Article 40).

The Criminal Procedure Code also permits inquiry officers and investigators to conduct confrontational interrogations where there are serious inconsistencies between the testimony of the accused and other witnesses. The two parties are questioned together and confronted with the differences in their testimony (Article 149).

It is prohibited to force a suspect or accused to give testimony, or to subject him or her to cruel or inhumane treatment (Article 81 and 82). Suspects and accused have the right to give or refuse to give testimony and shall not be required to give testimony against themselves (Article 35). Investigators cannot demand that a suspect or accused give testimony against themselves or use pressure or force to get testimony (Article 16.3).

Once the inquiry or investigation is completed, a decree is drawn up and the case is referred to a prosecutor. The prosecutor must, within a maximum of 42 days, verify the case, draw up a decree to prosecute or an indictment, and transfer the case to the Court (Article 214 and 215).

9.2 Current Practice

As noted above, there are currently one or more juvenile police inspectors in each aimag and four or five in each district of Ulaanbaatar. While a significant part of their work is juvenile crime prevention, they also conduct inquiries for cases involving children. Many of the juvenile inspectors have backgrounds and training as teachers, though increasingly the practice is to recruit juvenile inspectors with legal training from the Police Academy. They are not provided any special training for their position, though most have participated in training on children's rights provided by the National Board for Children, the Mongolian Child Rights Center, the National Center Against Violence, and other NGOs. The majority of them are women.

Prior to September 2002, juvenile inspectors would carry out the initial case registration and then transfer a case to investigators. However, under the new legislation, they will be responsible for registering and conducting inquiries for all minor and less serious cases, and then refer the matter directly to the prosecutor. Serious and very serious cases will be investigated from the first instance by investigators. Although Ulaanbaatar used to have a central investigations office for juveniles, it was dismantled in 1998 and investigations decentralized to the district level, partly out of concern that bringing all of the juveniles together in one place to wait for their interrogations was facilitating criminal contamination. There are currently no specialised juvenile investigators and no special rules or procedures for conducting juvenile inquiries or investigations, apart from those contained in the Criminal Procedure Code.

Children who are held in pre-trial detention are interrogated in investigators' rooms at the detention facility. For children out of custody, the police generally call their parents or lawyer to bring them to the police station, or in some cases, summons them through their school. Interrogations take place at the police station in the juvenile inspector or investigator's office. Parents may be present, though they can be excluded by the investigator if they are interfering with the investigation. The practice is to have an educator present, who is generally a teacher from a local school.

Under the previous legislation, lawyers' participation at the investigation stage was permitted but not mandatory, and in practice many children did not have the benefit of legal advice during interrogations (see the section on Legal Representation). In some cases, lawyers are selected by the investigator and do not have the opportunity to meet with the child prior to the interrogation. Concern was expressed by both the children and other stakeholders that, where lawyers are selected by the investigators, they tend to serve the interests of the investigator, not the child, and often try to persuade children to confess their guilt. One prosecutor noted that children can be easily led by others so it is sometimes difficult to know whether their confessions are genuine. Often parents or lawyers tell them what to say and encourage them to confess to crimes.

Some lawyers don't defend us but instead they support the investigators and try to make us confess our guilt.

The police discriminate against people. They prefer to accuse poor children or street children who have no lawyers, rather than children whose parents can give bribes or have friends. These children are discharged, and only the children without lawyers, like us, endure the punishment.

In general, children are first interrogated during the initial 5-day period to determine if there are sufficient grounds to register a case. They will then be interrogated again during the course of the inquiry or investigation.

The police don't make decisions quickly. They demand that children come to their office every day. When we come they just make us clean the floor, make copies and so on and then let us go. This continues for 1 or 2 months. We can't go to school during these days so we drop out.

Children may refuse to give a statement to the investigator but this is extremely rare. If more information is required or there is any conflict with the evidence of the victim or a co-accused, the juvenile may be interrogated many times. The children in the focus group discussion noted that this often requires them to miss many days of school and to spend long periods of time waiting outside the investigator's office for their turn to be interviewed.

The purpose of the interrogation is to conduct a full inquiry into the alleged crime, as well as the background and character of the young person. This includes uncovering any other criminal conduct the juvenile may have been involved in. In some cases, investigators publish the names and pictures of child suspects through the media to elicit more complaints from the public

Stakeholders advised that in most cases, juvenile inquiries and investigations are completed within the initial period prescribed by law. However, investigations sometimes take longer if a crime has been repeated many times, if it was committed in a group, or if the accused leaves the jurisdiction and has to be located and returned. In some jurisdictions, delay is caused by the fact that investigators have heavy caseloads.

Some juvenile inspectors and investigators noted that juvenile work can be very challenging and that different strategies need to be employed to communicate with them effectively. Other stakeholders advised that, in most cases, investigators treat juveniles the same as adults, and will often use tactics to pressure them into confessing their guilt and to ensure a speedy and satisfactory resolution to the case. Some stakeholders were quite frank in noting that the general practice is for prosecutors and investigators to communicate in a very aggressive manner with both adults and juveniles, and that this can be very intimidating for children. It was noted that before, the special juvenile investigations department had defence lawyers in the same office and there was no scolding or beating of children. However now, in the absence of lawyers, intimidation is being used.

The police in Mongolia do not have an enviable reputation, and in most parts of the country their relationship with the community is marred by fear and distrust. Human rights groups have noted that police are widely perceived as being rude, aggressive and not serving the needs of the community. In 1996, Mongolia participated in an International Criminal Victims Survey conducted in countries in transition with the support of the UN Institute for International Criminal Research. Of those who took part in the study, only 24.7% stated that the police were doing a good job, 36.4% said they were not doing a good job, and 39% refused to answer the question. Similarly, the Adolescent Needs Assessment conducted by MYDC and UNICEF in 2000 revealed that only 48% of children had trust in the police - 34% said they trusted the police, 14% said they had some trust, 20% had little trust, and 18% had no trust at all. All of the children who participated in the focus group discussions stated that they did not trust the police, and only three indicated that they would like to be police when they grow up.

What the Children Said

- the police of high rank and the women police do not beat children, but the low rank and younger police beat us a lot
- they do not pay attention to children's rights. They treat us like adults and like criminals, not children
- they use offensive language and call us rude names like neglected child or social waste
- they use different methods to pressure children to confess crimes or to punish them such as tying children to chairs, beating them with police sticks, burning plastic bags and dropping it on their hands and legs, kicking them in the face, sharpening a match stick and punishing it under their nails, not giving food.
- some police prefer not to beat us themselves but make adults or bosses (those who have authority amongst the street children) beat us.
- they treat us like dogs
- the street children are treated very badly even though they have not committed any offence.
- they are bad-tempered people and do harmful things
- their ranks and salaries are increased according to the number of crimes they detect. If we confess our guilt for crimes we haven't committed then they give us cigarettes and sweets.
- few police charge us for the one offence we really committed. They always try to give us more penalties for other offences we did not commit.
- the experienced offenders can stand the pressure or the beating and say nothing. But the inexperienced, first-time offenders cannot stand the beating and they are easily deceived. They tell about all the crime they committed before and are given more punishment.
- they promise not to keep us in pre-trial detention or to punish us if we confess the crime but in fact they cheat us.
- Sometimes thieves make bargains with the police and bribe them with money or give them half of the stolen things so they are released. The police do not punish the adult or experienced thieves even if they know about their stealing because they are good friends and take bribes.

The children's account of their treatment by the police is consistent with complaints received by the National Human Rights Commission of Mongolia. As noted above, both the Human Rights Needs Assessment and the NHRCM's 2002 Report cite numerous complaints of individuals being tortured, threatened or abused by investigators, and it was noted that coercion or abuse is commonly used to obtain confessions.

Despite the problems within its ranks, the police department has many dedicated employees, and in particular, many juvenile inspectors display great compassion and respect for the rights of children in conflict with the law. The General Police Department has recognised its broader institutional problems and acknowledges that improving relations between police and the community is an important part of the transition process. With the support of the Mongolian Foundation for Open Society (Soros Foundation) and the Constitutional and Legal Policy Institute (COLPI), the General Police Department is introducing community policing principles to the police force. Following successful pilot projects in two districts of Ulaanbaatar in 2000, the GDP adopted community policing as one of its five main goals and will be

extending community policing practices nation-wide. In essence, community policing involves a philosophical shift away from reactive policing towards a more proactive approach based dialogue and cooperation with the community. It seeks to change the orientation of the police to a public service organisation, rather than a force of oppression and suppression.

The Police Academy, which acts as the central training institution for all police officers, is also undergoing significant modernization and curriculum reform. The Police Academy currently offers a four-year law degree and training program for investigators, as well as shorter courses for lower ranking police. While many of the Police Academy courses touch on issues of juveniles and child victims, there are no specialised training courses or programs to train juvenile specialists. With the support of Soros, the Police Academy is in the process of revising its curriculum to introduce community policing philosophy and techniques, and the curriculum and training methods for the basic police course have been redesigned, making the course more practical and skills-oriented. Soros and COLPI have been supporting the Police Academy to develop community policing training modules that will be incorporated into the Police Academy training program and also used to re-train police personnel on an in-service basis. Modules on use of force and victim care have already been completed, and the GDP is in the process of developing its regional training agenda for next year.

9.3 Assessment and Recommendations

A full assessment of the Mongolian police is beyond the scope of this assessment. However, it is clear that the police force has identified some major challenges and is taking steps to address them. The biggest challenges will be changing police culture, reducing corruption and eliminating the use of violence or intimidation during the arrest and interrogation of young people.

Although Mongolian has shifted to an adversarial criminal justice system, proceedings at the inquiry and investigation stage have, to some extent, retained an inquisitorial character. Although suspects and accused have the right not to give testimony against themselves, in practice significant emphasis is placed on obtaining confessions from the accused and on resolving any conflicts or inconsistency in testimony at the pre-trial stage. This results in prolonged investigations and repeated interrogations of young people. While the requirement that educators or defence lawyers be present during interrogations can afford some additional protection to juveniles, in many cases this requirement is either not enforced, or their presence is little more than a formality since they are selected by the investigators. Reports of threats, intimidation and physical violence against children during the course of interrogations is of grave concern and should be addressed as a matter of priority.

Young people can be easily intimidated or coerced by adults, and ensuring respect for their due process rights requires that additional care be taken in conducting interrogations. It is therefore recommended that special police and prosecutors' guidelines be developed to govern all inquiries and investigations involving children. The General Police Department is in the process of

developing a police procedural manual, and special rules and procedures for dealing with children could be developed as part of this process. The rules should be clearly grounded in the CRC and UN Guidelines, and should include necessary safeguards to ensure that all contacts between children and the police are conducted in a manner that respects the child's rights and takes into account his or her age.

It is recommended that the guidelines include a statement of general principles outlining the special nature and objectives of the juvenile justice system, as well as the need to be firm but compassionate when dealing with children. At the beginning of any interrogation, police should be required to explain children's rights to them in simple language that they can understand, and children should be advised that they are not required to give testimony and can stop the interrogation at any time. In order to ensure that children can properly assert this right, their right to have a lawyer of their choice should be strictly enforced, and the practice of investigators selecting attorneys for indigent juveniles should be discontinued (see the section on Legal Representation below). Investigators should also be strictly prohibited from using any threats, inducements, or promises of favour to elicit testimony from children.

In addition, children should be entitled to have their parents or guardian present during all contacts with the police, unless the parents' presence is not in the child's best interest. Currently, while the presence of an educator is mandatory, a juvenile's parents can only be present with the permission of the investigator, and in many cases they are excluded if the investigator believes that they may interfere with the investigation. The guidelines should clarify that it

Some police don't beat us to make us confess. We tell them about what we did because they give us food, explain things to us and appear to be nice and sensitive.

is the interests of the juvenile, not the investigation, that govern whether parents should be present, and they should be excluded only in exceptional circumstances. The purpose of having parents present is to provide emotional support to the juvenile and to reduce the trauma or fear associated with police questioning. The presence of an educator who is unknown to the juvenile and who may be perceived by the child as being associated with the police is not an adequate substitute for parental support. For children whose parents are unknown or not available, another adult support person, such as an older sibling, uncle, grandparent or family friend should be permitted to attend. Where an educator is used, he or she should meet with the child independently before the interrogation to establish a rapport and to reassure the child about their role in the process.

It is also recommended that the practice of interrogating children known to be under the age of criminal responsibility be discontinued. Police interrogations can be very traumatic, particularly for young children. Once it is determined that a criminal case cannot be initiated, the only purpose of the interrogation is to identify the underlying causes of the crime so that the police can issue appropriate directives. This type of inquiry would be better carried out by a social worker.

Another concern is the practice of publishing the names and photos of children in the media to elicit additional complaints from the public. The CRC emphasises that children's right to privacy must be respected at all stages of the criminal proceedings, and the Beijing Rules state that the identity of a juvenile shall not be published through the media. The reason for this is that publicly identifying a young person as a criminal often leads to discrimination by community members, school officials or potential employers, thus impeding their rehabilitation and reintegration into the community. In addition, criminological research has shown that publicly labelling a child as a criminal increases their sense of marginalisation and deviancy, causing them to act out against society by committing more crimes.

Similarly, the practice of summoning children through their schools should also be discontinued, since this leads to the stigmatisation and negative labelling of the child. A number of children in the focus group discussions noted that once their teachers and classmates know that they have been accused of a crime, they are treated badly and discriminated against. In the discussion on causes of juvenile crime, the children said that when the police send a letter to the school and call for them several times, this makes them feel ashamed in front of their teachers and schoolmates, and as a result they end up dropping out and committing more crimes. Therefore, any unnecessary identification of juveniles amongst their peers should be avoided, and as a rule children should be summonsed through their parents, not the school.

The CRC and UN Guidelines also stress that juvenile proceedings should be resolved without delay, and bearing in mind a child's sense of time. The rules should therefore require police to place priority on juvenile cases and to complete inquiries and investigations as expeditiously as possible, particularly where the juvenile is subjected to pre-trial detention. The time limits in the Criminal Procedure Code should be viewed as outside limits, rather than the norm. In addition, more efficient practices for scheduling and conducting interrogations should be developed so that children are not required to spend long periods of time waiting at the police station. This concern was raised by a number of stakeholders, including the children in the focus group discussion. It was noted that, because children get called to the police station many times and have to wait for long periods outside the investigator's office, they end up missing many days of school, fall behind and drop-out. To the extent possible, interrogations of children should take place outside of school hours so that the process does not interfere with their school attendance.

What the children said

Good police officers are those who:

- pay attention to the causes of crime
- don't beat us and force us to confess
- don't give priority to putting us in custody or accusing us of many crimes
- don't make us wait for a long time
- give us good advice
- give us food and sweets
- the older police and the women police officers who have experience working with juveniles and understand them well

Ensuring that police act in an informed and appropriate manner when dealing with children will also require specialised training. The CRC and Beijing Rules emphasise the need for specialized juvenile police officers, particularly in urban centers and in areas where the youth crime rate is high. Currently, although there are juvenile inspectors throughout the country, they do not receive any specialised training for the position. In addition, they are only responsible for conducting inquiries for minor and less serious offences. All other crimes are handled by investigators, who also receive no special training on dealing with children. While some training on children's rights has been provided by various NGOs, there is no internalised and comprehensive police training to prepare qualified juvenile specialists. The majority of stakeholders recommended that this be addressed by developing a special juvenile justice training course to improve the way police communicate with children. It was noted that the mentality of children is very different from adults and therefore different skills and approaches are required.

Most stakeholders recommended that, in addition to the existing juvenile inspectors, there should also be specialised juvenile investigators. However, having two levels of trained juvenile police specialists may not be feasible and sustainable. Instead, consideration should be given to creating specialised juvenile police who are responsible for all juvenile inquiries and investigations, except for very serious crimes such as murder and armed robbery. Since the existing juvenile inspectors already have significant experience dealing with children and were generally recognised by all stakeholders, including the children, as being more sensitive and appropriate in their dealings with juveniles, consideration should be given to making them primarily responsible for all juvenile cases. However, this would require a significant reassessment of juvenile inspectors' roles and responsibilities as well as a change in their designation. Currently, juvenile inspectors are essentially required to perform the functions of a police officer (case registration and inquiries), a probation officer (supervision over children on deferred sentence) and social worker (supervision over at risk and street children). Whether all of these functions can and should be performed by uniformed police officers should be reassessed. In addition, a significant amount of juvenile inspectors' time is spent on crime prevention activities, some of which could be more effectively performed by other agencies (see the section on Crime Prevention). A shift away from control and suppression approaches to crime prevention would mean that, while juvenile inspectors would continue to play an essential role as community liaisons on juvenile crime prevention, primary responsibility for

many of the law awareness and supervision functions they currently perform would be transferred to social workers and schools. This would allow juvenile inspectors' resources to be more effectively used to conduct inquiries and investigations in juvenile cases.

Regardless of which approach is taken, a special training course should be introduced at the Police Academy to train juvenile police specialists. The same course could be offered on an in-service basis to current juvenile inspectors and/or selected investigators. One option would be to incorporate a juvenile justice component into the community policing training program being developed by the Police Academy and the GDP with the support of Soros Foundation. In addition, a module on juvenile justice should also be included in the new basic police course

to provide lower ranking police, patrol officers and guards with basic training in child rights and the use of force against children.

Two juveniles who escaped from the juvenile prison and were re-arrested:

We think that we were caught very quickly because of our clothes. We were brought to a woman juvenile inspector at the Sukhbaatar District Police. She said she understood us very well and would try to do her best not to give us any additional penalty. She was also concerned about giving us some food.

What the children said

- improve police officer's education and respect
- make the police honest to their oath
- improve control over the police by the authorities
- increase the police salary
- use better criteria to select police
- make the police respect the law, not defy it
- improve police communication skills
- teach the police to be fair and honest
- stop the police from taking bribes
- dismiss bad police and punish them properly
- make the police listen to public opinions about them and judge their work accordingly
- have special children's police and children's lawyers who understand children well and protect them

In addition to new guidelines and training, there must be some means of ensuring that police comply with the rules and are held accountable when they fail to do so. This requires effective supervision, an effective complaints system, and more rigorous examination of police conduct by prosecutors, defence lawyers, and judges. Failure to comply with mandatory requirements of the Code and breaches of the rules on interrogating juveniles should invalidate the proceedings. In addition, allegations of police corruption and abuse should be vigorously investigated and prosecuted.

Parents and children should also be given the necessary information to empower them to assert and protect their own rights. This could be done by developing and distributing short, simple brochures that explain the rights of

children in conflict with the law, as well as police powers and responsibilities. The Center for Human Rights and Development has created similar brochures on other topics, which are currently being distributed to the public through district and aimag police stations.

Recommendations

- Develop new police policies and guidelines on conducting juvenile inquiries and investigations consistent with the CRC and UN Guidelines.
- Provide specialized juvenile training for police officers, both in-service and as part of the Police Academy training program.
- Develop a brochure or handbook to distribute to children in conflict with the law and their parents.

10. LEGAL REPRESENTATION

Because of their young age, children in conflict with the law generally require assistance to ensure that their basic rights are respected. For this reason, the Convention on the Rights of the Child states that all children shall have the right to legal or other appropriate assistance in the preparation and presentation of their defence. The Beijing Rules also state that, throughout the proceedings, juveniles shall have the right to be represented by a legal adviser and to apply for free legal aid where there is provision for such aid in the country.

10.1 Legal Provisions

Mongolia's Constitution guarantees every accused the right to a defence and to be accorded legal assistance. This principle is reinforced in the Law on Courts, which states that everyone has the right to a defence and to freely choose a defence lawyer (Article 9). The Court has the obligation to explain this right and to ensure that defendants are given the opportunity to exercise it (Article 9.2).

Mongolia's new Criminal Procedure Code also clarifies the rights of defence counsel and includes a number of new provisions intended to ensure that defence counsel participate at all stages of the process on an equal basis. The Code states that judicial proceedings shall be based on adversarial principles, and that the prosecutor and defence counsel shall participate equally in analysing the evidence, submitting requests and making submissions to the court (Article 17). Defence counsel must use all means available under the law in order to defend the accused and to render legal assistance (Article 17.3). Their role is to protect the legal rights of a suspect or accused, and they have the right to take part in criminal proceedings starting from the moment when someone is deemed to be a suspect in a crime (Article 38 and 41).

Under the old Criminal Procedure Code, the presence of defence counsel was mandatory for all trials involving juveniles. However, under the new Code, the participation of defence counsel is mandatory at all stages of the criminal

process, including case registration, inquiry, investigation and trial. Where a juvenile or his family has not retained counsel, the police, prosecutor or judge is obliged to secure the participation of a lawyer. However, the Code also states that suspects and accused have the right to choose their defence counsel themselves (Article 40). While investigators, prosecutors and courts may take measures to facilitate the participation of a lawyer, they are prohibited from selecting or urging a particular lawyer (Article 39). The Law on Advocates states that when a person requests legal assistance, the police, prosecutor or court must provide them with the names and addresses of professional advocates.

The Criminal Procedure Code also lists the rights and duties of defence counsel, including the right to be present at interrogations of the accused and to ask questions, to be present at the interrogation of victims and witness and to ask questions, and to review the materials in the case at the conclusion of the investigation (Article 41). A suspect or accused has the right to meet with defence counsel in private (Article 36). In addition, the Rules for Admission of Defence Counsel to Prisons and Places of Detention issued by the Minister of Justice state that defence counsel have the right to meet individually with their clients in a special room so that they cannot be heard by a third party. Admission is to be on the basis of the presentation of identification and an appointment scheduled by the Advocates Association.

Both the Law on Courts and the Law on Advocacy state that, where a defendant cannot afford to pay for a lawyer, payment shall be financed by the State. The Ministry of Justice is responsible for developing rules for paying defence lawyers' fees and for monitoring implementation.

The Law on Advocacy regulates the roles and responsibilities of lawyers, and establishes an independent Advocates Association to provide professional guidance and to provide continuing training for advocates. The Law states that the Ministry of Justice is responsible for issuing, suspending and terminating an advocate's licence to practice law. It also requires every lawyer to provide free legal representation to at least two indigent clients per year.

10.2 Current Practice

Mongolia currently has approximately 400 lawyers. The majority of them are concentrated in Ulaanbaatar and other centers, and in many of the aimags there is a serious shortage of lawyers. Although there is a long-standing practice of ensuring lawyers' involvement in all trial proceedings involving juveniles, concerns have been raised about the quality and independence of legal representation, and about the availability of legal assistance at the crucial investigation stage.

Although the new Criminal Procedure Code makes the participation of defence lawyers mandatory at all stages of criminal proceedings, starting from the point that a juvenile is considered a suspect, it is too early to assess the impact this provision will have on police practices. Many investigators and prosecutors advised that the general practice has always been to ensure that children have legal representation during interrogations. However, the

children who participated in the focus group discussion said that most children do not know what their rights are and are not given any advice about what to do when they are arrested by the police. They stated that children are generally advised to have a lawyer when their case is transferred to the prosecutor or just before the trial.

While there were no statistics available on the percentage of juveniles who have legal assistance at the investigation stage, a survey conducted by the NHRCM at the Gants Hudag Detention Center in April 2001 revealed that 80% of all detainees and 60% of the juveniles did not have legal counsel. When asked why, most detainees responded that they did not know they had the right to counsel, could not contact counsel because they were in custody, had no one to pursue the issue on their behalf, or had no money to pay attorney's fees. Many stated that they were not informed that they had the right to retain a lawyer and that one could be appointed if they could not afford to pay. In many cases, the parents of juveniles are unaware of the right to legal assistance, the availability of free legal aid, or of the significance of having legal representation early in the proceedings. Furthermore, the Center for Human Rights and Development's National Human Rights Record 2000 states that, even when detainees are aware of their legal rights, they are often prevented from exercising them by the investigators.

Where children do have a lawyer at the investigation stage, it is often someone who has been selected by the investigator. Despite legislative provisions guaranteeing accuseds the right to choose their own attorney, many stakeholders advised that, where a juvenile's parents cannot afford a lawyer, the general practice is for the investigator to select someone to attend the interrogation. In some cases, the children meet their lawyer for the first time in the investigator's office and do not have the opportunity to speak with them in private prior to the interrogation. In addition, the practice of some investigators is to rely on one or two lawyers for all cases. This can seriously undermine the lawyers' independence, and a number of stakeholders, including the children, advised that lawyers often take the side of investigators and do not properly defend their interests. The Center for Human Rights and Development's 2000 report notes that in some areas lawyers' offices are located in the police stations and they closely fraternise with the police and prosecutors, giving rise to the perception that they are not independent.

Some investigators say to have a lawyer present during the interrogation. The investigator finds the lawyer, but we don't even know whether the person is a lawyer or not and can't even remember their name.

Similar concerns were raised about legal representation at the trial stage. Where juveniles do not have a lawyer, the general practice is for the Court to appoint a lawyer on their behalf. In many cases, lawyers are notified only the day before the court session and do not have time to properly prepare. In a recent survey conducted by the Soros Foundation, 86.3% of advocates stated that indigent suspects or accused do not select their advocate themselves.

What the children said

- lawyers are concerned with their own interest not the interest of children
- A good lawyer costs a lot of money and not all children can afford it
- lawyers charge between 3000 and 8000tg
- only children who cannot afford good lawyers end up in prison
- lawyers only defend well if they are paid well. If they are only given a little money, they will not study the case. At the trial they say nothing or support the judge and scold us.
- before the trial lawyers say nice things to our parents and say that they will defend us well and reduce the penalty. They say one thing to our parents and another thing to us.
- the lawyer promised to defend well if we gave him more money, but we couldn't give him the money he asked for so he said nothing at the trial.
- lawyers do not put enough effort into studying the case carefully and do not talk to families, attend the interrogations or give us advice.

One of the main reasons cited for poor access to and quality of legal representation is the failure of the State legal aid system. The cost of legal fees can be prohibitive for many juveniles, and most lawyers are reluctant to take cases if they are not guaranteed proper payment. A survey conducted by the Advocates Association in 2002 revealed that, while the average fee charged by lawyers representing juveniles was between 15,000 and 20, 00 tg per case, in more than half the cases, no fees were paid. A number of stakeholders noted that lawyers are more likely to serve clients who pay them well, and often do not provide quality legal assistance to juveniles because they are not guaranteed payment by the legal aid fund, or because the fixed rate fees are too low.

Although the State allocates an annual budget for legal assistance to the indigent, the mechanism for providing legal aid has never worked effectively. Until recently, the budget for legal aid was allocated to the courts, which were responsible for paying lawyers who acted for indigent clients. However, this money was often spent on general court expenses. It also limited the right to free legal aid to the court stage, and discouraged lawyers from settling cases early since they could only get paid if the matter went to court. To qualify for legal aid, children were required to provide documentation from their local governor's office stating that they are indigent. This can be very difficult for unsupervised or migrant children who often lack proper registration and identification documents.

Under the new Law on Advocacy, the legal aid fund is managed by the Ministry of Justice, and is to be disbursed to lawyers through the Advocates Association. However, although 9 million tugrug has been set aside for this purpose, the money has yet to be released by the Ministry of Justice because the Advocates Association has not provided it with a list of the number of cases in each aimag where legal aid is required.

Despite these difficulties with the legal aid system, there are many NGOs and individual lawyers who are dedicated advocates for children. MCRC tries to mobilise lawyers to represent juveniles for free, and also conducted a 14-day training program in 1997 to train specialised juvenile lawyers. The Women's Lawyers Association, Lawyers' Center for Legal Reform, Human Rights and Development Center, and National Center Against Violence all provide free legal advice to those who cannot afford lawyers, and also conduct awareness campaigns through television, newspapers, magazines, radio and brochures.

In addition, the Soros Foundation has supported the establishment of legal clinics at two national law schools. The clinics, which have been operating for almost three years, provide free legal advice to vulnerable and low-income clients in Ulaanbaatar. They also have a summer outreach program to provide legal advice to clients in Khovsgol, Darhan, Selenge and Erdenet. The Mongolia National University clinic currently has an office at the Sukbhaatar district court and students have represented some juveniles at the trial stage, with the support of their instructors who are all qualified lawyers. They have not represented clients at the investigation stage, though there is no legal bar to them doing so. Consideration should be given to allowing them to participate at the inquiry stage on behalf of juveniles charged with minor and less serious offences.

10.3 Assessment and Recommendations

The new Criminal Procedure Code provision making it mandatory for juveniles to have a lawyer at all stages of the criminal proceedings is a significant step towards ensuring that their rights are fully respected, and strategies should be in place to ensure that all children, including those who cannot afford to pay, have the full benefit of this right. Although the practice of many judges and investigators has been to arrange for the participation of legal counsel in juvenile proceedings, in reality the presence of a lawyer has often been little more than a formality. It is clear from the comments of the children that few juveniles have confidence in the independence of lawyers, or in their commitment to protecting their client's interests.

The active participation of an independent defence counsel at all stages of the criminal proceedings is essential to ensure that children's right to due process and a fair trial are respected. The presence of an independent lawyer at all interrogations can also help protect children from abuse and coercion, and ensure that they are not pressured or compelled to give testimony. Having a lawyer is also necessary to ensure that the child's interests are properly reflected in any decision about pre-trial detention, since the Criminal Procedure Code grants defence counsel, but not the accused, the right to be present and make submissions when the court makes a determination about the imposition of a measure of restraint.

However, for children's right to independent legal representation to be truly effective, the legal provisions prohibiting investigators, prosecutors and courts from selecting lawyers for juveniles should be strictly enforced. The trust and confidentiality that are essential to the lawyer/client relationship cannot be established if lawyers are perceived to be affiliated with investigators. Children

must have confidence that their lawyer is on their side, and lawyers must at all times act in the child's interest and vigorously protect their rights.

One simple measure to facilitate the independent selection of lawyers is to develop a brochure for parents and juveniles that explains the right to counsel and provides very practical information on how to hire a lawyer, including information about standard fees, how to apply for free legal aid, and the phone numbers for the Advocates Association, law school clinics, and NGOs that provide free legal advice. The police could then provide all juveniles with a copy of the brochure when they are first arrested or summonsed.

In addition, many stakeholders suggested that additional training should be provided to improve lawyers' capacity to effectively represent juvenile clients. As the Human Rights Needs Assessment Report notes, under the old system, defence lawyers were seen largely as figureheads and had relatively low status within the justice system as compared to prosecutors and investigators. As Mongolia shifts to a more adversarial justice system, defence lawyers have a crucial role to play in protecting and promoting the rights of their clients. With the support of the USAid Judicial Reform project, the Advocates Association and the National Legislative and Judicial Research, Information and Training Center have been conducting training for lawyers on ethics, advocacy skills and their role in the adversarial process. Within this framework, an additional training module could be developed on the unique roles and responsibilities of advocates when representing children. It was also suggested that a process of certification could be introduced to create specialised juvenile advocates.

A number of stakeholders also recommended that a handbook or manual be developed for lawyers, NGOs and law school students who represent juveniles. The handbook could include national and international laws relating to juveniles, as well as strategies for the effective representation of young people. Both the Advocates Association and the National Legislative and Judicial Research, Information and Training Center expressed an interest in developing the handbook.

The process for obtaining State-funded legal assistance also needs to be clarified to remove bureaucratic obstacles, to guarantee juveniles their right to free legal assistance, and to provide lawyers with assurance that they will be paid for their work. However, this needs to be done within the context of broader legal aid reform. The Soros Foundation has recently completed an assessment of the legal aid system in Mongolia and is planning to hold a national conference in early 2003 to build consensus for a reform strategy. Soros' draft report includes recommendations for the creation of a public defenders system, with full-time staff lawyers appointed and paid by the government to represent indigent clients. Whatever model for legal aid is decided upon, the right of children in conflict with the law to legal representation should be considered as a priority.

Recommendations

- Develop and distribute brochures for juveniles and their families explaining the right to counsel and providing practical information on how to hire a lawyer and to apply for free legal aid.
- Improve the State-funded legal aid system to ensure free legal aid is available to all children at all stages of the criminal proceedings.
- Develop a lawyers' handbook on representing young people
- Provide training for lawyers and law school clinic students on representing juveniles

11. TRIAL

The CRC states that children accused of an offence have the right to have the matter determined without delay by a competent, independent and impartial authority in a fair hearing, with legal or other appropriate assistance, and in the presence of their parents or legal guardians. Children should be provided the opportunity to be heard in any judicial proceedings affecting them, and to have access to free legal aid where there is provision for such aid in the country. In addition, children have the right not to be compelled to give testimony or to confess guilt, to examine adverse witnesses, and to introduce witnesses on their behalf under conditions of equality.

The Beijing Rules stress that criminal proceedings involving children must be conducive to the best interest of the juvenile and must be conducted in an atmosphere of understanding which allows the juvenile to participate and to express themselves freely. In addition, both the CRC and the Beijing Rules require that juveniles' right to privacy be respected at all stages of the criminal proceedings in order to avoid harm being caused to them through publicity or by the process of labelling. No information that may lead to the identification of a juvenile shall be published.

11.1 Legal Provisions

Under Mongolia's Constitution, everyone charged with an offence has the right to a fair hearing within a reasonable time by an independent and impartial court (Article 37(3)). This includes the right to adequate time and facilities for preparation of a defence, the right to defend oneself before the court, and the right to examine and cross-examine all witnesses.

The Law on Courts establishes the different levels of court and their jurisdictions. Although provision is made for the establishment of specialised courts (Article 13.2 and 18), there is no specialised court for juveniles. The Law establishes a specialised Constitutional Court, as well as three levels of courts that hear criminal matters: 1) the Supreme Court; 2) aimag and Capital City courts; and 3) district, soum or inter-soum courts. The Supreme Court is the highest court and hears cases on appeal from the lower courts or on referral from the Constitutional Court. It can also issue official interpretations

on any law other than the Constitution. The aimag and Capital City courts decide cases on appeal from the District, Soum and Inter-Soum courts, and also act as courts of first instance for serious and very serious crimes. Soum, Inter-Soum and District Courts are courts of first instance and have jurisdiction over minor and less serious criminal offences. According to the Criminal Procedure Code, minor and less serious crimes are heard by a judge of the district, soum and inter-soum court sitting alone (Article 32). Other cases are heard by a panel of three judges. The module for the courtroom is to be established by the General Council of Court (Law on Courts, Article 26.2).

The Law on Courts states that court trials shall be conducted based on adversarial principles (Article 5) and reinforces the presumption of innocence (Article 7), the right to equality before the law without discrimination on enumerated grounds (including age), the right to a defence, and the right to freely choose a defence lawyer (Article 9). The Criminal Procedure Code reinforces these principles, stating that judicial proceedings shall be based on adversarial litigation, with the prosecutor and accused having equal rights. Under the Law on Prosecutors, the prosecutor acts as public accuser on behalf of the State and is responsible for proving the accused's guilt before the court (Article 15). The Criminal Procedure Code states that the prosecutor and the accused shall have equal rights in presenting evidence and making submissions to the Court (Article 238). In addition, a person who has suffered material damage because of a crime may bring a civil suit as part of the criminal proceedings (Article 115).

The Criminal Procedure Code states that an accused must be brought to trial within 15 days from the date the case is received by the Court, though if this is not possible, the time period may be extended by an order of the chief judge (Article 225). The parties must be notified three days in advance of the Court date (Article 228.4).

At the opening of the trial, the judge must advise the accused of his or her rights (Article 260.2). At the trial of a juvenile, his or her parents or legal guardians must be present, unless the Court determines that their presence would be harmful to the interest of the juvenile (Article 374). Although parties generally have the right to be present during their trial, the Court can decide to remove juveniles from the courtroom when hearing circumstances that may have a negative influence on them (Article 375).

The Criminal Procedure Code states that all parties must stand when addressing the court, giving testimony or making submissions (Article 251). The accused may refuse to give testimony, but if he does, any statement he made during the inquiry or investigation can be entered as evidence (Article 264).

According to the Law on Courts, court proceedings shall be conducted in public, but a closed hearing may be held, depending on the special features of a particular case (Article 11). The Criminal Procedure Code states that court sessions shall be open to the public, unless closed proceedings are

necessary to protect the confidentiality of the State, an organization or an individual (Article 235).

In order to promote continuing development of the judiciary, a new provision in the Law on Courts states that judges of all levels are required to take a minimum of 14 days of legal education and re-training every year (Article 41). The Law also establishes a Judicial Research Center attached to the Supreme Court with the duty to give recommendations on theoretical and practical issues relating to the application and interpretation of the law, and to analyse judicial statistics (Article 72).

11.2 Current Practice

As noted above, Mongolia does not currently have a separate, specialised court for juveniles and there is no special juvenile justice training for judges or prosecutors. The Criminal Procedure Code contains a separate section with rules for executing proceedings in juvenile cases, but the only special procedures related to trial are the requirement that parents or guardians be present, the mandatory participation of a lawyer, and the requirement that a juvenile's proceedings be separated from that of an adult co-accused. While these provisions provide some additional protections for children in conflict with the law, they fail to fully reflect the requirements of the CRC and UN guidelines.

Most stakeholders noted that in practice, juvenile court proceedings are exactly the same as those for adults. The judge or panel of judges sits at the front of the courtroom wearing robes. The juvenile is required to sit in the front row, with parents or guardians sitting behind, and must stand whenever giving evidence or answering a question. The rights of the accused are read out by the judge at the beginning of the proceedings, but there is no requirement that this be done in simple language that a child can understand.

Whether juveniles are treated in a more child-friendly manner during the proceedings depends very much on the individual judge. One stakeholder advised that some judges allow juveniles who have been in detention to wash, change their clothes and have some tea before the proceedings start, and speak in a much more gentle tone. However, this depends on the style of each judge. It was also noted that, although many judges do not scold children the way they do adults, almost all children cry during the course of the court session. The Criminal Procedure Code allows judges to close proceedings to the public, but this is not mandatory for case involving juveniles.

They announce the articles that we are sentenced to at trial and ask if we agree with it, but in fact we don't know anything about those articles.
-a 16 year old boy

Court delays are not a significant issue for criminal cases, and in general most trials are held within 35 days of the file being received by the prosecutor. However, as noted above, concerns remain about respect for due process rights, particularly for juveniles who do not have legal counsel at the pre-trial stage. While the new criminal laws emphasise the adversarial nature of

criminal proceedings and guarantee equal participation of the prosecutor and defence counsel, the extent to which lawyers fully and competently advance the interests of their clients varies considerably.

Furthermore, although Mongolia's Constitution guarantees judicial independence, there is a strong public perception that the courts are unfair and corrupt, and annual reports from the Human Rights and Development Center state that complaints of judges accepting bribes to secure a favourable verdict are common. The National Human Rights Commission of Mongolia's 2002 Report similarly notes that the public's confidence in the right to a fair trial by an independent court is very low due incidents of judges accepting bribes, showing bias towards "connections" and delaying cases. According to a survey conducted by UNDP on Public Opinions and Attitudes on Corruption in Mongolia, the judiciary ranked third (behind customs officials and banks) in terms of public perceptions of corruptness, with 48.8% of the population expressing the view that they are corrupt.

However, in the last two years, the government has taken significant steps to ensure respect for the right to a fair trial and to restore public confidence in the judiciary. A Strategic Plan for the Justice System of Mongolia was introduced in May 2000 that aims to strengthen the judiciary and improve respect for the rule of law. With the support of USAid and GTZ, a Judicial Code of Ethics is being drafted, and an automated case management system has been introduced to assist courts to effectively track and manage their case loads, to improve transparency and accountability, and to improve statistical reporting.

In addition, a comprehensive continuing legal education program is being developed with donor support. A new consolidated National Legislative and Judicial Research, Information and Training Center has been established to conduct in-service training for judges, prosecutors and lawyers, and a faculty of trainers has been appointed and trained. The Center plans to develop a comprehensive continuing legal education program to provide regular in-service training to legal professionals.

11.3 Assessment and Recommendations

In order to give effect to the CRC and international standards, Mongolia must provide some form of differentiated court proceedings for children accused of crimes. The UN Committee on the Rights of the Child has stressed that juvenile trials should be held in an atmosphere of understanding conducive to the child's best interest and should ensure due process, fair trial procedures, legal representation and parental assistance.

While some countries have established special Juvenile Courts to hear all cases involving children in conflict with the law, the requirements of the CRC can be met without necessarily creating a separate juvenile court structure. In many countries, a certain number of judges from the regular criminal court are selected and provided specialised training to conduct juvenile court proceedings. Separate child-friendly rules and procedures for juvenile court trials are established through legislation or by the judicial council. The

specialised juvenile judges deal with all juvenile cases in accordance with these special rules, but using the same courtrooms and administrative structures as the adult criminal courts. In this way, youth can be dealt with separately according to special procedures, without the added administrative expense of creating an entirely separate court structure.

Many stakeholders, particularly judges, expressed the view that there should be specialised court proceedings for juveniles. While it was generally agreed that establishing a separate juvenile court system would be too costly, many people recommended that specialised juvenile judges and prosecutors be established within the existing court structure. It was suggested that one or two judges from each district, soum, inter-soum, and aimag court could be trained as juvenile court specialists, and then all juvenile court trials in their jurisdictions could be assigned to them. Specialised prosecutors could also be trained and appointed to exercise supervision over the investigation of juvenile cases and to present those cases in court.

In addition to specialised legal professionals, a number of stakeholders suggested that separate rules and procedures should be developed on the conduct and atmosphere of juvenile trials. It was noted that coming before the court is very intimidating and psychologically difficult for children, particularly when they have to face a panel of judges in robes and are spoken to in harsh or scolding tones. One judge suggested that juvenile proceedings should be conducted in a less formal, less adversarial atmosphere, and could be conducted as a simple discussion amongst all parties. It was noted that there is no specific requirement that judges wear robes in all cases, or that all proceedings be conducted in a standard courtroom.

In addition, some participants raised the issue of privacy and the sensitivity of juvenile court proceedings. The Criminal Procedure Code does not currently mandate closing the court during juvenile proceedings, though this is the practice in some areas. There is also no legislation barring the publication of juveniles' names, and no attempts to guarantee or protect their privacy. As noted above, the details of juvenile cases are regularly published in the media and the details of their criminal charges are sent to local governors and to the juvenile's school, often with negative repercussions for the young person. These practices should be reconsidered in light of the CRC, which requires State parties to ensure that children in conflict with the law have their right to privacy fully respected at all stages of the proceedings. Similarly, the Beijing rules stress that, in order to avoid the harm that can be caused to juveniles through the process of labelling, the media should be prohibited from publishing information about a juvenile's identity.

The Criminal Procedure Code currently contains little guidance in terms of child-friendly court procedures. It is therefore recommended that a set of rules on juvenile court proceedings be developed under the leadership of the Juvenile Justice Working Group and the General Council of Courts, pursuant to its authority under the Law on Courts to develop the module for courtrooms. Input could be elicited from the courts, prosecutors, police, Advocates

Association, Supreme Court Research and Information Center, National Human Rights Commission and National Board for Children.

There are many very simple, cost effective measures used in other countries to ensure that juvenile trials are held in an atmosphere that is conducive to the child's best interest, and to encourage greater participation by the child and his or her family. Respecting children's right under the CRC to participate in judicial proceedings and to express themselves freely requires that measures be taken to reduce the intimidation of the courtroom setting and to ensure that children understand the process. Some common strategies used in other countries include:

- having judges remove their robes;
- conducting the proceedings in an office or meeting room around a table, rather than using the traditional courtroom structure;
- using simple language and providing frequent explanations to the child;
- allowing parents or another support person to sit next to the juvenile;
- waiving rules that require juveniles to stand or to sit in a separate box;
- mandating the exclusion of members of the public from the courtroom;
- banning the publication of juveniles' names in the media;
- Distributing pamphlets to children and parents explaining children's rights and the court process in simple language.

Once these rules are developed, it is recommended that special handbooks or manuals be developed for judges, prosecutors and lawyers. These could include a statement of the general principles to be adhered to, as well as instructions on how to conduct juvenile court proceedings. The judge's manual should also be included in (or printed as an addendum to) the new bench book that is currently being finalised.

Based on these new rules and manuals, a training module and training materials should be developed to train specialised juvenile judges and prosecutors. The National Legislative and Judicial Research, Information and Training Center has a roster of trained legal trainers and has agreed that a specialised juvenile justice training course could be included in its continuing legal education program for 2003. A module on juvenile justice principles and procedures could also be included in the new two-week training course being developed for new judges.

Recommendations

- Develop special guidelines or practice directives with rules for conducting juvenile court proceedings in a more informal and child-friendly manner
- Develop juvenile justice manuals or handbooks for judges and prosecutors, and add an addendum to the new judge's Bench Book on juvenile justice.
- Select judges and prosecutors in each jurisdiction to act as specialized juvenile justice officials. Provide them with specialized training.
- Develop a training module and conduct training for judges, prosecutors and lawyers on juvenile justice.
- Include a juvenile justice component in the training course for new judges
- Include a course on children's rights and juvenile justice in the law school curriculum.
- Develop information pamphlets explaining the court process and the rights of juveniles in simple language. Require juvenile inspectors and investigators to give a copy to all juveniles and their parents.
- Amend the Criminal Procedure Code to include more guidance on special procedures for conducting juvenile trials

12. SENTENCING

Sentencing is one of the key areas that should differentiate juvenile justice from the regular court system. The CRC and UN Guidelines emphasize that sanctions imposed on juveniles must take into account their diminished capacity to understand the consequences of their actions, as well as their increased potential for rehabilitation. According to the CRC, the main objective of the juvenile justice system should be the rehabilitation and reintegration of the young person. A variety of sentencing options, such as care, guidance and supervision orders, counselling, probation, foster care, education and vocational training programmes and other alternatives to institutional care should be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and to the offence. Imprisonment of a child must be in conformity with the law and must be used only as a measure of last resort and for the shortest appropriate period of time. Neither capital punishment nor life imprisonment without the possibility of release shall be imposed on children under the age of 18.

The Beijing Rules state that the well-being of the juvenile must be the guiding factor in the consideration of his or her case. Before imposing a sentence on a young person, the background and circumstances in which the juvenile is living and the conditions under which the crime has been committed must be properly investigated so as to facilitate the judicious adjudication of the case. The sentence imposed should be proportionate not only to the gravity of the offence, but also the circumstances and needs of the juvenile. Imprisonment must not be imposed unless the juvenile has committed a serious act involving violence against another person or is persistent in committing other serious offences. A wide variety of dispositions should be available, allowing for flexibility so as to avoid institutionalisation to the greatest extent possible, including: care, guidance and supervision orders; probation; community

service orders; fines, compensation and restitution; orders to participate in group counselling and similar activities; and orders concerning foster care, living communities or other educational settings.

The Beijing Rules also state that an appropriate authority should be appointed to implement alternatives to detention. Efforts should be made to provide juveniles with necessary assistance such as housing, education or vocational training, employment, or any other assistance to facilitate rehabilitation. Volunteers, local institutions and other community resources should be called upon to contribute to the effective rehabilitation of juveniles in a community setting.

It is clear from these principles that creative approaches to sentencing are required to address the special needs of juveniles. Both the CRC and the Beijing Rules state that a broad range of sentencing options should be available, with few restrictions, so that incarceration can be avoided to the greatest extent possible. There should be a continuum of penalties that allows for graduated responses, or a gradual increase in severity of penalty if the juvenile re-offends. Mandatory minimum sentences and automatic prison terms for recidivists or certain classes of offences should be avoided so that judges have the flexibility to tailor penalties to the circumstances of each child, and to impose community-based alternatives in all but exceptional circumstances. Under no circumstances should imprisonment be used as a substitute form of care for children who lack appropriate parental supervision.

This emphasis on community-based rehabilitation is not simply a matter of child rights, but is also grounded in the lessons learned by countries around the world as they have grappled with juvenile crime. There is now widespread agreement that imprisonment is rarely an effective means for rehabilitation, reintegration and preventing further offending. Research has shown that institutionalisation has negative effects on young people and increases the likelihood that they will re-offend. Removing a young person from society increases their sense of alienation and reinforces criminal behaviour. While prisons may satisfy public calls for retribution, it is only a short-term fix. Society is protected while the juvenile is locked up, but the community is at an even greater risk once they have been released since imprisonment has been proven to increase juvenile recidivism.

Experience has shown that successful rehabilitation is the best way to protect society from juvenile crime, and that the most effective rehabilitation programs are those that take place in a community setting, rather than an institution. Because young people's behaviour is heavily shaped and influenced by their environment (family, community, peers and school), the most effective rehabilitation programs are those that work with the youth's whole environment to address the underlying causes of the criminal behaviour. Removing children from society does not help them to deal with the underlying problems in their environment that contributed to the criminal behaviour. It does not teach them how to cope with negative peer influences or family problems. Community-based programs that promote accountability

and provide support services to juveniles and their families are a much more effective means of protecting society and promoting law-abiding conduct.

12.1 Legal Provisions

Mongolia's Constitution and Criminal Code both prohibit cruel, inhuman or degrading punishment. Article 46 lists the types of punishments that may be imposed on a person who has violated the penal law:

- Fine: the amount of a fine is determined by the seriousness of the crime committed as well as the property status and income of the accused. If a person persistently evades payment of a fine, the Court can substitute a penalty of incarceration or imprisonment for up to three years. The minimum fine is five times the minimum wage, or approximately 125,000tg.
- Deprivation of the right to hold a specified position or to engage in a specified business.
- Confiscation of property
- Compulsory work: can be between 100 to 500 hours, and must be for a minimum of three hours and a maximum of 12 hours per day. According to the Law on the Execution of Judicial Decisions, local governors are responsible for locating a work placement for the offender and supervising his or her work performance. The person's wages are paid to the State, and the proceeds are used to pay compensation to the victim, or are remitted to the State. If a person deliberately evades a forced labour judgement, the Court can substitute a penalty of incarceration (solitary confinement) at the rate of one day of incarceration for 24 hours of labour.
- Incarceration: is defined as the separation of a person from society in a solitary confinement facility for a term of one to six months. It cannot be imposed on anyone under the age of 16 (Article 51.2).
- Imprisonment: is confinement in a correctional institution or prison. The maximum period of imprisonment that may be imposed on a juvenile is 15 years (Article 52.3).
- Conditional Sentence: if a person convicted of a less serious crime for the first time has compensated damages, the court may impose a conditional sentence and fix a period of probation. If no new crime is committed in that period, the sentence is not executed (Article 61).
- Death penalty: cannot be imposed on anyone under the age of 18 (Article 53.4).

The Criminal Code also includes two additional penalties applicable to juveniles. Under Article 62, if the Court considers that a juvenile who is sentenced to prison for the first time can be reformed without isolating him or her from society, the execution of the sentence may be deferred for a period of six months to two years. The Court can require a juvenile on deferred sentence to find a job or undertake studies, to redress the damage caused, and to notify the police about any change in place of work, study or residence. In addition, he or she may be placed under the supervision of a relative or organization to be responsible for their education and rehabilitation. If a juvenile on probation fails to fulfil the duties imposed on him or commits an administrative offence, the Court can revoke the probation and require him or her to serve the prison sentence.

Where a juvenile's sentence is deferred, the Law on the Enforcement of Court Decisions states that a copy of the conviction must be sent to the police and district authorities. The juvenile is placed under the supervision of an individual or organization. The police are responsible for opening a file on the juvenile, meeting with him and his parents or guardians and advising them of their rights and obligations as set out in the judicial decision. The police can also require the parents, guardians, or individual who has supervision of the juvenile to follow their duties and obligations, and must keep monthly records on the rehabilitation of the juvenile and the execution of the decision. Community and district authorities are required to facilitate involving the juvenile in educational and vocational training programs, supervising his rehabilitation process and exchanging information with the police. Parents and those with supervision of the juvenile are responsible for the juvenile's rehabilitation and education and for providing awareness of legislation, morality and "labour correction" (Article 102). If the juvenile displays rehabilitation, then the district authorities or police may submit a proposal to the court to discharge the juvenile's penalty. If the juvenile does not fulfil his or her obligations or commits an administrative offence, the deferred sentence shall be invalidated. The police or district authorities may submit a request to the Court to have the penalty of imprisonment imposed (Article 103).

The Court may also choose to impose a "compulsory education measure" on juveniles who commit minor or less serious crimes. The juvenile is given one year to be rehabilitated and may be required to redress the damage through work. The juvenile is placed under the supervision of his or her parents, an NGO or some other specified individual. If the juvenile is not rehabilitated within the specified time frame, the Court may send the juvenile to a special educational institution. The length of time spent in the educational institution is determined on an individual basis, having regard for the seriousness of the crime and the character of the juvenile, but in any case shall not extend past the age of 16 (Article 67).

When issuing a judgement in a case involving a juvenile, the Court is obliged to consider the possibility of deferring the sentence as provided under the Criminal Code, and the necessity of appointing an educator in cases where an alternative to imprisonment is imposed (Article 377). In addition, the Criminal Code states that, when imposing a penalty, the court must take into consideration the nature and degree of the social danger, the character of the accused, the motive or purpose of the crime, the degree of harm caused and any aggravating or mitigating circumstances (Article 54). Mitigating factors include being under the age of 18 at the time the offence was committed, voluntary compensation of the damage caused, and expressing sincere remorse (Article 55). Aggravating factors include repeated commission of a crime, committing a crime in a group, inflicting serious consequences, or committing a crime while drunk (Article 56). The period spent in pre-trial detention may be taken into account in calculating terms of incarceration or imprisonment.

Certain aggravating circumstances can also increase the severity of a crime. For example, theft carries a penalty of three to six months incarceration or up to two years in prison. However, if committed repeatedly or in a group, the penalty of imprisonment is a minimum of two years and maximum of five. If a person has a previous conviction for theft or a similar offence, the penalty is between 10 and 15 years imprisonment. Hooliganism carries a penalty of incarceration for three to six months or imprisonment for a term of up to three years. If committed repeatedly or in a group, it is punishable by imprisonment for up to five years.

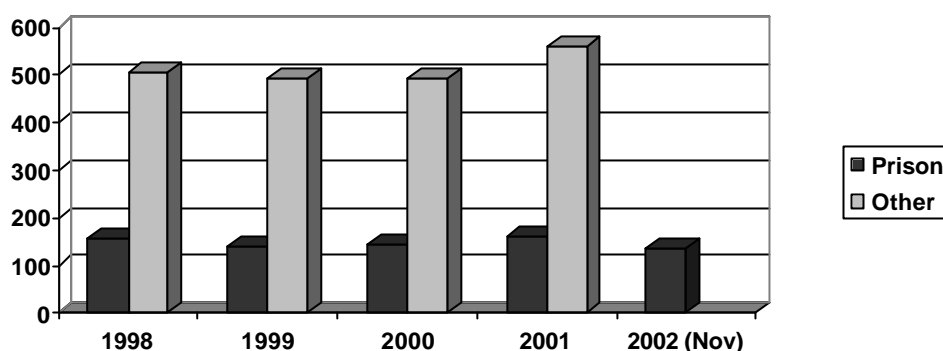
A number of crimes under the Criminal Code carry mandatory minimum penalties of imprisonment. For example, the minimum penalty for robbery is five years imprisonment, for theft committed repeatedly or in a group the minimum is two years imprisonment, for inflicting less serious bodily injuries in a group, three years, for appropriation of property by fraud if committed repeatedly or in a group, two years, or if committed by a recidivist five years, and hooliganism committed with a weapon, five years.

12.2 Current Practices

In deciding what penalty to impose, judges generally rely on a sentencing report presented by the prosecutor, as well as submissions from the prosecutor and defence counsel. The sentencing report includes information collected by inquiry officers or investigators about a juvenile's background and character, including the juvenile's criminal history, family circumstances, schooling and employment, and any underlying factors that contributed to the criminal conduct. The sentence imposed is generally based on the nature and circumstances of the offence, the degree of damage or injury caused, the background and family circumstances of the child, and whether damages have been compensated.

Most stakeholders advised that it is not the practice to detain children, and the most common penalty imposed is deferred sentence. However, deferred sentence can only be used for first-time offenders, and for children who have a parent or guardian to exercise adequate supervision. In addition, deferred sentences are generally not used where the crime was repeated many times, or where it involved significant injuries or high levels of damage. Damages are considered high if they are 125-200 times the minimum wage, which is currently between 3 and 5 million tg (\$3,000-5,000US). The penalty of forced labour is rarely used for juveniles because there is a lack of work opportunities for them. In some cases, fines are imposed on the juvenile's parents, but this penalty is only used if they can afford to pay. Although the Criminal Code also provides for compulsory measures of an educational nature, this penalty is rarely used, and there is currently no special educational institution as provided for in the Code.

Sentences Imposed on Children under 18 1998- Nov 2002³



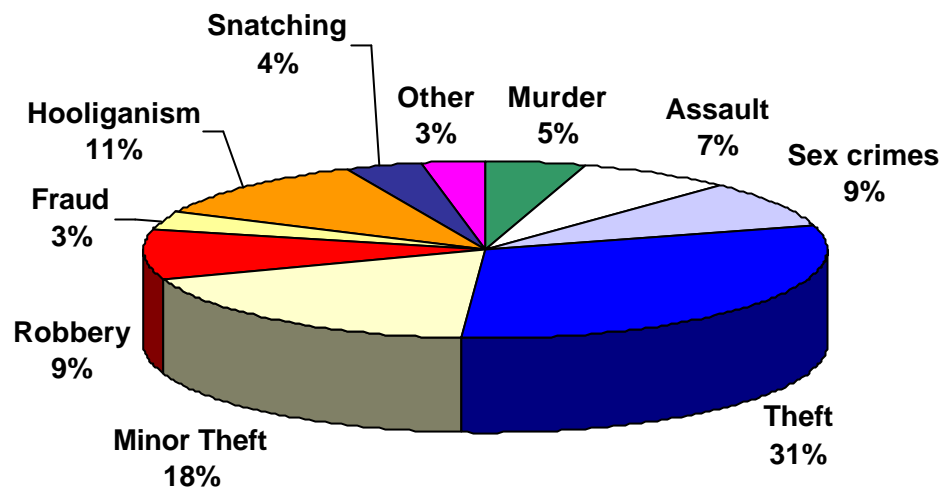
Under the previous Criminal Code, there was a provision permitting Courts to impose a penalty below the mandatory minimum if circumstances warranted leniency. However, that provision has been eliminated, and the minimum penalties specified in the Code are now mandatory for all accuseds. In addition, a new penalty of “incarceration” or solitary confinement has been added. The penalty applies to minor and less serious crimes and can be imposed on juveniles 16 years of age or older. While there was still some uncertainty as to how this penalty will be interpreted and applied, juveniles sentenced to solitary confinement are currently being held at the juvenile prison. The Law on the Execution of Court Decisions states that people subject to the penalty of incarceration must be held in isolation. They have the right to visits and to use the pay phone, but can only leave their cells for a short period each day and do not work or participate in any other education or leisure activities. Because there are no facilities to hold juveniles in isolation, they are currently being held in groups in the prison’s visiting room and will eventually be transferred to the vocational training rooms once the prison’s new vocational training center is completed.

[Statistics on the average prison sentences imposed on juveniles for theft, hooliganisms, robbery, and assault]

Most stakeholders advised that the majority of juveniles sentenced to prison committed theft or stealing. As the chart below shows, between 1998 and 2002, approximately 67% of children sentenced to prison were charged with non-violent offences. Several people noted that few juveniles are in prison for very serious crimes or because they are recidivist, and that in general, juveniles are sentenced to prison if damages cannot be compensated at the investigation stage. In addition, stakeholders advised that prison is often the only option for unsupervised children because they have no homes or their parents cannot provide appropriate supervision.

³ Data on the number of juveniles sentenced to prison per year is based on information received from the Ministry of Justice, Department of Court Decisions Enforcement. This data conflicted with information from the juvenile prison, which indicates significantly higher numbers of children sentenced to prison.

Types of crimes committed by juveniles sentenced to prison 1998-2002



When a deferred sentence is imposed on a juvenile, he or she is referred to the local juvenile inspector. The juvenile inspector meets with the juvenile and his or her parents, and opens up a file on the child. A standard form is filled in to record the juvenile's name, date and place of birth, work or school, criminal code charge, close relatives and address, height, weight, accomplices, address of peers, and parents work and status. The juvenile inspector explains parents' obligations to them, warns them of the consequences if the child re-offends and has them sign a declaration stating that they will ensure that the child attends when summonsed by the police and will not re-offend.

Each juvenile inspector has, on average, between 10 and 15 children on deferred sentence who are under their supervision. The juvenile inspector meets with the child once per month to provide them with advice about the law and to warn them about the penalties for re-offending. On occasion, law awareness programs are conducted for all children under police supervision with the support of the bcal children's center, social workers, NGOs and justice sector officials. In addition, some juvenile inspectors have developed good co-operation with local governors, social workers, children's centers and NGOs, and try to refer juveniles to appropriate programs and services, such as non-formal education or NGO-run drop-in centers and family support programs. For example, one juvenile inspector in Sukhbaatar aimag develops an individual work plan for each child that includes plans for both the juvenile and his or her parents. The juvenile inspector initiates what needs to be done, but gets support from the local social worker, governor's office, and NGOs such as World Vision. Emphasis is placed on creating a good living environment for the child, providing him or her with praise and a sense of community, and facilitating enrolment in school, non-formal education, or job opportunities. However, in other areas, juvenile inspectors have little time for individual cases, and programs and activities are infrequent and generally limited to law awareness.

Some jurisdictions have also developed “Trust Certificate” programs. Under the program, local justice sector officials, business leaders or NGOs agree to supervise a child on deferred sentence. The role of the official is to provide education, support and counselling to the juvenile.

In some cases, the Court places juveniles on deferred sentence under the supervision of their schools. A directive is issued to the school to take the child under supervision and to eliminate the causes that led them into crime. Teachers and peers are required to supervise the juvenile’s behaviour, prevent them from re-offending and ensure that they are rehabilitated.

Starting in 2003, the Ministry of Justice, with the support of Soros Foundation, is launching a community service work pilot project. The project will be providing community work opportunities for people who have been sentenced to a period of compulsory work. While the project is not designed specifically for juveniles, they are one of the target groups. Training has been provided to local governors, prosecutors, judges and police, and they are in the process of developing work placements for accuseds who are referred to the program.

A pilot project is also being developed in Dornod to provide more effective rehabilitation programs for children on deferred sentence. With the support of World Vision, the juvenile police department is establishing a child development center. In collaboration with the local governor, children’s center, social workers and students from the Pedagogical University, the center will be used to provide psychological counselling, life skills courses, non-formal education and legal awareness seminars to juveniles and their families. Material assistance will also be provided to assist disadvantaged families.

12.3 Assessment and Recommendations

It was generally agreed by all stakeholders that prison is not an effective way to rehabilitate young people, and that in many ways it simply teaches them to be better criminals. It was noted that children are not likely to be rehabilitated while they are separated from society. Prison does nothing to address the underlying family problems that contributed to the child’s behaviour, and since they simply return to the same environment they came from, they are likely to re-offend. These comments are supported by international studies, which have shown that between 50 and 80% of juveniles sentenced to prison or to secure education and rehabilitation institutions re-offend within five years of their release. Research has consistently shown that prison neither deters nor rehabilitates offenders, but instead serves to further alienate them from society and push them further into a life of crime. In addition, harsh and humiliating punishment has been shown to be a significant factor in the development of violent and anti-social behaviours in young people. By contrast, juveniles who have benefited from programs based on constructive, community-based rehabilitation are more likely to accept responsibility for their actions and become law-abiding citizens. Research has shown that rehabilitation programs are much more effective when they are conducted in the community, rather than in institutions. Even high risk, repeat offenders have been shown to respond better to intensive community-based programs

than to incarceration. For this reason, many countries have shifted away from reliance on costly and ineffective prison and rehabilitation centers, and are investing instead in developing effective community-based sentencing programs.

However, despite the general acceptance by judges, prosecutors and police that prison is not an effective means of rehabilitating juveniles and ensuring the long-term protection of society, there is still heavy reliance on the imprisonment of young people, mostly for property-related offences. As can be seen from the chart above, less than a third of the juveniles sentenced to prison were guilty of violent offences. In addition, statistics suggest that the courts are relying more and more on prison sentences for theft and property-related offences; although the number of juveniles involved in theft rose only by approximately 4.5% between 2001 and 2002, the number of children sentenced to prison for theft rose by 57%. When prison sentences are used, many stakeholders noted that they can be quite harsh. For example, one of the juveniles who participated in the focus group discussions was sentenced to five years in prison for stealing a cell phone. Another was sentenced to five years for snatching a bag, and there was a girls sentenced to over a year in prison for stealing a coat.

Another concern is the number of orphaned and unsupervised children in prison. Statistics from the juvenile and women's prison show that between 1998 and 2002, there were consistently been between 28 and 40 orphans in prison. The head of the juvenile prison estimated that between 40 and 50% of children sentenced to prison are orphaned or unsupervised. Many stakeholders noted that prison is often the only option for children who have no homes. In some cases, unsupervised children are placed on deferred sentence for their first offence, but because the underlying problems of poverty and family violence are not addressed, they return to the streets where they continue to steal and eventually end up being sentenced to prison.

The weight given to compensation of damages as a mitigating factor also operates to the disadvantage of children, particularly those from poorer families. A number of stakeholders noted that the children who end up in prison are generally those whose families cannot afford to pay for damages. This gives rise to perceptions of unfairness and inconsistency in sentencing practices. For example, where a juvenile has paid compensation for damages, the case will generally be dismissed at the investigation stage, or a conditional sentence is imposed. However, a child convicted of the same offence who cannot pay damages can be sentence to several years in jail.

I was an ordinary child and used to attend school. One day I stole something from my friend's apartment together with my two girlfriends. But one of the girls was released because she stole from her home and her mother said she had no complaint. The other girl, who was the initiator, had a brother who was a friend of a policeman so using their friend they managed to release her. They said she made amends for her damage. Both of my girl friends are attending their school now, but I am here in prison. The girls who did the stealing with me are in the sun, but I'm sentenced to 2 years in prison. It's not fair. -a 16 year old girl

This over-use of prison for non-violent juvenile offenders results in part from the lack of flexibility in the sentencing provisions of the Criminal Code, as well as the overriding punitive nature of the criminal justice system. The Criminal Code states that the purpose of imposing a penalty is to protect citizens, to restore rights violated as a result of crime and to deter criminal behaviour. Emphasis is placed on punishment, rather than rehabilitation of offenders. There are limited non-custodial sentencing options available for children, and they can only be used for first-time offenders and if the damages are not too high. Property-related offences attract penalties that are relatively high by international standards, and committing a crime in a group, which is common amongst juveniles around the world, automatically escalates the seriousness of the offence. For repeat offenders, there is no option but to sentence them to jail, regardless of the seriousness of the crime.

The new amendments to the Criminal Code strengthen, rather than diminish, reliance on imprisonment. The new Code removes the flexibility judges had to reduce the mandatory penalties set for specific crimes. One judge expressed concern about the impact this will have on children, noting that a group of children who rob a taxi driver at knife-point will now be automatically subject to a minimum of 8 years in prison. In addition, concern was also expressed about the new penalty of solitary confinement that can be imposed for minor and less serious crimes. A number of stakeholders expressed the view that this penalty is quite harsh and is not appropriate for children because it would be very emotionally and psychologically difficult for them.

In many respects, these sentencing practices fail to fully reflect the principles of the CRC and UN Guidelines. The CRC states that, while children must be held accountable for their actions, the overriding objective should be to promote their rehabilitation and reintegration. A variety of non-custodial sentencing options should be available and judges should be given the flexibility to select the penalty that is most appropriate for the individual juvenile. The sentence imposed should be proportionate not only to the gravity of the offence, but also the circumstances and needs of the juvenile, and should reflect their limited maturity. In addition, the Beijing Rules emphasise that imprisonment must not be imposed unless the juvenile has committed a serious act involving violence against another person or is persistent in committing other serious offences. Imprisonment must not be used for homeless or unsupervised children as a substitute for more appropriate social welfare responses.

In order to ensure compliance with these principles and to provide clearer guidance to judges, it is recommended that the Criminal Code be amended to include a statement of special principles and factors to be considered when imposing sentences on children. In the short-term, a separate chapter or addendum to the judges' benchbook could be developed to outline binding CRC provisions and to provide greater clarity in terms of the application and interpretation of the existing sentencing provisions. These principles should be grounded in the CRC and UN Guidelines, and should emphasise the need for rehabilitation, rather than merely punishment. The sentences imposed on

juveniles must reflect their diminished capacity to understand the consequences of their actions, as well as their greater rehabilitative potential. While juveniles must be held accountable for their actions, this must be done in a way that promotes their rehabilitation and reintegration, and imprisonment should only be used as a last resort and for the shortest period necessary. In many cases, non-custodial options such as repairing harm done or community service provide much more meaningful consequences for young people than prison terms, and therefore community-based options should be used to the greatest extent possible.

In addition, it is recommended that the Criminal Code be amended to allow judges the flexibility to impose less than the stated minimum penalty where circumstances warrant. The use of mandatory minimum sentences against children violates the CRC, which states that imprisonment should be used only as a measure of last resort, not automatically or as the preferred penalty. Amendments should also be introduced to prohibit the use of solitary confinement as a penalty for children under 18. Imposing solitary confinement on children charged with minor and less serious crimes violates the UN Guidelines on Juveniles Deprived of their Liberty, which state that solitary confinement can never be used against children because of the emotional and psychological harm it can cause. The use of any form of imprisonment for minor and less serious crimes is also contrary to the Beijing Rules, which state that imprisonment should be reserved for violent offenders, or those who persist in committing serious crimes. In addition, the conditions in which the children are kept are not consistent with the CRC, which state that all children deprived of their liberty must be afforded the right to education, and to engage in recreation and leisure activities.

Furthermore, while the Criminal Code includes more sentencing options for children than for adults, the number of penalties that can be effectively applied to juveniles is still quite limited, and there are strict limitations on their use. The CRC and UN Guidelines state that a variety of sentencing options should be available, and that there should be few restrictions so that judges have the flexibility to impose the appropriate option. Thus, many countries have developed a continuum of sentencing options that allow for graduated responses, or a gradual increase in the severity of the penalty if a juvenile re-offends. The options are designed so that a second offence results in more serious consequences, but not necessarily a prison term.

	Reprimand	Apology	Fine	Forced Labour	Community Service	Compensation/ Restitution	Probation	Reporting Center	Deferred Sentence	Open/ Foster Care
Mongolia			•	•					•	
Russia			•		•		•		•	
Germany			•		•	•	•			
Poland	•	•		•	•	•	•			•
UK	•	•	•		•	•	•	•		•
Canada	•	•	•		•	•	•	•	•	•
South Africa	•	•	•		•	•	•	•		•
New Zealand	•	•	•		•	•	•	•		•

Lithuania		•	•		•	•	•	•	•	
Bulgaria	•	•			•	•	•		•	
Georgia	•	•	•			•	•		•	
Latvia			•		•	•			•	

It is therefore recommended that the Criminal Code be amended to include a broader range of sentencing options for juveniles, including those outlined below. Most of the options, particularly community service, probation, home supervision, reporting centers and shelter placement could be piloted by using existing forced labour and deferred sentence provisions.

Admonishment or Judicial Reprimand: Admonishments or judicial reprimands are used for first-time or minor offenders in many countries, including Poland, Romania, Netherlands, France, Australia, New Zealand, US and Canada. Instead of imposing a penalty on a juvenile, the judge issues a strong reprimand telling him or her that the conduct was unacceptable and that any further offending will lead to harsher consequences. For many first-time offenders, the force of a judicial reprimand is sufficient for them to understand the seriousness of their conduct.

Conditional Discharge: With a conditional discharge, the Court makes a finding of guilt against the juvenile, but suspends registering the conviction and deciding on a sentence for a certain period of time, during which the juvenile must meet certain conditions, such as not re-offending or taking part in a treatment program. If the results are satisfactory, no penalty is imposed. If the conditions are not met, the juvenile is brought back before the court and an appropriate sentence is imposed.

Fine: Fines are commonly used as an alternative to prison for adults, but can be less effective with juveniles. In most cases, juveniles do not have the financial means to pay the fine themselves, so the penalty does not require them to take personal responsibility for their actions. However, in some countries, programs are put in place to provide work opportunities for juveniles so that they can pay the fine imposed.

Compensation or Restitution Orders: In addition to being part of a diversion program, restitution can also be used as a penalty imposed on juveniles convicted of a crime. As noted above, compensation orders require the juvenile to take some measures to compensate the victim for his or her losses. Compensation may be symbolic rather than representing the amount of actual loss or damage, and generally requires the juvenile to apologize, to explain his or her behaviour and to make some contribution towards remedying the harm done to the victim. In some cases, this involves cash compensation for loss or damage. However, where juveniles cannot afford to pay, compensation can be made by working for the victim or repairing the damage done. International studies have shown that compensation of this nature enhances the juvenile's acceptance of his responsibility for wrongdoing and reduces re-offending.

Community service work: community service is commonly used throughout Europe, North America, Australia, New Zealand, Africa and South East Asia, and is also being increasingly used in Central and Eastern Europe as cost-effective way to reduce prison overcrowding and to support juvenile rehabilitation. Community service work is distinct from compulsory work because it is unpaid. Compulsory work orders require employers to garnish a certain percentage of an employee's wages and remit that amount to the State. Its application can be limited, particularly for juveniles, because it can only be imposed on someone who has a job. In Kazakhstan, for example, community work has been introduced as a sentencing option, but it is under-utilized because employers must pay the government for the offenders' work. However, with community service work orders, the juvenile works for a set number of hours on an unpaid basis in some way that benefits the community. Work placements can be arranged with local governors, NGOs, community groups, youth groups or some other charitable organization. The most effective community service work placements are those that require juveniles to work alongside positive adult or peer role models, and that give them the opportunity to practice and demonstrate competent and responsible behaviors.

As noted above, the Ministry of Justice and Soros are in the process of developing a community service work pilot in Ulaanbaatar which could be used as a more rehabilitative sentencing option for juveniles. However, it is recommended that special rules be developed to govern how compulsory work will be applied to juveniles to ensure compliance with the CRC and UN Guidelines. In particular, compulsory work should not be degrading or demeaning, should not endanger the health or safety of the juvenile, and should not interfere with their schooling. Of concern is that the minimum number of hours for compulsory work is mandated by the Criminal Code and is generally quite high. Community work orders are intended to allow the juvenile to make amends for their crime by doing some work for the community, and generally involve a small amount of work limited to the weekends or some after school hours. In most countries, the number of hours that juveniles can work is generally limited to between 50 and 300 hours, and usually at a rate of no more than 20 to 40 hours per month. However, the current rules require an accused to work at least three hours and up to 12 hours per day. In addition, the current requirement that employers pay the State for the offender's labour may make it difficult to find work placements for juveniles. Consideration should be given to amending the rules to allow juveniles to perform unpaid community service work for charitable organisations, and to provide flexibility in terms of how many hours are worked, and at what rate.

Probation: probation is widely used throughout the world as one of the main alternatives to detention for children in conflict with the law. It consists of an order placing the juvenile under the supervision of a justice sector official or social worker for a specified period of time and requiring the juvenile to comply with certain conditions or take part in rehabilitation programs. In some countries, juveniles on probation are supervised by local social workers. Others employ professional probation officers, who are specialized social

workers attached to the courts, the ministry of justice, or the corrections department.

The key to successful probation programs is individualized case planning. A trained probation officer or social worker conducts an assessment of the juvenile's background and identifies the underlying problems that led to the criminal behaviour. Based on this assessment, a clear plan is developed outlining what programs and activities the juvenile must undertake to resolve the problems that led to the criminal behaviour, to improve their ability to deal with the stresses in their lives, and to make better decisions in the future. This may include referral to government or NGO-run life skills courses, non-formal education programs, or other services. The juvenile's compliance with these programs is monitored by the probation officer through regular office meetings, home visits, and collateral checks with parents, teachers and service providers. In some cases, probation officers provide direct counselling to juveniles, while in others they act merely as an assessment, referral and monitoring resource. In many countries, volunteers or community-based committees have been used to effectively compliment the work of probation officers and increase community involvement in juvenile rehabilitation.

Probation is distinct from a deferred sentence in that it generally involves Court-ordered conditions that require juveniles to participate in constructive programs to address the underlying issues that led to their criminal behaviour. By contrast, deferred sentence orders merely place a juvenile under the supervision of a parent or other organization; the order is directed at the parents, not the juvenile, and the only requirement on the young person is that he or she not commit further crimes. In addition, deferred sentence is not generally considered to be a non-custodial sentence, since it technically involves the imposition of a prison sentence which is merely suspended, but can be enforced in the event of any further criminal or administrative infraction. Probation orders are a distinct form of sentence imposed without a prison term attached. Failing to comply with a probation order is a separate offence, which is subject to the same sentencing options as any other crime.

However, existing deferred sentence provisions could be used to pilot more intensive probation programs. In many areas, juvenile inspectors have developed good collaboration with local social workers, children's centers and NGOs, and are already making efforts to refer juveniles to appropriate support programs. However, there is currently no system for comprehensive assessment, referral and case management or for consistent and ongoing support services for juveniles. In many case, support is limited to material assistance or occasional trainings. Juvenile inspectors meet only once per month with juveniles, and in most cases their counselling is limited to law awareness and warnings about the consequences of re-offending. However, as was noted in the section on Crime Prevention, teaching children about the law and warning them about the penalties for crimes has not been shown to have any significant impact on adolescent behaviour. In most cases, persistent criminal behaviour is linked to underlying problems of abuse, neglect, family dysfunction, poverty or abandonment, and the most effective rehabilitation programs are those that address these risk factors. It was noted

that a child who steals because he is homeless and hungry will continue to steal even if he knows it is illegal unless something is done to provide him with appropriate care and support to improve his living conditions.

A number of stakeholders expressed concern that juvenile inspectors do not have the time and resources to dedicate to individual cases, and that more needs to be done to provide counselling and support to juveniles and their families. It was noted that currently children on deferred sentence go back to the same living environment and are exposed to the same pressures and influences that led them into crime, without adequate support services to help them change their behaviour. Addressing this problem should not be the work of the police alone, but also social workers, schools, children's centers and NGOs. Some suggested that there should be professional social workers attached to the justice sector to work with juveniles. Several juvenile inspectors noted that it is psychologically difficult for children to come to the police station for counselling, and many of them are quite closed with the police. It was also noted that, while juvenile inspectors try to support juveniles as much as they can, they are not social workers and cannot solve all of children's problems.

Properly trained and resourced probation officers are essential to the effective implementation of a comprehensive juvenile justice system based on diversion, early intervention and community-based rehabilitation. Investment at this level can often lead to a reduction in expenditures at more costly levels of the system, such as prison. It is therefore recommended that priority be placed on building the capacity of juvenile inspectors to provide more comprehensive rehabilitation and support services to children on deferred sentence.

A starting point would be to make more effective use of existing resources within the community and to mobilise greater support from local social workers, children's centers and NGO. There are currently numerous government and NGO-run programs providing non-formal education, school re-integration, literacy training, tutoring programs, adventure and experiential life skills courses, and family counselling and income generation support. Many communities have family and child development centers that could be used to provide parenting skills courses or other support to families with children in conflict with the law.

Making more effective and consistent use of these resources will require juvenile inspectors to take a more proactive role in co-ordinating services, actively liaising with the community and developing referral lists of available resources in their community. It is therefore recommended that juvenile inspectors be provided training, handbooks and proper assessment tools to allow them to develop individualised plans of care for children on deferred sentence. Plans of care should identify the main problems or risk factors that have contributed to a juvenile's behaviour, and include clear strategies to address these problems. In many cases, this will require the support of local social workers, children's centers and NGOs. New methodologies should be developed based on addressing family risk factors and building juveniles' life

skills, rather than educating them about the law. International research has shown that the best rehabilitation programs are those that work with juveniles in their own homes and communities, addressing the underlying problems that contributed to the criminal behaviour and teaching children the skills they need to face the obstacles and challenges in their everyday lives. This requires that regular, sustained and consistent support be provided throughout the probation period, not just on a monthly or occasional basis. Community or university student volunteers could be mobilised and trained to support juvenile inspectors in monitoring juveniles' progress and compliance with the rehabilitation plan.

Consideration should also be given to establishing specialised probation officers under the Department of Court Decisions Enforcement or local governors to perform this function, rather than the police. Juvenile inspectors are currently performing the job of both a police officer and a probation officer. These roles require very different skills and mandates. Juveniles on probation require a trained professional to provide guidance, support and counselling. The effectiveness of the relationship depends on the probation officer's ability to gain the trust of the juvenile and to be viewed as a supporter and friend, rather than purely an authority figure. As many juvenile inspectors noted, this is very difficult for a police officer to do, since they are ultimately responsible for law enforcement and are often distrusted and feared by young people. It is therefore recommended that the current roles and responsibilities of juvenile inspectors be reassessed. In the long term, separate non-uniformed probation officers should be specially trained and appointed in all communities with high rates of juvenile crime to take over responsibility for coordinating community-based sentencing options. Many current juvenile inspectors who have training as educators and experience working with juveniles could be transferred into these positions. In the short term, consideration should be given to splitting the functions of existing juvenile inspectors and appointing at least one them in each district or soum (where there is more than one) to be exclusively responsible for supervising children subject to investigation and on deferred sentence. Ideally that officer would not wear a uniform, and would be given an office somewhere other than the police station.

It is also recommended that the current practice of placing children on deferred sentence under the supervision of their schools and sending notices or decrees to inform schools of juvenile convictions be discontinued. As noted above, the CRC and Beijing Rules emphasise that juveniles' right to privacy must be respected, since informing the community about the details of their case can lead to negative labelling and interfere with their rehabilitation. Both the children who participated in the focus group discussion and some of the juvenile inspectors noted that informing schools can have negative consequences for the children. One juvenile inspector advised that most children do not want to go back to school once they have committed a crime because they are embarrassed and are treated badly by their peers and teachers and receive added pressure from being labelled a thief. A child interviewed as part of the Peri-urban Study said that he committed a crime while studying grade 7 and could not resume his studies because the school director refused to take him back on the pretext that he would be a bad

influence on the other children. These reports suggest that training and awareness is required to change teachers' attitudes towards children who have been in conflict with the law, and to ensure that labelling and stigmatisation does not contribute to school drop-outs. In the interim, reporting juvenile cases to school authorities should be discontinued.

Reporting Centers: Reporting centers are also used as a sentencing option in several countries, including the UK, Canada, the Philippines, and throughout the Caribbean. Under this model, juveniles are required to report to an NGO or police-run center for a specified number of hours per week, usually on weekends. The objectives are to punish the juvenile with loss of leisure time, and to provide instructive and rehabilitative programs designed to develop personal responsibility and life skills. They can be used as a stand-alone sentence, or as part of a probation order. The number of hours a juvenile is required to attend can vary, but generally does not exceed 10-15 hours per week.

Reporting centers can be run by the police, local education authorities, or NGOs. The centers provide a closely supervised environment where the juveniles are required to participate in specialized education and rehabilitation programs during potentially high-risk times (after school, early evenings, weekends). Employment and training assistance, education and literacy classes, alcohol and drug abuse counseling, and life skills courses are used to address the underlying causes of criminal behaviour and to affect behavioural change. In some cases, reporting centers are designed exclusively for children in conflict with the law (at the pre-trial stage and after conviction). Others are broader community centers that integrate juveniles with local neighborhood children who go to the center for recreation, tutoring and employment and training support. This integration reduces stigmatization of the juveniles and also provides them with positive peer associations.

As noted above, it is recommended that a reporting center be piloted in one or more jurisdictions with high juvenile crime rates. The same centers used to provide additional supervision for juveniles under investigation could also be used for juveniles on deferred sentence. The centers could act as a focal point for rehabilitation and family support programs provided by local children's centers, social workers, juvenile inspectors or probation officers, and NGOs. If the model proves successful, probation and reporting centers could be added to the Criminal Code as separate sentencing options.

Home Detention or Intensive Supervision: Home detention or intensive supervision programs are designed for juveniles who would otherwise be sentenced to jail because they are at high risk for re-offending or have insufficient parental supervision. Under a home detention or intensive supervision program, juveniles are released under the supervision of their parents, but with closer monitoring and more intensive support than probation. The probation officer meets with the young person and his or her parents and develops an individualized case plan based on the juvenile's specific needs. The objective of the plan is to address some of the underlying problems that led to the criminal conduct, to help the juvenile develop skills to change his

behaviour, and to improve the parent/child relationship. The juvenile is required to take part in structured rehabilitation programs and services, usually for 35 hours per week. This includes a combination of school attendance, employment or employment training, volunteer work in the community, recreational and leisure activities, counseling, and structured group programs. In some cases, the juvenile is not permitted to leave the house except for pre-approved activities.

Probation officers monitor the young person's compliance and progress through daily check-ins, frequent phone calls, unannounced home visits and talks with parents and teachers. This frequent, one-on-one contact helps build trust between the juvenile and the probation officer, who acts as role model or mentor and provides support and encouragement to the young person. In some countries, specially trained community volunteers are used to help probation officers monitor the juvenile's behaviour or to act as mentors. The approach is effective because probation officers use frequent, personal contacts to develop a relationship with the juvenile and because they tailor a highly individualized plan that addresses the underlying causes of crime. It also ensures that parents or guardians are actively involved in the juvenile's reintegration and builds their capacity to more effectively supervise their children.

Open Custody or Shelters: Increasingly, open custody or shelter care is being used as an alternative to prison for juveniles who are homeless or lack adequate parental supervision. Under this model, instead of being sentenced to jail, juveniles are sentenced to a specific period of "open custody" or are placed under the supervision of an NGO-run shelter. In many cases, the same shelters are used for both those who are awaiting trial and those who have been convicted. As noted above, shelters are home-like centers located in residential areas. They generally house between 10-15 youth and are staffed by social workers who have been specially trained to deal with troubled adolescents. Open custody or shelter facilities can be part of the prison system, or run by local governments or NGOs. They generally rely on close, 24-hour staff supervision, trust-building and a structured, daily routine to monitor the juvenile's behavior.

When a juvenile is sentenced to a period under the supervision of a shelter, the staff develop an individualized rehabilitation plan that aims to address the underlying causes of the juvenile's criminal behaviour. Appropriate interventions are designed to resolve family problems, to assist children to reintegrate into education or vocational training programs, and to improve their decision-making and problem-solving skills. The juveniles are required to do household chores and take part in group or individual counselling sessions. The emphasis is on preparing them for reintegration and providing them with the skills they need to break previous bad habits and live productive lives.

It is recommended that an open custody model be established on a pilot basis in one or more areas. If the model proves successful, legislative amendments could be introduced to replace the current sentence of solitary confinement

with open custody, or to redefine the requirements of an ordinary regime prison for juveniles so that smaller, community-based centers could be established on an open custody model. The pilot would likely require the support of an NGO to establish or re-designate an existing care center. During the pilot period, unsupervised children charged with minor and less serious crimes who would normally be sentenced to prison could be sentenced instead to deferred sentence under the supervision of the care center. Care center staff would have to be provided with specialised training to deal with these children and to develop appropriate rehabilitation plans. The same shelter recommended above for children under investigation could be used, provided the staff to juvenile ratio is kept low. Many countries have successfully mixed the two groups, and because they are not in secure detention, the rules requiring the separation of pre-trial and convicted juveniles need not be strictly applied. Structured programs and close contact with staff members contributes to the reduction in criminal contamination and promote positive behaviour.

Opportunities for study tours or other experience sharing should be explored so that policy-makers and front-line staff can observe a model in other countries. In addition, clear guidelines and policies should be developed in consultation with the police, prosecutors, judges, Ministry of Justice officials, National Board for Children and NGOs to clarify roles and responsibilities, and to ensure that care center operations meet the needs of the justice sector. A specialised training program should also be developed to provide care center staff with the training and skills they need to deal more effectively with children in conflict with the law.

Community consultation and awareness activities are also essential to combat the perception that non-custodial sentences are not adequate punishment for young people who commit crimes. Advocacy and participatory awareness activities at the local level can help influence community thinking about juvenile crime and foster support for more child-friendly responses.

Recommendations

- Develop commentaries or practice directives outlining the special principles to be applied when sentencing children
- Amend the Criminal Code to prohibit the use of incarceration against children, to remove the application of minimum penalties to children, and to include a broader range of sentencing options.
- Using the deferred sentence provisions of the Code, develop pilot projects to test open custody, probation and reporting center sentences.
- Establish probation officers to coordinate and supervise community-based sentencing alternatives and provide them with training, guidelines and handbooks on coordinating community-based rehabilitation services.

13. JUVENILES IN PRISON

Even with effective community-based sentencing alternatives, there will always be a minority of juveniles who commit serious violent offences and must be detained for the protection of society. However, States are obligated to ensure that imprisonment does not lead to the violation or deprivation of other rights to which all persons under the age of 18 are entitled under the CRC, and in particular the right to education, to adequate nutritious food, to health care, to engage in leisure and recreational activities appropriate to their age, and to be protected from all forms of abuse and maltreatment. The CRC states that no child shall be subject to torture or other cruel, inhuman or degrading treatment or punishment. Children deprived of their liberty shall be treated with humanity and respect for their dignity, and in a manner that takes into account their age. In particular, children must be separated from adults and shall have the right to contact with their family through correspondence and visits, except in exceptional circumstances.

The Beijing Rules further state that juveniles in institutions shall receive care, protection and all necessary social, educational, vocational, psychological and medical assistance required for their development. Young female offenders placed in institutions deserve special attention and shall by no means receive less care, protection, assistance, training and treatment than male juveniles. In addition, efforts should be made to provide semi-institutional arrangements, such as half-way houses, educational homes, and day training centers to assist juveniles in their reintegration into society.

As noted above, the UN Guidelines on Juveniles Deprived of their Liberty (JDL's) contain a set of comprehensive guiding principles for the treatment of children in prison. The JDL's state that juveniles deprived of their liberty must be treated with humanity and respect and in a manner that takes into account their age. Children must be separated from adults, and should be protected from abuse and exploitation by fellow inmates. The design of detention facilities for juveniles and the physical environment shall ensure due regard to the need of juveniles for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities. In addition, the number of juveniles detained in closed facilities should be small enough to enable individualised treatment. Juvenile prisons should be decentralized to facilitate access and contact between the juveniles and their families, and open detention facilities with no or minimal security measures should be established for juveniles.

The JDL's state that upon admission to a prison, juveniles should be examined by a medical professional and interviewed for the purpose of classification. A psychological, social and medical report should be prepared to identify the specific types of care and programmes that are required. Where the length of stay permits, an individualised treatment plan should be prepared.

Sleeping accommodations should consist of small group dormitories or individual bedrooms. During sleeping hours, there should be regular, unobtrusive supervision of all sleeping areas in order to ensure the protection of each juvenile. Every juvenile should be provided with separate and sufficient bedding, which should be clean when issued and changed often enough to ensure cleanliness. Sanitary installations should be provided to enable juveniles to comply with their physical needs in privacy and in a clean and decent manner.

The JDL's also state that institutions must provide all juveniles with food that satisfies dietetic, health and hygiene standards. The detention facility should ensure that each juvenile has personal clothing suitable to the climate, and the right of every juvenile to have personal effects shall be fully recognised and respected. Every juvenile should have the right to a suitable amount of time for daily exercise, in the open air when weather permits, and should also be given additional free time for daily leisure activities.

In keeping with the continued emphasis on rehabilitation, the JDL's state that juveniles in custody should be guaranteed the benefit of meaningful activities and programmes. Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible, and in any case, by qualified teachers through programmes integrated with the general education system so that juveniles can continue their education after release. Juveniles also have the right to receive vocational training in occupations likely to prepare them for future employment. Diplomas or certificates awarded to juveniles in detention should not indicate in any way that they have been institutionalised. Every detention facility should have a library that is adequately stocked with educational and recreational books.

In addition, juveniles should be provided with the opportunity to perform remunerated work, if possible within the local community. The type of work should comply with child labour standards, and should provide appropriate training that will be of benefit to the juveniles following release. Juveniles who do perform work have the right to equitable pay.

In order to facilitate reintegration into society, the JDL's state that emphasis should be placed on allowing juveniles to maintain contact with family members and the community. Juveniles should be allowed to communicate with their families and friends and to leave detention facilities to visit their home and family. Every juvenile has the right to receive regular and frequent visits, in principle once per week and not less than once per month. They should also have the right to communicate in writing or by telephone at least twice per week and to receive correspondence. In addition, all juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures and special courses should be designed for this purpose.

The JDL's further state that measures of restraint or force should only be used in exceptional cases where all other control methods have failed, in order to prevent juveniles from inflicting self-injury, injuries to others or serious destruction of property. The UN Standard Minimum Rules for the Treatment of Prisoners prohibit the use of instruments of restraint such as handcuffs, chains, irons and straightjackets as punishment. In addition, the JDL's state that the carrying of firearms by personnel should be prohibited in any facilities where juveniles are detained.

With respect to punishment, the JDL's state that juveniles should not be disciplined, except in accordance with the law. All disciplinary measures constituting cruel, inhuman and degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, and solitary confinement. Reduction of diet or restriction on family contact shall not be used as forms of punishment. In addition, labour should always be viewed as an educational tool and a means of preparing juveniles for return to the community and shall not be used as a disciplinary sanction.

In order to ensure that the rehabilitative goals of detention are achieved, the JDL's state that the staff of juvenile prisons should include specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists. All personnel should receive specialised training, particularly in child psychology, child welfare, international norms and standards, and child rights.

13.1 Legislative Provisions

Both the Criminal Code (article 52.8) and the Law on the Execution of Court decisions state that minors sentenced to imprisonment shall serve their term in a juvenile correctional facility of ordinary regime. Under the Law on the Execution of Court Decisions, penal institutions have the duty to promote rehabilitation, to involve juveniles in general secondary education programs, and to provide vocational training (Article 8, 125). The Internal Rules on Prisons, issued by the Ministry of Justice, also state that prisoners may be granted permission to study by correspondence.

Juveniles in prison also have the right to adequate and nutritious food, clothes and medical care, and to subscribe to newspaper and use the library at the detention center (Article 15). In addition, prison authorities must provide prisoners with a bed, sheets, blankets, a winter and summer uniform, and allow them to possess their own underwear, warm clothes and shoes (Article 128). The Internal Rules state that dormitories must have windows that allow in natural sunlight.

Juveniles in prison are permitted to correspond and to receive packages, and to have an unlimited number of short visits (3 hours) and eight long visits (72 hours) per year (Article 107, 115). Family or friends wanting to visit prisoners must seek permission in advance, and must pay a fee. Prisoners are permitted to use a payphone, at their own expense, for not more than 5 minutes and under the supervision of a guard. If a prisoner has a family

member who is terminally ill or dies, the head of the prison may grant the prisoner leave for up to seven days.

Juveniles in prison are guaranteed the right to practice their religious beliefs, read books, or play sports in his/her personal free time. In order to provide work experience, juveniles can be involved in light forms of labour, provided it complies with labour laws (Article 120). All prisoners who work must be paid for their labour (Article 121).

The Law on the Execution of Court Decisions also lists the types of disciplinary punishments that may be imposed on prisoners. Juveniles who have violated the rules and regulations of the prison may be required to work extra hours, lose rewards, or be jailed in a disciplinary cell for up to 15 days, or in exceptional circumstances up to 30 days. In addition, if it is necessary to ensure security and prevent a prisoner from committing a violation, he or she may be temporarily transferred to an isolation room for up to 72 hours. A physician must supervise the health conditions of prisoners in the disciplinary cell or isolation room (Article 127) and certify in advance that the prisoner is medically fit for isolation.

According to the Conditions and Rules for Discipline and Separation Cells issued by the Minister of Justice, prisoners in separation and isolation cells cannot have any communication with other prisoners and are prohibited from talking, singing or making noise. Discipline and separation cells shall have a concrete ceiling, concrete or brick walls, a wooden floor or wooden bed, double iron doors, a small monitoring hole and outside locks. They should also have a window and proper ventilation and heating. Prisoners must be provided a sleeping pad, blanket and cup and spoon, and be provided with proper seasonal clothes, as well as the opportunity to sleep, eat and fulfil hygiene functions. They must be permitted, under the supervision of a security officer, to go to the bathroom three times per day, to go out once per day and to have a shower once per week.

The Law on the Execution of Court Decisions states that prison staff may use force, including rubber and electronic clubs, firearms with rubber bullets, tear gas, handcuffs, straightjackets, and guard dogs, in the event that a prisoner attacks an employee, attempts to escape, or to harm himself or others. Prison staff may carry firearms while on duty, but they may only be used against a juvenile when an attack by the juvenile causes serious danger to the health and life of others, during the arrest of an armed juvenile, and in the event of mass disorder. While firearms may be used against adults if they attempt to escape, this is excluded from the permissible uses of firearms against children (Article 140).

According to the Law on the Execution of Court Decisions, when a juvenile turns 18, he or she shall be transferred to an adult prison by court decision based on the recommendation of the prison director. However, a juvenile may stay in the juvenile prison for up to two years on the prison director's recommendation (Article 110).

The Criminal Code provides that all persons serving prison sentences, including juveniles, are entitled to early release or parole. Decisions on parole are made by the Court, on the recommendation of the head of the prison. Prisoners are entitled to early release after serving ½ of the term for less serious crimes, after 2/3 of the term for serious crimes, and for grave crimes, after 4/5 of the term (Article 72). Upon their release, prison authorities may provide the prisoner with appropriate clothes and transport and food expenses to return home.

13.2 Juvenile Prison Conditions

Mongolia has 27 prisons, including one juvenile prison for boys and one women's prison. The juvenile prison for boys is located on the outskirts of Ulaanbaatar. Juveniles sentenced to prison from around the country are transferred there. Girls are imprisoned in a separate section of the women's prison, which is located outside of Ulaanbaatar.

The boys' prison generally has 100 to 120 children at a time. A file is opened on each juvenile upon their arrival, and information about the offence for which they have been convicted, the sentence imposed, as well as their family status, educational background, health conditions and criminal history is recorded. Taking into account the early release policy, most juveniles spend between three months and one year in the institution, though some can be there for three years. The head of the prison noted that 60-80% of juveniles sentenced to prison are there for stealing. Between 40 and 50% of them are street children or orphans, and generally 30-40% are illiterate or have never attended school.

Conditions in the boys' prison are basic, but much better than the pre-trial detention facilities. The institution is relatively clean and hygienic, and boys live in dormitories rather than cells. They generally get sufficient food and clothing, and there is a medical facility on site to provide basic health care.

The boys' prison has several classrooms and vocational training rooms. The Christina Noble Foundation currently pays the salaries of qualified teachers who teach at the boys' prison five days per week. They generally teach grades one to five, using the regular school curriculum, and also provide some informal computer training. They have the capacity to teach up to grade seven, but not beyond that. Most of the children in prison are functionally illiterate, and they have many 17 and 18 year olds in their grade one class.

In addition, the prison currently offers vocational training in felt making, woodwork, leatherwork, and agriculture. A new vocational training center, built with the support of the Canada Fund, was opened in November 2002 and there are plans to expand the types of training offered to the boys. The prison would like to place more emphasis on vocational training that will enable the boys to get jobs when they are released. CNF is in the process of assessing the viability of various vocational training options and is considering offering courses in brick-laying, tiling and other basic construction skills. They would like to train local trainers to provide the boys with short training courses and

then provide them with a certificate of qualification and some basic tools when they are released.

There are also a number of other NGOs that provide programs and services at the boys' prison. MCRC has a lawyer who visits the prison once per week to provide legal advice to the children and to promote sports and leisure activities for them. He conducts trainings for the boys on human rights and legal issues, as well as topics such as smoking, alcoholism and drug use. In addition, GTZ has provided funding for students from the National University legal aid clinic to conduct legal training courses for the boys once per fortnight. Soros Foundation also has a lawyer and a psychologist who visit both the boys' and girls' prisons once per week to provide advice and counselling. With the support of Peace Winds, a psychological counselling room has been set up and two counsellors from the National Pedagogical University have started working with the boys.

Leisure, sporting and cultural activities for the boys are fairly limited, and many stakeholders noted that they are lacking constructive ways to spend their free time. There is a basketball net outside and the prison was provided sporting equipment by a Japanese organisation last year, but the equipment is all gone.

What the children said

- the lessons are very basic and there is no grades 7 to 10
- the quality of the schooling is not as good as normal schools
- there are several trainings in handicrafts and we have many certificates but what we have learned will not satisfy any job requirements. There won't be any jobs for us when we are released
- there are no cultural or sporting activities for us during our free time
- we would like people to organize meetings, singing and dancing.
- we would like to have sporting competitions or parties organized with the children from the prison and children from ordinary schools.

The boys are permitted regular visits with their families, but this is difficult for children who are from other parts of the country. A visitors' room was furnished on the ground floor with the support of MCRC, but it is now being used for juveniles being held under sentences of solitary confinement.

At the women's prison, the girls have a separate part of the building and all live together in one separate room. The prison has the capacity to hold 15 girls, but it generally has only between six and 11. As with the boys prison, the girls live in a dormitory style building and are free to walk in the interior courtyard. There is a basketball hoop, volleyball net and many flower beds in the summertime.

Because of its distance from the city, the women's prison receives much less support from NGOs than the boys' prison. There is no formal education for the girls. The prison has a classroom that has been equipped by CNF, but CNF teachers can only go there three times per week due to the distance and financial constraints. They teach cooking, knitting and some maths and

English. In addition, ADRA is conducting an experiential, life-skills course for the girls this winter. The girls also work doing sewing and making crafts.

Juveniles are generally released after serving a portion of their sentence, as stipulated in the legislation. Although the heads of the prisons have discretion with respect to transfer, juveniles who turn 18 before the completion of their sentence are generally sent to an adult institution. In practice, most of the boys are sent to the Miingun-murit prison, because it is believed to have a better environment for them. The boys are accommodated together and attempts are made to avoid mixing them with serious adult criminals.

The prisons offers little support in terms of reintegration and after care for juveniles who are being release, other than providing transportation back to their home province or district. Although an assessment is conducted on each child when they enter the institution, there are no individual plans of care prepared to ensure their rehabilitation and reintegration, and neither facility has a qualified social worker on staff. Approximately 5 to 6% of juveniles released from the juvenile prison re-offend and are sent back. Others would have turned 18 and would be sent to the adult prison when they re-offend, but there are no clear statistics to track recidivism rates of juveniles who have obtained the age of majority.

What the children said

- prison does not rehabilitate but teaches us worse things. Because so many offenders are in the same place we learn worse things from each other.
- children come back to prison not long after their release because they don't have a home and people to love them, so they steal again to avoid hunger
- police suspect them of crimes because they have been released from prison
- people do not want to have close contact with children released from prison
- in the winter street children commit more crimes because they want a warm place to live.
- children from the countryside are given transport costs and taken to the train station
- when we are released nobody cares where we go.

In an attempt to support the transition of juveniles being released from prison, CNF has extended its sponsorship program to include the families of juveniles in prison. While the juvenile is in prison, they regularly visit his or her family (in Ulaanbaatar only) to provide the family with reassurance about their child and also to support the juveniles' younger siblings to prevent them from following in their older sibling's footsteps.

In addition, World Vision has established an innovative "Open Zone" project at the boys' prison. With the agreement of the Department of Court Decisions Enforcement, World Vision built three gers next to the prison building, but outside the security fence. Eight to ten boys from the prison are selected to spend between six months to one year in the Open Zone prior to their release. They specifically target children from disadvantaged families or who are without supervision. The purpose of the program is to facilitate the reintegration of juveniles upon their release and to reunite them with their

families. World Vision provides a trained social worker who works with the boys during the day, providing counselling, non-formal education and some vocational training. They arrange fortnightly family visits for the boys from Ulaanbaatar, and also organise leisure and sporting activities and outings into the city. When released, World Vision provides ongoing follow-up and support services through its area-based programs. In the three years it has been operating, approximately 40 boys have benefited from the Open Zone project. Despite the minimal security arrangements, there has not been a single escape attempt, and only one boy has re-offended after his release. World Vision credits this success with the fact that the social worker has built a strong trust relationship with the children, and because the children already in the program have a positive influence on the new children coming in.

Although there are some special legal provisions relating to juvenile prisoners, there is no separate, comprehensive policy on the treatment of children in prison and none of the prison staff have received any specialised training on dealing with young people. The boys' prison has 33 staff members, 21 of whom are prison guards, 7 or 8 vocational training instructors and the rest supply and administration staff. Although the prison has made a request to have a full-time social worker or psychological counsellor on staff, the budget for the position has not been approved. The women's prison does not have staff specifically assigned to work with the girls.

Until recently, prison officials were trained at the Police Academy, and lower ranking guards received either a short-course at the Police Academy or on the job training. The education level of prison guards varies considerably, and while some of them have university degrees, others have only secondary school training or some prior military service.

As noted above, the Department of Court Decisions Enforcement has recently established a new training center to train all prison staff, and they have placed priority on changing the mentality of prison guards and improving respect for human rights. Soros Foundation provided support to establish the center, to develop training materials and to train trainers. Some training has already been conducted for prison officials, and they are in the process of conducting 14-day, in-service training programs for prison guards throughout the country. Trainings are being conducted on a regional basis, and a variety of topics are covered, including human rights. The Center is in the process of re-designing its curriculum and developing a training program for next year.

13.3 Assessment and Recommendations

By all accounts, the juvenile prison has made significant progress over the last five years towards improving the environment for children. Both the boys' and girls' prisons are based on the dormitory model and children enjoy relative freedom and privilege. The prisons actively encourage the involvement of NGOs, and this has greatly improved the number and quality of programs available to the children. However, the prison system currently lacks the resources and personnel to provide quality education and rehabilitation programs for children. As the Department of Court Decisions Enforcement noted, their focus, due to financial constraints, is basically on providing the

juveniles with warm accommodation and food. These priorities are reflected in the prisons' staffing choices – the majority of staff members at both prisons are guards, and neither institution has a qualified social worker or general education teacher on staff.

As noted above, the majority of juveniles currently sentenced to prison pose no threat to society and could be more effectively dealt with through community-based rehabilitation programs. The strategies outlined above should help reduce the number of juveniles in detention, thereby freeing up resources to provide more effective programs for serious juvenile offenders who must be detained.

At the same time, there needs to be a shift in the general purpose or objectives that juvenile prisons serve within the broader juvenile justice and juvenile crime prevention system. According to the CRC and UN Guidelines, the role of juvenile prisons should not be simply to contain children, but rather to promote their rehabilitation and reintegration into society. The Beijing Rules emphasise that the role of institutions is to provide juveniles with care, protection, education and vocational skills with a view to assisting them to assume productive roles in society. Separate rules and guiding principles should be developed to clearly reflect the UN Guidelines, and to ensure that emphasis is placed on education, rehabilitation, and continued contact with the community. These principles should also be reflected in decision-making on staffing, resource allocation, and the design of programs and services.

In light of the low levels of education of most juvenile prisoners, greater emphasis should be placed on providing basic education in accordance with the regular school curriculum. Both the CRC and national legislation require institutions to provide general education programs to all juveniles in prison. Currently, no formal education is provided by the government at either the boys' or girls' prison. Although the boys are provided some formal education with the support of CNF, they do not have the opportunity to complete grade 10. The girls do not have any formal education at all, and most of the training offered focuses on traditional “women’s” skills of cooking and sewing. The fact that children are in prison for a short time and are at different learning levels is a challenge, but prisons around the world face these same issues and have developed strategies to provide quality education to children in their care. For example, the Ministry of Science, Education and Culture has been developing innovative multi-grade teaching techniques for rural schools that could be applied in the juvenile prison. Regardless of the length of time they are in detention, all children can benefit from education that is appropriate to their level of learning and that helps them to reintegrate into school or vocational training upon their release.

With respect to vocational training, a number of stakeholders, including the boys themselves, noted that the current programs do not provide them with particularly marketable skills and are not very useful when they are released. The project being developed by CNF to provide training in basic carpentry skills would likely be more practical. Similar strategies should be explored to develop practical vocational training programs for the girls.

In addition to vocational training, the JDL's emphasize the need for meaningful programs and activities that foster children's sense of responsibility and that help them to develop the necessary skills to become productive members of society. Currently, the range of rehabilitation and support programs in the prisons is quite limited. A number of NGOs provide legal awareness programs and some psychological counseling, but there is limited emphasis on developing life skills and preparing children for independent living. The comments from the boy above indicate a clear lack of problem solving and basic life skills – he wants very normal things such as a home, but has decided on a life of crime because

I can't live without stealing. My life demands that I steal. I haven't got a home. Where can I go after I am released. I am not going to be rehabilitated and I think I will end up back in prison. But this time I will not steal only 1 - 200,00 tg, I will commit a bigger crime and hide the money. After a few years in prison I will be released and buy an apartment. I think I will have to steal to support myself my whole life.

-an 18-year old boy

he can see no other path for himself and does not have the skills to overcome the obstacles that he faces. Activities such as the experiential learning program developed by ADRA and MYDC can help build children's self-confidence and teach them necessary problem solving, goal setting, decision-making and social skills.

In addition, a number of stakeholders emphasised that greater attention needs to be given to supporting children upon their release. Currently, children released from prison are required to report to and be under the supervision of juvenile police inspectors. However, many of these children require intensive support and social welfare services that cannot be provided by the police. The head of the juvenile prison has identified this as a priority and would like additional support from NGOs and other organisations to help children upon their release, particularly those who are homeless. It was noted that many unsupervised children simply return to the streets or to their same dysfunctional families. Because they have nowhere to go and no one to care for them, they start stealing again and are sent back to the prison. One boy who participated in the focus group discussion was back in prison three days after his release because he stole clothes to wear.

The JDL's emphasise that, in order to support children's rehabilitation and reintegration, the staff of juvenile prisons should include specialists, such as counsellors and social workers, who can develop individual plans of care for each juvenile at the time they enter the institution. The plan should identify what the child's major needs are – education, housing, family care, behavioural and life-skills problems, job finding skills - and develop strategies for what the juvenile can do to begin to address some of those problems while in the institution. It should also include strategies for linking the juvenile to necessary NGO and government support service upon his or her release so as to ensure a smooth transition back to the community.

In light of the high number of unsupervised and orphaned children in the juvenile prison, it is recommended that greater emphasis be placed on developing pre-release and reintegration programs. This would require that the juvenile prisons have at least one trained social worker on staff to conduct assessments and prepare individualised treatment plans for each juvenile, particularly those who are at high risk due to their lack of parental care. In the short term, the NGO-supported social workers currently working at the juvenile prison could be used as a resource for this purpose. At minimum, there should be a release plan in place for each juvenile to ensure they have a place to live, either through appropriate parental care or care center accommodation. Assisting juveniles with school registration or linking them to non-formal education, vocational training or job opportunities would also help facilitate their transition back into the community. There are numerous NGOs, particularly in Ulaanbaatar, who could support these kinds of initiatives, and the juvenile prison social worker should have a comprehensive referral list of available community resources. After a child's release, continued follow-up and support should be provided by local social workers, rather than the police.

In addition, it was generally agreed that the World Vision Open Zone program has been successful at rehabilitating juveniles and supporting them to reintegrate into the community, and consideration should be given to expanding the model so that more boys could benefit from the program. The Beijing Rules stress that semi-institutional half-way house arrangements such as the Open Zone should be in place to help juveniles successfully reintegrate into society.

The JDL's also emphasise that contact with the community is essential to prepare juveniles for their return to society, and juveniles should be permitted to leave the prison to work, go to school, or visit with their families. Current restrictions on juveniles leaving the prison grounds should be reconsidered, particularly for those who are close to their release date and could benefit from gradual reintegration into the community. The Open Zone staff have found that regular outings into the city and to participate in sporting and cultural activities with other children has been beneficial for the children's rehabilitation, and they have not experienced any difficulties with children attempting to escape. In addition, opportunities should be explored to provide juveniles with community contact and positive peer influences by holding sporting competitions with local schools, or by developing peer visitation programs through organisations such as the Scouts Association.

What the children said

- it would be better if workers from children's organizations receive juveniles when they are released and take them home and to school.
- nobody listens to use when we are released so it is necessary to have someone talk on our behalf and help us find a job or school
- We would like it if some good families would adopt homeless children after their release
- It would also be good if homeless children can be brought to a school dormitory or shelter that would allow us to work. Then we can attend school and work and will be able to have our own apartments in the future.

Because juvenile prisons serve very different purposes than adult prisons, the JDL's emphasise that all prison personnel should receive specialised training, particularly in child psychology, child welfare, international norms and standards, and child rights. There is currently no special training for juvenile prison staff, but the Department of Court Decisions Enforcement has identified this as a training need for 2003. It is recommended that a special training module with rules, procedures and strategies for dealing with children be incorporated into the Department's training curriculum for both prison officials and front-line staff.

It is also recommended that separate, comprehensive legislation or rules on the treatment of juveniles in prison be developed to appropriately reflect the special status of children, to clearly state the rehabilitative objectives of juvenile institutions, and to establish more appropriate methods of discipline and control, based on principle of minimal use of force. The current Internal Rules for Prisons do not contain any special provision for children and fail to fully meet the requirements of the CRC and UN Guidelines. Specifically, the special rehabilitative objectives of juvenile detention are not explicitly stated. In addition, although the Law on the Execution of Court Decisions contains some limitations on the use of instruments of force or restraint against juveniles, the law does not specifically require the minimal use of force at all time, as required by the JDL's. It also permit the use of firearms against juveniles in specified circumstances, in direct contravention of the JDL's which state that prison staff shall not carry firearms at any institution where juveniles are held. The use of disciplinary and isolation cells as punishment or as a means of control also violate the JDL's, which state that solitary confinement or isolation in a dark cell shall not be used as forms of punishment against juveniles. In addition, the JDL's state that labour should always be viewed as an educational tool and a means of preparing juveniles for return to the community and shall not be used as a disciplinary sanction. Therefore, provisions allowing for additional work hours to be used as a form of punishment should not apply to children.

Recommendations

- Develop separate legislation and rules for juvenile prisons based on the principles of the CRC and UN Guidelines.
- Ensure that children's right to basic education is fully respected.
- Mobilize NGOs to provide more effective vocational training and life skills programs.
- Expand the Open Zone so that more juveniles can benefit from the program.
- Appoint a social worker to develop individual treatment and release plans to facilitate juveniles' reintegration into the community.
- Wherever possible, keep juveniles who have turned 18 in the juvenile prisons for the statutory two-year period, rather than transfer to adult institutions

14. RESEARCH, DATA COLLECTION AND ANALYSIS

Comprehensive data collection, analysis and research on juvenile crime are essential tools for promoting informed policy debate, and to support rational justice sector planning and budgeting. Monitoring, data collection and analysis allow countries to observe trends and patterns in juvenile crime, to assess the impact and effectiveness of various interventions, and to ascertain where resources are needed the most. The Beijing Rules state that efforts should be made to organise and promote necessary research on juvenile crime as a basis for effective planning and policy formulation. States should establish a system to collect, analyse and regularly evaluate data on juveniles involved in the justice system, and should periodically review and appraise trends, problems and causes of juvenile crime.

The guidelines issued by the United Nations Committee on the Rights of the Child for the periodic reporting by signatory countries provides some guidance on juvenile justice data collection. The Guidelines require countries to disaggregate juvenile crime data by age, gender, region, rural/urban, race, and the nature of the offence. State parties are also requested to collect data and report on the availability and frequency with which alternatives to detention are used, the frequency with which detention is used (and the types of deprivation of liberty used), and the percentage of cases in which children were provided legal assistance.

14.1 Current practices

All justice sector agencies, including the police, prosecutors, detention facilities, Ministry of Justice and Supreme Court Research and Information Center currently collect detailed, primary data on children in conflict with the law. Juvenile inspectors keep very detailed records on the number and types of crimes committed by children in their jurisdiction, including the age, gender, family and educational background, type of crime, time of day the crime was committed, and whether the crime was committed in a group or under the influence of alcohol. The data is not computerised, but standard weekly, monthly and quarterly reports are sent to the central Crime Prevention Division, which compiles the information. National reports are produced that show the number and types of crimes committed by children disaggregated by geographical region. However, the regular national reports do not disaggregate data on the basis of age, gender, or the family and education background of juveniles.

Similarly, the pre-trial detention centers and prisons keep detailed records on children in detention, including age, gender, crime committed, family background and, in the case of prisons, the length of the sentence to be served. The pre-trial detention facilities prepare weekly reports detailing the number of individuals newly detained. This data was kept by the investigations department of the police, but should now be under the jurisdiction of the Department of Court Decisions Enforcement. The Department of Court Decisions Enforcement receives regular reports from the prisons, and also keeps data on the number of children sentenced by the

Court, the types of crimes committed, the sentences imposed, the percentage of children who are repeat offenders, and what form of sentence had been previously imposed on the repeat offenders.

The Supreme Court Research and Information Center keeps data on children whose cases have come before the courts. With the support of GTZ and USAid, the Courts are in the process of introducing a computerized system for data collection and case management. The Supreme Court Research and Information Center is also developing new data collection indicators. Currently, data is disaggregated on the basis of the type of crimes committed, the penalties imposed and the age category of the offenders. However, data is not disaggregated on the basis of gender and there are no statistics on conviction rates or on recidivism. Previously, the Courts did not collect data on the use or length of pre-trial detention because decisions about measures of restraint were made by prosecutors. However, now that decisions about pre-trial detention are to be made by the Courts, this information can be reflected in the Center's statistics.

The National Statistics Office prepares annual population reports which include only the total number of crimes committed in the year by children and by adults. The Information, Monitoring and Assessment Department of the Ministry of Justice is responsible for monitoring and conducting assessments of juvenile crime and juvenile crime prevention activities, and produces annual reports to the National Council on the Prevention of Juvenile Crime. Its reports are based largely on the rate of juvenile crime in different regions, as well as the number of activities undertaken pursuant to crime prevention plans of action.

14.2 Assessment and Recommendations

While the collection of data on juvenile crime is currently quite comprehensive, it was noted that there is limited evaluation and analysis of this information in a manner that can assist policy development. Although various justice agencies have data collection staff, their work is limited to the recording and compiling of information, and there is no central institution that conducts comprehensive research to evaluate the quality of data, to analysis juvenile crime trends and to monitor implementation of criminal policy. Furthermore, although detailed data is collected by each individual justice sector agency, it is not shared or analysed on a sector-wide basis so that overall trends can be identified, and so that the impact and effectiveness of various justice sector responses can be assessed.

Another concern is the limited access to and availability of justice sector information. Very limited data was made available for the purpose of this assessment, and information is not generally available to research institutions or academics.

It is recommended that a comprehensive study be undertaken to assess the nature and quality of juvenile justice data collected by each justice sector agency, and to make recommendations to improve sector-wide reporting and analysis. In particular, data should be disaggregated on the basis of

appropriate indicators, including age and gender, and indicators should be standardized to allow for greater cross-agency information sharing. Standard forms and reports should be re-designed to reflect all appropriate indicators, and to present information in a format that can better assist policy-makers in analysing the use of justice sector resources and the effectiveness of various justice sector interventions and sentencing options. For example, statistics on what kinds of penalties are being imposed for different kinds of offences can show whether prison is being used as a last resort and for only the most serious of offences. Statistics on the rate of recidivism of juveniles released from prison and who have been on deferred sentence can help prison officials and police assess the effectiveness of their rehabilitation programs. Statistics showing the alleged crimes and social background of children in pre-trial detention can show whether there is an over-reliance on pre-trial detention and whether more cost-effective alternative care arrangements should be developed.

Furthermore, as noted in the Crime Prevention section, regular monitoring and evaluation of new programs and activities should be undertaken to assess what impact specific measures have on promoting juvenile rehabilitation and reducing crime rates. In addition, research on national and international best practices and new theories and approaches to juvenile crime should be promoted to support more effective planning and policy formulation. The Police Academy, the National Legislative and Judicial Research, Information and Training Center, the Supreme Court Information Center, and university law schools all have expert researchers who could conduct this type of research.

Recommendations

- Conduct an assessment of the quality of justice sector data collection on juvenile crime and develop sector-wide system for the collection and analysis of information on the basis of common indicators.
- Assign an agency to regularly review and evaluate juvenile justice and crime prevention programs.

15. CONCLUSIONS

While there are many challenges to face in ensuring that the juvenile justice system fully reflects the principles of the CRC and UN Guidelines, many justice sector officials have indicated a clear commitment to improving the situation of children in conflict with the law. This Assessment Report has attempted to highlight some key issues for discussion by drawing upon international standards and lessons learned from other countries. The following is a summary of the priority issues to be addressed:

Inter-agency Co-ordination

There are many government and non-government actors involved in dealing with children in conflict with the law, including the police, prosecutors, lawyers, judges, prison staff, welfare agencies, children's organizations and local authorities. Effective implementation of comprehensive juvenile justice reforms will require the co-ordinated efforts of all these agencies at both the national and sub-national level. In particular, designing and implementing a reform strategy requires a strong co-ordinating body at the national level to establish common policies, principles and objectives that will apply across the justice system. With the establishment of the Juvenile Justice Working Group in November 2001, Mongolia has taken an important step towards improving sector-wide juvenile justice coordination. However, the Working Group currently lacks members from some key justice sector agencies, including the Courts, the Ministry of Social Welfare and Labour, the National Council on the Prevention of Juvenile Crime and Crimes Against Children, and justice sector research and training institutes. It is recommended that the membership of the Working Group be expanded to include these organizations, as well as key NGOs working in the area of child protection and juvenile justice. In addition, sub-groups could be established to work more intensively on specific issues such as the development of rules and procedures or training manuals.

Development of Juvenile Justice Policies, Procedures and Manuals

The CRC requires State parties to establish special laws and procedures applicable to children in conflict with the law and states that, where children are concerned, the justice sector should be governed by a different set of guiding principles - one that emphasises accountability, but is also guided by the best interests of the child and the need to promote their rehabilitation and reintegration into society. Mongolia currently lacks an overarching legislative or policy framework for the treatment of juveniles and there is no statement of guiding principles to establish the different goals and objectives that should guide justice sector officials when dealing with children. It is therefore recommended that the Working Group develop a common, sector-wide policy framework for the juvenile justice system. The policy should incorporate CRC requirements and international juvenile justice principles such as respect for due process and procedural rights, diversion, minimal penetration into the justice system, preference for community-based rehabilitation, and imprisonment only as a last resort. It could also define the roles and responsibilities of each agency, as well as the role of local governors, social workers, NGOs, and volunteers.

Once developed, the juvenile justice policy should also be reflected in comprehensive rules and procedures to govern the arrest, detention, investigation, trial, sentencing, rehabilitation and imprisonment of children. Based on these rules, the Working Group could oversee the development of manuals, procedures or practice directives for all justice sector agencies to ensure that children's rights are being respected at all stages, and also to ensure that all justice-sector agencies are operating under a common set of principles and with common objectives.

Training and Specialization:

The CRC and UN Guidelines emphasise the need for specialised justice sector officials to deal with children in conflict with the law. It is therefore recommended that specialised juvenile investigators, prosecutors, lawyers and judges be selected, and that they, along with juvenile inspectors, be given additional training on juvenile justice. To the extent possible, training should be incorporated into existing in-service training programs and should be conducted by established justice sector training institutes. Sectoral training modules should be developed jointly under the leadership and coordination of the Working Group to ensure consistency. They should include international juvenile justice principles, as well as national juvenile justice policies, rules procedures and methodologies for dealing with children in conflict with the law.

Piloting Diversion Programs

The CRC also requires State parties to establish measures for dealing with children accused of committing crimes without resorting to judicial proceedings. It is recommended that a pilot diversion program, based on the police cautioning and victim-offender mediation models, be developed in one or more districts, using the existing reconciliation provisions of the Criminal Procedure Code. Clear guidelines, procedures and monitoring mechanisms will be required to ensure that CRC principles are adhered to, and to define what types of crimes are appropriate for diversion and what factors the police should consider in exercising their discretion. These guidelines could be developed by a sub-group of the Working Group, and in particular would require the approval of the police, prosecutor and courts. Special training on conducting victim offender mediation would also be required for pilot district juvenile inspectors. If, after an appropriate period of monitoring and evaluation, the pilot proves effective, then comprehensive diversion provisions should be added to the Criminal Code and Criminal Procedure Code.

Community-Based Alternatives to Detention

The CRC requires that detention, either pre-trial or as a form of punishment, should only be used as a measure of last resort. In order to reduce the number of children in pre-trial detention and prison, a broader range of community-based sentencing alternatives should be developed. To provide an alternative to detention for unsupervised children, it is recommended that pilot mentoring, reporting center and care center programs be established for children in conflict with the law. Under existing legislative provisions, children could be released under the supervision of the care center at the pre-trial stage, and also placed under care center supervision pursuant to a deferred sentence order. Rules and guidelines for the operation of the care center could be developed by the Working Group, with input and approval from the police, prosecutors, courts and the National Board for Children.

In addition, it is recommended that more comprehensive rehabilitation programs should be made available for children on deferred sentence. In most areas, this can be accomplished through low-cost strategies to make more effective use of existing NGO and government services, and by increasing the involvement of local social workers. Guidelines, training

modules and handbooks should be developed to assist juvenile inspectors to conduct individual needs assessments, develop a plan of care, and ensure that juveniles are referred to appropriate programs and services in the community.

In the long term, legislative amendments should be introduced to create a broad continuum of sentencing options for children.

Improving Conditions for Children Deprived of their Liberty

Conditions in pre-trial detention centers throughout the country are cause for concern, and measures should be taken to ensure that children in detention are treated with humanity and respect for their dignity, and in a manner that takes into account their age. In particular, concerns about violence, poor hygiene facilities, lack of physical and mental stimulation, poor diet, and failure to segregate juveniles from adults should be addressed as a matter of urgency. In addition, efforts should be made to mobilise NGOs and children's organisations to provide counselling, education and leisure activities for children in detention.

With respect to juveniles in prison, greater focus should be placed on the rehabilitative objectives of institutionalisation. Children's right to education should be fully respected, and programs should be developed, in cooperation with NGOs and children's organisations, to provide reintegration and after-care services for juveniles who have been released. The use of force and disciplinary practices should be reassessed to ensure compliance with the CRC and UN Guidelines.

Data Collection, Analysis and Research:

Adequate data collection, research and analysis will be required to assess the impact and effectiveness of juvenile justice initiatives, and to support policy-making. It is recommended that a sector-wide data collection and crime statistics database be developed, with data disaggregated on the basis of age, gender and other relevant criteria. Regular assessments should be conducted to evaluate the impact and effect of juvenile justice programs, particularly new diversion and community-based strategies. The Working Group should also promote research into international best practices and developments in the field of criminology and adolescent behavioural theory.

Legislative Reform

Mongolia does not currently have a set of separate, comprehensive criminal laws relating to children in conflict with the law. The long-term goal should be to enact separate juvenile justice legislation that is clearly and explicitly grounded in the principles of the CRC. In addition, there are some provisions in existing laws that clearly violate the CRC and should be considered for immediate reform. Specifically, the use of solitary confinement should be prohibited as a sentence, the mandatory minimum prison terms should not apply to children, restrictions on the use of force against children by the police and prison staff should be strengthened, and it should be prohibited to impose

the administrative penalty of apprehension on children, particularly child prostitutes.

Reform of Crime Prevention Strategies

It is recommended that a number of current crime prevention activities be reassessed in light of the Riyadh Guidelines and recommendations of the UN Congresses on the Prevention of Crime and Treatment of Offenders. As the wealth of international research has shown, crime prevention is most effectively achieved through measures that address the needs of at-risk youth in a positive, constructive, and non-authoritarian manner, while being sensitive to the issue of stigmatisation and labelling. This will require a shift away from police supervision and control strategies towards a more child-centered approach to crime prevention. It is recommended that opportunities for research or experience sharing be explored in order to draw on international best practices in refining Mongolia's crime prevention strategies and evaluation process.

REFERENCE MATERIALS

The following documents were reviewed in the preparation of this report:

- Convention on the Rights of the Child
- UN Standard Minimum Rules for the Administration of Justice (Beijing Rules)
- UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)
- UN Rules for the Protection of Juveniles Deprived of their Liberty (JDLs)
- UN Standard Minimum Rules for Treatment of Prisoners
- UN Standard Minimum Rules for Non-Custodial Measures
- UNICEF Innocenti Digest on Juvenile Justice, 1996
- Criminal Code of Mongolia
- Criminal Procedure Code of Mongolia
- Law on Crime Prevention
- Law on Police of Mongolia
- Law on Prosecutors Office of Mongolia
- Law on Courts of Mongolia
- Law on Advocates
- Law on the Enforcement of Court Decisions
- Law on Arrest and Detention of Suspects and Accuseds
- Law on the Protection of the Rights of Children
- Law on the Temporary Detention of Unsupervised Children
- Law on Administrative Liability
- National Human Rights Commission of Mongolia Act
- Internal Rules on Prisons
- Rules on Separation and Discipline Cells
- Mongolian National Judicial Reform Strategy
- National Programme of Action for Children 2002-2010 (Draft)
- National Action Program on Providing Human Rights in Mongolia (Draft)
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Orhon

Bayan-undur sum (Erdenet)
Mr Saadeleg, Head, Police Department
Mr Lhagva, Juvenile Inspector
Mr Enkhbold, Investigator
Mr Altangadas, Prosecutor
Ms Selengee, Prosecutor
Ms Tuul, Chief judge, Inter-sum court
Mr Tsermaa, Head, Children's Center

Dornogobi

Sainshand Sum

Mr Batdelger, Head, Aimag Police Department
Ms Ulziisuren, Juvenile inspector (took the job very recently)
Ms Munguntuya, Prosecutor presenting the State in Court
Mr Chuluun, Prosecutor in charge of supervision over sentencing
Ms Batchimeg, Judge
Mr Bayarsaihan, Head, Children's Center

Zamiin-Uud sum

Mr Davaasuren, Head, Police Department
Mr Gan-od, Investigator
Ms Altangerel, Social policy section, Governor's Office
Ms Tsendenpeljee, Judge