



# JUVENILE JUSTICE IN THE CEE/CIS REGION: PROGRESS, CHALLENGES, OBSTACLES, AND OPPORTUNITIES

unite for  
children

unicef 

© The United Nations Children's Fund, 2013

This document has been prepared by Dan O'Donnell,  
Senior consultant on child rights,  
at the request of the UNICEF Regional Office for CEE/CIS

PHOTOS

Front cover: © UNICEF/Kazakhstan/2012/Kseniya Shoiko  
Page 3: ©UNICEF/SWZCEECIS/2012/McConnico  
Page 11: xxxxxxxx à venir

# JUVENILE JUSTICE IN THE CEE/CIS REGION: PROGRESS, CHALLENGES, OBSTACLES, AND OPPORTUNITIES

Throughout the Central and Eastern European/Commonwealth of Independent States (CEE/CIS) region, children in conflict with the law are among the most vulnerable citizens. They routinely suffer violations of their rights – generally out of sight of the general public, behind closed doors – and with very little opportunities to complain formally and receive support. Reports from many countries in the region show that arrested and detained children are often subjected to violence – including torture, beatings, rape and humiliation. Stigmatization, isolation and desocialization resulting from long periods of detention greatly jeopardize their chances of reintegration into society.

Yet, the majority of these children do not represent a threat and might not need being detained in the first place. These children are accused of petty or non-violent offences; many have committed ‘status offences’ (i.e., acts classified as offences only when committed by children) such as truancy, alcohol or substance use and ‘being beyond parental control’; others, sometimes living on the streets, are engaged in survival behaviours such as substance abuse or prostitution. Often, the interventions of the police, prosecutors, judges and facilities’ staff bring a repressive response where the solution would be in terms of social support to the child and his/her family. Many observers confirm that children of minority and lower income groups are overrepresented in juvenile justice systems, and even more so in detention. Their contact with the justice system often pushes them deeper into poverty and exclusion instead of extending a supportive hand.

As per the Convention on the Rights of the Child and other international and European standards, children in conflict with the law are entitled to specialized and adapted treatment, consistent with their age, and the promotion of their reintegration as fully fledged citizens able to play a constructive role in society. Reintegration should be the ultimate aim of all juvenile justice interventions. It is now well established that early, supportive and tailored responses to conflict with the law are the most efficient way to reintegrate the child, prevent recidivism and ensure public safety.

## Introduction

This paper describes the most significant advances made in the development of juvenile justice systems in the CEE/CIS region over the past decade, and the most important challenges remaining. The paper also provides some key recommendations for further impact on the rights of the children involved. It is mainly based on a series of assessments of the juvenile justice systems in fifteen countries of the region – from Albania to Uzbekistan – conducted by the UNICEF Regional Office for CEE/CIS in between 2006 and 2011.<sup>[1]</sup>

In many countries in the region, the process of developing juvenile justice systems began shortly after the year 2000 and was supported by UNICEF in most countries. International NGOs contributed to the reform, especially through the establishment of pilot projects (e.g., the Open Society Institute in Kazakhstan) and the creation of diversion programmes (e.g., the Coram Children’s Legal Centre (UK) in Tajikistan). Support was also provided by the European Commission as well as, among others, the Swedish International Development Cooperation Agency, the Swiss Agency for Development and Cooperation and the Government of the Netherlands. Recommendations of the United Nations Committee on the Rights of the Child often were instrumental in triggering the reform process.

Efforts initially focused on situation analyses, capacity-building and legislative reform and gradually shifted towards more comprehensive approaches to the development of a fully fledged juvenile justice system. In many countries, the reform process now appears to be deepening and, possibly, accelerating. On the other hand, there are still a few countries where lack of transparency makes it difficult to appreciate how juvenile justice functions in practice.

Until recently, the overriding aim of juvenile justice reform was defined in terms of ‘humanization’ by many of the governments engaged in the reforms. In practical terms, this translated into goals such as avoiding the prosecution of children involved in minor offences, making sentences shorter, eliminating violence and ill-treatment, preventing children from being detained with adults, improving physical conditions in prisons, and so on. These are all important goals, but they often overlooked the fact that one of the purposes of juvenile justice is to reduce reoffending. During the first decade or so of reform efforts, insufficient attention was given to the prevention of offending and reoffending. This is beginning to change.

All countries in the region have adopted new criminal legislation during the last two decades, as part of broader efforts to bring their legal systems into compatibility with international human rights standards. In most of them, further amendments concerning juvenile justice have been made in recent years. With some exceptions, the law in force now generally complies with international standards. These and other reforms mentioned below have resulted in decreasing rates of detention and imprisonment in some countries. In the Republic of Moldova, for example, the total number of children in pretrial detention and juvenile prison fell by 68 per cent between 2007 and 2010.<sup>[2]</sup> This followed important reforms to the Criminal Code in 2007, which *inter alia* restricted pretrial detention

1 Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Kazakhstan, Kosovo (under UNSC Resolution 1244/99), Kyrgyzstan, Republic of Moldova, Tajikistan, The former Yugoslav Republic of Macedonia, Turkey, Turkmenistan, Ukraine, and Uzbekistan. Country reports are to be found at <[http://www.unicef.org/ceecis/protection\\_17305.html](http://www.unicef.org/ceecis/protection_17305.html)>, accessed 20 May 2013.

2 In 2007, 221 children; in 2010, 71 children.

to juveniles accused of a serious offence, limited the duration of pretrial detention to four months, made prison sentences discretionary for reoffenders, shortened the length of prison sentences for juveniles, and made juveniles eligible for early release after serving one third to two thirds of their sentence.<sup>[3]</sup> In Armenia, during the past three years, detention of children both pre- and post-trial has been maintained at what is probably the lowest possible level – i.e., approximately 15 children in pretrial detention and 15 children in custodial sentence. (See below for more examples.)

Legislation is, however, not always applied properly due to many factors, including the systemic weakness of the administration of justice, the persistence of values inconsistent with human rights and a dominant culture of impunity. Treatment of children in the correctional system has been largely ‘humanized’, but treatment in pretrial detention facilities and police custody often violates international standards. Secondary prevention remains very poor. Diversion schemes often are not accompanied with the support that children and families would need in order to prevent reoffending. Alternative sentences are imposed relatively frequently, but programmes for assisting offenders given alternative sentences are scarce. Support for reintegration into the community is almost non-existent. The development of specialized institutions and programmes, including specialized police units, juvenile courts, probation services, legal aid programmes and restorative justice programmes, has been slow.

Below are described some of the main achievements and remaining challenges in supporting juvenile justice system reform in the CEE/CIS region.



## I. Main achievements in juvenile justice reform

- **Governments' commitment to juvenile justice system reform has been growing over the last decade.**

There is now a substantial commitment to juvenile justice system reform in most countries. Governments increasingly recognize the need for a comprehensive approach to the development of juvenile justice. There is also growing appreciation for the importance of linkages between juvenile justice, child protection and access to justice, in particular for children who are victims of crimes and human rights violations. In many countries, however, the commitment is not strong enough to ensure that sufficient resources are made available to support existing institutions or develop new ones when needed. In particular, the social dimension of juvenile justice – i.e., the support necessary to enable the child not to reoffend – is most often poorly resourced.

Transparency has also improved over the years. Many countries of the region do not only report to international bodies, such as the Committee on the Rights of the Child and the Committee against Torture, they have also opened their doors to fact-finding missions by bodies such as the Special Rapporteur on torture or the Subcommittee on Prevention of Torture. Some significant changes in law and practice can be traced directly to the recommendations of such bodies. The willingness to engage in dialogue with international human rights bodies and, more generally, to cooperate with international organizations and learn from the experience of other countries is an important development.

- **Significant progress has been made in bringing legislation in line with international and European standards.**

Significant progress has been made in bringing legislation in line with international and European standards. Children under age 14 may not be prosecuted, and persons under age 18 may not be tried or sentenced as adults, regardless of the crime they have committed. None of the countries in the region imposes the death penalty, sentences of life imprisonment or sentences of corporal punishment in juvenile cases. The maximum sentence that may be imposed on convicted juveniles has decreased in most countries, often to 10 years for serious crimes committed by older juveniles. Maximum sentences are rarely imposed. The legislation of most countries contains generous provisions on early release, and data from some countries indicate that most juveniles given prison sentences benefit from early release. In Georgia, the new Code of Criminal Procedure requires juvenile cases to be heard in closed court. As mentioned above, legislative changes in the Republic of Moldova impacted positively on the use and length of deprivation of liberty. Gaps in legislation remain, however, and are discussed in the next section.

- **The principle of use of deprivation of liberty as a 'last resort' is increasingly captured in law and policies.**

The Convention on the Rights of the Child provides that deprivation of liberty, whether before or after trial, "shall be used only as a measure of last resort and for the shortest appropriate period of time." The legislation of most countries establishes a threshold that precludes the imposition of prison sentences for first offenders convicted of minor crimes. The legislation of Kazakhstan recently was amended to preclude prison sentences for juveniles for crimes of medium gravity. The impact of this amendment and other reforms led to the closure of three juvenile prisons in 2011. Express recognition of the 'last resort' principle by the new Criminal Code of Kyrgyzstan is also an exemplary development. Changes in the legislation on sentencing and other reforms have led to a substantial decline in the population of juvenile prisons in most countries of the region. Many have now taken distance with the legacy of the former Soviet Union, when sentences involving deprivation of liberty in some form were the rule. In Kazakhstan, for example, deprivation of liberty fell by 64 per cent between 2007 and 2011;<sup>[4]</sup> in Kyrgyzstan, it fell by 80 per cent between 2005 and 2012;<sup>[5]</sup> in Azerbaijan, it fell by 40 per cent between 2005 and 2011;<sup>[6]</sup> in Ukraine, it fell by 60 per cent between 2005 and 2011.<sup>[7]</sup> In Georgia, the percentage of convicted juveniles given prison sentences decreased from 40 per cent in 2007 to 27 per cent in 2012.<sup>[8]</sup>

- **Diversion and mediation schemes are developing.**

Diversion was practically unknown in the region until recently. Charges could be dropped due to 'reconciliation' between the victim and offender, but this was essentially an economic transaction that did not contribute to rehabilitation and was subject to abuse. Most legislation now recognizes diversion, within narrow limits. In most countries of the region, diversion is possible only at prosecution level. Prosecutors have discretion not to prosecute for reasons such as the belief that future offending can be prevented without the imposition of a sentence. Ideally, when the risk of recidivism is minimal, discretion to dismiss charges for this reason should extend to serious offences, especially when the offender is a juvenile. In most countries, however, it is limited to minor crimes and, sometimes, crimes of medium gravity. Georgia recently established a classical diversion scheme for juveniles who agree to participate in a programme for the prevention of reoffending in exchange for a decision not to prosecute.

4 In 2007, 425 juveniles were given prison sentences; in 2011, 153 juveniles were given prison sentences.

5 In 2005, 179 juveniles were given prison sentences; in 2012, 35 juveniles were given prison sentences.

6 In 2005, 75 juveniles were given prison sentences; in 2011, 45 juveniles were given prison sentences.

7 The number of convicted juveniles given prison sentences also fell by 48 per cent between 2005 and 2009.

8 National Statistics Office of Georgia. See <[http://www.geostat.ge/index.php?action=page&p\\_id=602&lang=eng](http://www.geostat.ge/index.php?action=page&p_id=602&lang=eng)>, accessed 20 May 2013.

Absolute numbers are, respectively, 426 juveniles given prison sentences in 2007, and 129 in 2012.

Other countries have established programmes that combine diversion and secondary prevention. In Armenia, for example, 'Community Justice Centres' operate throughout most of the country, and their success in preventing reoffending has been documented.<sup>[9]</sup> Victim-offender mediation is recognized in a growing number of countries although, in most, it is not yet well established. Armenia, where mediation is an integral part of the services provided by Community Justice Centres, is an exception.

- **Professionals and institutions are further specializing in child rights.**

Thousands of judges, police officers, prosecutors and other professionals across the region have received training over the past ten years or so. Data on key indicators such as prison sentences confirm that there is an overall improved compliance with the 'last resort' principle. The training of professionals no doubt has contributed to this outcome. However, the persistence of practices, such as ill-treatment and arbitrary detention that violate both international norms and national law, clearly indicates that these capacity-building initiatives have not fully translated into results for children. They have also not been systematically assessed so far. Training courses have often not been carried out with sufficient depth. There is now an increasing tendency to integrate juvenile justice into regular training curricula – a positive, noteworthy trend.

Some countries have also started to operate specialized juvenile justice institutions. Kazakhstan recently set an example for the region by establishing children's courts throughout the country.<sup>[10]</sup> The creation of these courts reduced delays in the adjudication of cases and resulted in decisions that are more sensitive to the rights and interests of the children concerned. It is worth noting, however, that the cost of maintaining such courts should be balanced with the reality of each particular context, including the number of cases examined yearly in the jurisdiction and the budgets available. Thus, specialized children's courts will not be the most appropriate solution in all countries.

In most countries, responsibility for the investigation of crimes by juveniles belongs to the criminal police and investigators. Juvenile police units exist in most countries but focus almost exclusively on 'prevention'. This contributes to violations of the rights of juvenile suspects such as denial of access to legal assistance, detention with adults and the use of physical and psychological violence to obtain confessions. A few countries, like Kazakhstan and Kyrgyzstan, have established specialized police units that investigate crimes involving children whether as victims or offenders.<sup>[11]</sup> In many countries, the juvenile police supervise children who are given suspended or conditional sentences.

The lack of specialized probation services means that the majority of convicted juveniles receive no assistance designed to reduce the risk of reoffending. In all countries of the region, children have the right to legal assistance before and during trial, and during appeals. Effective access to legal assistance is problematic, however: appointed lawyers are badly paid and poorly motivated, and often fail to appear during interrogation before trial. Armenia, Georgia and the Republic of Moldova have set up Legal Aid Services with national coverage, and the Georgian and Moldovan services have lawyers specialized in juvenile cases. In Kazakhstan, small groups of lawyers have been formed to provide legal assistance to juveniles in the two largest cities. In Azerbaijan,<sup>[12]</sup> Kyrgyzstan and Tajikistan, legal assistance projects have been established by NGOs with international funding. Non-governmental legal aid programmes usually consist of an integrated package of legal and psychosocial assistance. These are very positive developments, although the capacity of most of these projects remains quite limited.

- **Civil society plays a greater role in juvenile justice.**

Civil society now plays a significant role in juvenile justice in most countries, whether by providing services, research, monitoring, technical assistance, training or advocacy. In Armenia, Azerbaijan, Kazakhstan, and Kyrgyzstan, for example, civil society groups have a legal mandate to monitor the treatment of detainees and prisoners.<sup>[13]</sup> Civil society groups provide legal assistance to accused or detained juveniles in Azerbaijan, Kazakhstan, Kyrgyzstan, and Tajikistan, and psychological, educational or social assistance to juvenile prisoners in Armenia, Azerbaijan, Georgia, Kyrgyzstan, and Tajikistan. In Azerbaijan, Georgia and Kyrgyzstan, NGOs have played a significant role in law reform. In some countries, they are members of the national bodies responsible for the rights of children or juvenile justice reform. The role of national human rights institutions, which has been increasing in the region, is addressed in the next section.

- **Reforms start to be better informed by evidence and research.**

Throughout the region, support for academic research withered during the first two decades of independence, and criminological research concerning juveniles was scarce. Important policy decisions were taken, and legislation was drafted on the basis of received wisdom and subjective convictions. Efforts are now being made to redress this situation. In Georgia, for example, a first-ever self-reporting survey on juvenile offending and juvenile victims of crime is underway, with a view to informing strategies for the prevention of offending. Studies on children's

9 Center for Educational Research and Consulting, Final Evaluation of 'ZANG' Armenian Legal Socialization Program, March 2013. See <[http://www.ph-int.org/publications/zang\\_report\\_cerc\\_eng\\_final.pdf](http://www.ph-int.org/publications/zang_report_cerc_eng_final.pdf)>, accessed 20 May 2013.

10 They are children's courts in the sense that they have competence over crimes against children and civil proceedings regarding children (neglect, custody, adoption etc.) as well as cases involving juveniles accused of an offence.

11 In Kazakhstan, specialized investigators exist only in the two largest cities.

12 In Azerbaijan, this service is being handed over to the Government.

13 In Ukraine, too, NGOs monitor juvenile facilities in cooperation with the Ombudsman.

experiences with regard to juvenile justice recently have been carried out in several countries and have contributed valuable information concerning violations of the rights of children. Information provided by children themselves has begun to show signs of transforming the process of improving juvenile justice systems.

A significant gap in research relates to the relationship between poverty, family structure, exclusion, and offending. Many countries in the region collect data on the background of offenders, which indicate that many juveniles come from poor, often large families, and frequently one-parent households. Research into the mechanisms that link these factors and offending is, however, weak.

Nevertheless, data collection and management often remain a challenge, as detailed in the next section.

## II. Main remaining challenges

Although considerable progress has been made in juvenile justice system reform, many challenges remain in reaching international and European standards.

- **In spite of progress, full compliance with international and European standards is not achieved yet.**

Although legislation throughout the region has been brought into greater compliance with international standards, there are some important exceptions. For example, the Committee on the Rights of the Child considers that children should not be deprived of liberty for more than 24 hours without a court order.<sup>[14]</sup> A few countries, including Kyrgyzstan and the Republic of Moldova, have reduced the maximum length of custody without a court order to 24 hours. In most, however, the police may keep juveniles for questioning up to 72 hours without a court order. This increases the risk of ill-treatment, and during this time children usually remain in police stations that lack separate facilities.

Trials of juveniles should be closed to the public,<sup>[15]</sup> but the legislation of most countries makes closure discretionary. Also, although international standards consider the use of solitary confinement as a disciplinary measure a form of ill-treatment,<sup>[16]</sup> the legislation of most countries in the region still allows it. Other examples are mentioned below.

- **Even when legislation does comply with international standards, implementation sometimes is poor.**

For example, throughout the region the law recognizes the right to a lawyer as from the moment a juvenile is identified as a suspect or interrogated.<sup>[17]</sup> In many countries, the law is circumvented by the practice of informal ‘conversations’ with juveniles whilst maintaining the pretence that they are not suspects. The low level of forensic expertise combined with performance evaluation based on the number of cases closed contributes to widespread use of physical and psychological violence during interrogation. The legislation of most countries in the region recognizes sentences of community service although, in most of them, they are rarely imposed. The Republic of Moldova, where almost one quarter of all convicted juveniles has received this sentence, is an exception. Several other examples of poor implementation of national and international standards are described throughout this paper.

- **Prevention of offending remains insufficient.**

In most countries, efforts to prevent offending still rely heavily on methods inherited from the former Soviet Union – such as ‘registration’ by the police and placement in ‘special schools’<sup>[18]</sup> and shelters operated by the police for runaways, abandoned children, victims of exploitation and abuse, and young children involved in offending – at the expense of social support to children and families in difficult circumstances.

Improvements have taken place, however. Policies and procedures tending to reduce placement in special schools have been adopted; some of the schools have been closed;<sup>[19]</sup> and others have adopted new approaches that show greater respect for the rights of children. The methods used by juvenile police are evolving. In Armenia and a few other countries, they are working more closely with interdisciplinary, community-based prevention and diversion programmes. In a few countries, some of their ‘preventive’ functions have been shifted to other ministries or bodies. In Kazakhstan, for example, centres for runaways, abandoned children and victims of exploitation and abuse recently were transferred to the Ministry of Education. The number of centres was reduced; procedures for placement were amended; conditions were improved; and a policy of assisting the families of children placed in these centres was adopted.

14 Committee on the Rights of the Child, General Comment No. 10 on ‘Children’s rights in juvenile justice’, CRC/C/GC/10, 25 April 2007, para. 83.

15 *Ibid.*, para. 65.

16 See United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), Rule 63.

17 Children too young to be charged with a crime do not have this right, even when they are taken into custody to investigate their involvement in criminal activity.

18 ‘Special schools’ is a generic term for schools operated by ministries of education for children having ‘antisocial’ behaviour or who participate in criminal conduct when too young to be prosecuted, and sometimes offenders placed there by a court that considers a conviction and sentence to be unnecessary. See United Nations Children’s Fund, *The Development of Juvenile Justice Systems in Eastern European Neighbourhood Policy Countries, Reform achievements and challenges in Armenia, Azerbaijan, Georgia, Moldova and Ukraine*, UNICEF Regional Office for CEE/CIS, Geneva, 2010, pp. 66–68.

19 School No. 18 in Armenia was closed, for example, and a Deputy Director was convicted of crimes relating to sexual exploitation of students. The special vocational school in Kyrgyzstan was closed. In Ukraine, five of the eleven ‘schools for social rehabilitation’ were closed in 2012.



These are important steps in the right direction, but they fall far short of a comprehensive prevention strategy. Community- and school-based programmes staffed by adequately trained social workers, therapists and special educators are few and have limited capacity and coverage. No country yet has the kind of comprehensive national programme for providing children at risk and their families with the type of assistance envisaged by the Council of Europe Recommendations 2000(20) and 2003(20).<sup>[20]</sup>

- **Younger children involved in criminal activities<sup>[21]</sup> are often deprived of legal guarantees and support services.**

Children who participate in criminal activities while too young to be prosecuted are, for the most part, treated the same as children who are involved in other 'antisocial' activities such as truancy or running away from home. Ironically, children who are too young to be charged with an offence are deprived of certain legal guarantees precisely because they are not suspects.<sup>[22]</sup> Most countries continue to rely mainly on the two traditional measures, namely, 'registration' by the juvenile police<sup>[23]</sup> or placement in a 'special school'.<sup>[24]</sup> The main positive change that has taken place in most countries is that placement in a special school can no longer be made by an administrative decision but generally requires a court order.<sup>[25]</sup> Another positive development is the establishment, in countries such as Armenia, Azerbaijan, Kyrgyzstan, and Tajikistan, of community-based centres where some children who participate in criminal activities at an early age (as well as those involved in antisocial behaviour) can receive remedial education and a broad range of psychosocial assistance. Unfortunately, in some countries, the number of centres offering such services is limited; in some others, the authorities have shown some reluctance to refer children to them.

- **Children in conflict with the law receive very little support in view of their reintegration.**

Legislation concerning sentencing invariably recognizes that the circumstances of the offender should be taken into account, as well as the principle that the measures taken should be proportionate to the offence. In reality, the length of sentences and the availability of non-custodial measures still depend primarily on the gravity of the offence and, only secondarily, on the probability of reoffending and the type of disposition most likely to meet the needs of the offender. In spite of the above-mentioned improvements, the law in general is still designed to be punitive, at heart.

Suspended or conditional sentences are imposed on juveniles more than any other sentence, but most countries do not have specialized agencies responsible for supervising and assisting offenders given such sentences. This means, in effect, that the majority of convicted juveniles receive a sentence intended to deter reoffending but no actual assistance designed to reduce the risk of reoffending.

Many juvenile prisons in the region do not have qualified social workers and psychologists, and the services provided by those who are employed in juvenile correctional facilities are very limited. Psychological screening of prisoners is rudimentary. Georgia and Kazakhstan are among the few countries where individualized plans are adopted to prepare juvenile prisoners for return to society. All juvenile prisons have schools, but many do not offer remedial education, which is greatly needed.

Finally, most countries in the region lack any coherent programme to help young people return to school, find employment and reintegrate into the community after serving a sentence. In many countries, they also face discrimination that affects their possibilities of finding employment and successfully integrating into the community. The involvement of the social sector in supporting the child and his/her family upon return in the community is by and large insufficient. In many countries, the social sector is not fully developed, and social workers are caught up in administrative work rather than direct support to children and their families.

- **Pretrial detention is often too long and takes place in substandard conditions.**

The Committee on the Rights of the Child considers that detention before and during trial should not exceed six months.<sup>[26]</sup> Kazakhstan is the only country whose legislation meets that standard, at present. In most countries, the limit is the same for juveniles and adults, and in several it is a year or more when exceptional circumstances exist. Furthermore, in some countries, such limits apply only to detention before trial, not during trial and post-trial proceedings. Surveys of juveniles indicate that, while pretrial detention often is relatively short, in most countries some juveniles report being detained for longer than the legally permitted period.

20 Recommendation Rec(2003)20 of the Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice calls for a "more strategic approach" in which "The juvenile justice system should be seen as one component in a broader, community-based strategy for preventing juvenile delinquency that takes account of the wider family, school, neighbourhood and peer group context within which offending occurs." Section II.2. Recommendation Rec(2000)20 of the Committee of Ministers to member states on the role of early psychosocial intervention in the prevention of criminality is based on the premise that "preventing criminality requires efforts across society, taking into account adverse social and economic circumstances of children" and "when a child is at risk of engaging in persistent criminal behaviour, such behaviour is effectively prevented, in particular, by promoting protective factors and reducing risk factors." (Preamble)

21 The age-based threshold for prosecution as a juvenile often is referred to as the 'minimum age of criminal responsibility' (MACR) although, in some countries, this term is confusing as only adults have criminal responsibility. It is particularly inappropriate in the CEE/CIS region because, in most countries, there is no single age at which a child is liable to prosecution but rather one age for serious offences and another for all offences. The term 'MACR' thus applies literally only to children under 14 years of age although, according to national law, children aged 14 or 15 years are in the same situation, unless they have committed a serious offence.

22 For example, they may be questioned without the presence of a lawyer.

23 Registration involves being put on a list and supervision by 'juvenile police' until the police conclude that the child's behaviour has improved.

24 See *The Development of Juvenile Justice Systems in Eastern European Neighbourhood Policy Countries*, supra, pp. 63–68.

25 In some countries, unfortunately, no court order is necessary if the child's parent requests or agrees to placement.

26 General Comment No. 10, CRC/C/GC/10, supra, para. 83. (This paragraph does not refer expressly to detention, but provides that legal proceedings should not last more than six months, which of necessity limits detention before and during proceedings.)

The law in these countries does not authorize the pretrial detention of juveniles charged with minor offences. This is positive but, since the usual alternative is release in parental custody,<sup>[27]</sup> exceptions sometimes are made when a child's parents are seen as unable or unwilling to ensure effective supervision. In some countries, where there are designated juvenile judges, they handle the trial but not pretrial proceedings. This also contributes to arbitrary or unnecessary use of pretrial detention. Despite these problems, the use of detention is declining in many countries. In Kazakhstan, detention fell by 81 per cent between 2007 and 2011;<sup>[28]</sup> in Kyrgyzstan, it fell by 52 per cent between 2006 and 2011;<sup>[29]</sup> in Azerbaijan, it fell by 57 per cent between 2005 and 2012;<sup>[30]</sup> in Ukraine, it fell by 47 per cent between 2006 and 2011.<sup>[31]</sup> In Georgia, the percentage of accused juveniles detained before trial decreased from 40 per cent in 2010 to 28 per cent in 2012.<sup>[32]</sup>

Conditions in most juvenile detention centres are far worse than those in prisons for convicted juveniles. Even in countries where facilities have been renovated and material conditions are adequate, juvenile detainees spend most of the day in their cells<sup>[33]</sup> and have very limited access to social, recreational or educational programmes. Girls invariably are detained in detention centres for women.

- **Ill-treatment is reported, sometimes amounting to torture.**

Research on torture and ill-treatment carried out by Ombudsman offices and NGOs in eight countries of the region,<sup>[34]</sup> with UNICEF and European Union support, shows that ill-treatment, sometimes amounting to torture, is a significant problem in the context of juvenile justice in all the reporting countries. Beatings are the most common form of torture or ill-treatment, and they are most often used to force children to give information to the police or other investigators during questioning. Psychological torture (e.g., holding a gun to the head of a child during questioning) is also reported in several countries, as are rape, sexual abuse, and threats of rape and sexual abuse. Solitary confinement continues to be used as a disciplinary measure.

The torture and ill-treatment of children are rarely reported to the competent authorities. The most common reasons, according to the children surveyed, are fear and the belief that complaining would be useless. Laws and practices that encourage torture and ill-treatment include laws allowing the questioning of children (and adults) by the police for three days without a court order, the questioning of children without the presence of a lawyer, the lack of medical screening, superficial medical screening, screening by personnel lacking independence and appropriate training, and the investigation of complaints of ill-treatment by the very authorities directly or indirectly involved. Convictions for the torture or ill-treatment of juveniles are rare, and governmental programmes for providing assistance to victims and compensation of victims are non-existent. A few recent cases where officials have been convicted for the torture of juveniles are signs of progress, but even in these cases the sentences are not proportionate to the gravity of the offence.

- **Girls are confined in women's prisons.**

In most countries of the region, the number of adolescent girls given prison sentences is so small that it would be impractical to establish separate facilities for them.<sup>[35]</sup> Consequently, they serve their sentences in women's prisons, usually with frequent contact with adult prisoners. The impact of contact between juvenile girls and adult women in prisons (and pretrial detention centres) has not been studied.<sup>[36]</sup> In some countries, the programmes available for adolescent girls in women's prisons are inferior to those available in prisons for juveniles, especially insofar as education is concerned.

- **Accountability remains weak, and a culture of impunity persists in many countries.**

In the rare instances where public officials are convicted of torture or other serious violations of the rights of children, the sentences imposed are not proportionate to the gravity of the offence and the compensation received by the victim is minimal. In a case in which a police officer was convicted of torture, the victim who suffered long-term medical consequences received compensation equivalent to € 260. In another, the director of a 'special school' convicted of abuse of power for using students for forced labour had the conviction set aside due to reconciliation with the victims – who were represented by his successor as head of the school.

Nearly all the countries of the region have statutory national human rights institutions, including Ombudsman offices. Their role is particularly important because of the obstacles that make it difficult for children to defend their rights. Children whose rights are violated often lack the capacity to make a complaint themselves, and their parents frequently are unwilling or unable to take action on their behalf. Free legal assistance may not be available for poor children seeking remedies for violations of their rights.

27 Georgia, where bail is commonly required in juvenile cases, is an exception. If the parents are not able to pay, however, there is a high risk that children still end up in detention.

28 In 2007, 546 children were detained before trial; in 2011, 105 children were detained before trial.

29 In 2006, 62 children were detained before trial; in 2011, 30 children were detained before trial.

30 In 2005, 60 children were detained before trial; in 2012, 26 children were detained before trial.

31 In 2006, 1,641 children were detained before trial; in 2011, 868 children were detained before trial.

32 In 2010, 138 juveniles were detained before trial; in 2012, 80 juveniles were imprisoned for nine months in 2012.

33 In the former Soviet Union, the right to outdoor recreation is misinterpreted to mean the 'right to walk', usually in a cell that has no roof.

34 Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Republic of Moldova, Tajikistan and Ukraine.

35 Ukraine does have a juvenile correctional facility for girls.

36 Kyrgyzstan opened a separate unit for girls in the women's prison, but in 2012 it had only two inmates.

Most of these institutions have not played a leading role in juvenile justice reform, in exposing violations of the rights of children in the context of juvenile justice, or in helping victims obtain assistance or remedies. There are exceptions – the Ombudsman in Montenegro and the Deputy Ombudsmen for children in The former Yugoslav Republic of Macedonia have played active roles in juvenile justice. Ensuring that other such institutions have the independence and resources needed to fulfil their potential role is a significant challenge. Many Ombudsman offices report having received few complaints about the ill-treatment of juvenile suspects and prisoners. This might be due largely to a perception of ineffectiveness and insufficient efforts to reach out and win the trust of children whose rights are violated.

- **Data concerning juvenile justice are fragmentary and unreliable in most countries.**

Data are rarely collected on important indicators, such as reoffending and involvement of younger children in criminal behaviour, and are not disaggregated – hampering the assessment of potential discriminatory practices against certain groups of children. Data from different parts of the system – police, prosecutors, courts, and prisons – are not centralized and often are published only on an *ad hoc* basis. This makes it difficult for policy makers to understand how the system works in practice and for the public to hold authorities accountable for the way institutions function.

Progress is being made. The State Statistical Committee of Azerbaijan publishes an annual compilation of data on criminal justice that includes a section on juvenile justice, and the National Statistical Committee of Kyrgyzstan has begun to publish a more comprehensive collection of data on criminal and juvenile justice every five years. However, more has to be done to provide decision makers and managers with the information needed to make evidence-based policy and investments, monitor their implementation and impact, and encourage accountability to the public.

- **Poverty, corruption and governance impact on juvenile justice system reforms.**

Poverty and lack of resources affect the development of juvenile justice systems. In most countries of the region, *per capita* GDP is less than US\$ 5,000.<sup>[37]</sup> Scarcity of resources affects investments in the social sector, including investments in the type of services for children and families that can help reduce offending and assist those who have become involved in crime. The issue is also, obviously, one of prioritization of Government spending.

The development of juvenile justice is also dependent, to some extent, on the development of more robust and effective justice systems and will inevitably be affected by systemic problems such as poor infrastructure, heavy caseloads, antiquated training methods, inadequate salaries, cronyism, and lack of independence.

Corruption and impunity are amongst the most formidable obstacles to the development of fair, humane and effective juvenile justice systems and they affect juvenile justice in many ways.<sup>[38]</sup> Resources allocated to prisons are misappropriated, and unqualified personnel are put on the payroll. In one country, judges are reluctant to be assigned to juvenile cases because opportunities for bribery are limited. In another, the practice of accepting bribes to charge juveniles with crimes that can be resolved by reconciliation is reported. When juvenile suspects or offenders have been treated with violence, bribes are sometimes offered to parents to dissuade them from filing complaints.

Almost all countries of the region are on the path to democracy, but the speed at which they proceed varies. In some, progress towards open, democratic government has been slow and carefully controlled. This does not prevent juvenile justice reform, but it perpetuates factors that hinder the pace of reform. One is the privileged position of security forces. The dependency of such regimes on the police does not facilitate the transfer of social functions such as the prevention of offending to more appropriate institutions, whose underdevelopment arguably is, in part, the consequence of the favoured position of security forces. The privileged position of law enforcement and security forces also contributes to a culture of impunity for human rights violations.

In countries where political change has been faster, other problems may arise. Differences between opposing forces may block legislative reform for years. ‘Peaceful revolutions’ may lead to dismissal of large numbers of judges and civil servants for political reasons. Democratically elected leaders may implement repressive or ‘zero tolerance’ law enforcement policies based on models imported from the West. These are obstacles that can be overcome. In the final analysis, democratic governance favours reform, even though the path often is not smooth.

37 See <<http://data.worldbank.org/indicator/NY.GDP.PCAP.CD>>, accessed 20 May 2013.

38 According to Transparency International, two thirds of the countries in the region fall into the lower half of the 2012 Corruption Perceptions Index. (The exceptions include Bosnia and Herzegovina, Georgia, Montenegro, Serbia, and The former Yugoslav Republic of Macedonia.) See <<http://cpi.transparency.org/cpi2012/results>>, accessed 20 May 2013.

### III. Priority areas of improvement

As a result of this overview of the state of juvenile justice system reforms in the region, the following areas of improvement are recommended as a matter of priority:

#### **1. Comprehensive prevention plans should be instituted at every level of Government.**

Low capacity to prevent offending and reoffending is perhaps the biggest challenge in the development of juvenile justice in the region today. Yet it is not a challenge that can be solved in isolation. A more balanced approach to prevention is needed, with less reliance on supervision by the police and greater allocation of resources to social and psychological support for children and families at risk. Political, material and technical assistance is necessary to recognize the role of social work in preventing conflict with the law and helping families in difficult circumstances to strengthen social or interdisciplinary professional and paraprofessional services and integrate such efforts with programmes targeted at especially vulnerable children. Efforts are underway to develop non-residential services for children at risk of offending and their families. Some have shown positive results, but the capacity of most such programmes remains extremely limited.

The prevention of offending also requires improvements in the prevention of violence and exploitation of children, the detection of these phenomena, and assistance to victims. Schools should be made more inclusive and supportive by reducing class sizes, strengthening remedial programmes, showing greater respect for the views and rights of children, developing the capacity to identify children with learning or behavioural problems and provide them appropriate assistance, and eliminating informal fees that discriminate against the poor. The development of juvenile justice is closely linked to the development of child protection systems, better schools and even more comprehensive public health services. Further guidance is to be found in the United Nations Guidelines for the Prevention of Juvenile Delinquency (1990), the Council of Europe Recommendation (2003)20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice, and the Council of Europe Recommendation 2000(20) on the role of early psychosocial intervention in the prevention of criminality.

#### **2. Greater, quality support should be provided to enable children not to reoffend and support their reintegration.**

For children who have offended, greater support should be provided to enable them not to reoffend and to reintegrate fully into their communities. This requires enhanced social and psychological assistance for children who have been diverted from the judiciary proceedings, who benefit from alternatives to deprivation of liberty, and for children who are in detention, pre- and post-trial. Without such support, it is likely that the child will go back to the same circumstances that led to offending.

Alternative measures should provide a wide range of quality services and activities, tailored to the various specific needs that children may have – including life skills, counselling, mentoring, and treatment for substance abuse or mental health problems. Social services should be mandated and enabled to provide follow-up for children and families who need it. They should start being involved before the measure or sentence is completed and should participate in the child's and family's preparation in this respect. In the region, prison management practices and programmes for the prevention of reoffending and preparation for their return to the community are deficient as we have seen, and the lack of programmes designed to assist released prisoners reintegrate into their families and communities compounds this gap. International cooperation has focused too narrowly on 'humanizing' the treatment of convicted juveniles; it is time to expand the focus and develop the capacity to implement effective programmes for the prevention of reoffending, including through restorative approaches.

#### **3. Pretrial detention should always be used as a measure of 'last resort and for the shortest appropriate period of time'.**

In order to reduce pretrial detention, last resort policies should be adopted or, when already in place, better implemented. Authorities are often reluctant to use release under parental supervision, the most common alternative to pretrial detention in the region. Consequently, children from families living in poor or other difficult circumstances are sometimes detained illegally. Diversion and alternatives to detention should be further developed and diversified to benefit these children as well – including victim-offender mediation, community service and enhanced supervision during pretrial proceeding or for children given suspended sentences or non-custodial sentences. Educational, cultural, social and recreational programmes should be developed in pretrial detention centres for juveniles in order for the child to be able to go on with a constructive life when out of detention.

Dealing with children outside of the justice system as much as possible should contribute to prevent abuse and intimidation in police and pretrial facilities, where violence and substandard conditions seem to be the most common.

#### **4. Data management should be improved and independent monitoring reinforced.**

Although efforts to strengthen mechanisms for investigating human rights violations and holding accountable those who violate the rights of children have begun, they are still fragile and need solid political, material and technical support. Independent mechanisms for monitoring the rights of children in the context of juvenile justice, especially children deprived of their liberty, must be reinforced with a view to keeping watch over issues such as the legality of the detention and potential occurrence of ill-treatment.

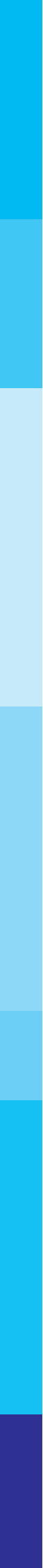
Data collection and management mechanisms should be improved in order to constantly ensure that all interventions are decided and implemented in line with international and national standards, and to allow for evidence-based policy-making and programming. Data should be disclosed so that the public may hold authorities accountable. Data should also be used to document the impact of diversion, probation, mediation, fines, imprisonment, and other dispositions on juvenile offenders of different ages and backgrounds involved in different kinds of offences. Research on the causation of offending should be undertaken, and research on children's experiences with respect to offending and juvenile justice should be continued and expanded.

**5. *Child justice should be integrated into broader rule of law and justice reform agendas.***

Progress made in developing specialized juvenile justice systems should now be further built on to expand the scope of child justice to all children who are in contact with justice systems: victims and witnesses of crime; parties in civil proceedings such as custody, inheritance or care; and by extension, any child who wishes to claim redress for a violation of his/her rights or entitlements. In many cases, the professionals and institutions dealing with children in conflict with the law are also dealing with the other children in contact with criminal, civil and administrative justice systems.

Improving child-sensitive procedures in courts and police stations should be considered an integral part of broader justice sector reforms. As of now, juvenile justice system reforms often take place in parallel to the wider reforms, possibly wasting opportunities for synergy. More generally, children should be considered more systematically as rule of law stakeholders and taken into account in rule of law agendas.







**UNICEF Regional Office for CEE/CIS**  
Child Protection Unit  
Palais des Nations  
1211 Geneva 10, Switzerland  
[www.unicef.org/ceecis](http://www.unicef.org/ceecis)