ASSESSMENT OF REGULATORY FRAMEWORK AND PRACTICE IN CRIMINAL PROCEEDINGS INVOLVING CHILDREN IN THE REPUBLIC OF MOLDOVA

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Author: Sergiu Rusanovschi

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Contents

Executive summary

Introduction

When it declared independence in 1991, the Republic of Moldova inherited a Soviet justice system that focussed on crime and punishment, with little consideration of the rights of suspects and victims, including children. Years of advocacy and technical assistance resulted in a first Government-UNICEF project: "Reform of the Juvenile Justice System" in 2002, followed by many others, which slowly led the Moldovan justice system toward international standards.

Recently the Government has been implementing a number of relevant strategies and programmes promoting human rights, justice reform and the rule of law, among which the Justice Sector Reform Strategy for 2011-2016 with direct budgetary support from the European Union and technical assistance from various development partners. Despite making noteworthy progress since independence, the current justice system for children needs further reform in order to be in line with international children' rights standards. Both the Concluding Observations of the UN Committee on the Rights of the Child[1] from 2009 and the UNICEF evaluations from 2010 and 2011 of the juvenile justice reform have identified some major shortfalls in the current justice system.

This report seeks to analyse the normative framework in Moldova against international standards, such as the UN Convention on the Rights of the Child, UN guidelines and the Council of Europe child rights instruments. It then considers the practical implementation of the existing laws and procedures in order to identify key gaps, inform future policy and programme development and suggest areas for further research in the area of justice for children.

Although the assessment focusses mainly on children who have come in contact with the criminal justice system as suspects or offenders, it also evaluates existing mechanisms designed to protect and support children who are victims or witnesses of crimes. Children who are in conflict with the law are often also victims or witnesses of crimes, and thus both need to be considered in close relation. Furthermore, one of the main principles in justice for children is child-sensitivity and this is reflected in how law enforcement and justice systems treat children in general, whether directly (suspects, offenders, victims or witnesses) or even indirectly (as children of suspects, in divorce cases etc.). This assessment is limited to justice for children in criminal cases and will thus consider only directly affected children.

Major Findings

Moldova has embarked on an unprecedented thorough reform of its justice system, with a separate public document, the Justice Sector Reform Strategy and its Action Plan for 2011-2017, regulating the way toward a more efficient and child-friendly justice system. The Ministry of Justice is coordinating a Justice for Children technical working group which regularly convenes key players in the justice reform with the aim of spotting and addressing important child-related aspects in the administration of justice. Some progress toward a more child-friendly justice system is already reported at a policy level and in practice. Nevertheless, many shortfalls caused by the insufficient capacity of the system and the legacy of a punitive approach in justice need further research and investment.

Although there is a wide variety of legal and policy documents safeguarding children's rights during legal proceedings, as well as outside the legal system, they seem to communicate poorly among themselves, leaving out important areas concerning children's needs and rights during, before and after they come into conflict with the law. The system still has the tendency of addressing each issue separately, by sector, and fails to understand the complexity of the phenomenon of child's

[1] UN Committee for the Rights of the Child, *Review of the reports presented by the States Parties pursuant to article 44 of the Convention: Concluding Observations – Republic of Moldova*, CDC/C/MDA/CO/3, 20 February 2009.

involvement in criminal activity. The most vulnerable children seem to fall between the cracks of these regulatory gaps, being left with little or even no community and family support.

When already in contact with the criminal justice system, a child will benefit from legal aid, which is disproportionate in terms of quality in services rendered by private and state guaranteed lawyers. This leads to children and their family not being aware of their full spectrum of rights and legal options. As a result, there are children to whom pre-trial detention has been applied unnecessarily, with detention pending a final decision may last longer than the maximum six-month term prescribed by international standards.

The poor system infrastructure still allows for children to be detained in adult pre-trial facilities, thus diminishing the efforts to re-educate and reintegrate the child once the punishment is over. It also appears, from the findings of this assessment, that children in pre-trial detention may have poor access to quality education and healthcare services. The report further suggests that, legally, solitary confinement might be still applied to children in detention. Protection from ill-treatment is still insufficiently guaranteed with the lack of an effective complaint mechanism accessible to detained children. Rehabilitation and treatment of children who are victims of ill-treatment and torture is currently unavailable.

While there are a limited number of legal provisions allowing diverting children from coming in contact with the criminal justice system, these are poorly applied due to lacking community services and local capacity to oversight the child and his or her family. The law provides for a few alternatives to detention, such as bail, community service, probation and fines but these mostly apply to children above 16 years old or are generally accessible to children coming from less vulnerable families. This leads to the next identified issue, that of prevention services, which either are lacking or disproportionately distributed, or have an insufficient capacity and understanding to identify and prevent children's engaging in criminal activity at an earlier age. Specialized services aimed at behavioural change and family counselling are completely lacking from the local governments' agendas and, where applied on an experimental basis, do not have any guarantee of sustainability.

The report also suggests that despite fundamental progress in safeguarding the rights of child victims in criminal proceedings, there is a need to further coordinate efforts in this direction and invest in the capacity of justice specialists in contact with the victims. Currently, only victims under 14 year old benefit from guaranteed special treatment in criminal proceedings and victims of violent and sexual crimes, leaving other categories of victims at the discretion of the prosecutor. Services may be developed not only to identify and report vulnerabilities of children and their families, but also to prevent victimisation and rehabilitate child survivors.

In order for this and other issues mentioned above to be tackled successfully, more research is required. Reliable, uniform and disaggregated data are essential in this regard. However, the current data collection and analysis system has failed to produce reliable analytical reports that would provide information for effective policies and programmes. A number of actors, such as the Ministry of Justice, the General Prosecutor's Office and the Ministry of Internal Affairs, as well as institutions from social sectors, collect a wide variety of data on children, but lack the capacity to analyse them. This may be because data is seldom disaggregated by age and gender, leaving children invisible in a justice system designed for adults. Often, data coming from various institutions do not communicate, showing different results for the same indicators, while a number of important juvenile justice indicators are not collected and reported. These include the number of accused children deprived of liberty, the length of pre-sentence detention, early release, child re-offending and the number of children detained in adult facilities.

Main recommendations

To mediate the problems identified in this assessment, the report proposes a number of recommendations. In order to prevent child involvement in criminal activity and help to reintegrate those who have already come in conflict with the law, the report recommends diversifying and strengthening prevention and social reintegration services. In this regard, the Government should consider regulating and providing a budget for behavioural change programmes, recreational centres and family counselling services and psychological support to children and families who are in conflict with the law or at risk of this. A more diversified spectrum of com-

munity services will also increase diverting children from the criminal justice system by referring them to community support and family counselling, and where needed, behavioural change assistance supervised by psychologists and probation counsellors. At the same time, the author also recommends diversifying measures that can be applied as alternatives to pre-trial and post-sentence detention taking into account the child's needs and community options. In order for these to be applied, accessible and quality legal aid must be guaranteed to all children who come into conflict with the law at all stages of criminal proceedings. To achieve this, a quality assurance mechanism and training for lawyers must be in place, the report suggests.

For a more child-friendly criminal justice system, international standards laid out in the Beijing Rules and other international justice instruments must be translated in domestic policy and practical frameworks. In this sense, the report author stresses the need to use detention only as a last resort and to legally guarantee a reasonable length of detention while awaiting a final court decision. Additionally, the report recommends investing in a quality assurance mechanism for legal aid. To ensure the child's well-being during criminal proceedings, a trained psychologist or social teacher must accompany and support the child throughout the process. The good application of the best interest of the child principle will depend on this specialist's performance in the administration of justice when child suspects or offenders are involved.

Should detention be applied to child offenders, access to education and quality healthcare services must be guaranteed not only by law, but also in practice. Adjusting the educational curriculum to the needs of children in detention is suggested in this report including by means of amending the educational framework plan to establish a number of compulsory teaching hours to children in pre-trial detention. For higher quality healthcare services, the report author recommends starting with transferring the penitentiary medical staff under the supervision of the Ministry of Health and training doctors to identify signs of ill-treatment of children in a timely manner. Zero tolerance for torture must also be undertaken by the justice system including amending the law to guarantee free legal aid to all torture victims. On the same note, the report emphasizes the need to fully abolish any form of solitary confinement as a disciplinary measure to children in detention, no matter what form it may take and what guarantees it may provide. To prevent this or other forms of ill-treatment, the report also proposes strengthening the complaint mechanism and adjusting it to the child's needs to make it accessible and effective.

Although not the focus of this report, child victims and witnesses of crimes have not been left out of the assessment. The author proposes to continue investing in child friendly interviewing rooms for victims of violent and sexual crimes, developing the capacity of justice and social specialists in providing proper interviewing and support to these children in the process and to legally guarantee special treatment of all child victims of crimes. Finally, to improve policy and programme reporting, the report proposes investment in a reliable and unified data collection and analysis system in place and recommends that relevant players have proper training to produce valuable data reports.

Background

After it declared independence in 1991, the Republic of Moldova had neither courts nor judges specialised in juvenile justice. A child in conflict with the law had to face a justice system that was preoccupied with solving the crime and did not meet the child's needs. A child could be detained before being sentenced when deprivation of liberty could have been avoided, and the detention terms before and after trial exceeded international standards. Since 2001, the Government of Moldova engaged in a thorough reform of its juvenile justice system with support from national and international development partners. From 2002-2005, the first Government-UNICEF "Reform of the Juvenile Justice System" project, followed by another three-year programme, fostered legislative reforms, and strengthened institutional and human capacity in order to establish alternatives to institutional care, helping children to return to society and providing them with legal assistance. Since then, a series of important objectives have been attained, such as shorter periods of detention for children, the provision of alternatives to detention, established probation services and state guaranteed legal aid for children, and institutionalized Child Rights Ombudsman.

Several public documents approved by the Government mention the undertaken engagements to promote the reform of the justice system for children. Among these are the following: the Justice Sector Strengthening Strategy, the National Development Strategy for 2008-2011, the National Human Rights Action Plan for 2011-2014 and the Justice Sector Reform Strategy for 2011-2016. These documents provide for child-sensitive criminal proceedings that would also assist children in conflict with the law to fully reintegrate into society. Since 2010, the Moldovan Government changed its approach to juvenile justice to a broader justice for children spectrum which includes child-sensitive proceedings and services for child victims and witnesses of crimes. The reasoning of this lays in the understanding that children who come in conflict with the law are often themselves victims or witnesses of abuse, neglect or exploitation.

Nevertheless, the current justice for children system needs further reform in order to be in line with international child rights standards. Both the Concluding Observations of the UN Committee on the Rights of the Child[2] from 2009 and the UNICEF evaluations from 2010 and 2011 of the juvenile justice reform have identified some major shortfalls in the current justice system, including a lack of a specialised system for children, poor infrastructure for alternatives to detention and measures to prevent children from coming in conflict with the law and re-offence, insufficient coordination among actors involved in the juvenile justice reform process, underdeveloped services of legal aid, uneven and unorganized collection and management of statistical data.

The alignment of the justice for children system to international standards may be possible only by means of a continuous promotion of the legislative and institutional reforms, while the efficient distribution of efforts, resources and responsibilities to key stakeholders shall contribute to the strengthening of this system.

The purpose of this report is to provide a comprehensive review of justice for children legislation, policies and practices in Moldova. Since the country's accession to the UN Convention on the Rights of the Child in 1993, many different laws, decrees, policies and programmes to ensure a child-friendly criminal justice system have been passed. This report seeks to analyse and evaluate those normative documents against international standards, such as the UN Convention on the Rights of the Child and the Council of Europe child rights standards. The objective is to identify key gaps, inform future policy and programme development and suggest areas for further research in the area of justice for children.

[2] UN Committee for the Rights of the Child, *Review of the reports presented by the States Parties pursuant to article 44 of the Convention: Concluding Observations – Republic of Moldova*, CDC/C/MDA/CO/3, 20 February 2009.

This report is based on a desk review of relevant laws, subsidiary legislation, policies, previous studies and programmes on child friendly criminal justice. Where it is possible, information about the implementation and effectiveness of those laws, policies and programmes has been drawn from available reports, surveys and studies on the juvenile justice or broader justice for children situation in Moldova. Additional information was collected through field work to obtain input from key stakeholders at the national and sub-national levels.

In particular, this report aims to diagnose the criminal justice system in rapport with the international juvenile justice standards. More specifically, the study focuses on the evaluation of the efficiency and functionality of the legal guarantees offered to children who are breaking the law (juvenile justice) that relate to the duration of investigation and detention, accessibility and quality of legal aid, access to educational, medical and psychological services while in detention, guarantees against solitary confinement as a disciplinary sanction, protection from torture and the existence of an efficient complaint mechanism for children in detention. In addition, the report looks at the policy provisions on the state's response to children who are below the age where they are considered responsible for committing criminal offences, and touches on the existing services to prevent children offending, including schemes for diversion and alternatives to detention for children who are found criminally responsible.

Although the assessment focusses mainly on children who have come into contact with the criminal justice system as suspects or offenders, it also evaluates existing mechanisms designed to protect and support children who are victims or witnesses of crimes. Children who are in conflict with the law are often also victims or witnesses of crimes, and thus the two needs to be considered in close relation. Furthermore, one of the main principles in justice for children is child-sensitivity and this is reflected in how law enforcement and justice systems treat children in general, whether directly (suspects, offenders, victims or witnesses) or even indirectly (as children of suspects, in divorce cases etc.). This assessment is limited to justice for children in criminal cases and will thus consider only directly affected children.

Methodology

In the course of this study the following methods have been used: 1) legal review of national legislation in comparison with international laws and standards, 2) desk review of available research, studies and data in the area of justice for children, 3) analysis of statistical data from relevant authorities related to justice for children and 4) individual interviews with representatives from relevant public authorities, practitioners and experts in the field.

The main objective of the legal review was to determine the status and progress of the national legislation compared to the obligations under the UN Convention on the Rights of the Child and other international treaties and standards (standardised rules, principles, general provisions, recommendations).

To assess the correspondence of the legal obligations and the practice, a desk review of research was conducted complemented by structured and semi-structured interviews which were carried out with decision makers and executives from: the Ministry of Justice, the Ministry of Interior, the General Prosecutor's Office, the Central Probation Office, the Department of Penitentiary Institutions and the National Council for State Guaranteed Legal Aid, the Ministry of Labour, Social Protection and Family and Ministry of Education. In addition, experts from the inter-ministerial working group on justice for children were also consulted. These interviews have clarified the perception of the public servants on the functionality of the system, as well as their views on the administrative/institutional and regulatory problems, which obstruct the implementation of the reforms.

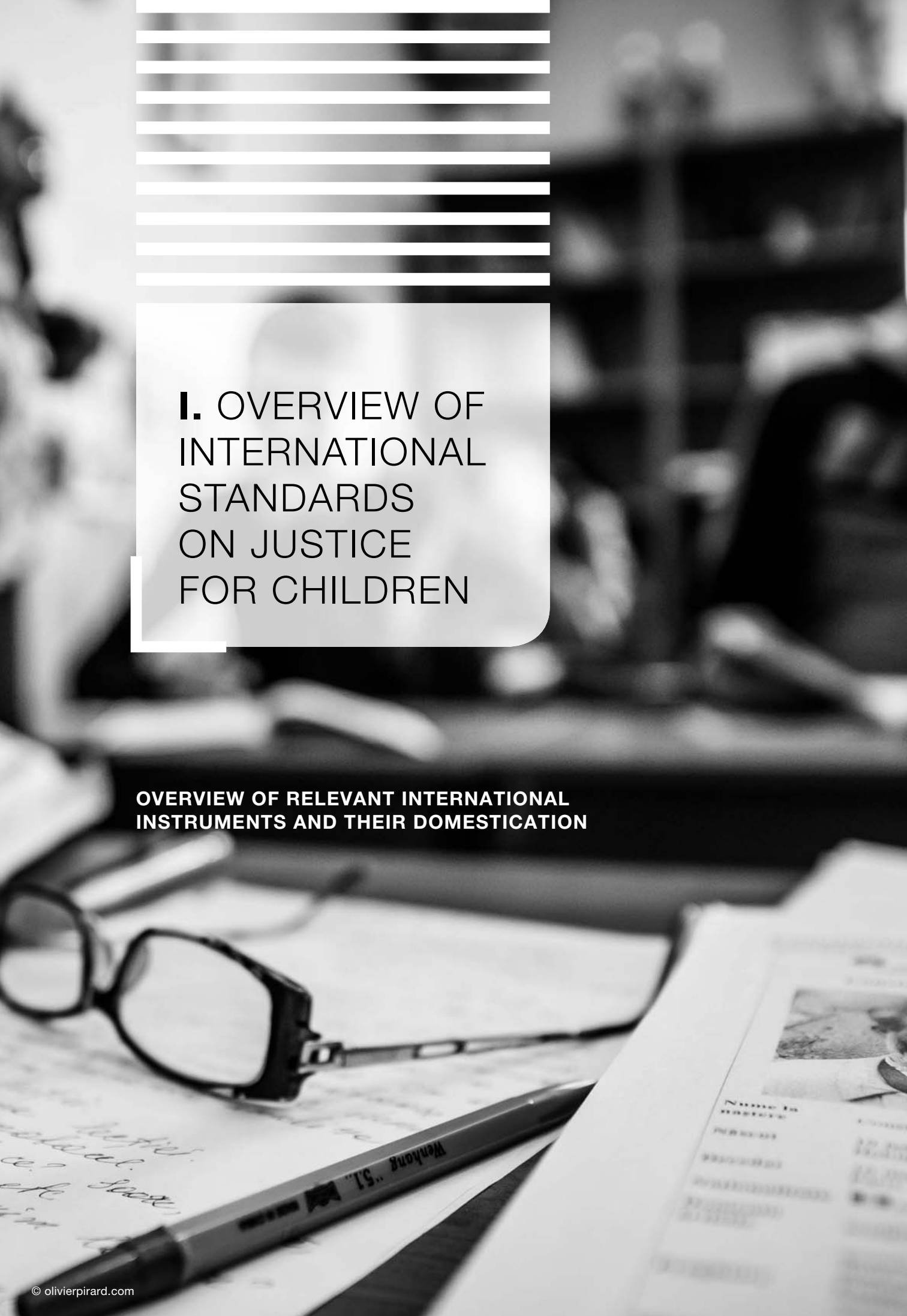
A balance of opinion was ensured by means of interviewing specialists who come in contact with children at various stages of the criminal justice process: five defence lawyers, two judges, two prosecutors, two criminal investigation officers and a public servant from the Municipal Directorate of Child Protection and a representative of the Centre for Human Rights. Particular attention was paid to the public defenders from Chișinău who continue to protect the interests of children who are in conflict with the law. Five semi-structured interviews were held with experts from civil society and international organizations in order to assess the impact of the reforms on children in conflict with the law.

For the purpose of this report, statistical data were requested from relevant public institutions. The core of this exercise was to assess data collection and reliability when it comes to children who find themselves in contact with the law. The following data was provided by public institutions that were contacted: the number of children in custody, the duration of preventive arrests of children, the number of ongoing criminal investigation cases involving children, the number of children below the age of criminal responsibility who have committed offences, the number of children to whom solitary confinement was applied in the last 12 months, the number of complaints on ill-treatment against children in detention filed, the number of written complaints from children in detention, the number of children that have received state guaranteed legal aid, etc. This exercise shall not be considered a countrywide statistical exercise.

The analysis of statistical data refers to the 15 juvenile justice indicators of the United Nations, approved at New York in 2006 (listed below in Chapter I).

I. OVERVIEW OF INTERNATIONAL STANDARDS ON JUSTICE FOR CHILDREN

OVERVIEW OF RELEVANT INTERNATIONAL INSTRUMENTS AND THEIR DOMESTICATION



Pursuant to international standards, justice for children has the objective to ensure, in any given situation, the interest of the child, even if deprived of freedom as an exceptional measure. Generally speaking, the term *justice for children* points to the principles, the legal and regulatory framework, the procedure, institutions, experts, used methods and techniques with respect to children involved in the criminal justice system, which are friendly to the child. According to the Guidelines on child-friendly justice[3], this is an accessible justice, adjusted to age, swift, adapted and focused on the needs and the rights of the child, including the right to a fair trial, right to participate and understand the procedures it entails, the right to a private life and to a family and the right to integrity and dignity. A comprehensive approach must be taken by all relevant authorities to take into account all the involved interests, including the physical and psychological wellbeing and the legal, social and economic interests of the child. Moreover, justice for children also implies prevention, including through removing the causes that lead to delinquency.

There is a series of international documents providing for international standards in the area of the protection of children's rights and justice management. For instance, the UN Convention on the Rights of the Child[4] provides for in Articles 37 and 40 a series of guarantees while managing justice for children and complying with the observance and protection of children's rights. Furthermore, the UN Committee on the Rights of the Child has formulated a general explanatory memorandum, especially dedicated to juvenile justice issues[5]. Also, there are non-binding documents which establish international standards for juvenile justice management at various stages of the process: The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (*The Beijing Rules*)[6], United Nations Rules for the protection of juveniles deprived of their liberty (*The Havana Rules*)[7] and the United Nations Guidelines for the prevention of juvenile delinquency (*The Riyadh Guidelines*)[8]. Relevant provisions are found also in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment[9], United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)[10], as well as the International Covenant on civil and political rights (Article 14).

Regionally, the European Convention on Human Rights shall be considered the milestone of the entire human rights protection system. In addition, the Recommendation (2003) 20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice[11], is the basic document to guide the state's parties to the Council of Europe. It is further accompanied by the Recommendation (2006)2 on the European Prison Rules[12], the Resolution CM/Res/2 on the Child-Friendly Justice[13], and the Recommendation (89)12 of the Committee of Ministers to Member States on Education in Prison[14]. It is worth mentioning several specialised Council of Europe conventions: the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention, 2007), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, European Convention on the Exercise of Children's Rights (1996).

These documents encourage the states parties to promote the approval of laws and procedures applicable directly on children in conflict with the law, as well as to create authorities and institutions empowered to manage justice for children. Measures must be taken to treat these children without recourse to judicial procedure, subject to condition that human rights and legal guarantees are fully adhered to. It is very important that no child be illegally or arbitrarily deprived of his/her liberty. The arrest, detention or imprisonment of a

3 Guidelines on Child-Friendly Justice, approved by the Committee of Ministers of the Council of Europe on 30 June 2010, available at: http://www.cnpac.org.md/files/ChildFriendlzJustice_ro.pdf

4 UN UN Convention on the Rights of the Child, approved at the General Assembly of the United Nations on 20 November 1989 at New York, in force for the Republic of Moldova since 25 February 1993.

5 CRC/C/GC/10, Committee for the Rights of the Child, General Commentary no. 10 (2007), "Children's Rights under juvenile justice", 25 April 2007.

6 A/RES/40/33, UN General Assembly, *Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)*, approved by means of Resolution 40/33 from 29 November 1985, paragraph 3, 5, 7, 8, 11.

7 UN General Assembly, *United Nations Rules for the protection of juveniles deprived of their liberty (The Havana Rules)*, approved by means of Resolution 45/113 from 14 December 1990, paragraph 1, 2.

8 A/RES/45/112, UN General Assembly, *United Nations Guidelines for the prevention of juvenile delinquency (The Riyadh Guidelines),* approved by means of Resolution from 14 December 1990, paragraph 60.

9 UN General Assembly, *the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,* approved by means of Resolution 43/173 from 9 December 1988.

10 UN General Assembly, *United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)*, approved on 14 December 1990.

11 Recommendation (2003)20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice, approved by the Committee of Ministers on 24 September 2003, paragraph 14.

12 Recommendation (2006)2 on the European Prison Rules, adopted by the Committee of Ministers at 11 January 2006.

13 Resolution CM/Res/2 on the Child-Friendly Justice, adopted at the 28th Conference of the Ministers of Justice of the Council of Europe (Lanzarote, October 2007).

14 Recommendation (89)12 of the Committee of Ministers to Member States on Education in Prison adopted by the Committee of Ministers on 13 October 1989.

child must comply with the law and be used only as an extreme measure and for a period as short as possible, while the suspected, accused or convicted child shall be ensured treatment pursuant to the sense of dignity and personal value, which should take his or her age into account as well as the need to promote the reintegration of the child into society.

Each stage of the criminal process must comply with strict limits to avoid any delay and to ensure a swift reaction to offences committed by children. In any case, the measures aimed at accelerating the act of justice and increasing its efficiency must be coordinated with the notion of reasonable timeframe of the process. Wherever possible, children who are suspects shall be exposed to alternatives to detention, such as placement with the relatives and encouragement of families or placement centres to subsequently take care of

Another set of guarantees provides for children in conflict with the law that besides the gravity of the offence, their personal circumstances shall be taken into account. The latter (social standing, family condition, damages caused as result of the offence) must be taken into account when quantifying the contents of the decision. Some categories of children in conflict with the law, such as members of ethnic communities, young women and group offenders may need special intervention programmes. Adequate mechanisms shall be put in place to promote the interaction and coordination among agencies and economic and social services within the educational and healthcare areas, justice system, youth organizations, communities, development agencies and other relevant institutions.

The interviews and collecting of statements from children in contact with the criminal justice system must at all times be done by trained professionals. In cases where the child is a victim or witness of a crime, video and audio-recorded statements are strongly encouraged and the number of interviews must be as low as possible, while the duration of the interviews must be adapted to the age of the child and his or her ability to pay attention to details. The recording of statements from children who are victims or witnesses of crimes must take place in specially designed rooms, creating a friendly environment for them. Measures must also be taken to ensure that the child victim or witness of a crime does not encounter the suspected perpetrator throughout the legal proceedings.

Finally, the juvenile justice system must be seen as a part of a larger strategy of preventing children from coming into conflict with the law and protecting children who are victims and witnesses taking into account the family, school, neighbourhood and acquaintances that may have had an influence that resulted in the child coming into contact with the criminal justice system. This system may be evaluated based on the indicators developed by the United Nations Organization[15]:

1. Number of children arrested during a 12 month period per 100,000 child population;
2. Number of children in detention per 100,000 child population;
3. Number of children in pre-sentence detention per 100,000 child population;
4. Time spent in detention by children before sentencing;
5. Time spent in detention by children after sentencing;
6. Number of child deaths in detention during a 12 month period, per 1,000 children detained;
7. Percentage of children in detention not wholly separated from adults;
8. Percentage of children in detention who have been visited by, or visited, parents, guardian or an adult family member in the last 3 months;
9. Percentage of children sentenced receiving a custodial sentence;
10. Percentage of children diverted or sentenced who enter a pre-sentence diversion scheme;
11. Percentage of children released from detention receiving aftercare;
12. Existence of a system guaranteeing regular independent inspection of places of detention. Percentage of places of detention that have received an independent inspection visit in the last 12 months;
13. Existence of a complaints system for children in detention. Percentage of places of detention operating a complaints system;
14. Existence of a specialised juvenile justice system;
15. Existence of a national plan for the prevention of child involvement in crime.

[15] UNODC, UNICEF, *Manual for the measurement of juvenile justice indicators*, New York, 2006, page 5, Available at: http://www.unodc.org/pdf/criminal_justice/06-55616_ebook.pdf.

II.
NATIONAL LEGAL FRAMEWORK AND CURRENT PRACTICES

In its Concluding Observations from 2002 (paragraph 52) and from 2009 (paragraph 73) the UN Committee on the Rights of the Child recommends the Government to create a separate system of juvenile justice fully compliant with the UN Convention on the Rights of the Child. European countries such as the Netherlands, Croatia, Estonia, Serbia, Macedonia, Kosovo and Kyrgyzstan have implemented this recommendation, including by means of approval of a Code or a specialised law on juvenile justice.

On the domestic arena, several objectives of the National Human Rights Action Plan for the years 2011-2014[16] relate to: improvement of the justice for children system, ensuring the functionality of the probation services and strengthening measures to alternatively resolve disputes (paragraphs 10-12). Also, the Justice Sector Reform Strategy for years 2011-2016 contains a section which relates to the strengthening of the justice for children system (Strategic objective 6.3), have the following areas of intervention: ensuring specialisation of personnel from the criminal justice system involved in working with children, strengthening of protection mechanisms during criminal procedure for children who are victims or witnesses of offences, strengthening the child probation system, observance of children's rights placed in detention, strengthening the system of collection and analysis of data on children in contact with the criminal justice system.

There is no separate law in Moldova to regulate justice for children, the most relevant for the subject being the Penal Code and the Penal Procedure Code. The Penal Code, approved in 2002, provides for the age of criminal responsibility, identifies acts as offences and provides for rules and guidelines on the enforcement of the criminal penalty with respect to delinquents who are children. The Penal Procedure Code foresees the competence and structure of the judicial system, the parties and participants of the criminal procedure, the custody, criminal prosecution and preventive detention, the court trial procedure, enforcement of the criminal sentences and alternatives to detention. The legislator approved special procedural rules applicable to child suspects, offenders, victims and witnesses and criminally responsible children. These procedures are regulated by special provisions of the Penal Procedure Code (Title III, Chapter I, Articles 474-487). However, the Code does not have an exhaustive list of provisions and procedures applicable to children, the vast majority being applicable under regular procedures. In the current reading of the Penal Procedure Code, there are no exemptions available to the panel of judges in cases with the involvement of children who are in conflict with the criminal justice system and who are above the age of criminal responsibility.

The legislative amendments approved starting in2003 generated a greater compliance of legislation to international standards in the area of children's rights. In 2009, UNICEF promoted the approval of amendments to the criminal and criminal procedure legislation. Criminal penalty was reduced for a series of offences, while the maximum imprisonment term for children was reduced from 15 to 12 1/2years. Out of 36 articles in the Penal Code (regulating 36 offences), the minimal criminal penalty was excluded, offering the judges the possibility of applying a more lenient penalty for children, depending on the circumstances and the child's records. The amendments to the Penal Code from 2012[17] created guarantees against acts of torture and other forms of ill-treatment, being incriminated as separate offences and with no possibility to have a softer penalty applied on those who have committed such acts.

Additionally, in 2012 new amendments to the Penal Procedure Code[18] came into force. These amendments contain important guarantees related to: the procedure of interviewing children under 14 who are victims or witnesses of crimes (Article 58, 109, 110[1]); the rights and obligations of the child witness (Article 481[1]); the possibility of reconciliation or mediation in criminal cases including those involving child offenders (Article 344[1]); mandatory presentation of the inquiry reports evaluating the psychological profile of the child (Article 475). A year later, amendments have been approved to the Enforcement Code of the Republic of Moldova[19], according to which additional guarantees have been inserted related to the access to medical services, disciplinary sanctions have been diversified and a series of guarantees inserted with respect to their application, the solitary confinement was re-

[16] National Human Rights Action Plan for 2011-2014, approved by means of Parliament Decision no.90 from 12.05.2011.

[17] Law on the amendment of certain legislative acts no. 252 from 08.11.2012.

[18] Law no. 66 from 05.04.2012 on the amendment and completion of the Penal Procedure Code of the Republic of Moldova no. 122-XV from 14 March 2003.

[19] Law no. 146 from 14.06.2013 on the amendment and completion of the Enforcement Code of the Republic of Moldova no. 443-XV from 24 December 2004.

placed by disciplinary isolation of children in specified situations with monitoring by prison medical staff and psychologist, full access to services, right to outdoor hours and a reduced term of solitary confinement from 7 to 5 days.

Irrespective of the legislative improvements, the management and processing of cases with the involvement of children is still an area of concern. There are currently no specialised courts available to try these cases, while the principle of random distribution of files to judges makes the procedure of creation of specialised judge panels impossible. Thus cases involving children are managed under general conditions, with the application of several special conditions regulated by the criminal procedure law: mandatory free legal aid, participation of the legal representative and of the teacher/ psychologist during the hearing of the child, etc.[20] These and other aspects shall be analysed in the chapters below.

The following chapter will look at a few fundamental areas of justice for children and assess the national compliance with international obligation and standards. Where available, the assessment includes the opinion of selected stakeholders to give a practical flavour to the theoretical analysis.

1. The definition of the child in criminal proceedings

In juvenile justice the terms "child" and "juvenile" are frequently used as synonyms. As provided by the UN Convention on the Rights of the Child (Article 1), a child is any human being below the age of 18 years old, unless under the law applicable to the child, the age of majority is attained earlier. The Havana Rules define the juveniles as any persons below 18 years (paragraph 11), while according to paragraph 2.2 of the Beijing Rules a juvenile is the child or teenager who is responsible for an offence differently than the ones applicable to an adult, and a juvenile delinquent is a child or teenager, accused or declared guilty to have committed an offence. A more comprehensive definition is offered by the Council of Europe Recommendation CM (2003)20[21], according to which **children (juveniles)** are persons who have reached the age of criminal responsibility, but have not yet reached the age of majority. Juvenile delinquents and children in conflict with the law are synonyms, defined as children suspected, charged or found guilty of a breach of criminal law[22]. The Committee prefers the term "children in conflict with the law" and "child" instead of "juvenile"[23]. This study shall use the term *child.*

In addition to the general definition of the child, in relation to children in conflict with the law, the criminal procedure often adds another criterion: that is the minimum age of criminal responsibility. International standards require countries to set the age of criminal responsibility at not too low an age level, bearing in mind the emotional, mental and intellectual maturity of the child.[24] International law does not provide a specific age for the child's criminal responsibility and the minimum age of criminal responsibility varies from 7 to 14 years old worldwide. While this is left at for domestic discretion, countries are encouraged to ensure that children below the minimum age of criminal responsibility who have committed an offence are kept outside the criminal justice system and benefit from the necessary community support to help prevent re-offence or victimisation of these children. The best interest of the child, along other general principles of the Convention, should constitute the basis for the establishment of a legal framework regarding the actions, procedures and measures that can be applied to children below the age of criminal responsibility who engage in antisocial behaviour[25].

In the author's view, the minimum age established by the national legislation corresponds to the international acceptances. According to Article 21 of the Penal Code, criminal responsibility is assigned to individuals who were at least 16 years of age when they committed the offence. Children between 14 and 16 years of age may be brought to criminal justice only for a limited number of crimes. The Misdemeanour Code[26] No. 218 as of 24 October 2008) stipulates that contravention responsibil-

[20] Turcan A. et al., *Studiu privind serviciile oferite copiilor în contact cu sistemul justiției și stabilirea costului anual al acestora*, Chișinău, 2011, page 50.

[21] Recommendation Rec(2003)20 of the Committee of Ministers of the Council of Europe to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice

[22] Committee on the Rights of the Child, *General Comment no. 10: Children's rights under juvenile justice,* 25 April 2007.

[23] Carolyn Hamilton, *Guidance for Legislative Reform on Juvenile Justice*, Children's Legal Centre and UNICEF, Child Protection Section, New York, 2011, page 3. Available at http://www.unicef.org/policyanalysis/fi les/Juvenile_ justice_16052011_fi nal.pdf.

[24] Article 40(3) UN Convention on the Rights of the Child and CRC/C/ GC/10, Committee on the Rights of the Child, General Comment No 10 (2007) "Children's right in juvenile justice", 25 April 2007

[25] CRC/C/GC/10, Committee on the Rights of the Child, General Comment No 10 (2007) "Children's right in juvenile justice", 25 April 2007.

[26] The Misdemeanour Code of the Republic of Moldova, adopted through the Law no. 218 from 24 October 2008

ity can be assigned only to those who have reached 18. . Children between 16 and 18 years of age may be brought to contravention responsibility only for the committal of a limited number of contravention offenses (Article 16). According to the Penal Procedure Code, the fact that the age of criminal responsibility was not reached is a circumstance that prevents the initiation or conduct of criminal investigation (Article 285). If the court finds that the person did not reach the age for criminal responsibility at the time the crime was perpetrated it rules to terminate the criminal process (Article 391). In cases where the age of the child cannot be determined (e.g. missing identification documents), the law provides for immediate expertise to determine the age of the child and until the age is determined, the child shall be treated as below the age of criminal responsibility.

2. Domestication of international juvenile justice standards

The United Nations Minimum Rules for the Administration of Juvenile Justice or 'The Beijing Rules' (1985) emphasise the need to pay attention to the well-being of the child in the juvenile justice system and encourages Governments to ensure that any reaction to child offenders be in proportion to the circumstances of both the offender and the offence. To complement the principles laid out in the above documents, the Committee on the Rights of the Child's General Comment no. 10 on Children's Rights in Juvenile Justice[27] provide for additional explanations on the standards that Governments are encouraged to incorporate in their juvenile justice systems. Below are some of the main standards explained based on the international instruments mentioned above:

Fair and just trial: Article 40 of the Convention of the Rights of the Child provides for the minimum conditions that governments must respect in a trial involving an accused child. These include, but are not limited to:

- No retroactive juvenile justice (a child will not be punished for an act that was legally criminalized after the commission of thereof);
- Presumption of innocence until proven guilty;
- Prompt and direct information on the charges;
- Immediate access to legal aid;
- Adjudication without delay by a competent and independent authority and in the presence of legal defender and, where in the best interest of the child, of parents or legal guardian;
- Freedom from compulsory self-incrimination;
- Rights to appeal to a higher competent, independent and impartial authority;
- Free assistance of an interpreter, where the child does not speak the language in which the trial is held;
- Respect of his or her privacy throughout the legal proceedings.

Where a separate juvenile justice system is deemed impossible, governments are encouraged to ensure that justice workers are professionally trained to handle cases involving children through **specialisation,** in-service training, refresher courses, etc. Juvenile justice workers must reflect the diversity of children coming in contact with the criminal justice system in terms of gender and minorities.

Social inquiry reports: In criminal cases involving children, the background and circumstances in which the child is living or the conditions under which the offence has been committed shall be properly investigated before a decision is issued on the case. This assessment will be presented in the form of social inquiry reports and will contribute to the individualisation of the measures applied to the child.[28]

Diversion: Governments are encouraged to incorporate measures in their policies to ensure that children are dealt with in a manner appropriate to their well-being, and proportionate to both their circumstances and the offence committed (Article 40(4) UN Convention on the Rights of the Child). These should include community programmes, such as temporary supervision and guidance, restitution, and compensation of victims and must be accepted freely and voluntarily by the child offender. The child's confession of a crime when participating in a diversion programme, such as mediation, must not be used against him or her in the process of justice delivery should the diversion programme fail.

[27] Committee on the Rights of the Child General Comment no. 10, CRC/C/GC/10, 25 April 2007

[28] See the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), A/RES/40/3, 29 November 1985, point 16.1

The completion of the diversion by the child should result in a definite and final closure of the case.

Alternatives to detention: The Committee on the Rights of the Child calls for competent domestic authorities to continuously explore the possibilities of alternatives to a custodial court conviction.[29] The United Nations Standard Minimum Rules for Non-custodial Measures 'The Tokyo Rules' (1990) lists a range of such possibilities that may be applied before and after trial. Among these, the Rules mentions: verbal warnings, conditional discharge, restitution to the victim, probation and judicial supervision, community service, referral to an attendance centre, remission, pardon and others. The document encourages states to prescribe by law the definition and application of non-custodial measures and that careful assessment of the background and personality of the alleged child offender (through social inquiry reports) is made before selecting the appropriate non-custodial measure.

Deprivation of liberty: International standards call for the use of deprivation of liberty only as a last resort and for the shortest term possible. Upon the **apprehension** of a child, his or her parents or guardian shall be immediately notified and the duration of apprehension must not exceed **24 hours**.[30] The Governments are also called to ensure, where applicable, that alternatives to **pre-trial detention** and **detention pending trial** (such as close supervision, intensive care or placement with a family or in an educational setting or home) to child suspects are in place. The duration of pre-trial detention and detention pending trial must be limited by law and be subject to regular review (every two weeks). Pre-trial detention and detention pending trial of children must be **separate from adults**. The Committee on the Rights of the Child call states to provide in their national systems for pre-trial duration that does not exceed **six months** from the moment of child's apprehension.[31] Child imprisonment must be proportionate both to the offence and offender.

Detention conditions: The child shall receive care, protection and all necessary individual assistance - social, educational, vocational, psychological, medical and physical - that they may require in view of their age, sex and personality.[32] Article 37 of the UN Convention on the Rights of the Child safeguards the child against any form of ill-treatment, including **torture**, and prohibits capital punishment or life imprisonment to child offenders. Disciplinary measures such as corporal punishment, placement in a dark cell, closed or **solitary confinement**, or any other punishment that may compromise the physical or mental health or well-being of the child, should be forbidden. An effective and accessible **complaint mechanism** must be in place and children must be aware of it. Regular and **independent qualified inspection** must be carried out in facilities where children are detained.

Prevention: The international law calls the States parties to fully integrate into their comprehensive juvenile justice systems the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) adopted by the General Assembly in its resolution 45/112 of 14 December 1990. This document encourages the State parties to develop community-based services and programmes for the prevention of child involvement in crime, with focus on family well-being and accessible and inclusive education. The document also suggests that formal agencies of social control should only be utilized as a means of last resort.

The national legislation provides for a package of guarantees to children when facing criminal responsibility. Pursuant to Article 28 of the Law on the rights of the child[33], the state protects the right of the child to personal liberty. The custody or arrest of the child are used only as an exceptional measure and only in cases provided by law. If the child is in custody or under arrest, the child's parents or their legal guardians must be immediately informed. Neither the capital punishment, nor lifetime imprisonment may be applied for offences committed by a person aged less than 18 years. During court hearings where children are involved, the participation of the defence lawyer and of a psycho-pedagogue or a teacher is mandatory.

The Penal Procedure Code regulates in a separate chapter the procedure in cases involving children[34] and contains a series of general guarantees related to criminal prosecution, court trials of cases and enforcement of court sentences for children. For instance, pursuant to Article 270(1) of the Penal Procedure Code the prosecutor undertakes

[29] Committee on the Rights of the Child General Comment no. 10, CRC/C/GC/10, 25 April 2007

[30] Idem.

[31] Idem.

[32] United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), A/RES/40/3, 29 November 1985

[33] Law on the rights of the child, no. 338 from 15.12.1994.

[34] Penal Procedure Code, Title III Special Procedures, Chapter I, The Procedure in cases involving minors, articles 474-487

criminal prosecution when children commit offences, while Article 20(3) of the Penal Procedure Code directly provides the obligation to urgently and as a matter of priority undertake criminal prosecution where suspects are children. The questioning of the suspect, charged or defendant who is a child takes place under general conditions provided for by the Penal Procedure Code and may not take more than two hours without a break and in total it may not exceed four hours per day, with mandatory participation of the defence lawyer (Article 479 Penal Procedure Code).

When examining the opportunity to use a preventive measure on the child, the possibility of placing the child under supervision is mandatorily discussed every time. The custody of the child as well as his/her preventive arrest may be used only in exceptional cases when serious, highly serious or exceptionally serious offences have been committed with the use of violence. The fact of custody or preventive arrest of the child is immediately notified to the prosecutor and to the parents or other legal representatives of the child, an action that is noted down in the custody minutes (Article 477 of Penal Procedure Code). The custody of a child may not exceed 24 hours. The child to whom custodial measures are applied must be brought to the investigative judge as quickly as possible within 24 hours, to decide on his/her arrest or release from custody (Article 166 of Penal Procedure Code).

A series of guarantees can also be found in the Penal Code, which provide the child exemption from criminal responsibility who has committed a minor or less serious offence for the first time, if the conclusion is reached that the aims of the penalty may be attained by means of placement in a special educational and re-educational institution or in a medical and re-educational facility (Articles 54, 89, 93). Article 109 of the Penal Code provides for the possibility of settlement, which excludes criminal responsibility for a minor or less serious crime[35], while in the case of children that is also applicable for a serious crime. The imprisonment penalty for children may not exceed 12 years and 6 months (Article 70) and life imprisonment is not applicable to children (Article 71). There are of course other legal guarantees, but we shall turn to them later on.

[35] According to Article 16 of the Penal Code, *"(2) Minor crimes are considered acts for which criminal law provides for a maximum punishment by imprisonment for a term of up to 2 years inclusively. (3) Less serious crimes are considered acts for which criminal law provides for a maximum punishment by imprisonment for a term of up to 5 years inclusively."*

The prosecutors interviewed consider that the guarantees offered by the Penal Code and the Penal Procedure Code are adequate and sufficiently comprehensive and protective towards children. The following elements are considered positive: the mandatory nature of the state guaranteed legal aid, participation of the teacher during the interview of the child and notification/ summoning legal representatives (parents, tutors etc.). However, the arguments presented are more linked to the contents of the legislative provisions and less to their practical application. On the other hand civil society representatives and institutions involved in child rights protection consider that there are cases when the law is not observed and children's rights are breached. Even if the legal provisions are relatively adequate, often the observance of the procedure is a formality, which in turn generates an illusory protection of children's rights. The most frequent examples of negative practices are: late summoning of the legal representatives to participate at questionings; impediment of confidential meetings of the child protection bodies' representatives with the child suspect; insufficiency of adapted rooms (and trained staff) where interviews of child victims or witnesses of crimes can take place; a lack of co-operation mechanism of the prosecutors with the social services to ensure specialised psycho-educational assistance during the criminal prosecution.

Lawyers interviewed believe that, though it is the prosecutor's exclusive competence to examine the cases where children are involved, in reality the contact of the child with the police investigation officer is not excluded. In some cases, the child's explanations are requested before bringing him or her in front of the prosecutor. There are allegations that hearings take place in the absence of the lawyer, psychologist or legal representative. There are cases when the prosecutor, as a person who conducts the criminal investigation, hears the child within the premises of the police inspectorate, and the procedure is a mere formality, as the child has been already "prepared" by the special investigations officer and forced to admit his or her guilt. Thus, at the initial stage, the prosecutor has a minimal intervention, and the lawyer intervenes too late. Often lawyers do not contest these actions carried out in non-compliance with the procedure. Other times children are reportedly not recorded when brought to the police inspectorate.

Another reported problem refers to the non-uniform practice of investigating the cases involving children in conflict with the law. Usually, if there is a reasonable doubt that the child committed an offence, immediately after the registration of notification the prosecutor withdraws these materials in order to undertake a complex investigation of the case. Other prosecutors interviewed consider that criminal investigation shall be initiated by the criminal investigation officer and only after all the procedures have been undertaken the case should be submitted to the prosecutor, who will determine the competency. These practices create confusion and may lead to excessive periods of investigation of a case.

In the following paragraphs, the international standards, the provisions of the legislation in force and current practices are analysed with respect to the following guarantees/measures applicable to children in criminal procedure: 1) fair and just trials in cases involving children (including determining the best interest of the child and legal aid); 2) diversion and alternatives to detention; 3) detention length and conditions (including prevention of solitary confinement, ill-treatment and complaint mechanism); 4) prevention.

2.1. Fair and just trial for child alleged offenders

According to the CoE Guidelines on child-friendly justice[36], information on any charges against the child must be given promptly and directly after the charges are brought. This information should be given to both the child and the parents in such a way that they understand the exact charges and the possible consequences. Whenever police apprehend a child, the child should be informed in a manner and in language that is appropriate to his or her age and level of understanding of the reason for which he or she has been taken into custody. In addition to general criminal justice standards of fair and just trial (such as no retroactive justice, presumption of innocence, freedom from compulsory self-incrimination, etc.), children should be provided with access to a lawyer and be given the opportunity to immediately contact their parents or a person whom they trust.

[36] Guidelines on Child-Friendly Justice adopted by the Committee of Ministers of the Council of Europe on 30 June 2010. Available at: http://www.cnpac.org.md/files/ChildFriendlzJustice_ro.pdf.

Determining the best interest of the child

The law requires that a psycho-pedagogue ("*psihopedagog*") or a school teacher should be part of judicial proceedings involving a child with the goal of assisting the judge in determining the best interests of the child. The law prescribes to the teacher or psycho-pedagogue participating in legal procedures the right to ask questions, and at the end of the hearing, to familiarise with the minutes or written statements of the child and to make written observations concerning their completeness and correctness. These rights shall be explained to the teacher or psycho-pedagogue prior to the child's hearing, notice of which should be made in the respective minutes (Article 479 of the Penal Procedure Code). However, the national law fails to explain the status of the teacher or psycho-pedagogue participating in criminal proceedings and therefore their weight in deciding upon the child's best interest.

The practice shows that in the absence of express provisions on the status of the teacher and psychologist in the criminal proceedings, the hearing of the child suspect, accused or defendant are often flawed and create serious difficulties in determining the best interest of the child and ensuring a beneficial environment for them during the participation in the actions carried out by the prosecutors or the court. Such a gap creates situations in which hearings take place in conditions that do not take into account the child's state and maturity, causing psychological discomfort, the inhibition of the child and preconditions for victimisation.

The most problematic aspect related to ensuring proper child support in criminal proceedings and determining the best interest of the child is the lack of a state agency empowered to provide in-service training of any specialisation and to certify these specialists, which makes it impossible to carry out a qualified and valid psychological expertise during the criminal proceedings. Likewise, it appears that teachers invited to participate in court proceedings have no clear understanding on their role in the process and are not familiar with their rights and obligations (ask questions during trial, review the trial records before signing them, etc.). There are many cases when the participation of the teacher in hearing a child is a mere formality.

Reportedly, only in 2-3 out of more than 60 cases handled by a specialised lawyer in 2013 was the activity of the teacher/psychologist considered

"good." There are allegations that some teachers manifest hostile attitude toward the accused children, putting pressure on them to force them to admit their guilt. Moreover, specialised NGOs report a poor understanding among police criminal investigators and prosecutors of the importance and mandatory participation of the teacher or psychologist in the proceedings, and therefore often fail to ensure their presence during the proceedings and have them sign the papers later[37]. Prosecutors interviewed explained that usually prosecutors prefer to involve a psychologist in cases where a child is the victim of the crime, while the teacher is generally invited in cases of children in conflict with the law, because in their view the latter are in no need of psychological assistance, as they are not considered victims. Consequently, the teacher or the psychologist has neither the skills, understanding nor the opportunity to provide assistance to the child alleged offender in contact with the criminal justice system, which reduces their role to a mere formality in the process. Similar conclusions can be made for the psychologist's support to the child victim or witness in criminal proceedings where specialists lack the skills to facilitate the criminal investigation and judicial proceedings, and are not equipped with the capacity to provide psychological support to the child throughout the justice process.

On the other hand, the courts and prosecutors recognise that ensuring the teacher's or psychologist's participation in the criminal prosecution is one of the most difficult problems encountered during the criminal prosecution of a case where children are involved. There are no legal leverages to ensure the psychologist's or teacher's presence in court, which may delay the reasonable duration of the criminal prosecution. Typically, about 30% of the planned criminal proceedings are postponed because of the teacher's failure to show up. Although Article 87 of the Penal Procedure Code stipulates that the request for citing a specialist when forwarded by the criminal prosecution body or the court shall be considered obligatory for a manager of an enterprise, institution or organization where this specialist works, this rule remains declarative[38]. To mitigate this, experts and practitioners suggest instating psychologists within the public prosecution offices[39].

As there are no psychologists in public structures, children are assisted during the hearings by teachers from community schools, psychologists ("*raion*") from the district level services of psycho-pedagogical assistance, a recently established community service under the Ministry of Education, or the specialists from the municipal Directorates for Child Rights Protection and District Education Directorates. These professionals, however, have no training in assisting children in contact with the criminal justice system. Lawyers interviewed have stated that such cases occur quite often. As a rule, teachers taking part in the hearing of children have not attended initial and in-service training courses on how to assist children who are in contact with the criminal justice system. Even if the curriculum of Psychology and Educational Sciences Departments comprises modules related to "child psychology," "psychology and educational psychology of anti-social behaviours," "differentiated approaches to the personality" and "science of conflicts," these do not suffice to assist the child in the criminal proceedings. Consequently, the child who is in contact with the criminal justice system as an alleged offender is deprived of professional and adequate psycho-social assistance.

Under the conditions where the involvement of the psychologist during the hearing of children is more deficient compared with that of the teacher, the representatives of relevant authorities (General Prosecutor's Office, Ministry of Justice, MLSPF, Ministry of Education) consider it necessary to introduce the position of psychologist in the staffing list of the local directorates of social assistance and family protection. Hence, besides guardianship competencies, one of the main tasks of these local directorates is to ensure the provision of social services, including that of psychological support. Consequently, institutionalisation of psychologists in the local directorates of social assistance and family protection would allow their involvement in the court proceedings for cases involving the children, regardless of their legal standing. However, they would need to benefit from special in-service training in addition to their general degree to en-

[37] National Centre for the Prevention of Abuse against Children, *Copiii victime ale infracțiunilor şi procedurile legale: cazul Republicii Moldova*. Chişinău, 2013, page 45. Available at http://amicel.cnpac.org.md/files/studiu_audierealegala.pdf.

[38] Information taken from the Letter of the General Prosecutor's Office addressed to the Prime-Minister, No 25-2d/2012-922 of 27.12.2012.

[39] Dolea I., Zaharia V., *Studiu de fezabilitate privind instanțele specializate în cauzele cu implicarea copiilor în Republica Moldova*, Chişinău, 2011, page 59-61. Available at:http://www.unicef.org/moldova/ro/2011_003__Studiu_de_Fezabilitate_instante_oentru_copii_ROM.pdf.

sure their understanding of their role and the child's needs in criminal justice.

Another solution voiced by justice specialists working with children is to involve psychologists or psycho-pedagogues from the district ("*raion*") or municipal psycho-pedagogical assistance service (PAS). The service was established in 2013 and is under the administrative authority of the district or municipal subdivision with duties in the field of education. One of the PAS's objectives is to provide psychological and pedagogical support to children in need, including by developing individual psychological support programmes, to children enrolled in school. However, the service is still relatively new and underdeveloped and unavailable in many districts.

Specialists interviewed voiced the possibility of social assistance psychologists or educational psychologists from PAS to participate in the judicial proceedings to ensure that the rights and needs of children in contact with the system are respected. In the localities where PAS is functional and there are no other specialists, prosecutors already request for the services of psychologists during the hearing of children both in cases where the child is an alleged offender and when the child is a victim or witness of crime. Though this is not included in their job description, the PAS's psychologists accept the request; however, the lack of experience in working with children in conflict with the law, as well as with children victims and witnesses of crimes, doubled with the lack of understanding of criminal proceedings and of determining the best interest of the child, reduces the effectiveness of their intervention. Furthermore, currently PAS have a lack of specialised staff (for example in the districts where there PAS is established, only 2 out of 7 positions of psychologists included in the organizational chart are employed).

The participation of a psychologist or specialised support service worker in criminal proceedings in cases where children are parties in the process is essential to ensure that the child's needs are fulfilled. The role of the psychologists is: to facilitate the communication of the child with the justice system on the one hand, and to provide first-hand psychological assistance and support to both the child victim/witness or alleged offender and their families throughout the entire process of criminal justice, on the other hand. Thus, ensuring the efficient participation of the psychologist in the criminal proceedings for cases involving children requires solution both in regulatory and institutional terms. The implementation of the suggested solutions would minimize the risks of repeated victimisation of the child as a result of the contact with the criminal justice system and extend the psychosocial intervention over other stages, not only the legal hearings stage, and in particular preparation of the child to participate in legal proceedings, emergency psychological support, counselling of the child after participation in the legal proceedings.

Access to Quality Legal Aid

Ensuring free representation and free legal aid to children in conflict with the law is an obligation of the states pursuant to the international legislation in the human rights field. Article 37 of the UN Convention on the Rights of the Child provides for that children must be ensured with prompt access to legal aid and other forms of assistance after being apprehended, while Article 40(2) provides for that the state have the obligation to ensure to every child legal aid or other relevant form of assistance during the preparation and presentation of the defence. Similar provisions are stipulated in the European Convention on Human Rights (ECHR) on the exercise of children's rights (Article 14). Although the Convention does not discuss the issue of "free" legal aid, these provisions are inserted in the Recommendation (2006)2 on the European Prison Rules (para. 98), General Commentary no. 10 of the Committee on the rights of the child (paragraph 49), according to which, irrespective of the form of assistance offered to the child by the state, it must be free of charge. More generally, but no less importantly, both ECHR (Article 6) and the International Covenant on civil and political rights (Article 14) provide for the right to free legal aid for any person who cannot afford to pay for the services of a defence lawyer.

On the national level, legal aid for children in conflict with the law is regulated by the Constitution of the Republic of Moldova, the Penal Procedure Code, the Civil Procedure Code and the Law on state guaranteed legal aid. Article 69(1) of the Penal Procedure Code provides for that the participation of the defence lawyer in criminal procedure is mandatory if the suspect, accused or defendant is a child. These provisions are also referred to by Article 19(1) of the Law on state guaranteed legal aid, which guarantees qualified legal aid to a series

of categories of beneficiaries, irrespective of the level of income. Within an hour of the person's arrest, the criminal investigation body must request the regional office of the National Legal Aid Council (NLAC) or other persons empowered by the former to appoint a duty lawyer to provide immediate legal aid. The request to appoint a lawyer on duty must be presented in written form, including via fax, or on the phone (Article 167 of the Penal Procedure Code). Although the legislator has taken the necessary steps not to allow any violation of the rights of children in conflict with the law, the issue needs to be analysed both in terms of observance of the law and the quality of the services of legal aid. These two elements are essential to ensure access to justice for children coming in contact with the criminal justice system as suspects or offenders.

The official statistical data shows an increase in the latest years of the number of child suspects who benefited of state guaranteed legal aid as follows: in 2011, the Regional Offices of the National Legal Aid Council (NLAC) have offered urgent qualified legal aid to 1 344 children[40], in 2012 – to 2 021 children[41], and in 2013 – to 1 949 children[42], having covered 100% of the requests. Although no quantitative data is available with respect to the share of children in detention who have received the services of a defence lawyer, the interviews organized with justice professionals shows that in reality all children in detention have an appointed defence lawyer. If they cannot afford an lawyer, one shall be appointed by NLAC, a practice which is compliant to the recommendations addressed to the Government by the Committee on the Rights of the Child with respect to the need to ensure that all children are covered with legal aid at all stages of the criminal process[43].

Pursuant to the information offered by NLAC, cases involving child offenders are taken over by the lawyers included in the lists of the Regional Offices of NLAC. This list includes both public defence lawyers and private lawyers remunerated by the state for free legal aid cases. Some of these lawyers have some specialisation in dealing with cases involving children, while others do not. Both categories can be allocated cases involving children. However, there seems to be a difference in the quality of legal services provided by these two categories. As referred to non-specialised lawyers, some experts interviewed expressed concerns with regard to the quality of legal aid when children in conflict with the law are involved. The delivery of these lawyers is believed to range from "good" to "very weak." Similar conclusions are to be found in a report from 2012 produced by the Moldovan NGO Institute for Penal Reform after monitoring over the course of one year 59 criminal cases involving 83 children in five district ("*raion"*) courts in Moldova. The report's authors found that in roughly half of the monitored cases, lawyers were offering poor quality legal services. In some cases the appointed lawyers are reported to not have discussed the case with their clients before the court hearings, and sometimes children were allegedly not aware of who their lawyer was.[44] For instance, in some reported cases the decision of the investigative judge to use pre-trial detention was not challenged by the defender of the child defendant, and the former or his or her legal representative had no knowledge of such a legal possibility. The monitors have also reported cases when the participation of the lawyer was treated as a mere formality or when the child did not benefit from any legal aid during certain procedural stages, such as questioning of the child or at the recognition of suspects[45]. A more recent report by the same monitors suggests that the quality of legal assistance slightly improved in 2013[46]. This may be the result of training provided during 2013 to specialised public defenders by the National Legal Aid Council.

By contrast, lawyers specialising in child cases are perceived by interviewed specialists as good professionals and an example of good practice. According to the data published on the official website of NLAC[47],there are currently 22 lawyers specialised on cases involving children, and eight

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40 NLAC, *Raportul de activitate al Consiliului Național de Asistență Juridică Garantată de Stat pentru anul 2011,* page 8, available at: http://cnajgs.md/fileadmin/fisiere/documente/Informatie_utila/Rapoarte_CNAJGS/Raportul_de_activitate_al_CNAJ_2011.doc.

41 NLAC, *Raportul de activitate al Consiliului Național de Asistență Juridică Garantată de Stat pentru anul 2012,* page 10, available at: http://cnajgs.md/fileadmin/fisiere/documente/Informatie_utila/Rapoarte_CNAJGS/Raportul_de_activitate_al_CNAJGS_2012.pdf.

42 Statistical data available at: http://cnajgs.md/ro/informatie-utila.html.

43 CRC/C/MDA/CO/3, Concluding Observations of the UN Committee for the Rights of the Child, Republic of Moldova, 20.02.2009, paragraph 73(i), available in English at: http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-MDA-CO3.pdf.

44 Dolea I., Zaharia V., Rotaru V., *Raport de monitorizare: Respectarea drepturilor copiilor implicați în procesul de judecare a cauzelor penale în mun. Bălți"*Chișinău, 2012, page 31-32. Romanian version available at http://irp.md/uploads/files/2014-03/1394404674_raport-balti-2012.pdf

45 *Ibidem*, page 31.

46 Dolea I., Zaharia V., Rotaru V., *Raport de monitorizare: Respectarea drepturilor copiilor implicați în procesul de judecare a cauzelor penale (Bălți, Ungheni, Orhei, Căușeni, Leova)*. Chișinău, 2013, page 23. Romanian version available at http://www.monitor.md/attachments/article/146/Raport%20de%20Monitorizarea%202013.PDF.

47 http://cnajgs.md/ro/prestatorii-de-servicii.html

public lawyers from the Public Defenders' Office, but the latter deliver services only in the Ciocana and Râșcani city districts ("*sectoare"*) of the Chișinău municipality. This number is not enough given the number of cases arriving on their desks. Furthermore, due to poor remuneration of free legal aid services, specialised lawyers are often reported to undertake private cases in addition to the cases involving children in order to make extra money. This way, they tend to pay less attention to the quality of the legal aid services in each case. This usually significantly decreases the quality of legal aid provided to children in conflict with the law.

Moreover, when specialised lawyers are not available to undertake a case involving a child suspect, the National Legal Aid Council will admittedly refer it to other appointed lawyers, who have not undertaken specialised training. In such cases, NLAC explained that they take into account the appointed lawyers' experience of working with children and their previous performance. However, these appointees outside the system may not have the necessary skills to deliver quality legal services to child suspects.

In terms of private legal assistance, lawyers interviewed mentioned that it may well be the case of lack of continuity in representing children in certain cases, which is important if the child is to develop a relationship of trust with the lawyer and for the lawyer to properly understand the complexity of the case and the child's personality. Allegedly, some private lawyers who provide legal aid decide to discontinue an initiated case due to the lack of financial resources from the children's families. Another significant cause contributing to the poor quality or discontinuation of legal assistance to children is very low public salaries paid to free legal aid lawyers. The current system pays public lawyers separately for each procedural activity they perform or at which they participate, but not based on the number of hours spent in solving the case.

The insufficient professional preparation and (initial and in-service) training, and lack of quality standards are no less important impediments in the assurance of an effective remedy by the criminal justice system to children who are in need of legal assistance. The specialised courses organized by NLAC and the National Institute of Justice are insufficient and generally irregular, focusing only on children in conflict with the law. On the other hand, the legal profession in Moldova lack instruments and mechanisms to evaluate the quality of services delivered by lawyers, which would include the management of the files by the lawyer, the minimum mandatory contents of the defence file organized on the basis of age (child/adult), minimum quality standards, evaluation of client satisfaction over the delivered assistance, etc. Lawyers from the state guaranteed legal aid system are monitored by the NLAC territorial offices by means of written reports and registers, as well as by means of instated complaint mechanism under the Bar Association, which ultimately may decide upon disciplinary measures applied for unethical or unlawful performance of lawyers. Regrettably, private lawyers are outside the scrutiny of the National Legal Aid Council.

In conclusion, the shortage of lawyers specialised in cases where children are involved, along with the incapacity of the legal aid system to ensure qualitative specialised assistance to all children in need, may have bad repercussions on ensuring the children's right to effective defence. In addition, the absence of a mechanism that would ensure the continuity of delivery of legal aid to children, as well as the absence of the quality monitoring for legal aid are issues which need to be addressed by the National Legal Aid Council and the Bar Association. The majority of experts consider it necessary to develop quality standards which are applicable at least to the system of state guaranteed legal aid, to complete the already developed specialised guidelines (for example the Defence Lawyer's Guidelines[48], the Guidelines for the lawyers providing state guaranteed legal aid to children in conflict with the law[49]). Only through a well-defined and impartial monitoring of services delivered by lawyers will it be possible to ensure a higher quality of legal aid.

[48] *Ghidul avocatului în apărare*, approved by means of Decision of the Bar Association Council no. 2 from 30.03.2012.

[49] *Ghidul avocatului care acordă asistență juridică garantată de stat copiilor în conflict cu legea*, Chișinău, 2013, Available at: http://cnajgs.md/fileadmin/fisiere/documente/Informatie_utila/Studii__Rapoarte__Cercetari/Ghidul_avocatului_copii_in_conflict_cu_legea.pdf.

2.2 Diversion and alternatives to detention for children

In its 2009 Concluding Observations to the Republic of Moldova report, the Committee on the Rights of the Child welcomed several achievements of the Republic of Moldova, but expressed its concern that the alternatives to detention are only seldom used the children suspected of committing certain crimes are not separated from adults in pre-trial detention facilities, and the sanctions for severe crimes are still too severe[50]. The Beijing Rules (para. 13), the Council of Europe Guidelines on child friendly justice, the Recommendation (2003)20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice (para. 17), as well as other international documents on human rights establish that, whenever possible, pre-trial detention should be replaced by alternative measures, such as bail, close supervision, intensive care or placement in an educational setting or home. Social inquiry reports (social reports or pre-sentence reports) are considered an indispensable aid in most legal proceedings involving children. The competent authority should be informed of relevant facts about the juvenile, such as social and family background, school career, educational experiences, etc. (para. 16).

Diversion of child offenders from criminal justice

According to the penal and penal procedure legislation of the Republic of Moldova, the prosecutor, during the criminal investigation, and the investigative judge, during the trial, are empowered to apply **diversion measures** for children. Thus, the prosecutor may order termination of the criminal process if the child committed a minor or less severe offence for the first time (Article 483(1) of the Penal Procedure Code). In such cases, the child can be subject to educational measures, which include: 1) a warning; 2) putting the child under the supervision of parents, persons replacing the parents or specialised state bodies; 3) the child's obligation to repair the damages; 4) the child's obligation to follow a medical treatment of psychological rehabilitation; and/or 5) the enrolment of the child in a specialised education and re-education institution or in a curative and re-education institution (Article 104 of Penal Code). Another measure of diversion available in the Moldovan criminal law is reconciliation as stipulated in Article 109 of the Penal Code. Full reconciliation absolves the child offender from criminal responsibility and can be applied either at the stage of criminal investigation or judicial proceedings. Article 276(7) of the Penal Procedure Code foresees the possibility to reconcile the parties of a criminal case by means of mediation as stipulated in Article 344[1] of the Penal Procedure Code. The latter article provides for the possibility of mediating a minor, less serious or serious crime committed by a child (adult offenders are only eligible for mediation in cases of minor and less serious offences).

Representatives of the General Prosecutor's Office who were interviewed stated that children in conflict with the law are generally diverted in about 50% of the cases. The most frequent measures applied are reconciliation, exemption from criminal liability and educational constraint measures. The statements are confirmed by figures: in 2013 the criminal investigation was terminated in 984 (55%) of the 1,776 criminal cases against children. The great majority of these were terminated following reconciliation of parties or application of educational measures, while 5% (96 cases) were terminated due to other reasons that may not be qualified as diversion (lack of the element of a crime, the child is below the age of criminal responsibility, etc.). This trend has been relatively stable at least in the last few years. Lawyers who were interviewed also confirm the high incidence of alternative sentencing. However, cases were reported when prosecutors were reluctant to exempt the child from criminal responsibility, preferring to send the case to court and let the judge decide whether to apply reconciliation or not.

Unfortunately, the application of reconciliation has not proved efficient in Moldova. One reason for this is that it may be applied over and over again to the same offender with no limitations or conditions to be fulfilled by the offender. Article 109 of the Penal Code on reconciliation offers the possibility to unlimited applying of the reconciliation without obliging the prosecutor to replace it with another alternative measure if the child re-offended. Furthermore, the lack of re-educational services for child offenders adds up to the inefficiency of reconciliation. As a result, child offenders who have reconciled with their victims tend to re-offend very

[50] Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations - The Republic of Moldova*, CDC/C/MDA/CO/3, 20 February 2009, para.72.

soon, sometimes while the current investigation is still ongoing.

Experts who were interviewed are of the opinion that cases eligible for reconciliation should be referred to a mediator pursuant to Article 276(7) of the Penal Procedure Code. In their view, mediation will help the child acknowledge his or her deeds, redress the violation against the victim and reintegrate successfully in the community. While mediation is a possibility according to the current criminal law (Article 344[1] of the Penal Procedure Code), it is not compulsory, and is often deemed unpopular due to additional hassle for the justice specialists. It is highly recommended that proper investment in the mediation services be made (promotion, training).

There are further inconsistencies when applying educational constraint measures as per the provisions of Article 104(1) para (e) of the Penal Code. Considering the ongoing deinstitutionalization reform carried out by the Government, the judges are apparently reluctant to apply this provision. Another reason impeding the application of this provision is the actual lack of such institutions or non-residential programmes aimed at re-educating and reintegrating children with behavioural difficulties. Similarly, in terms of conditional suspension of criminal investigation, the current regulatory framework does not provide for the procedure of referring a child to a special treatment or counselling or behavioural change programme Article 511(1) of the Penal Procedure Code). Nor does it provide for the authority empowered to monitor the application of this measure. The lack of re-education and reintegration non-residential programme and community support to children in conflict with the law and their families makes it unrealistic to divert children from the formal criminal justice system without the risk of their re-offence or victimisation. Currently, NGOs such as the Institute of Penal Reforms work closely with psychologists from the psycho-pedagogical assistance services (PAS) in several communities in a pilot effort to develop such programmes aimed at children in conflict with the law and their parents. However, such programmes need to also be regulated and budgeted for, centrally or locally, and the competences of the agencies that can implement such programmes need to be regulated.

Alternatives to detention

If the prosecutor decides not to apply diversion measures, he/she shall send the case and the indictment to court in the usual manner. In court, when hearing a criminal case, the judge shall be entitled to terminate criminal proceedings on the same grounds as specified in Article 483(1) of the Penal Procedure Code on exemption of criminal responsibility of the child. If not, the Court has the option to apply alternatives to detention with regard to child offenders. Thus, according to the Article 93 of the Penal Code, children convicted for committing a minor, less serious, or serious crime may be exempted from punishment by the court if it is ascertained that the goal of the punishment can be achieved by placing them in a special education and re-education institution or in a medical re-education institution, or by applying other coercive measures of an educational nature specified in Article 104 of the Penal Code. Additionally, Article 67 of the Penal Code stipulates the possibility to apply community service work instead of custodial sentences. However, the latter cannot be applied to children below the age of 16 years.

Statistical data reveal that most of the cases that involve children do not pass through the formal criminal justice system, which in turn decreased the number of custodial sentences. Of all children suspected of committing a crime, the number of convicted children decreased from 1,888 in 2005 (56%) to 344 in 2012 (17%) and 304 in 2013, which shows the increasing practice of avoiding the judiciary procedures in case of children. At the same time, data provided by the General Police Inspectorate reveal a number of 588 children sentenced in 2012 and 529 children sentenced in 2013. There is likelihood that alternative sentencing measures were applied on a higher number of cases involving child offenders. However, it is difficult to determine from the existing data the extent of these measures.

With detention being a last resort measure, **alternatives to pre-trial** and **during trial detention** are recommended where diversion is not possible and include supervision by the parent or tutor, bailing out or home arrest[51]. Article 477 of the Penal Procedure Code stipulates that "when solving the issues related to preventive measures in relation to children, in each case the possibility

[51] Article 175, 184 and 188 of the Penal Procedure Code.

of his or her transmittal under supervision shall be discussed mandatorily."

Unfortunately, as revealed by UNICEF's Juvenile Justice Reform Evaluation of 2012, pre-trial detention is still used not only as a last resort remedy. In the absence of community services that could react promptly to the situation of children with the highest needs (children abused by parents) and because these children risk continuing to live with their parents, judges prefer to keep them in detention until the case is considered[52]. Another study found that the national law enforcement bodies still use pre-trial detention of children in more cases than strictly required by the law. The study found that often the Courts of law, in the person of investigative judges, fail to justify sufficiently the need to apply the pre-trial detention of child offenders[53]. According to data of the General Prosecutor's Office, 35 children were apprehended in2013, and pre-trial detention was used in the case of 24 children[54].

The Central Probation Office data requested for the purpose of this research reveal that in late 2013, 148 children were on the records of probation offices, 127 of whom were convicted with suspended sentences, nine children were exempted from criminal responsibility by applying educational measures, seven - sentenced to unpaid community work, and five were convicted to other non-custodial sentences[55]. The probation service has an important role in diverting children from the criminal process, because of their competence to prepare social inquiry reports for the judiciary bodies in order to estimate the risk for public safety, relevant for the decisions on preventive measures and individualization of sanction. The statistical data of the Central Probation Office show an increasing rate of social inquiry reports prepared for adults and children in the last three years.

	2011	**2012**	**2013**
Police	211	240	203
Prosecutor's Office	443	539	493
Court	10	9	2
TOTAL	**664**	**788**	**698**

Figures show that most of the social inquiry reports are requested by the prosecution, which suggests that the reports might be used to decide on applying of diversion measures instead of applying criminal sanction by the court. However, according to statistical data, the number of reports produced is lower than the number of requests received: 673 requests were received and 589 reports were produced in 2012, compared to 652 requests received and 526 reports produced in 2013. This may be because of the overload of requests addressed to probation offices and their limited capacity to meet this demand.[56] In turn, this may affect the quality of social inquiry reports, which may determine justice professionals to question their efficiency.

The reference data of the General Police Inspectorate on the number of criminal cases finished in 2013 and the number of social inquiry reports developed during this period show that such reports are not developed for each case: 526 reports produced vs. 1,094 criminal cases involving child suspects finalized. According to the results of a study conducted in 2011, most judges and prosecutors believe that these reports are useful and should be prepared for each case involving a child[57].

Another problem refers to the manner how the social inquiry reports are used during the criminal process. Although the criminal investigation body requests social inquiry reports during the criminal investigation and trial stages (Article 475), the Penal Procedure Code does not regulate the form of social inquiry report and its legal weight in the criminal process. With regard to diversion, prosecutors interviewed admit that they would divert children from the criminal justice system more often if efficient community-based services for children were available.

The analysis of the legal framework and current practices of diversion reveals a shortage of

[52] Kirsten Anderson, Legal Resources Centre of Moldova, *Final evaluation of project "Reform of the Juvenile Justice System in Moldova"*, Chişinău, 2012, page 47.

[53] Botezatu R., Cojocaru O. et all, *Study on the length of children's pre-trial detention and establishment of a mechanism to monitor the length of preventive detention*, Chişinău, 2011, page 25.

[54] Press release al the General Prosecutor's Office, *Children: offenders and victims of crimes in 2013.* Information available at: http://www.procuratura.md/md/com/1211/1/5639/.

[55] Dolea I., Zaharia V., Rotaru V., *Raport de monitorizare: Respectarea drepturilor copiilor implicați în procesul de judecare a cauzelor penale (Bălți, Ungheni, Orhei, Căuşeni, Leova)*. Chişinău, 2013, page 23. Available at http://www.monitor.md/attachments/article/146/Raport%20de%20Monitorizarea%202013.PDF.

[56] There is one probation office in each district of the country with only one (and sometimes two) probation counsellors covering the entire district. According to the procedure, an inquiry report must be submitted to the requesting party within 14 days from the date of the requets.

[57] Dolea I., Zaharia V., *Feasibility Study on the Specialised Courts in Cases Involving Children in the Republic of Moldova*, Chişinău, 2011, page 64.

non-custodial measures and a limited efficiency of the existing ones. Because of the lack of a mechanism to enforce the educative measures, prosecutors and judges are limited in deciding to apply an efficient (re)education measure for children, especially considering the acute lack of community-based services and non-residential support programmes for children in conflict with the law and their families. Additionally, the shortcomings in the procedure on referring and monitoring/ supervising the enforcement of measures applied impedes their efficiency and may fail in preventing re-offence among children.

2.3 Detention

The deprivation of liberty of children is regulated in several international treaties. The European Convention on Human Rights (ECHR) provides for, in Article 5(1), that no one shall be deprived of his or her liberty save in the cases prescribed by law and in accordance with a procedure prescribed by law, and that any arrested or detained person shall be brought promptly before a judge or other officer authorized by law, and the right to a trial within a reasonable time or to release pending trial. Also, pursuant to Article 37(b) of the UN Convention on the Rights of the Child "No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time." Similar provisions can be found in paragraph 6.1 of the United Nations Minimal Rules on non-custodial measures (known as the "Tokyo Rules").[58]

Moreover, the UN Committee on the Rights of the Child recommends in its General Commentary no. 10 (2007) that the period of pre-trial detention should not exceed 30 days, with the final decision on the charges taken within six months of arrest[59]. The United Nations documents recommend the exclusion of recourse to pre-trial detention for children save in cases of very serious offences committed by children who are older, and in this case the pre-trial detention period should be limited.

Length of detention pending adjudication

Although there is detailed regulation, no international document has specific provisions related to the conditions of application of pre-trial detention, except the European Court for Human Rights (ECtHR) case law, which developed the conditions that justify the use of pre-trial detention within the ambit of the requirements of the Convention. It is obvious that the length of an arrest applied to a child should be shorter than the one applied to an adult, as it must be analysed based on the age and the personality of the arrested subject. In this respect, the ECtHR issued a decision finding a breach of Article 5(3) on the basis that the authorities did not take into account the age of the child when deciding to extend the pre-trial detention period (which had already been 4 months long). Worth mentioning are the *Selcuk* (from 10 January 2006) and *Nart* (6 May 2008) *vs. Turkey* cases.

At the national level, the Penal Code, the Penal Procedure Code, the Enforcement Code, the Law on the penitentiary system, as well as several decisions of the Supreme Court of Justice Plenum regulate the use of preventive measures[60]. Article 186 of the Penal Procedure Code provides for that children may be arrested during criminal prosecution, before the case is sent for court trial, for a period of up to 30 days, save exceptional cases when the pre-trial detention may be extended up to four months. Although it is considerably shorter than the one applied to adults (up to 12 months), it greatly exceeds the maximum detention period recommended by international institutions. Even if applied in exceptional cases, the provision entails the risk that detention for a longer period becomes the norm for children in conflict with the law.

The maximum length of pre-trial detention (4 months) is not applicable to the detention during court trial and the appeal stages in court. There is no separate provision for children in trial detention and at the appeal stages, the only limitation is that the duration be "reasonable," similar to the provision for adults (Article 20 of the Penal Procedure Code). This provision is very vague and offers the court a large margin of discretion, which in turn leads to lengthy detention periods for children during the trial and the appeal stages, as well as, in

[58] United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), A/RES/45/110, 14 December 1990

[59] CRC/C/GC/10, Committee on the Rights of the Child, General Comment no. 10 (2007) "Children's rights under juvenile justice", 25 April 2007, paragraph 83.

[60] Decision of the Plenum of the Supreme Court of Justice of the Republic of Moldova "*Cu privire la jurisprudența în cauzele penale cu implicarea minorilor*", no.39 from 22 November 2004, paragraph 5, published in the Bulletin of the Supreme Court of Justice, 2005, nr.7, p.6;

practice generates inconsistencies and discrimination.

In comparison, pre-trial detention in **Romania** for a child defendant during criminal investigation may not exceed a reasonable period and cannot be longer than 90 days, while the maximum duration of court trial detention of the child defendant during court trial and appeal stage may not exceed a reasonable period and cannot be longer than 9 months and 18 months respectively, depending on the seriousness of the offence. While in **Germany,** the maximum detention period, which includes both pre-trial and court trial stages, may not exceed six months. It may exceed this period only by means of Regional Supreme Tribunal decision and only in cases specifically prescribed by law.

The experience of the Republic of Moldova shows that approximately 85% of sentences are challenged at the Supreme Court of Justice/ Court of Appeal, which in turn frequently rules that there should be a retrial of the case by the first level courts. This "cycle" may be repeated three or four times. As the judge of the first level court may not rule over the same case, there are often delays While children are waiting for their appeal to be decided and pass through this process, they continue to be detained in preventive detention isolators[61]. Regretfully, the data on the average detention period for children during the pre-trial, trial and appeal stages are not published. According to the conclusions of a study undertaken in 2011, the length of detention of children varies from several days to more than 600 days, and more than a half of children in detention spend over 200 days in pre-trial detention. Longer periods of detention can be found at the court trial stage[62]. There have been cases registered when children were detained for almost a year in the criminal prosecution isolation area of Penitentiary no. 13 in Chișinău[63]. One of the lawyers interviewed stated that she was working on the case of a child, who was kept in pre-trial detention for seven months in 2013, after which the case was sent to the court. In March 2014, the judge extended the arrest period by another 90 days. The employees of preventive detention institutions reported that the pre-trial and during the trial detention period of a child is usually between four months and one year[64]. According to the data provided by the Department of Penitentiary Institutions, the average length of children in pre-trial detention was seven months in 2012 and 2013.

Excessive detention in institutions subordinated to the Ministry of Internal Affairs (MIA) is also a problem. According to Article 175 of the Enforcement Code preventive arrest is to be in the criminal prosecution isolators of the Department of Penitentiary Institutions under the Ministry of Justice. Contrary to this provision, it has been established that about 53% of the children have been apprehended and detained for more than 24 hours[65] in the police detention facilities subordinated to the Ministry of Internal Affairs[66]. Also, there is reportedly a widespread practice of apprehending and keeping child suspects in the police inspectorate for up to 6 hours without explaining the reason for apprehension, taking any procedural measures, or allowing the child to leave the inspectorate.

In addition to above practices and contrary to international standards[67], children in pre-trial detention are held in separate wings of adult detention facilities, which may have severe implications on the child's development. This has been confirmed by juvenile prison workers during a recent visit by UNICEF staff to familiarise themselves with the detention conditions of children in the juvenile prison. The prison workers explained that children arrive "traumatised" from pre-trial detention, where although held in separate cells, children and adults interact during meals and other joint activities. The prison staff explained that these children quickly pick up the adult "prison hierarchal culture" during pre-trial detention with adults. This "hierarchic" model is then transferred to the juvenile prison.

Therefore, the legislative reforms in the area of pre-trial detention have not shown to be efficient in aligning Moldovan legislation and practices to

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61 Kirsten Anderson, Legal Resources Centre from Moldova, *Final Evaluation of the Project "The Reform of the Juvenile Justice System in Moldova"*, Chișinău, 2012, page 38-39. Available at: http://www.unicef.org/evaldatabase/files/2012_001_JJ_Evaluation_Report_ENG.pdf.

62 Botezatu R., Cojocaru O. et all, *Studiu privind durata măsurilor de arest preventiv aplicate față de minori și crearea unui mecanism de monitorizare a aplicării măsurilor preventive*, Chișinău, 2011, page 4, 32.

63 Memoria Centre, Centre for Human Rights, UNICEF, *Report "Torture and ill-treatment against children in the context of juvenile justice: prevalence, impact, prevention, identification, support and reporting"*, Chișinău, 2012, page 55.

64 Kirsten Anderson, Legal Resources Centre from Moldova, *Final Evaluation of the Project "The Reform of the Juvenile Justice System in Moldova"*, Chișinău, 2012, page 38-39.

65 The Penal Procedure Code of the Republic of Moldova stipulates in Article 166 (6) that apprehension of minors may not exceed 24 hours, within which the child will either be released or a preventive measure, possibly preventive arrest, will be applied should the child be deemed suspect in a crime.

66 Botezatu R., Cojocaru O. et all, Study on the length of pre-trial detention of children and creation of a monitoring mechanism of the pre-trial detention monitoring, Chișinău, 2011, page 4, 32.

67 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, point 85

international standards. We consider that additional measures are necessary to ensure that the entire detention period before the final court judgement does not exceed six months, as recommended by the Committee on the Rights of the Child. Consequently, in order to avoid long-term detention periods for children, it is relevant to regulate the periods of court trial for criminal cases with the involvement of children in detention with provisions in the criminal procedure legislation, so that the children are detained for the shortest period possible.

Protection against torture and ill-treatment

The evolution of the international legal framework demonstrates the strong concern of human rights institutions for violence against children deprived of freedom. There are several international documents establishing a series of obligations of institutional, jurisdictional and substance obligations, aimed at preventing and offering remedies against torture and other forms of ill-treatment: the European Convention on Human Rights, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the UN Convention on the Rights of the Child (Article 37), European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Specific provisions are contained in Council of Europe Guidelines on Child Friendly Justice and General Comments No 8 and 13 of the UN Convention on the Rights of the Child, which refer unanimously to the obligation of the State Party to ensure that no child is subject to torture, cruel, inhuman or degrading treatment or punishment[68].

In order to insert international principles into the national legislation and policies it is necessary to adjust continuously the regulatory framework on the prevention of torture and other forms of ill-treatment. Besides the general provisions that guarantee the right of any person to physical/mental integrity and prohibit torture and ill-treatment[69], the child's right to life and physical and mental integrity is guaranteed by the Law on the rights of the child (Article 4). Moreover, when the Penal Code has been amended recently[70] a new article was introduced, which defines torture, inhuman or degrading treatment and criminalizes these acts committed against a child as aggravating circumstance (Article 166[1](2), (4)). The new regulations exclude prescription for crimes of torture, inhuman or degrading treatment (Article 60(8) of CC) and exclude both the possibility to apply a more lenient sanction than required by the law (Article 79(4) of CC) and conditional suspension of sanction for crimes of torture and ill-treatment. The Law on the use of physical force, special means and arms[71] limits the use of physical force (Article 6) and prohibits the application, with some exceptions, of special means and arms against children (Article 8, 12). Both the Law on the rights of the child (Article 28), and the Penal Procedure Code (Title III) establish a set of guarantees to the child in case of detention and arrest.

The existence of a legal framework adjusted to the international requirements does not guarantee the elimination of torture in practice. We cannot ignore the convictions of the Government by ECtHR, which consisted of 75 violations of Article 3 of the Convention (both children and adults) of which 8 files on prohibition of torture and 43 files on application of inhuman and degrading treatment since 1997. At the national level, topicality of this issue is confirmed by the statistics provided by the General Prosecutor's Office, according to which only 157 out of the 719 complaints about torture formulated in 2013 (by 251 fewer than in 2012) resulted in a criminal investigation. Children were involved in eight of 157 cases. Unfortunately, the General Prosecutor's Office was unable to present data on the number of convictions for acts of torture. According to the same source, the prohibited, inhuman, humiliating and degrading methods are applied most often by police officers during the period when the victims remain in the police inspectorate (27%), in penitentiary institutions (14%), in police sectors, posts or other specialised rooms (9%) and in temporary detention facilities of the Ministry of Internal Affairs (3.6%).[72] During the six months of 2013, the first instance courts handed out nine

[68] CRC/C/GC/8*, Committee on the Rights of the Child, General Comment No 8 (2006) "The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment", 2 March 2007; CRC/C/GC/13, Committee on the Rights of the Child, General Comment No 13 (2011) "Right of the child to protection from all forms of violence", 18 April 2011.

[69] Constitution (Article 24), Penal Procedure Code (Article 10(3), 11(9)), Penal Code (Article 4), Enforcement Code (Article 169(1)).

[70] Law on amending and completion of several legislative acts, No 252 of 08.11.2012, in force since 21.12.2012.

[71] The Law on the use of physical force, special means and arms, No 218 of 19.10.2012.

[72] In Moldova, the police detention facilities are under the jurisdiction of the General Police Inspectorate under the Ministry of Internal Affairs, while detention facilities for the execution of preventive arrests and post-sentence detention are under the Department of Penitentiary Institutions which is under the jurisdiction of the Ministry of Justice.

sentences against 14 police officers for the acts of torture and ill-treatment committed[73], compared to 13 sentences for 30 persons in 2012[74]. In the magistrates' opinion, the low number of cases taken to court, and of convictions reveal the low quality of the materials transmitted to the court by the criminal investigation body.

The specific cases where the victim's personality has significance are those that involve children. This is an especially vulnerable group. According to data of the General Prosecutor's Office[75], the rate of notifying cases of ill-treatment against children is relatively high: in 2013 children were indicated as victims of ill-treatment in 24 complaints (out of 425), compared to 39 - in 2012 and 35 - in 2011. At the same time, there are indicators that forms of psychological abuse against children are identified insufficiently, or are not recorded and reported correctly.

The findings of a study conducted in 2012 confirm the incidence of torture against children. About 69% of children interviewed stated that they had been subject to torture and ill-treatment in police custody. They also stated that sometimes they had been taken from their home without being officially summoned by police officers (including sector police officers) and brought to police stations. Most often the complaints regarding torture and ill-treatment are made by the victims or his or her parents with the contribution of doctors and social workers being very low. There was only one notification received from a doctor in the first six months of 2012, and none from social workers[76]. Data for 2013 are not available. Besides, victims of police violence continue to encounter difficulties when filing complaints and often do not realize that the acts of torture and ill-treatment represent violations of their rights[77]. It was found that 55% of children interviewed were interrogated without having legal representatives present and were intimidated both physically and mentally in order to determine them to sign statements on the recognition their crime[78].

Hence, 40% of the prosecutors interviewed believe that the existing legislation does not provide enough guarantees to child victims of torture and ill-treatment both at the investigation and trial stage[79]. Specialists believe there are no regulations that would contain efficient mechanisms to prevent and combat torture, as well as mechanisms for the rehabilitation of child victims and case documentation, as provided in Article 39 of the UN Convention on the Rights of the Child. The investigation carried out by the prosecution is regarded as biased, which at the criminal investigation stage conducted the criminal investigation, and supported the accusation in the court. Besides, there are no specially developed programmes regarding the hearing of children in order to avoid their repeated victimisation. However, the most topical issue seems to be the rejection of accusations of torture after the preliminary summary verification and the lack of a mechanism to collect relevant data about acts of torture and ill-treatment makes it almost impossible to know the real situation.

The interviewed lawyers revealed two recent cases of alleged torture against children, occurred in Penitentiary No. 5 of Cahul from 2010 to2012, which involved several members of staff, including the head of the penitentiary. One of the children was transferred to Penitentiary No. 13 in Chişinău, where he hanged himself. After the Cahul military prosecution service completed the investigation, the case files were submitted to the military court of Chişinău[80].

Drawing conclusions for the events mentioned above, it seems that in spite of the progresses made with the legal framework, practices of maltreating children persist in specialised institutions. A series of key problems remain unsettled and authorities need to intervene urgently in order to eradicate them.

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73 Press release, *Prosecutor's Office Reacts Promptly to Notifications of Torture.* Available at www.procuratura.md/md/com/1211/1/5362/.

74 General Prosecutor's Office, *Informative note for 2012 on statistical data regarding the activity of prosecutors responsible to reviewing cases of torture and ill-treatment from the territorial and specialised prosecutor's offices*.

75 General Prosecutor's Office, *Press release: Torture in numbers, 2013*. Available at: http://www.procuratura.md/md/newslst/1211/1/5671/.

76 Memoria Centre, Centre for Human Rights, UNICEF, *Report"Torture and ill-treatment of minor children in the context of juvenile justice: prevalence, impact, prevention, detection, assistance and accountability",*Chişinău 2012, p.28.

77 Amnesty International, *An unsolved problem: combating torture and ill-treatment in Moldova*, 2012, page 8.

78 Memoria Centre, Centre for Human Rights, UNICEF, *Report"Torture and ill-treatment of minor children in the context of juvenile justice: prevalence, impact, prevention, detection, assistance and accountability",* Chişinău 2012, p.41.

79 *Ibidem*, page 60.

80 Information available at http://www.procuratura.md/md/com/1211/1/5687/

Disciplinary isolation ("izolare disciplinară")

Use of solitary confinement is a violation of international law and is proven harmful for the psychological well-being of the imprisoned child. This principle is enshrined in the main documents of the United Nations and Council of Europe. For instance, both Beijing Rules[81], Havana Rules[82], General Comment No. 10 of UN Convention on the Rights of the Child, and Council of Europe recommendations[83] prohibit disciplinary measures that constitute cruel, inhuman or degrading treatment, including corporal punishment, placement in an unlit cell, isolation or any other punishment that might endanger the physical or mental health of the child concerned. At the same time, the disciplinary measures and procedures will constitute last resort mechanisms and will ensure safety of and respect towards the child and objectives of institutional care. On the regional level, the European Social Charter, the European Convention on Human Rights and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment prohibit any form of inhuman or degrading treatment and torture, and safeguard the rights to health and education to all children.

In the Republic of Moldova, solitary confinement ***("încarcerare")*** was prohibited by an Order of the Ministry of Justice in 2010[84]. Though most specialists believed that it was no longer applied against children, the findings of a study conducted in 2011 showed that the most frequent sanctions applied to children in detention were reprimands and solitary confinement[85]. The representatives of the Department of Penitentiary Institutions stated that the institution collects data on the total number of persons against whom solitary confinement was applied, without any disaggregation by age. The experts interviewed for the above study consider that, though there are standards that regulate the length of solitary confinement, there is a risk that prison inmates are punished with this measure for longer periods, by offering a break between confinements[86]. The practice varied from institution to institution. For instance, in the pre-trial detention facility of Chișinău it was reported that solitary confinement was banned in 2011 following the advocacy mission of the former French Minister of Justice, Robert Badinter, who spotted the urgency to prohibit the use of solitary confinement against children. The sanction was replaced with prohibition to watching TV. In the former juvenile prison of Lipcani (currently closed; in 2013 all juveniles were transferred to the newly renovated juvenile detention for boys in the village of Goian) and the female prison of Rusca, solitary confinement could be applied for a duration of up to seven days [before the amendments of 2013 - *a.n.*], as a disciplinary measure. The 2012 UNICEF evaluation of juvenile justice reforms showed a typical example of solitary confinement applied in the former juvenile prison for boys in Lipcani: an interviewed child was placed in solitary confinement twice during six years of detention, as a punishment for hitting a teacher; he described the room as very small, where he could only sit on a chair during the day, and was allowed to walk outside only for two hours[87].

The above-mentioned practices indicated inconsistencies in the legislative framework, which perpetuated the use of solitary confinement. Thus, until recently, the Enforcement Code of the Republic of Moldova used to operate with the term of "***încarcerare***" (solitary confinement) and contained rigid provisions regarding the application of this sanction even against children. In 2013 upon an initiative coming from Parliament, the law was amended[88] to diversify the range of disciplinary sanctions; to introduce a series of guarantees for their application; to replace "***încarcerare***" (solitary confinement) with "*izolare disciplinară*" (disciplinary isolation), and to reduce their maximum duration for children from seven to five days. Thus, according to Article 246(1) of the Enforcement Code, disciplinary isolation for a period of up to five days is one of the disciplinary sanctions that could be applied to children. The same term is applied also in the case of disciplinary isolation of juvenile remand prisoners (Article 306(6)). These amendments aimed,

[81] United Nations Standard Minimum Rules for the Administration of Juvenile Justice, adopted by the UN General Assembly by Resolution 40/33 of 29 November 1985.

[82] United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by the UN General Assembly by Resolution 45/113 of 14 December 1990.

[83] Recommendation (2003)20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice; Recommendation (2005)5 on the rights of children living in residential institutions; Recommendation (2006)2 on the European Prison Rules.

[84] Magazine UN in Moldova, April-June 2010, *Juvenile Solitary Confinement Cells to Be Abolished in Moldova,* page 12. Available at file:///C:/Users/user1/Downloads/Revista_ONU_243_07_07_2010_Final_TIPAR.pdf.

[85] Lupusor I., Adam A., Tarasov A., *Studiu privind încarcerarea aplicată față de copiii în detenție*, Chișinău, 2011, page 47.

[86] *Ibidem*, page 48.

[87] Kirsten Anderson, Legal Resources Centre of Moldova, *Final evaluation of project "Reform of the Juvenile Justice System in Moldova"*, Chișinău, 2012, page 42-43.

[88] Law No 146 of 14.06.2013 on amending and completion of the Enforcement Code of the Republic of Moldova No 443-XV of 24 December 2004.

among other things, to introduce new encouraging measures for detainees, as well as at replacing incarceration with another disciplinary sanction that does not imply full sensorial isolation and is applied only for purposes of security, both for the penitentiary and for the life and health of the offender or other inmates or staff[89].

However, an analysis of the current provision in comparison with the older version of the Enforcement Code reveals that the legislator substituted only the name of the sanction, rather than its substance/nature. Although Article 246(2) of the Enforcement Code provides that disciplinary sanctions may not in any way affect the detainee's basic rights, including right to lodge a complaint, the right to vote, the right to legal aid, medical assistance, daily outdoor activity, and correspondence, the provisions of Article 247(10) of the same Code foresees that solitary confinement shall be applied in accordance with the Statute on the Execution of Punishment by Convicts[90] (hereinafter referred to as the Statute), which has not changed since 2008, and that convicts in solitary confinement do not have the right to meetings, telephone discussions, receive parcels, packages and supplies packs. The 2008 Statute continues to use the term "solitary confinement" ("***încarcerare***") and older provisions with regard to solitary confinement which are not in line with international juvenile justice standards. Moreover, according to paragraph 5 of the Statute, the *disciplinary isolator* ("*izolator disciplinar" also called "carceră" in the same Statute*) is the cell where solitary confinement has been always applied and there are no mentions in the 2013 amendments that would safeguard better isolation condition. This means that the same cells applied in the past for solitary confinement will now be applied for disciplinary isolation. Therefore, in our view, the legislative amendments to the Criminal Enforcement Code of 2013 failed to safeguard the right of the child to be protected from inhuman and degrading treatment in detention. With disaggregated data on the application of solitary confinement missing, it is difficult to determine any infringements to the rights of child detainees. S*olitary confinement* may further be applied against children in detention, but this time under the name of *disciplinary isolation*.

In conclusion, we find that the national practice and legislation, though overall compliant to international standards, still remains repressive for children in detention by perpetuating incarceration and offering no real stimulative alternatives. The legal framework should be amended significantly so that the measure of disciplinary isolation (incarceration) in the case of children be excluded definitively, and the disciplinary sanctions or measures against children be in compliance with principle of proportionality and reflect the interests of the child, as stipulated in Recommendation (2003)20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice[91].

Access to education, health care and psychological services in detention

The right to education, health care and psychological support is set out in a number of international regulations, such as: UN Convention on the Rights of the Child (Article 24, 28, 37), Havana Rules (paragraph 27, 38, 42, 50), Beijing Rules (paragraph 13, 26), Recommendation (2006)2 on the European Prison Rules (para. 28, 39-45), Recommendation (89)12 on Education in Prison[92]. The above acts lay down the principle according to which the children in pre-trial detention should be provided care, protection and individual educational, psychological, health care and other support. The prisons should protect the health of all detainees and provide access to as complete educational programme as possible, which meet the individual needs, taking into account their aspirations. The education shall be provided through programmes integrated in the country's educational system, which would allow the children to continue their education without difficulty after release. Furthermore, the right of the juvenile to be examined by a physician immediately upon arrival in a detention facility shall be ensured, in order to find any evidence of previous inadequate treatment and to identify any physical or mental condition that require healthcare.

The legislator has added these provisions to several national acts. The Enforcement Code provides that the vocational training and mainstream education are the main means of correction of the convict (Article 171), and the general secondary

[89] Informative note on the draft Law on amending and completion of the Enforcement Code of the Republic of Moldova No 443-XV of 24 December 2004. Available at:http://www.parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/1614/language/ro-RO/Default.aspx.

[90] Statute of Punishment Execution by the Convicts, approved by Government Decision No 583 of 05.26.2006.

[91] Adopted by the Committee of Ministers on 24 September 2003 at the 853rd meeting of the Ministers' Deputies.

[92] Recommendation R(89) 12 of the Committee of Ministers to Member States on Education in Prison adopted by the Committee of Ministers on 13 October 1989. Available at:http://www.epea.org/index.php?id=144.

education and vocational training are provided on a mandatory basis to the convicts in prisons. At the request of the convict, the administration of the facility should create conditions for secondary vocational or higher education (Articles 240-242). Likewise, the administration of the prison shall favour contacts between the convicts and public organization representatives who can provide health care, legal or psychological support to them (Article 218). The Statute of Punishment Execution by the Convicts contains similar provisions (para. 411, 414-416, 441).

When the legislative amendments were introduced in 2012 and 2013[93], additional safeguards on access to health services were inserted. Currently, the suspect, defendant and accused have the right to examination and independent healthcare, including private medical examination, immediately after arrest or after they were made aware of the decision on arrest (Articles 64 and 66 of the Penal Procedure Code) and the administration of the facility is obliged to ensure this right (Article 187 of the Penal Procedure Code). All convicted persons shall be provided with health care while in detention. Medical treatment and medicines shall be provided whenever necessary or upon request, by skilled staff, and free of charge.[94]. The medical examination of the convict shall be carried out upon arrival in prison and during the serving of sentence, upon request and on a regular basis, but not less than once every six months. The physician carrying out the medical examination shall notify the prosecutor and ombudsperson if he or she finds that the convict has been subjected to torture, cruel, inhuman or degrading or any other form of ill-treatment[95]. Several guarantees have been introduced with respect to the application of disciplinary sanctions. Thus, the sanction in the form of disciplinary isolation shall be applied only after the medical examination of the convict is carried out and the fact is established that the execution of this sanction would not affect his or her physical and mental health. The prison physician shall examine convicts who are disciplinarily isolated on a daily basis. On proposal of the physician, the sentence may be suspended until the convict recovers[96].

These provisions show an improving trend regarding the convicts' access to education, health care and psychological counselling. However, the effectiveness of the regulatory framework shall be assessed in terms of its enforceability both for convicts and for child remand prisoners. Representatives of the Department of Penitentiary Institutions have stated that the educational needs of the children, who are sent to detention either at criminal prosecution stage or post-sentence, are evaluated and identified. In detention facilities, the educational services are provided by the community teachers, according to the approved curriculum and framework plan. The teaching process is based on criteria similar to the general education system, such as: dividing pupils into groups according to age and level of education, organizing the contents according to distinct subjects with programmes spread over academic years on the basis of the mainstream education plan, allowing pupils to pass to another year of study based on results achieved carrying out the work according to a timetable in the form of classes with all pupils of the respective group. The Ministry of Education and the Ministry of Economy recognize the diplomas, certificates or other documents which attest to having obtained qualification, profession, or vocational re-qualification during the time the sentence was served.

However, a recent study has revealed some difficulties in ensuring quality education something which is confirmed by prison administration: the classes are not organized based on needs; teachers are subjective when evaluating the pupils by allowing them to pass. In 2012, one pupil successfully passed the bachelor exams, but according to the prison administration he was hardly able to read and could not write. The children do not attend any courses during the summer; however, they enjoy an increased attention from NGOs, diplomatic missions and some international organizations (UNICEF, NORLAM)[97]. According to the Department of Penitentiary Institutions, the Ministry of Education has provided funding for only 16 hours of school education per week for children in pre-trial detention facilities (in 2012 and 2013), while children in prisons benefited from 21 hours per week. According to children interviewed, school education is minimal and only a few children in detention are satisfied with the teaching and occupational ac-

[93] Law on amending and completion of several legislative acts, No 252 of 08.11.2012 and Law No 146 of 14.06.2013 on amending and completion of the Enforcement Code of the Republic of Moldova No 443-XV of 24 December 2004.

[94] Enforcement Code of the Republic of Moldova, Article 230.

[95] *Ibidem*, Article 232.

[96] *Ibidem*, Article 247.

[97] Memoria Centre, Centre for Human Rights, UNICEF, *Report on the study "Torture and ill-treatment of minor children in the context of juvenile justice: prevalence, impact, prevention, detection, assistance and accountability"*, Chişinău, 2012, p.58.

tivities. The classes are too simplistic and are not individualized for the needs and skills of all children[98]. Moreover, even under such circumstances, the educational process is fragmented according to the measures applied to the children who have been convicted or their procedural status. For example, the application under legislation in force of the sanction of disciplinary isolation (incarceration) of convicted children, seriously affects the education continuity, and the difference between the curriculum of pre-trial facilities and prisons compromises the teaching process during the transfer of the child from a facility to another.

There are also problems in the field of healthcare. According to the findings from the UNICEF Report on torture and ill-treatment against children conducted by the NGO Centre for the Rehabilitation of torture Victims "Memoria" and the Centre for Human Rights in 2012, the majority of children interviewed ere not examined by a medic upon their arrest. In the course of the current study the findings show that in some police stations the medical examination is carried out, which, however, is deemed by interviewed specialists as insufficient, superficial, without detailed documentation of the health condition and without identifying any traces of torture and other forms of violence. Almost all the children in detention at the time of the study were examined when brought to prisons both for pre-trial detention and for serving the sentence. However, children stated that the medical examination was superficial, without questions about possible consequences of acts of torture or other forms of violence previously applied.[99]. On the other hand, the representatives of the prosecutor's office believe that a series of amendments introduced in the Penal Procedure Code in 2006 and 2012, according to which the detainees have the right to an independent medical examination (Article 64), led to improved quality of healthcare services in the police stations and prisons. The regulatory framework must be further amended as to ensure the professional independence of medical workers from the detention places by transferring all detention medical staff under the authority of the Ministry of Health.

The fact-finding missions recently conducted during the preparation of studies in the field of justice for children have found that in all places of detention visited, a psychologist was employed. In the pre-trial detention facility of Chişinău a psychologist was y visiting the children daily. However, there is an insufficient rate of psychologists to the total number of detainees. There are only two psychologists to 1,000detainees and there is no psychologist specialised in child psychology. According to the children interviewed for the UNICEF evaluation "Reform of the Juvenile Justice System in Moldova" in 2012, the psychologist was making daily visits for a short discussion with all of them. If they wanted a face-to-face discussion, they had to ask for it[100].

Therefore, we may conclude that the period of detention in the pre-trial detention facilities and transfers in different penitentiary institutions until there is a final judgment may significantly affect the continuity and quality of education, healthcare and psychological support of children. Similarly, children in post-sentence detention may have limited access to quality education, healthcare and psychological support.

Complaints mechanism

The existence of a complaints mechanism for children in detention is one of the 15 UN indicators used to evaluate the justice for children system. The detainees' rights to know the reasons for rejection and appeal the decision in an independent authority is an international standard enshrined in the UN Convention on the Rights of the Child (Article 37), Recommendation (2006)2 on the European Prison Rules (para. 70), Recommendation (2005)5 on the rights of children living in residential institutions, the Council of Europe Guidelines on child friendly justice, General Comments No 8, 10 and 13 of the UN Committee on the rights of the child.

The national legislation on the detainees' right to petition is in the spirit of the general principles stated in the international acts and recommendations. Both the Penal Procedure Code (Articles 187, 471, 473), Enforcement Code (Article 169, 210, 246, 248), and Statute of Punishment Execution by Convicts (para. 87, 325, 392-405, 450) contain guarantees that the detainee is in-

[98] Botezatu R., Zaharia V. et. All, *Study on the evaluation and development of the complaint mechanism for children in detention*, Chişinău, 2011, page 19.

[99] Memoria Centre, Centre for Human Rights, UNICEF, *Report on the study "Torture and ill-treatment of minor children in the context of juvenile justice: prevalence, impact, prevention, detection, assistance and accountability"*, Chişinău 2012, p.43.

[100] Kirsten Anderson, Legal Resources Centre of Moldova, *Final evaluation of project "Reform of the Juvenile Justice System in Moldova"*, Chişinău, 2012, page 40-41.

formed about the right to file complaints and contest the decisions of the penitentiary administration; the right to correspondence, telephone discussions and visits; the secrecy and inviolability of correspondence; the administration's obligation to grant e detainees an audience; free access to justice, as well as other related guarantees. In addition, detained provisions on the registration and review of the detainees' complaints, related to the execution of the criminal sanction, are contained in the Order of the Department of Penitentiary Institutions No 227 of 12.11.2008 "On the settlement and recording of the petitions addressed to the penitentiary administration".

However, there are deficiencies related to the guarantees and procedures applied in case of children. The legislator recognizes the need to review and improve the mechanism of processing the complaints filed by children in detention (section 6.3.4 of the Action Plan for Justice Sector Reform Strategy and its Action Plan for 2011-2016). This is mainly about the lack of regulations regarding the competence to settling complaints, terms and procedure for complaints review, terms for reply, contestation procedure among other things. Such regulations should be inserted in the law enforcement legislation and should take into account the level of understanding, psycho-emotional and intellectual development of children, and their lack of life experience, the child's evolving capacity to form and develop ideas. In this context, neither the Government's Action Plan for 2012-2015[101], nor the Concept Paper on the Penitentiary System Reform and Action Plan for 2004-2020[102] for its implementation contain provisions on the reform of the mechanism for complaints filing by detainees, in general, and by children, in particular.

According to the findings of a study conducted in 2011, the criminal procedure legislation, enforcement legislation and legislation on petitioning do not contain regulations that would expressly establish the existence of the child's legal capacity to file complaints both against the body that is enforcing the criminal sanction (i.e. pre-trial detention) and the contestations against the respective acts. Moreover, there are no requirements regarding the decisions taken based on the examination of the child's complaint, as well as regarding the content of the response provided to the petitioner. The response should be comprehensible to children and communicated not only to him or her, but also to people who can take decision with regards to the submitted claims or the need to contest the approved decision (e.g. legal representatives, guardianship and trusteeship authority)[103]. In the opinion of specialists, children who are illiterate or those who do not speak Romanian and need an interpreter face most difficulties. As a result, either they do not file complaints, or the petitions are written illegibly, making it almost impossible to solve the case.

The use of solitary confinement against detainees is another impediment to the fulfilment of the right to petition. When in solitary confinement, convicts do not have the possibility to complain about abuses committed against them because they do not have free access to paper, an envelope, stamps or a mailbox.

According to the data provided by the General Police Inspectorate, children in detention filed seven complaints in 2013 regarding acts of torture and other ill-treatment. In the same period the information provided by the Department of Penitentiary Institutions reveals that the institution collects data on the total number of complaints filed, without any disaggregation by age, making it impossible to identify the children who may be victims of abuse in detention. Nevertheless, it has been noted that the majority of the children's complaints refer to: 1) access to information; 2) legality of the actions of the penitentiary administration; 3) material conditions in detention, 4) provision of health care among others. The low number of written complaints made by children in detention is not an indicator of impeccable operation of the institutions that enforce the criminal sanction, but rather of flaws in the current legislation regarding concrete procedures for filing and reviewing the complaints and express guarantees for petitioners. Recent research shows that other authorised institutions (such as the Centre for Human Rights, the Supreme Court of Justice, the General Prosecutor's Office) have not received any complaints from children in detention, which shows that children do not use the existing complaint mechanism, possibly because they are unaware of the existing procedures, are unable to formulate complaints and

[101] Government's Action Plan for 2012-2015, approved by Government Decision No 289 of 07.05.2012.

[102] Approved by Government Decision No 1624 of 31.12.2003.

[103] Botezatu R., Zaharia V. et. All, *Study on the evaluation and development of the complaint mechanism for children in detention*, Chişinău, 2011, page 9.

to contest decisions, as well as unaware of their rights and obligations, in general[104].

Analysis of the legislation and existing practices revealed that the regulations regarding the use by detainees of the right to complaint are insufficient and are a mere formality, which makes it difficult for detainees to exercise this right, as well as for the penitentiary authorities to examine the complaints. Therefore, it is strongly recommended that a mechanism for the penitentiary administration is established to inform the relevant persons or institutions about the content of the complaint and the decision taken after its review. Additionally, the legal framework should be complemented with a specific mechanism on interviewing children, who allege abuse in detention, concerning their complaint.

2.4 Prevention services

Prevention of child involvement in crime includes many aspects that need our attention. The UN Convention on the Rights of the Child calls state parties to safeguard the harmonious development of the child's personality, talents and mental and physical abilities (preamble, and articles 6 and 29). These are considered paramount for the child's development to his or her full potential and therefore for a healthy and prosperous society. The Riyadh Guidelines adopted by the General Assembly in 1990 declare that the prevention of child involvement in crime is essential to overall crime prevention and calls the entire society to join efforts to ensure the harmonious development of children from early childhood.[105]

Family and community play a key role in preventing a child from offending in the first place. The services in the community must be there to intervene from the first signs of the child's vulnerability and risk of coming in conflict with the law, whether it is through inclusive education, social assistance or psychological support to the child and his or her family. Such services may be more general and cover a wider range of children at risk, including those at risk of committing a crime. For children who have already come in conflict with the law, tailored services must be there to help the child reintegrate into society and prevent him or her from repeated offending. Such services may include family conferences, substance abuse or behavioural-change programmes. Support services must be provided to the child including while in contact with the justice system and detention to ensure the child's constant contact with the outside world and his or her change of behaviour.

In Moldova, there is insufficient support in the community and a poor understanding of the phenomenon by practitioners which results in little or even no support to children who have behavioural difficulties. This is doubled by the insufficient legal and policy regulation to programmes and budget interventions at a community level targeted at children who are at risk of engaging in criminal activity. Children below the age of criminal responsibility who commit offences, once caught, are simply sent back to the community they come from without any further assistance. Vulnerable children may be at even higher risk of involvement in crime.

Following a thorough analysis of national policies, we found no document containing an overall strategy for actions needed in the area of justice for children separately. Most provisions regarding justice for children are incorporated in in general public documents on justice. National and local policies have a low level of communication and approach the issue of child vulnerability mostly in procedural terms rather than from the perspective of inclusion (rehabilitation and reintegration). While there is an increased attention of the Government to social and educational inclusion, access to justice is barely acknowledged as an issue. There are however, several policies, listed below, which include provisions with regard to children who are either at risk or involved in criminal activity or could be used for prevention.

The Moldovan **Government's Action Plan for 2012-2014**, approved by Government Decision no. 289/2012, provides for strengthening the protection of children's rights through further investment in local government and greater focus on most vulnerable children. **The Justice Sector Reform Strategy for 2011-2016** goes further as to foresee the creation of vocational programmes for children in detention, development of reintegration services for children who leave imprisonment and rehabilitation for child victims of ill-treatment in detention; modernizing the probation services to provide effective rehabilitation to child offenders, among other things. However, both documents fail to provide a clear classification of vulnerable

[104] *Ibid*, page 13.

[105] A/RES/45/112, 14 December 1990, I. Fundamental principles, points 1 and 2

children, and provide for no measures to ensure access to justice and proper services to these children.

A more elaborate classification of vulnerable children is provided in the **National Strategy for Community Actions to Support Children in Difficulty for 2007-2014**. The document distinguishes between children at risk, children from socially vulnerable families and children in conflict with the law. For these children, the strategy envisages the professionalization of community services rendered by social, health and education agencies of the local government. None of the above listed documents make reference to children below the age of criminal responsibility who are at risk of or involved in criminal activity. The following paragraphs provide an assessment of existing laws and policies that refer to children with behavioural difficulties, including those below the age of criminal responsibility and the services available to them. Further, the assessment elaborates on the services available to children at risk of victimisation and those at risk of engaging in criminal offending.

At the level of national policies and strategies, several documents were approved regarding children in conflict with the law and prevention. First, there is the *Justice Sector Reform Strategy (JSRS) for 2011-2016* and its Action Plan. The Action Plan for the Justice Sector Reform Strategy vaguely mentions, among other things, the adjustment of the legal and policy framework with specific reference to children below the age of criminal responsibility (Action 6.3.1. Indicator 4).

Secondly, there is *the National Strategy on Community Actions to Support Children in Difficulty for 2007-2014*, approved by Government Decision no. 954/2007 which aims at ensuring opportunities for the social integration of children in difficulty by relevant community actions. The strategy does not define children in difficulty. However, children in conflict with the law, but not specifically those below the age of criminal responsibility, are among the target groups mentioned. The Action Plan for Strategy implementation[106] has as a general objective to ensure social inclusion of 20% of children in difficulty and promote a national system of community actions to support these. Unfortunately, the achievement of progress indicators is not disaggregated by target groups.

There are other potential regulations that could be applied to children below the minimum age of criminal responsibility, namely the Framework Regulation on the Activity of the *Commission for the Protection of the Child in Difficulty*, the Child and Family Protection Strategy and the Law on Special Protection of Children at Risk, among other things. However, neither directly refers to children in conflict with the law below the minimum age or criminal responsibility, despite being a target group in the above-mentioned National Strategy. This shows a lack of consistency between various laws and policies with regards to justice for children.

The official statistics of the General Police Inspectorate show that 116 children aged 10-13 years too part in in crimes in 2013, compared to 165 children in 2012. In addition, 593 of all children who participated in crimes were aged 14-15 years (38%) and 958 children - aged 16-17 years (62%). For 2012, the figures were 707 and 1,268children, respectively[107]. Regarding the social status of the children involved in crimes, specialists who were interviewed explained that, based on their administrative unpublished data, these children come from vulnerable families, families with many children, mono-parental families, and children who lack at least one parent.

Currently, because the social protection policy is less focused on children coming in conflict with the law, officials in the criminal justice system are still involved in taking decisions regarding children below the age of criminal responsibility. Research shows that dâuring the criminal investigation the police/prosecutor's office and specialists of the Directorate on Social Assistance and Family Protection and General Directorate on Education, Youth and Sports do not co-operate well.[108] These latter structures are contacted only when the child's parents or legal representatives cannot be found to assist at the hearing.

In general, specialists interviewed reported that there are insufficient programmes and services for the prevention of child involvement in crimes and their support during and after the contact with the justice system, in particular for children at risk and vulnerable children with "high needs" (children

[106] National Strategy on Community Actions to Support Children in Difficulty for 2007-2014, approved by Government Decision No 995 of 03.09.2007.

[107] General Police Inspectorate, *Informative note on the status of children coming in conflict with the law and activity of child security services during 12 months of year 2013.* Available at:http://www.politie.gov.md/ro/siguranta-copiilor-2013.

[108] Besliu N., Haraz S., Popovici M., Rotaru V., *Children in conflict with the law - neglected or forgotten. Study on the situation of children in conflict with the law under the age of criminal responsibility.* Chişinău, 2011, page 54.

of alcoholic parents, with health problems, children from very poor families, children without parental care). Most services have been established for a broader category of beneficiaries - children in difficulty ("*copii în dificultate*") - aiming at eliminating the difficulty rather than preventing child involvement in criminal activity and re-offending. Services and institutions responsible for service provision are presented below.

The Child safety section is a unit of the Public Security Division of the General Police Inspectorate (GPI). Child safety inspectors, subordinated to this authority, are mainly in charge of prevention and monitoring of child involvement in criminal activity and on-the-job training for other police officers with regard to child-friendly approaches. Following recent police reform, the organizational chart of GPI has come to include only 48 positions of child safety inspectors (as compared to 200 in 2012), three of which were vacant in December 2013. This number suffices only to ensure one child safety inspector per district. Co-operation with social and other child protection services is yet to be regulated.

Until recently, the **Centre for Temporary Placement of Children,** subordinated to the Ministry of Internal Affairs functioned as a specialised service for temporary care of different categories of children in difficulty (street children, children without parental care, orphans, repatriated children, etc.). This centre was reportedly used to also temporarily place children engaged in criminal activity. Having a staff of police officers, social workers, psychologists, teachers and physicians, the Centre assisted about 300-400 children yearly contributing to their reintegration into the community. The services provided to beneficiaries consisted in: temporary short and long-term placement, health care, development of social skills, psychosocial support, schooling, vocational training and employment assistance, etc. As part of the decentralization reform, the Centre was closed in 2013 and subsequently transferred in the subordination of the Chișinău Mayor's Office, which has other **four temporary placement centres** funded from the municipal budget. Currently there are other **nine temporary placement centres** for children, established by non-governmental organizations. Some centres have social teachers ("*psihopedagog*"), who provide assistance and monitor the situation of children at risk or involved in crimes.

Service for protecting the rights of children at risk and in conflict with the law is a structural unit of the Municipal Directorate for the Protection of Children's Rights. The Service is in charge of identifying children at risk of becoming offenders, having their rights violated, committing crimes or who are conflict with the law; keeping records of these children and assist their (re)socialization. In 2012, 333 such children were identified in the Chișinău municipality, and their cases were reviewed at meetings held by the Council for Child Rights Protection. As a result, 122 children were placed under supervision for assistance. There were a total of 728 child offenders and children in conflict with the law under the supervision of the Municipal Directorate for the Protection of Children's Rights at the end of 2012.

The **Foster care service** operates based on the Framework Regulation and minimum quality standards, approved by Government Decision No 1361/2007. This service which is fairly new in Moldova is a form of protecting the child in difficulty, consisting of temporary placement of the child with a person or family that can meet the necessary material and social requirements for child development. According to the Activity Reports of Municipal Directorate for the Protection of Children's Rights, there were up to 17 children (identified in 2012)[109] and 24 children (identified in 2013) were placed in foster care service. These statistics show that the service is developing slowly. The Municipal Directorate for the Protection of Children's Rights acknowledges that the situation of children in conflict with the law continues to be one of the most problematic issues for the guardianship authority. Practice shows that children involved in anti-social or criminal behaviour are viewed with caution, which leads to them frequently being transferred from one form of protection to another.

The activity of **Community social service** is regulated by the Law on social assistance No 547/2003 and Law on social services No 123/2010. The social assistance system in Moldova consists of social services and social benefits. The social services represent the set of measures and activities carried out to meet the social needs of the person or family in order to overcome the difficulty and prevent marginalization and social exclusion (Article 10). The families who are in contact with

[109] Municipal Directorate for the Protection of Children's Rights, *Annual Activity Report - 2012.*

the criminal justice system may be beneficiaries of the service, though the law does not stipulate this expressly. The social worker ("*asistent social*") is responsible for the monitoring and evaluation of vulnerable families. However, due to the high number of beneficiaries for every social worker, the child's situation is often assessed superficially. Social workers provide services for different categories of beneficiaries and have little knowledge on the best interest of the child. The cases of children at risk of engaging in criminal activity are assessed in accordance with the case management principles laid out in the Ministry of Labour, Social Protection and Family's methodological guidelines. Social workers may make social inquiries about children, assist those without parental care as result of migration, etc. However they lack the professional training on the best interest of the child and have no capacity to assist children at risk of or involved in criminal activity that may require targeted services.

School psychological service: according to data from the General Directorate for Education, Youth and Sports, 128 psychologists (including those who are part-time) worked in pre-university educational institutions in 2012-2013: there were 60 recently employed psychologists, 32 psychologists with up to 10 years of work experience, 36 psychologists with over 10 years of work experience[110]. The services provided by school psychologists focus on helping children to learn the school curriculum and have little attribution in preventing child involvement in criminal activity. School children with major behaviour or learning problems are referred to other services that provide psychological, medical and social support[111].

The **Psycho-pedagogical assistance service (PAS)** was established by the Government Decision No 732/2013[112]. The Service is established by the decision of the District/Municipal Council from the second-level administrative-territorial units. The beneficiaries are all children, regardless of the material state of their family, age, health status, *criminal record*, etc. or other categories of children, who are marginalized or excluded in the process of accessing the education, as well as the child's family. The Service consists of complex assessment of children for educational inclusion; identification of the special educational needs; provision of psycho-pedagogical, speech therapy, psychological and other support services to children, integrated in institutions that do not have specialised services; specific therapies (play therapy, speech therapy, physiotherapy, work therapy). PAS is in charge of monitoring, at the national/municipal level, the situation of all children who benefit of services for psycho-pedagogical support (children with special educational needs, children exposed to violence, who dropped out of school, are neglected by their parents, and are at risk of being trafficked or of *coming into conflict with the law, with anti-social behaviours*, etc.). The service is not yet functional in all districts and the decision to establish it is taken exclusively by second-level local public authorities. However, both representatives of the Ministry of Education and of non-government organizations have a positive opinion regarding the establishment of PAS and believe that, with proper investment in capacity development, it will be functional.

The **primary legal assistance services** are established and operate on the basis of the Law on state guaranteed legal aid, and consist in provision of information about the legal system of the Republic of Moldova, regulatory documents in force, rights and obligation of subjects of law, judicial and extrajudicial actions to exercise and use the rights; legal consultancy; assistance with preparation of legal documents, etc. All citizens of the Republic of Moldova, regardless of the level of their income, can benefit from services. The primary legal assistance is provided by paralegals ("*parajurişti*") and specialised social organizations. *Paralegals* are individuals enjoying high respect by the local community; they have incomplete legal education or complete higher education and do not undertake any work as a lawyer and who, after special training, are qualified to provide free primary legal assistance to community members. Currently, the network of paralegals consists of 32 persons, who work throughout the entire country and are supported financially and methodologically by Soros Foundation-Moldova (50%) and the National Legal Aid Council (50%). One paralegal may provide services to 1-2 villages. However, the number of paralegals is too low for the more than 800 first-level administrative-territorial units (villages, communes) of the country. The training curriculum for parale-

110 General Directorate for Education, Youth and Sports, *Report on the activity of the Service for Educational and Psychological Support in pre-university educational institutions of Chişinău during the 2012-2013 academic year.* Available at www.Chişinăuedu.md/Rapoarte.

111 *Ibidem*, page 8.

112 Government Decision No 732 of 17.09.2013 on the establishment of the Republican Center for Psycho-pedagogical Support and District/Municipal Service of Psycho-pedagogical Support.

gals does not contain a module for legal assistance to children in conflict with the law, but with support from donors, paralegals organize public lessons for children on their rights in the event of an arrest by the police.

The establishment of the **Probation Service** was a step forward in aligning the national juvenile justice system to international standards. The Service is operates based on the Law on probation (2008) and Regulation on organization and modus operandi of probation bodies (2010)[113], and consists of psychosocial evaluation, the supervision of persons in conflict with the criminal law and their re-socialization, adjustment of persons released from detention facilities to prevent re-offending. With regards to children, the probation focuses on the psycho-pedagogical rehabilitation of the offender's personality; the establishment and maintenance of relations with children's rights protection services; monitoring the pre- and post-integration situation of the child in the family; the development of the capacity of the family and community to assist the child and prevent the risk of the child entering a difficult situation (Article 13). Each Probation Office appoints a probation counsellor specialised in working with children, with a series of duties. A review of the duties envisaged by the law shows that this is a huge load for the probation counsellor responsible with working with children. In practice, the probation counsellor informs the Child Safety Office, which monitors the child and can refer him or her to the social assistance service. In the opinion of specialists interviewed for the purpose of this research, the absence of well-thought probation programmes reduces the role of probation counsellors to developing social inquiry reports, monitoring alternatives to detention and rendering limited post-penitentiary services.

There is no **post-release support** after pre-trial detention of children. If convicted, boys are transferred to the penitentiary of Goian, the juvenile prison for boys, girls are transferred to the women's prison of Rusca; otherwise they leave home. If the child turns 18, he will be transferred to a penitentiary for adults with some exceptions when the child is allowed to stay in Goian until the age of 21. This does not apply to girls who are already detained in a separate wing of the women prison of Rusca. Some interviewed experts explained the little attention paid to post-release reintegration programmes for children by the existing perception that children usually return to the care of adults, while adults are the ones who need to reintegrate in the employment market.

In **detention, services** consist of preparing the children for release and social reinsertion. Six months before release from detention, children are involved in a pre-release programme which includes assistance for the preparation of the identification documents, information about educational institutions and vacancies in the child's community, assistance to restore the links with close relatives, information about healthcare and other public services in the released child's community and nearby. There is insufficient analysis to evaluate the efficiency of these programmes **Services provided by non-governmental organizations (NGOs)** play a very important role in guaranteeing the right of the child to a wide range of assistance and support services. Currently, NGOs complement the efforts of state institutions in providing educational, social, health, legal, psychological and other services. In the practitioners' opinion, the services provided by NGOs are more child-friendly, exclude excessive bureaucracy, are provided by highly qualified specialists and are trustworthy. However, their capacity contrasted to the demand does not meet the needs of all beneficiaries. Although the closure of closed institutions for children in conflict with the law was highly lauded by international and local monitoring bodies, the government failed to replace them with alternative services that would provide these children with a chance of full social reintegration.

Despite positive trends in the development of the child protection system, a series of deficiencies and constraints hamper efficient support to children who are in contact with the criminal justice system. Services for children involved in criminal activity or at risk of being involved are underdeveloped. Many communities have no other support services except for the community police and social workers. Often, community services are severely under-staffed and therefore are exceeded by the high number of beneficiaries with whom they have to work. Prevention of child involvement in crimes is hampered by the lack of non-residential recreational centres and behavioural-change programmes or specialised psychological assistance aimed at safeguarding the best interests of the child. NGOs and international organizations call for

[113] Regulation on the organization and modus operandi of probation offices, approved by Government Decision No 827 of 10.09.2010 on the organization and modus operandi of probation offices.

the establishment of non-residential social centres and behaviour-change programmes for children and young people that would give these children the chance to mix with other children in the community and reintegrate in the community. Such programmes may include but should not be limited to: family conferences, substance abuse prevention, mobile teams of legal and social support, mentoring programmes, targeted support to vulnerable families, prevention programmes carried out in schools, recreational centres, etc. While NGOs complement the support provided by government agencies, the mechanism of NGO contracting for public services is yet to be applied for the above purposes.

3. Safeguards for child victims and witnesses in criminal proceedings

The relevant international document is the United Nations Guidelines on Justice in matters involving child victims and witnesses of crime[114], adopted in 2005. The provisions of these Guidelines were added to the Guidelines on Child-Friendly Justice adopted by the Committee of Ministers of the Council of Europe[115]. Similar provisions are also found in the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. According to these documents, in order to avoid a child re-victimisation in criminal proceedings, they shall be interviewed by certified trained specialists in specially designed settings, and their statements shall be admissible as evidence in court, a stipulation that must be expressly provided in the law. Audio-visual statements of child victims or witnesses are strongly encouraged, and there shall be as few interviews as possible. The duration of the hearing shall be adjusted to the child's age and his or her level of attention. The statements of child victims and witnesses shall be recorded in specially designed child-friendly rooms, in a friendly environment, taking into account their age, level of maturity and any communication deficiency they might have. It is crucial to avoid the child witness or victim coming into contact with the accused. The guidelines require that the crimes, where child victims and witnesses are involved, shall be investigated as a matter of emergency and the procedures or laws shall stipulate this. Where the safety of a child victim or witness may be at risk, appropriate measures should be taken to require the reporting of those safety risks to appropriate authorities and to protect the child from such risk before, during and after the justice process.

Until recently, the protection of child victims and witnesses used to be interpreted in the domestic law from the perspective of the general procedure applicable to adults. However, with the transition in 2010 to a new approach to justice for children, the legislator included in the national legislation special provisions regarding child victims and witnesses[116]. According to Article 110[1] of the Penal Procedure Code, the interviewing of a child witness, who was under 14 involved in criminal cases on sexual offenses, child trafficking domestic violence under the terms of Article 109(5) shall be conducted by the investigative judge in specially arranged settings, fitted with audio and video recorders, via the agency of an interviewer ("*interviewator*"). The role of the interviewer is to "translate" the questions in a child-friendly language, in the case that the questions could traumatise the child witness. The hearing of a child witness shall avoid any negative effect on his or her mental state. The statements of the child witness shall be audio-video recorded and shall be documented fully in a protocol.

The child victim shall be heard in the same conditions as provided for the hearing of the witness. The victim, who is under 14, shall be interviewed with regard to criminal cases on sexual offenses, trafficking or domestic violence, as well as other cases that are in the best interest of the child, under the terms of Article 110[1] of Penal Procedure Code. Children who are aged from 14-18 shall be interviewed following the general procedure (for adults) stipulated in Articles 58, 60, 105 and 109 of the Penal Procedure Code, unless the circumstances require otherwise. It is the discretion of the prosecutor to decide whether to apply special interviewing in accordance with Article 110 and 115, which do not provide for child-friendly approach, but rather more general victim-friendly.

Recently, an inter-ministerial working group under the Ministry of Justice has revised the text of the current Article 110[1] of the Penal Procedure

[114] Economic and Social Council Resolution 2005/20. *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*, para. 13, 14, 30-32. Available in English athttp://www.un.org/en/ecosoc/docs/2005/resolution%20 2005-20.pdf.

[115] Section 6. Evidence/statements by children

[116] Law No. 66 of 05.04.2012 on amending and completion of the Penal Procedure Code of the Republic of Moldova No 122-XV of 14 March 2003.

Code in order to limit the number of allowed interviews, to prohibit victim-accused confrontation during interview or in court, define the "interviewer" and to admit the audio-visual recording of the interview as evidence in court. According to the revised provision, the interview will be carried out by a specially trained professional with legal or psychological background (as opposed to a psycho-pedagogue "*psihopedagog*" as the previous version stipulated). The interview is to be held in a specially designed setting which consists of the interviewing room and the observation room, the former being the room where the child and the interviewer are located and the latter being the room where all the other participants in the process are. Children above the age of 14 years who are victims or witnesses of sexual or violent crimes are interviewed in accordance with the general guarantees of victims and witnesses of crimes stipulated in Articles 109, 110 and 115 of the Penal Procedure Code, which allow for distance interviewing and the use of audio-visual statements in court, as well as protect the child from confrontation with the defendant in court.

According to the General Prosecutor's Office, the audio-visual statements of the child interviewed are kept in original at the court of law and are used as evidence during the judiciary examination of the case. Thus, according to Article 110 (1) of the Penal Procedure Code, the child, who is a victim of a sexual or violent crime, need not be present physically in the court of law for a hearing.

The practice shows that often children are interviewed more than recommended and that sometimes judges invite children to testify in court in addition to the recorded interviews at the criminal investigation stage. Research carried out by the National Centre for Child Abuse Prevention in 2013 on criminal proceedings for child victims[117] show that on average, respondent professionals (criminal investigators, prosecutors, judges) have conducted more than one interview in over 50% of cases, and in some 10% of cases the number of interviews could reach to 6 and more times.[118] Lawyers interviewed confirmed that sometimes up to seven stressful hearings were organized, when the victim felt intimidated and refused to talk. The number of participants rises with each interview, so that in the court the child has to repeat its previous statements in the presence of a numerous group: three judges, a clerk, two lawyers, a psychologist /teacher, sometimes the legal representative and the defendant[119]. As a rule, repeated interviewing takes place at the criminal investigation stage and creates preconditions for repeated victimisation of children during the administration of justice.

Due to the lack of child-friendly spaces for investigative interviewing, the interviews are sometimes held in the work offices of criminal investigators (or in the courtrooms). Two specially designed interviewing rooms for child victims and witnesses of crimes are available within the premises of two NGOs, both located in Chişinău: *National Centre for Child Abuse Prevention* and *La Strada*. For the last decade, these NGOs have lentthese rooms and their experts for the interviewing of children victims or witnesses of domestic violence, abuse, trafficking and other violent crimes upon request to state justice workers.

Until recently, the application of Article 110[1] of the Penal Procedure Code on child friendly interviewing of witnesses below the age of 14 years was hampered by a number of objective factors such as lack of child-friendly spaces for interviewing in criminal proceedings and lack of specially trained interviewers to carry out these interviews, among other things. In 2011, to mitigate these factors the Justice Sector Reform Strategy's Action Plan for 2011-2016 provided for the establishment of child-friendly settings to be used by criminal investigation and justice professionals for child-friendly interviewing and to specialise the justice system as to be adjusted to the child's needs (Actions under point 6.3 of the Action Plan). These actions are due by the end of 2014.

At the moment of writing this report, only two regional hearing rooms for children in the Prosecutor's Offices of Soroca and Călăraşi have been established[120], which are envisaged for the hearing of children under14, victims or witnesses of sexual abuse, domestic violence and human trafficking. Due to the lack of similar rooms, prosecutors from neighbouring districts will also use these regional rooms or the two available rooms at the NGOs National Centre for the Prevention of Child Abuse and La Strada Moldova, which are in the capital.

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117 Report Study „*Copiii victime şi procedurile penale: cazul Republicii Moldova*", 2013, National Centre for Child Abuse Prevention, also available at: http://amicel.cnpac.org.md/files/studiu_audierealegala.pdf

118 *Idem*.

119 Idem, page 30.

120 GPO Order No 15/25 of 25 February 2013 requires fitting of specially arranged rooms for the hearing of child victims or witnesses in the Prosecutor's Offices from the districts of Anenii Noi, Cahul, Leova, Ocnita, Orhei and Soroca.

The existing specially arranged interviewing rooms for children under public prosecution will soon be complemented with another four rooms in public prosecution offices in four different districts: Anenii Noi, Cahul, Leova and Ocnița[121]. In addition to prosecution, there are currently three child-friendly hearing rooms in the courts of Hâncești, Bălți and Edineț. Several rooms designed for child interviewing were established in eight police inspectorates (Ceadâr-Lunga, Ungheni, Edineț, Criuleni, C***ăuș***eni, Ciocana, Centru, Botanica Chișinău municipality)[122]; however the latter are designed mainly for hearing child suspects and, on an exceptional basis, to interview child victims or witnesses of crimes.

The tendency to establish such rooms in the majority of districts and at the levels of law-enforcement and courts may prove costly and unnecessary for a small country the size of Moldova. Moreover, a child friendly room designed only for investigative interviewing does not spare the child victim from potential repeated victimisation in the course of other actions required for the delivery of justice and the child's recuperation, such as medical forensic examination, medical and psychological assistance, and other things. To address this, the Moldovan Government will renovate, with financial support from the Norwegian Mission of Rule of Law Advisers from Moldova (NORLAM) and other development partners, a setting which will be entirely used as a one stop centre where a multidisciplinary team supports child victims of violence and abuse. The concept of the so-called "children's house" (*Barnehuset*) comes from Scandinavian countries and implies a space with all the necessary equipment and staff to provide a child victim with medical first aid, medical forensic examination, psychological assistance and forensic interviewing for the purpose of criminal investigation. This solution has been appreciated as both child-friendly and cost-efficient.

In Moldova, this will be a nationwide pilot project, called the Children's Centre, based in the capital and coordinated by the Ministry of Labour, Social Protection and Family and, if successful, later replicated in other places in Moldova. This effort is the result of a decision adopted in 2013 by the inter-agency technical working group hosted by the Ministry of Justice on child friendly criminal proceedings. Due to the small size of the country, the working group agreed that 3 to 5 such centres throughout the country are enough and that it was better to invest in their capacity than in numbers. Once this pilot is fully institutionalized and functional, the existing rooms may be used for other purposes serving the delivery of justice (e.g. interviewing anonymous witnesses, interviewing female victims of abuse and violence, etc.).

Child sensitive criminal proceedings are further hampered by the lack of a mechanism to train and certify professional interviewers specialised in working with child victims. In addition, there is no psychological support to the child who is about to be interviewed. Research shows that the child's preparation for the interview is often carried out on the spot by his or her parents or guardians.[123] Although the audio-visual recording of the interview is admissible as evidence in court, the judges still tend to invite the child victims for further interviewing during the trial. Training of judges in this regard is another necessary step toward a child-sensitive justice system.

Furthermore, the legal aid mechanism for victims needs to be made more professional and to be strengthened. The new amendments[124] to the Law on State Guaranteed Legal Aid ensure access to qualified legal aid to child victims of crimes (Article 7, 19). However, in order to apply it, training and an allocation mechanism of cases involving child victims to trained lawyers must be in place. So far, the statistical data published by the National Legal Aid Council are not disaggregated as to show the number of child victims who have been served. However, the National Legal Aid Council informed us that from July 2013 - February 2014, six children and 70 adults, victims of crimes, have already benefited of qualified legal aid. The low figure may be indicative of the need to promote the new amendments and to train lawyers in working with child victims.

[121] Press release. *The Prosecutor's Office ensures conditions for child-friendly justice.* Available at http://www.procuratura.md/md/com/1211/1/5640/.

[122] General Police Inspectorate, *Report on the Police Work in 2013, page* 6. Available at: http://igp.gov.md/ro/rapoarte.

[123] Report Study *„Copiii victime şi procedurile penale: cazul Republicii Moldova"*, 2013, National Centre for Child Abuse Prevention, also available at: http://amicel.cnpac.org.md/files/studiu_audierealegala.pdf

[124] Law No 196 of 12.07.2013 on amending Law No 198-XVI of 26 July 2007 on state guaranteed legal aid.

Other victim protection mechanisms are included in separate provisions related to specific crimes. For example, norms on the protection of victims of domestic violence are contained in Article 215[1] of the Penal Procedure Code, which stipulates how victims of domestic violence shall file the complaint and how it shall be reviewed by the court of law.

The court must take measures to ensure victim protection by issuing a protection order. With regards to cases of torture, the approval in 2012 of the new criminal procedure amendments on the legal term (30 days) to initiate criminal investigation based on a filed complaint could speed up the investigation of torture cases where the victim is a child.[125]

[125] Memoria Centre, Centre for Human Rights, UNICEF, *Report on the study "Torture and ill-treatment of minor children in the context of juvenile justice: prevalence, impact, prevention, detection, assistance and accountability"* Chişinău 2012, p.68.

III.
COLLECTING AND ANALYSING OF STATISTICAL DATA

Improving the gathering and analysis of data is essential for the reform in the justice children system. Consistent and disaggregated data contribute to better budget planning and programmes for children. Well administered statistics prevent unwanted delays in legal proceedings and inform of possible infringement to the rights of children who are in contact with the system. Data that communicate well with other sectors may help track the most vulnerable children throughout the system and plan targeted and timely support to them and their families. Reliable, comprehensive and disaggregated data inform policy-making and budgeting for national and community-based services that are then distributed throughout the country based on the actual needs of the communities and the general public.

In 2006, the United Nations Office on Drugs and Crime together with UNICEF have developed the Manual on measuring juvenile justice indicators, which recommends the use of a minimum of 15 impact indicators to show the progress of juvenile justice reforms globally. The manual recommends 11 quantitative indicators that refer to the duration of pre-trial and post-sentence detention, the number of children arrested and children in pre- and post-trial detention, child deaths in detention, separation from adults in detention, the child's contact with family while in detention, custodial sentencing, pre-sentence diversion and aftercare. Additionally, the manual lists four policy indicators documenting regular independent inspection, complaints mechanism, specialised juvenile justice system and prevention of child involvement in crime.

In Moldova, juvenile justice data is inconsistent, with some important indicators not being collected or synthesised. Among the latter, it is important to note are the duration of pre-trial detention, the number of children diverted from the criminal justice system and the number of children to whom alternatives to custodial measures were applied. Moreover, available data are inconsistent across institutions and are poorly used. That is why in its concluding observations from 2009, the UN Committee on the Rights of the Child recommends the Moldovan Government should strengthen its mechanisms for systematically collecting and analysing data that is disaggregated by, among other things, sex, age and geographical location, on all persons under 18 and for all areas covered by the Convention (para.20).

In practice, data on children in conflict with the law are being collected at all stages of criminal process, as follows: 1) Division for analysis and monitoring (General Police Inspectorate), 2) the General Prosecutor's Office, and 3) the Directorate for special data keeping of the Department of Penitentiary Institutions and 4) data gathered from court files.

The General Prosecutor's Office publishes data on the number of criminal investigations initiated and finished on cases involving children, the number of cases taken to court, the number of discontinued cases. The latter are not disaggregated because it was decided not to prosecute (de e.g. number of cases ceased for the lack of criminal deed or of its elements; cases closed due to the lack of subject of crime (the suspect is below the age of criminal responsibility); as a result of the reconciliation of parties or exercise of discretion to exempt from criminal responsibility). Publishing of data on the number of apprehended and arrested children should also be considered. No data are available on the percentage of accused children detained before and during trial and the length of their detention; the duration of trials; the length of the sentences imposed disaggregated by offence, age, sex and prior convictions; the length of sentences served; the number of convicted children serving sentences in adult facilities and the number of young adults in child facilities; as well as indicators concerning the social reintegration of children on probation (e.g. school enrolment or employment) and of released child prisoners[126]. These data would be useful in monitoring the functioning of the justice for children, in planning and in preparing reforms.

The Ministry of Interior (MoI) publishes information on offences committed by children and with their participation disaggregated by the type of offence. In addition to this, the public can access the up to date monthly information regarding the criminal situation compared to the previous year. However, data refer only to offences committed and not to the number and category of victims. For instance, the information on the number of victims of torture (including children) would be of high interest.

[126] UNICEF Moldova, *Assesment of Juvenile Justice Reform Achievements in Moldova*, Chișinău, 2010, page 16. Available at http://www.unicef.org/ceecis/UNICEF_JJ_Moldova_2010_WEB.pdf.

Currently, the data compiled by the General Police Inspectorate (GPI), as a major player in the justice for children area, including the number of children who committed offences, disaggregated by the type of offence, whether they have a previous criminal record, whether the offence was committed alone or in a group, and whether the suspect was under the influence of drugs or alcohol Also, the data are disaggregated by the child's social status and age. It is worth mentioning that, starting with 2013, the public has access to data regarding offences committed by children below the minimum age of criminal liability (10-13 years). GPI also collects the data on contraventions committed by children. In compliance with international standards, police inspectorates additionally collect data on child victims of sexual abuse and domestic violence, on crimes against life and health crimes against property, etc., and on (attempted) child suicides. Unfortunately, no data are publicly available on the number of children who have been apprehended and arrested and the average length of pre-trial detention for children.

The Department of Penitentiary Institutions (DPI) publishes data on children in detention facilities and prisons, disaggregated by sex, facility type and offence. These data do not distinguish between the children accused and awaiting trials or appeals. There is unfortunately no data published on the average length of pre-trial detention of children and detention during the trials or appeal, although each prison administration submits all data to the DPI on a daily basis relating to children who are detained. [127]. The data on the number of incarcerated persons (disciplinary isolation) and the number of complaints filed from the places of detention are not disaggregated by age.

The Central Probation Office gathers and publishes data on the number of sentenced children who are registered and erased from the register of the probation offices, disaggregated by the type of non-custodial measure imposed (unpaid community work, conditional suspension of punishment, conditional exemption from punishment prior to the expiry of the term, children who are exempt from punishment, educational constraint measures, amnesty). In addition, the Office publishes statistics on the number of requests for and number of pre-sentence inquiry reports developed, disaggregated by the category of subject (adults, children) and requesting authority (police, prosecution service, court of law). In the actual format, the data does not allow for identification of the number of requested reports for children, disaggregated by each authority. Similarly, there is no available data on the share of cases when the social inquiry reports have been developed.

The National Council for State Guaranteed Legal Aid (also known as the National Legal Aid Council - NLAC), through its Territorial Offices, collects and publishes quarterly data on the number of children (girls and boys) who benefited from legal assistance in criminal and contravention cases, as well as the procedural stage when the legal assistance has been provided (criminal investigation, in the court, during the appeal, extraordinary remedies). However, data on the children are not disaggregated by the authority that requested the appointment of the lawyer (police inspectorate, prosecutor, court, National Anti-corruption Council, General Directorate on Criminal Investigation, etc.). Although the law of free legal aid has been recently amended to guarantee free legal assistance to child victims of crimes, to date no data has been published on the number of children victims who benefited of state guaranteed legal aid.

The Superior Council of Magistrates, through the Division for the analysis of judiciary statistics, publishes on annual basis data on the activity of the courts of justice, which mainly refers to: the number of examined cases (civil, criminal and misdemeanour) disaggregated by court, the number of judges and their average caseload; the number of sentenced persons and category of sentence applied; number of appeals filed against the court decisions; the number of requests for applying the custodial (preventative arrest) and procedural constraint measures, as well as the number of admitted requests. Referred to as children, data are available on the number of cases examined involving children offenders, the number of children sentenced disaggregated by the type of sentence (imprisonment, conditional suspension of punishment, fine, community work) and type of offence. Unfortunately, no data are available on the duration of trials; the length of the sentences imposed disaggregated by offence, age (e.g. for acts of torture); the number of children arrested, the number of child victims.

[127] Botezatu R., Cojocaru O. et all, Study on the length of pre-trial detention of children and creation of a monitoring mechanism of *the pre-trial detention monitoring*, Chişinău, 2011, page 31.

The databank of the National Bureau of Statistics, though offering the possibility of access to information by different criteria, displays data only after all the envisaged institutions present their statistical forms. This leads to a long data analysis process. At the moment of writing this report, the data on "children coming in conflict with the law" was available only until 2012.

In its concluding observations of 2009 to Moldova's report under the UN Convention on the Rights of the Child and of 2013 to Moldova's report under the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography (the Optional Protocol), the Committee on the Rights of the Child (CRC) notes that the Moldovan statistics provided under the report "are not fully disaggregated and do not seem to reflect the real situation completely,"[128]leaving out a wide variety of uncovered areas under the UN Convention on the Rights of the Child. It further expresses concern over the lack of access by professionals working with or for children to the integrated electronic data collection system, which is counterproductive in policy development, programming and budgeting interventions for children. The CRC recommends that the State party strengthens its mechanisms of data collection and management and ensure that data is consistently disaggregated, by age, sex, socio-economic origin, nationality, ethnic origin and urban and rural residence, and systematically collected on all crimes covered under the Optional Protocol.[129] The CRC also encourages the State to use these indicators and data effectively for the formulation and evaluation of policies and programmes for the implementation and monitoring of the Convention.[130]

We may therefore conclude that in Moldova data collection in the area of justice is not sufficiently developed in line with the UNICEF/UNODC Juvenile Justice indicators and is not disaggregated for all areas covered by the UN Convention on the Rights of the Child. Moreover, data from different state agencies do not communicate and may significantly vary, making it contradictory at times. For instance, there are discrepancies between the data published by GPI and the General Prosecutor's Office (GPI vs. GPO) regarding the number of cases where the criminal investigation was finished (1094 vs. 1776), cases taken to court (622 vs. 790), discontinued cases (462 vs. 984), conditionally suspended cases (3 vs. 2). Therefore, a unified data collection and management system with emphasis on the child needs to be established to provide a real picture of the justice for children *status quo* and inform policy making and programming in the area of justice for children. Such a system should allow for a child's first contact with the system to be tracked up to his or her release and follow-up afterwards, as well as to see if the same child has been a victim (or witness) of crime before. With such information available to policy makers and professionals working with and for children, the interventions planned for children will better respond to the child's needs and prevent their coming in contact with the criminal justice system.

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128 Concluding observations on the initial report of Moldova submitted under article 12 of the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography, CRC/C/OPSC/MDA/CO/1, 4 October 2013

129 Idem.

130 Consideration of reports submitted by states parties under article 44 of the convention, Concluding observations: Republic of Moldova, CRC/C/MDA/CO/3, 20 Febriary 2009

IV.
CONCLUSIONS AND RECOM-MENDATIONS

The recommendations below are listed in the order of the criminal justice stages, and are not necessarily prioritized by institution or by area of intervention.

CHILDREN IN CONFLICT WITH THE LAW

PREVENTION AND SOCIAL REINTEGRATION SERVICES

Diversifying and strengthening of prevention/ reintegration services

Research shows that most children who come in contact with the criminal justice system come from a vulnerable background The Government must have mechanisms in place that would mitigate risks that lead to a child's coming in contact with the criminal justice system whether as victims or alleged offenders. Currently, support services for child offenders, victims and witnesses are underdeveloped. Most services have been established for a broader category of beneficiaries - children in difficulty - which fail to prevent delinquent behaviour and recidivism among children. The lack of local programmes and services for children at risk affects the capacity of the system to diminish both the rate of offences committed by children for the first time, and their re-offending.

In this regard, it is strongly recommended that:

(1) The Government takes prompt steps to diversify the social services, including behavioural change programmes and recreational centres for children and families aiming at preventing child involvement in criminal activity and their reintegration.

(2) The Government regulates and strengthens psychological support for the child to help him or her interact with the criminal justice system and families to cope with this situation whether as a victim or (alleged) offender.

(3) The General Police Inspectorate (GPI), in partnership with the Ministry of Labour, Social Protection and Family and the Ministry of Education, should **develop protocols to refer the children in contact with the criminal justice system** to the social protection services and psychological support programmes, so that the children benefit from specialised assistance and protection measures. **Practical recommendations and methodological guidelines on interacting with children must be developed** for child safety police inspectors, which will include the stages, the procedures and working instruments of assisting the child in contact with the criminal justice system. It is recommended that GPI consider the opportunity to **revise the functional duties of child safety inspectors** as to grant them a greater role in child protection.

(4) The Ministry of Labour, Social Protection and Family (MLSPF) participate in **developing practical recommendations and methodological guidelines for professional foster parents on assisting children with antisocial behaviour or in conflict with the law**. These guidelines must include a list of support services accessible to children and the family of the foster parent, as well as aspects envisaging examination procedure of the cases involving children, techniques of communication with the child depending on his or her age, personality characteristics, etc. Experience from other countries shows that working with parents is the best strategy, which will ensure the success of the intervention. It is recommended that existing foster care services are adapted to the special needs of children in conflict with the law, including by involving psychologists and specialised teachers.

(5) The Ministry of Labour, Social Protection and Family should initiate and oversee the capacity building of the community social workers in assisting the children in contact with the criminal justice system both victims and alleged offenders, below and above the age of criminal responsibility. Additionally, it is recommended that MLSPF examines the possibility of **including a "psychologist" unit in the staffing lists of the Directorates for social assistance and family protection**.

(6) The mission of the Ministry of Education is to improve and strengthen the role of school psychologists and psychologists from the Psycho-pedagogical Assistance Services in identifying and assisting/referring children with anti-social behaviour before it escalates to delinquency, as well as in ensuring an optimal number of these specialists per each territorial administration for its efficient functioning. In addition to this, the Ministry of Education must consider introducing a diversity of courses in the university general and master's programmes addressing psychological assistance to children at risk of coming or in contact with the criminal justice system. The Ministry must further ensure in-service and refresher training to all psychologists on the best interests of the child in criminal proceedings and revise psychologists' job descriptions as to include functions related to support to children with anti-social behaviour, children victims or witnesses of crimes, and their families.

(7) The National Council for State Guaranteed Legal Aid must consider the possibility of extending the network of primary legal aid providers (paralegals, legal clinics, and specialised public associations) throughout the country, including in the most difficult to access communities. The service providers should be trained on how to provide legal services in cases involving children in contact with the law whether as alleged offenders or victims.

(8) The efforts of the Central Probation Office must be oriented toward:

- developing a long term strategic document in the probation area;
- developing probation programmes or methodological guidelines aimed at reducing the risk of re-offending among children on probation, and psychosocial rehabilitation programmes for children monitored by the probation offices;
- improving the system for recruiting and monitoring the performances of the child probation counsellors, and improving the quality of social inquiry reports;
- training of probation counsellors in psychology and social assistance, with the application of the inductive training methods; Or
- setting up the „psychologist" unit in the staffing lists of the probation offices, thus ensuring the psychosocial support and services for children exempted of criminal liability and those sentenced to non-custodial measures.

(9) Setting up a cross-sectorial informational system for monitoring the evolution in time of each child in conflict with the criminal justice system, case management of service beneficiaries, the minimum mandatory content of the file of the registered child, ways of periodic review of the case against the child's needs, etc.

CRIMINAL PROCEEDINGS

Reducing the length of pre-trial detention of children

While pre-trial custodial measures of children must be admitted only as a last resort measure and for the shortest term possible, in practice, children spend long periods in detention due to delays in court hearings and proceedings, which greatly exceed the maximum detention period recommended by international institutions (pre-trial detention – 30 days and total detention before a final judgement – not exceeding six months). It is therefore recommended that:

(10) The **Penal Procedure Code** stipulates for the maximum length of children's detention in pre-trial, including during the trial and appeal, so that the total length of detention before a final judgement would not exceed six months, as provided by international standards.

(11) The Ministry of Justice should provide support in developing the mechanism for monitoring the allocation of cases involving children, thus allowing for due calculation of the length of pre-trial detention for children, as well as the length of detention during the trials and appeal. The establishment of a notifi-

cation procedure for judges regarding the expiration of pre-trial detention period for each child would be of utmost importance. Such provisions could be inserted in the **Penal Procedure Code** or other criminal procedure and judicial regulatory documents.

Improving the quality of legal aid

The quality of legal assistance is the key element in protecting the rights of children in conflict with the law, as well as child victims. In practice, the good functioning of the system is threatened by: a low number of lawyers specialised in cases involving children; insufficient professional preparation and training; a lack of quality standards for legal assistance; a lack of continuity in delivering legal aid to children, a lack of specialised curricula for lawyers representing child victims and systematized training. Consequently, there is a strong element of inequality in the quality of assistance, where some children have access to a specialised lawyer while others do not. Furthermore, to constantly overview the quality of legal aid provided to children, a monitoring mechanism should be in place. The main focus should be on:

(12) **Establishing a functional mechanism for initial and in-service training of lawyers** on request and of private lawyers, allowing for better and equitable access of alleged child offenders and victims to free legal aid services provided by specialised lawyers.

(13) **Developing and approving quality standards for legal assistance**, including requirements on the mandatory keeping of case files; the modality of keeping and the minimum content of the case file, disaggregated by age (child/adult); minimum quality standards applied; assessment of the client's satisfaction of assistance provided etc. The involvement of NLAC and Bar Union is required.

(14) **Developing and approving the mechanism for monitoring and evaluation of the quality of legal assistance** provided to clients. Evaluation shall be carried out based on a specially approved methodology. Disciplinary measures may be considered for failure to comply with quality indicators.

Strengthening the psycho-pedagogical assistance during criminal investigation and trial

The psychologist's assistance during the criminal process is essential in avoiding repeated victimisation and supporting children who are in contact with the law. Currently, the functioning of the service is hampered by: flawed hearing procedures of child offenders and interviewing of victims and witnesses; a lack of a training and certification mechanism of child interviewers in criminal proceedings; a lack of regulatory framework on the profession of psychologists and their role in criminal justice system; an underdeveloped system of initial and in-service training for psychologists and teachers. Therefore:

(15) The **Penal Procedure Code** should stipulate the status and role of the psychologist/ teacher in the criminal process, listing their rights and obligations, as well as establishing criteria for allowing these specialists in the criminal process. In addition, the professional level (e.g. specialisation or required special training) and specific tasks of the psychologist/ teacher (or psycho-pedagogue) at each stage of the process should be clearly described.

(16) The General Prosecutor's Office and the General Police Inspectorate are encouraged to intensify efforts for improving communication and co-operation between the prosecution service, criminal investigation bodies, and the public and private providers of psycho-pedagogical assistance, in order to ensure adequate psychological assistance during the criminal investigation process.

(17) Psychologist units should be institutionalised in the staffing lists of the territorial structures of social assistance and family protection. The Ministry of Labour, Social and Family Protection could be involved in this process by way of **amending the Law on social assistance and of the chart of the territorial structures of SPFP**.

(18) The role of the Ministry of Education must be enhanced in developing initial and in-service training programmes for teachers and/or psychologists participating in children's hearings/interviews,

with special focus on assisting children in contact with the justice system. One of the solutions could rely on **amending or adjusting the curriculum of the Psychology Department by including modules on child psychology.**

DIVERSION AND ALTERNATIVES TO CUSTODIAL MEASURES AND SENTENCES

Stimulating diversion and alternatives to detention

The information collected for the purpose of this study points out that the national law enforcement bodies continue to apply pre-trial detention of children in cases where an alternative measure could be applied. This may be due to the limited number of regulated non-custodial measures and anecdotal inefficiency of the existing ones. Therefore it is recommended that:

(19) The General Prosecutor's Office and the Ministry of Justice initiate the amendment of the **Penal Procedure Code** and of the **Law on probation** with provisions on the power of decision of social inquiry reports in individualizing the measures or sentences applied to children. Also, prosecutors and judges investigating shall be encouraged to request social inquiry reports more frequently, thus increasing the application of non-custodial measures. Standards must be considered to ensure high quality of these reports.

(20) The Ministry of Justice and General Prosecutor's Office initiate the process of amending the Penal Code and Penal Procedure Code as to diversify the measures alternative to preventive arrest and post-trial detention to be applicable to all children over 14.

(21) Social and child protection authorities consider developing, strengthening and diversifying regional and community services and tailored non-residential programmes such as family conferences, mobile social teams, substance abuse and behaviour change programmes where children in conflict with the law will be referred for re-education and social reintegration so as to avoid unnecessarily coming into contact with the criminal justice system and to prevent their offending and re-offending. Where possible, these services and programmes must have a family focus and therefore include, where applicable, the child's parents/caregivers in the re-education process.

(22) The Ministry of Labour, Social Protection and Family, Ministry of Education, Ministry of Health and Ministry of Internal Affairs to support local authorities on developing or complementing existing inter-sectorial referral schemes or mechanisms to include children with anti-social behaviour and children in conflict with the law. This will ensure timely system response and support to children in conflict with the law and their families.

Support to children with anti-social behaviour who are below the minimum age of criminal responsibility

Children below the age of criminal responsibility who manifest anti-social or delinquent behaviour require support services that would help them to socially reintegrate and avoid coming in contact with the criminal justice system. The practice shows that there are insufficient tools to encourage these children and their families to participate in non-residential programmes or benefit from other type of support with the aim to prevent their re-offending. Therefore:

(23) The central and local public authorities are invited to include children below the age of criminal responsibility with anti-social or delinquent behaviour in the target group of their sectorial policies. The legal framework should be amended so that the definition of *child in difficulty* also envisages children with anti-social behaviour who are below the minimum age of criminal responsibility. Social policies should envisage the development of social assistance and support services, including non-residential programmes aimed at re-education and social reintegration for these children and their families. The Ministry of Education and the Ministry of Labour,

Social Protection and Family have a crucial role in developing re-educational and social reinsertion programmes for these children and their caregivers.

(24) Local referral mechanisms between the school, social assistance, psychologists, police, probation, NGOs, etc. must be instated for the prompt identification, assistance and monitoring of cases of children with anti-social behaviour at risk of coming in conflict with the law. Improved communication and co-operation between law-enforcement, child protection and social assistance services is crucial to prevent these children coming in conflict with the criminal justice system. The police inspectorates shall notify and liaise with the child protection and social services immediately after an anti-social act committed by a child below the age of criminal responsibility has been identified. Likewise, education workers must liaise with social assistance and psychologists to address any case of delinquent behaviour among children below the age of criminal responsibility who are enrolled in school.

CHILDREN IN DETENTION

Adapting the educational and psychological programmes to the needs of children in detention

Children in pre-trial detention should be provided care, protection and individual educational, psychological, health care and other support. It is essential that the quality and volume of education for children in pre-trial detention be as least disruptive as possible and comply with the general educational programme. In practice, the educational process may be fragmented and there is no approach focusing on the needs of the child. Therefore:

(25) The Ministry of Education should ensure that the educational materials and personnel are allocated and well remunerated, covering the needs of each child in conflict with the law, as well as to create, in co-operation with the Department of Penitentiary Institutions, a mechanism for individual assessment of children in preventive arrest, ensuring that the hours of school education are individualized according to the needs and capacity of all the children place.

(26) The Ministry of Education, in partnership with the Department of Penitentiary Institutions, should develop procedures for ensuring the continuity of school education for children transferred form pre-trial detention facilities to prisons. The educational programmes in pre-trial detention facilities should be adjusted to those in penitentiaries. **In addition, it might be necessary to amend the framework educational plan by establishing the number of teaching hours for children in pre-trial detention.**

(27) The Department of Penitentiary Institutions is recommended to consider the opportunity of supplementing the number of psychologists in all detention facilities, which will guarantee children's access to psychological services according to their needs.

Ensuring the independence of medical staff in places of detention

The period of detention in pre-trial detention facilities affects children's state of health. Despite recent legislative amendments aimed at improving the quality of healthcare services in the police stations and prisons, the dependence of medical workers on the detention's administration may hamper the quality and timeliness of medical services delivered to children in detention and the documentation of allegations of ill-treatment. In this regard:

(28) The regulatory framework for ensuring the professional independence of medical workers from the places of detention should be amended by transferring medical assistants from the pre-trial detention facilities of the Ministry of Interior and the medical staff from the prisons of the Department of Penitentiary Institutions under the authority of the Ministry of Health.

(29) Enabling the medical staff in places of detention to prevent and combat acts of torture, in a way guaranteeing the prompt notification of prosecutors

about cases of torture and ill-treatment discovered in places of detention.

Zero tolerance for ill-treatment and torture

No child shall be subject to torture, cruel, inhuman or degrading treatment or punishment. However, cases of torture against children continue to be reported, while the existing legislation does not provide enough guarantees for these children both at the investigation and trial stage. Moreover, the investigation carried out by the prosecution, which conducts the criminal investigation and supports the accusation in court, may be deemed biased. In this regard:

(30) Concrete steps should be taken to remove the body, which conducted the criminal investigation and supported the accusation in the court from the investigation of cases on acts of torture appealed by children. In the process of amending the **Penal Procedure Code,** the participation of the Ministry of Justice, General Prosecutor's Office and the Ministry of Interior is needed. Furthermore, the **Law on state guaranteed legal aid should be amended with provisions guaranteeing the unconditional right to legal aid for victims of torture.**

(31) The **Penal Procedure Code** should be supplemented with provisions establishing the procedural constraint measure consisting in immediate suspension of the collaborator accused of committing acts of torture and ill-treatment, from the moment of receiving the status of suspect and during the investigation. At the same time, the rehabilitation mechanisms for the victims of torture should be strengthened, while fair and adequate compensation must be guaranteed.

(32) The rooms where persons in state custody are questioned and detained shall be constantly and effectively monitored, including by the means of surveillance cameras and keeping of the recorded information in the immediate proximity of these places. The handling and management of (including non-compliance disciplining and access to) video surveillance recordings must be strictly regulated by law enforcement and penitentiary internal regulations or other binding documents.

(33) The Ministry of Internal Affairs is encouraged to review the selection criteria for candidates during their admission into the police service. In addition, it is necessary to systematically enhance the capacity of police employees in preventing and combating torture, including by means of a specialised training programme The **Law on Police activity and status of the policeman** may be the proper legal framework to regulate these aspects.

Abolishing the disciplinary isolation of children

Use of solitary confinement (incarceration) is contrary to international law and is harmful for children who are deprived of freedom. Despite the recent legal amendments to the enforcement legislation replacing solitary confinement of children with disciplinary isolation, solitary confinement may still be applied as a disciplinary measure against children, which in turn limits their right to meetings, telephone discussions, parcels, packages and packs with supplies. These provisions cannot be regarded as compatible with the best interests of the child. It is strongly recommended that:

(34) The **Enforcement Code** should be amended by definitively excluding the measure of solitary confinement (incarceration) for children in all places of detention. This will be accompanied by introducing of alternative disciplinary measures with educational or protective character, which would replace detention. The involvement of the Ministry of Justice is essential here. Subsequently, the provisions of the **Statute on Punishment Execution by Convicts should be adjusted to the provisions of the Enforcement Code.**

(35) The **Enforcement Code** and the **Statute on Punishment Execution by Convicts** should regulate the limitations in applying the restrictions on visits and correspondence, so that links with parents and family would not be harmed, suspending the child's right to contact with his or her family, as a disciplinary measure, must be subject to repeal.

Further, a mechanism to appeal the decision on applying disciplinary measures against children in detention is to be considered.

Strengthening the complaints mechanism for children in detention

The detainee's rights to file complaints and appeals, to know the reasons for rejection and appeal the decision in an independent authority cannot be subject to a limited time However, there are still legislative deficiencies related to the guarantees and procedures applied in the case of children. National legislation on petitioning does not contain regulations that would expressly establish the existence of the child's legal capacity to file complaints. In order to address these shortcomings:

(36) The Ministry of Justice, in partnership with other authorities, shall initiate the amendment of the **Enforcement Code, Statute of Punishment Execution by the Convicts** and of the **Law on petitioning** in order to expressly establish the existence of the child's legal capacity to file complaints. In addition, the procedure of filing the complaints by the children in detention, and their examination should be regulated. The procedures of filing verbal complaints by the children in detention should be simplified.

(37) The **Enforcement Code** and the **Statute of Punishment Execution by the Convicts** shall be supplemented with provisions regarding the competent body to settle complaints, terms and procedure for complaints review, terms for reply, contestation procedure, etc. Such regulations should take into account the level of understanding, psycho-emotional and intellectual development of children, their lack of life experience and the child's capacity to form and develop ideas. The legal framework should be complemented with a specific mechanism on the hearing of children about their complaints.

(38) It is recommended that the **Enforcement Code** be supplemented with provisions regulating the obligation of prison's administration to bear all the costs related to child's right to petitioning through complaints and notifications directed to public authorities, law enforcement bodies, courts, intergovernmental organizations or institutions whose competence is being recognized by the Republic of Moldova.

CHILD VICTMS AND WITNESSES OF CRIMES

More efficient protection mechanisms for children victims and witnesses

In approaching the situation of children victims and witnesses, focus shall be placed on their protection and avoidance of repeated victimisation. Though the national legislation provides for important legal guarantees, these are used in practice to a limited extent. The lack of an efficient mechanism for victim protection leads to threats and pressures on child clients forcing them to withdraw their complaints. In order to address these inconsistencies the following steps should be undertaken:

(39) On the legislative level, the **Law on protection of witnesses and other participants in the criminal process** should be supplemented with provisions ensuring an efficient mechanism for the protection of children victims and witnesses. The protection measures shall be applied immediately, when a reasonable suspicion exists that the victim or witness will be exposed to a situation of unsafety and persecution. Provisions shall be inserted on empowering the prosecutor to apply protection measures. Both, the General Prosecutor's Office and the Ministry of Justice have a significant role in this process.

(40) The **Penal Procedure Code** should be supplemented with safeguards protecting all children who are victims and witnesses of crimes from repeated victimisation. Additional guarantees for children who are witnesses of crimes should be established through amending of the penal procedure code in order to provide for the possibility to interview a child witness according to the procedures foreseen in the Article 110 and 110^1 of the Penal Procedure Code.

(41) It is mandatory that all children under 18who are victims of sexual or violent crimes be guaranteed by law child-sensitive criminal proceedings, including through child-friendly interviewing in specially designed settings by certified specialists, psychological support and sensitive medical assistance.

(42) Following the adoption of amendments to Article 110[1] of the Penal Procedure Code, the regulatory framework should be developed, including cross-sectorial instructions, standards and guidelines, with regard to the procedure of interviewing child victims/witnesses in criminal proceedings, the specially designed settings, the minimum requirements of the recording equipment and the procedure of handling and managing audio-visual recorded evidence. The Ministry of Justice must exercise its convening role in ensuring cross-sectorial participation in developing and promoting for approval at a higher level these regulatory documents that would ensure child-friendly criminal investigation.

(43) In line with the same Article 110[1] of the Penal Procedure Code, the Government of Moldova must develop a specialised and certified training and evaluation programmes for specialists who will conduct child-sensitive interviewing in criminal investigations.

DATA COLLECTION AND MANAGEMENT

Improving the system of data collection and analysis

Improving data gathering and analysis is essential for the justice for children reform. At present, data collection is insufficiently developed and is not disaggregated for all areas covered by the UN Convention on the Rights of the Child. Moreover, data from different state agencies do not communicate and may significantly vary, making it contradictory at times. In this regard, it is necessary to:

(44) Develop and approve a set of universal justice for children indicators incorporated in a data system, which would provide disaggregated data concerning children offenders, victims and witnesses and which would communicate with other databases on children so as to allow identifying trends or tracking children before they enter the criminal justice system and after their release.

(45) Develop a centralized and unified system for collecting, analysing and monitoring data on justice for children and adults, using the set of indicators and data by multidisciplinary and inter-ministerial sectors. Children with lengthy periods of preventive arrest must be included as a separate indicator and strictly monitored. The Ministry of Justice should co-ordinate the process.

(46) Process and analyse information regarding the duration of trials on criminal cases involving children in preventive arrest, and publish such information in the journals of the Supreme Court of Justice and General Prosecutor's Office.

Bibliography

Specialised literature (studies, researches):

1. Kirsten Anderson, Legal Resources Centre from Moldova, *Final Evaluation of the Project "The Reform of the Juvenile Justice System in Moldova"*, Chișinău, 2012, Available at: http://www.unicef.org/evaldatabase/files/2012_001_JJ_Evaluation_Report_ENG.pdf.
2. UNICEF Moldova, *Assessment of Juvenile Justice Reform Achievements in Moldova*, Chișinău, 2010. Available at http://www.unicef.org/ceecis/UNICEF_JJ_Moldova_2010_WEB.pdf.
3. National Centre for the Prevention of Abuse against Children, *Children victims of crime and legal proceedings: Republic of Moldova Case*. Chișinău, 2013. Romanian version available at http://amicel.cnpac.org.md/files/studiu_audierealegala.pdf.
4. Botezatu R., Cojocaru O. et all, *Study on the length of pre-trial detention of children and creation of a monitoring mechanism of the pre-trial detention monitoring*, Chișinău, 2011.
5. Lupusor I., Adam A., Tarasov A., *Study of the disciplinary sanctions applied on children in detention, focusing on excluding incarceration of children*, Chișinău, 2011.
6. Memoria Centre, Centre for Human Rights, UNICEF, *Report on the study "Torture and ill-treatment against children in the context of juvenile justice: prevalence, impact, prevention, identification, support and reporting"*, Chișinău 2012. Romanian version available at http://www.unicef.org/moldova/ro/Memoria_Raport_Tortura_RO_web.pdf.
7. Botezatu R., Zaharia V. et. all, *Study on the evaluation and development of the complaint mechanism for children in detention*, Chișinău, 2011.
8. Turcan A. et all., *Study on the services offered to children in contact with the justice system and the establishment of their annual cost*, Chișinău, 2011.
9. Dolea I., Zaharia V., *Feasibility Study regarding the courts specialised in cases involving children in the Republic of Moldova*, Chișinău, 2011. Romanian version available at: http://www.unicef.org/moldova/ro/2011_003__Studiu_de_Fezabilitate_instante_oentru_copii_ROM.pdf.
10. Besliu N., Haraz S., Popovici M., Rotaru V., *Children in conflict with the law - neglected or forgotten. Study on the situation of children in conflict with the law under the age of criminal responsibility)* Chișinău, 2011. Romanian version available at http://www.unicef.org/moldova/ro/STUDIULCopiiSub14_30.09.11.pdf.
11. Carolyn Hamilton, *Guidance for Legislative Reform on Juvenile Justice*, Children's Legal Centre and UNICEF, Child Protection Section, New York, 2011. Available at http://www.unicef.org/policyanalysis/files/Juvenile_justice_16052011_final.pdf.
12. Dolea I., Zaharia V., Rotaru V., *Monitoring Report: observance of the rights of children involved in criminal cases in Balti municipality*. Chișinău, 2012. Romanian version available at http://irp.md/uploads/files/2014-03/1394404674_raport-balti-2012.pdf.
13. Dolea I., Zaharia V., Rotaru V., *Monitoring Report: observance of the rights of children involved in criminal cases (Balti, Ungheni, Orhei, Causeni, Leova)*. Chișinău, 2013. Romanian version available at http://www.monitor.md/attachments/article/146/Raport%20de%20Monitorizarea%202013.PDF.
14. Dolea I., Zaharia V., Rotaru V. et all., *Criminal justice and human rights. Sociological research*. Chișinău, 2010. Romanian version available at http://crjm.org/files/reports/IRP.justiia.penala.do.2010.pdf.
15. UNICEF Regional office for CEE/CIS, *Good practices and promising initiatives in juvenile justice in the CEE/CIS region*, 2010. Available at http://www.unicef.org/albania/UNICEF__JJGood_Practices_WEB.pdf.
16. Amnesty International, *An unsolved problem: combating torture and ill-treatment in Moldova*, 2012.

National legislation:

17. Law on the rights of the child, No. 338/1994
18. Penal Code of the Republic of Moldova, adopted by the Law No. 985/2002
19. Penal Procedure Code of the Republic of Moldova, adopted by the Law No. 122/2003
20. Contravention Code of the Republic of Moldova, adopted by the Law No. 218/2008
21. Enforcement Code of the Republic of Moldova, adopted by the Law No. 443/2004
22. Law on state guaranteed legal aid, No. 198/2007
23. Statute of Punishment Execution by the Convicts, approved by the Government Decision No. 583/2006
24. Decision of the Plenum of the Supreme Court of Justice of the Republic of Moldova "On the case-law in cases with the involvement of children", no.39/2004

Strategic and policy documents:

25. Government's Action Plan for 2012-2015, approved by Government Decision No 289/2012
26. National Development Strategy „Moldova 2020", approved by Law No 166/2012
27. Justice Sector Reform Strategy for 2011-2016
28. National Decentralization Strategy for 2012-2015, approved by Law No 68/2012
29. National Strategy for Community Actions to Support Children in Difficulty for 2007-2014, approved by Government Decision No. 954/2007
30. National Programme on Establishment of an Integrated System of Social Services for 2008-2012, approved by Government Decision No 1512/2008
31. Programme for the Development of Inclusive Education in the Republic of Moldova for 2011-2020, approved by Government Decision No 523/2011
32. Action Plan for the Support of Roma People in the Republic of Moldova for 2011-2015, approved by Government Decision No 494/2011
33. Strategy on the Social Inclusion of People with Disabilities (2010-2013), approved by the Law No. 169/2010

International standards:

34. UN Convention on the Rights of the Child (1989)
35. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
36. Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) (1985)
37. United Nations Guidelines for the prevention of juvenile delinquency (The Riyadh Guidelines) (1990)
38. United Nations Rules for the protection of juveniles deprived of their liberty (The Havana Rules), (1990)
39. UN Guidelines for Action on Children in the Criminal Justice System (1997)
40. United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) (1990)
41. General Comment No. 10: Children's rights in juvenile justice, CRC/C/GC/10, 25 April 2007
42. Recommendation (2005)5 on the rights of children living in residential institutions, adopted by the Committee of Ministers at 16 March 2005
43. Recommendation (2006)2 on the European Prison Rules, adopted by the Committee of Ministers at 11 January 2006
44. Recommendation (2003)20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice, approved by the Committee of Ministers on 24 September 2003.
45. Resolution CM/Res/2 on the Child-Friendly Justice, adopted at the 28th Conference of the Ministers of Justice of the Council of Europe (Lanzarote, October 2007)
46. Recommendation R(89) 12 of the Committee of Ministers to Member States on Education in Prison adopted by the Committee of Ministers on 13 October 1989.
47. United Nations Guidance Note of the Secretary-General UN Approach to Justice for Children
48. UN Committee for the Rights of the Child, Review of the reports presented by the States Parties pursuant to Article 44 of the Convention: Final Observations – Republic of Moldova (2009)

Web resources:

http://www.unicef.org/moldova/ro/12007_19495.html

http://www.procuratura.md/md/newslst/1211/1/3675/

http://www.procuratura.md/md/newslst/1211/1/5560/

http://www.procuratura.md/md/newslst/1211/1/5671/

http://unimedia.info/stiri/video-Au-fost-create-camere-de-audiere-a-copiilor-victime-Nu-exista-specialiti-competeni-70763.html

Anexe

A n n e x 1

GLOSSARY

The following definitions[131] are proposed for the purpose of this report:

Alternative sentence: A measure that does not involve the deprivation of liberty that is imposed at the time of the final ruling on a child who has been found guilty of committing an offence by the formal criminal justice system. This is also known as a 'non-custodial sentence.'

Alternatives to detention: Refers to measures that may be imposed on children who are being formally processed through the criminal justice system that do not involve deprivation of liberty. 'Alternatives to detention' are also referred to as 'alternatives to deprivation of liberty' and 'non-custodial measures.'

Arrest: When someone is placed under the custody (they are not free to leave) of the police, military, intelligence or other security forces because of actual, suspected or alleged conflict with the law.

Child: Refers to any person under the age of 18, in line with the UN Convention on the rights of the child (Article 1). Words and terms such as 'minor,, 'juvenile' and 'juvenile delinquent' have been avoided in this Study, due to their negative and prejudicial connotations and the fact that they detract from the reality that the individuals involved are first and foremost children and adolescents. However, the term 'juvenile' will still be used when it is specifically mentioned by an international instrument under review or when quoting references and identifying the titles of previous researches.

Child in conflict with the law: Any child who comes into contact with law enforcement authorities because he or she has been accused of – or been found responsible for - breaking criminal law. This term also applies to children under the age of criminal responsibility, although – if a distinction needs to be made – they can be referred to as 'children under the minimum age of criminal responsibility.'[132]

Child in contact with the law: Any child who comes into contact with the criminal justice system as a victim/survivor, witness or in conflict with the law, and/or any child who comes into contact with the civil and/or administrative justice systems. This term is much broader than 'child in *conflict* with the law'. Diversion and alternatives to detention apply specifically to children in *conflict* with the law, although it is recognised that many such children are also victims/survivors and/or witnesses as well.

Child victim and child witness: These terms refer to children who have had offences committed against them or who are witnesses in relation to criminal cases.

Children at risk: Children can be at risk of experiencing many forms of abuse, neglect, exploitation and crime, and many children live in situations that expose them to multiple risks. In the current context, the term is used to refer specifically to children who are at a higher risk than other children of involvement in criminal activity or offending.

Complaints mechanism: Any system that allows a child deprived of liberty to bring any aspect of the treatment that child has received, including violations of his or her rights, to the attention of the authority responsible for the place of detention, or any other official body established for such purpose.

Convicted: A child is convicted when found guilty of having committed an offence by the decision of a competent authority.

[131] UNICEF Toolkit on Diversion and Alternatives to Detention. 2009. Glossary of terms relevant to children in conflict with the law. Available at http://www.unicef.org/tdad/index_55673.html

[132] The child under the age of criminal responsibility is in conflict with the law as the offence/crime must still be investigated and the child interviewed to establish that they are responsible. As they are below the age of criminal responsibility, criminal proceedings cannot be brought, but as a result of offending a welfare intervention may be required.

Deprivation of liberty / detention: means "any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority."[133]

Diversion: Diversion means channelling children in conflict with the law away from judicial proceedings through the development and implementation of procedures, structures and programmes that enable many - possibly most - to be dealt with by non-judicial bodies, thereby avoiding the negative effects of formal judicial proceedings. Diversion can be instigated from the time of apprehension (before arrest) to any point up until the final disposition hearing (including after pre-trial detention).

Juvenile justice / juvenile justice system: Legislation, norms, standards, guidelines, policies, procedures, mechanisms, provisions, institutions and bodies specifically applicable to children in conflict with the law who are over the age of criminal responsibility.

Justice for children: Approach aiming to mainstream attention to the impact on children and respect for children's rights in all justice-related policies and decisions. This focuses on the rule of law and emphasises the need to better integrate child-friendly justice standards in broader justice and security reforms. This has implications not only for the child protection programming, but also for any social, judiciary or human rights policy development.

Legal representation / legal aid: 'Legal representation' is representation in court by a qualified lawyer (or a legally trained person who is authorised to appear in court). 'Legal aid' generally refers to funding or funding schemes made available by the State or others to provide for 'legal representation' to all vulnerable groups in contact with the criminal, civil or administrative justice systems, whether as offenders, victims or witnesses, to ensure their effective legal protection.

Minimum age of criminal responsibility: This is the lowest age at which the criminal justice system deems a child can be held responsible for his/her own behaviour and can therefore be found guilty in a court. Under this age, children are not considered to have the capacity to infringe penal law.

Offence: An act punishable by the law by virtue of the legal system in question.

Pre-sentence report (or inquiry report) (*"referat presentențial")*- is a report assessing the psycho-social and economical condition of the child suspect and his or her family/environment, carried out by the probation councillors upon request from the prosecutor or judge handling the case against this child. The report is submitted to the requesting prosecutor or judge within 14 days from the time of the request and before any decision on the case is issued.

Pre-trial detention: The period when children are deprived of liberty between the moment of being charged and the moment of being sentenced. Pre-trial detention includes: detention in police cells following arrest and before the first assessment of the case before a competent authority; and detention in remand facilities following the first hearing of the case before a competent authority but prior to the final disposition hearing.

Probation: Non-custodial measure involving the monitoring and supervision of a child whilst he or she remains in the community as well as guidance and assistance. A competent authority, the public prosecutor, the social welfare service or a probation officer usually supervises probation.

Punishment: A penalty imposed for wrongdoing.

Rehabilitation: Restoring of a person to good health or a useful place in society, often through therapy and education.

(Re)integration: (Re)-establishing of roots and a place in society for children who have been in conflict with the law so that they feel part of, and accepted by, the community. 'Re'-integration assumes that the child was once a part of, and accepted by, the community in the past.

Sentence: Final decision, notwithstanding any right of appeal, by a competent authority about a child's case ruling that the child shall be subject to certain measures.

Social inquiry report: This is an assessment of an accused person's current and past social circumstances and their need and motivation for treatment or other alternative forms of non-custodial care (e.g. community work order, probation). A social inquiry report is often a pre-requisite to enable court judges to use their discretion in disposing of children's cases in the most appropriate way.

[133] UN Rules on the Treatment of Juveniles Deprived of their Liberty (JDLs) Art. 11(b).

Annex 2

INSTITUTIONAL AND COORDINATION FRAMEWORK

A number of institutions in the Republic of Moldova are dealing with children in conflict with the law, though this target group is not expressly stipulated in their regulations. All the institutions that are involved in child protection refer to children at risk and children who are in difficulty, terms that include the child with psychological-behavioural disorders and the child in conflict with the law. However, there are no provisions anywhere regarding child victims and witness of crime. Hence, there is a series of bodies with responsibilities in child protection.

The Superior Council of Magistrates (SCM) operates on the basis of the Law on the Superior Council of Magistrates No 947/1996 and is an independent body, created with the view of organization and functioning of the judicial system. In exercising its functions, the SCM shall: select candidates for the position of judge; approve the vocational training programme for judicial candidates, appoint the judge who will supervise the judicial candidate's internship; examine citizens' petitions on issues related to judicial ethics; apply incentive-related measures as well as disciplinary sanctions to judges; ensure that vocational training is provided for active judges and courts' personnel collaborators; appoint, promote, transfer and remove from position collaborators of the SCM's personnel, and apply incentive-related measures and disciplinary sanctions to them.

The Prosecutor's Office is an autonomous institution within the judiciary authority playing a crucial role in the area of justice for children. Within the limits of its duties and competencies, the Prosecutor's Office defends the general interests of society, the rule of law, rights and liberties of citizens, manages and performs criminal investigations, represents the prosecution in courts of law, as provided by the law. When performing its duties, the prosecution manages and performs criminal investigations; implements the criminal policy of the state; ensures efficient protection of witnesses, victims and other participants in the trial; controls observance of the law in pre-trial detention facilities and penitentiaries, etc. The **General Prosecutor's Office** (GPO) operates on the basis of the Regulation approved by Order No 52/3 of 21.06.2010[134]. The organizational structure of GPO includes the *Section for Children and Human Rights* of the General Investigation Division, with the following duties: 1) review the notifications from individuals and legal entities, materials about the violation of the rights and interests of the child, of the rights of socially-vulnerable people in the activity of central public authorities; 2) protect the child, human rights and fundamental freedoms, by intervening with prosecution acts as provided by the Law on prosecution; 3) analyse and generalize the state of observing the fundamental human rights and freedoms, activity of child protection, prevention of children from coming in conflict with the law; 4) organize, coordinate and control the activity of territorial prosecutors, specialized in areas within the section's competence, etc. In 2010, based on an Order of the General Prosecutor, all territorial prosecutor offices assigned prosecutors specialized on child issues[135], whose duty is to ensure compliance with the legislation on child rights protection and contribute to prevention of children from coming in conflict with the law.

The **Ministry of Justice** operates on the basis of the Regulation approved by Government Decision No 736/2012 and is the central specialized body empowered to develop and monitor the implementation of policy documents in justice and human rights protection. When performing its duties, the Ministry develops, coordinates and monitors the implementation of strategies, programme and plans within its area of activity; ensures and coordinates the activity related to the judiciary and legal reform; monitors and controls how the established legal professions or services are carried out, manages, as prescribed by the law, the system of state guaranteed legal aid, etc. The Ministry has several administrative authorities in its subordination, including the Department of Penitentiary Institutions, Central Probation Office and Department of Judicial Administration.

The Ministry of Education operates based on the Regulation approved by Government Decision No. 653/2009 and is the specialized body of the public administration that promotes Government policy on education, develops and implements development and quality strategies in edu-

[134] Regulation of the General Prosecutor's Office may be accessed at http://www.procuratura.md/file/2012-02-04_Regulamentul%20Procuraturii%20Generale.pdf.

[135] Order on the duties of the Prosecutor's Office in child rights protection and performance of juvenile justice, No 808-p of 07.09.2010.

cation. One of the Ministry's functions consists in evaluation and monitoring of the access of children and young people to education, the quality of educational services and adoption of enhancement measures. *Division for Pre-University Education* is the specialized unit of the Ministry, which promotes Government policy on the protection of children's access to education. *Education Directorates* are established at the level of municipalities and second-level local public authorities. According to Article 44 of the Law on education, the Education Directorates ensures the cooperation of the subordinated educational institutions with LPAs and Ministry of Economy; ensure, jointly with LPAs, compulsory schooling of students under the age of 16 etc. The Education Directorates operate on the basis of their own regulations, developed according to the standard Regulation[136] and approved by the District Council.

The Ministry of Labour, Social Protection and Family operates based on the Regulation approved by Government Decision No. 691/2009 and is the specialized body of the public administration empowered to develop, promote and endure the implementation of the Government policy in social assistance and protection, family protection and children's rights, etc. One of the Ministry's duties consists in developing and monitoring minimum quality standards by types of social services for families with children and *children in difficulty.* The *Division for Social Assistance Policies* is the specialized unit of the Ministry, with the following duties: it develops programmes and activities for supporting and protecting the disadvantaged; develops quality standards for social services; ensures centralized recording and inspects the quality of social services provided by public and private institutions and NGOs according to the quality standards provided by law. Another unit is the *Division for Policies on Family Protection and Children's Rights*, with the following duties: it develops mechanisms for the social protection of families with children, access of the child and family to quality social assistance services; monitors the application of minimum quality standards by types of services for *children in difficulty*; coordinates the guardianship and trusteeship activity and protection of the rights of orphan children and children without parental care. The *Directorate for Social Assistance and Family Protection (DSAFP)* is established at the local level, subordinated administratively to the District Council, and methodologically - to the Ministry. DSAFP operates based on the Regulation, approved by the Rayon Council Decision. Respectively, the duties might vary depending according to the case. For instance, according to the Regulations of Cahul DSAFP[137], the Directorate consolidates, develops and provides services to families with *children in difficulty* (community social service, services of the community centres, reintegration, family support, family-type, and day care services); actively identifies *children in difficulty*, ensures early intervention and prevents the deterioration of social problems; refers complex cases to specialized services or highly specialized services provided at the national level (services of placement and rehabilitation centres for young children, *services of the temporary placement centres for children).*The Directorate also *keeps records and contributes to the socialization and reintegration of people released from detention facilities, including young offenders, in cooperation with the Police Commissariat and Inspectorate for Children, participates jointly with law enforcement bodies in the monitoring of the execution of alternative measures.* Though the DSAFP is responsible for supporting children in various situations of difficulty, its organizational chart does not include the positions of psychologist and lawyer. The Ministry has several institutions in its subordination, including the "Azimut" Centre for Temporary Placement of Children at Risk from Soroca town, and "Пламъче" Centre for Rehabilitation and Social Protection of Children at Risk from Taraclia town.

General Police Inspectorate (GPI) has an explicit role in the area of justice for children GPI operates on the basis of the Regulation approved by Government Decision No. 283/2013 and is the central unit for police administration and control, subordinated to the Ministry of Interior, which protects the human rights and fundamental freedoms by activities aimed at maintaining and restoring public order and security and preventing, discovering and investigating offences and crimes. *The Public Security Division (PSD)* is the specialized unit of GPI, empowered to prevent anti-social phenomena that generate crimes and offences, and to transpose the relevant Government policy. The *Community Interaction Section* and *Child Safety Section* are part of the Public Security Division.

[136] Government Decision approving the Standard Regulation of the Rayon (Municipal) General Directorate for Education, No 1380 of 29.10.2002.

[137] Regulation on the Organization and Modus Operandi of the Directorate for Social Assistance and Family Protection, approved by the Decision of Cahul Rayon Council No 07/09-III of 20.09.2012. Available at: http://www.cahul.md/ro/page/direc-ia-asisten-social-i-protec-ie-a-familiei/20.

Considering the police reform process, launched in 2013, and the recently approved structure of GPI, the main duties and tasks of PSD are still not known. *Local police inspectorates* were established at the level of local public authorities, which coordinate the activity of the Child Safety Office. The work of the Child safety officers aim both at preventing crimes and at providing assistance in cases of crime. The actions aimed at preventing of children from coming in conflict with the law are part of the inspectors' annual action plan and are coordinated by the Inspectorate.

People's Advocate Office is the successor by right of the Centre for Human Rights which operates based on the Regulation approved by Parliament Decision No. 57/2008. In April 2014, the Parliament adopted the new Law on People's Advocate (Ombudsperson)[138], which regulates the activity, status and exercise of duties of the People's Advocate, as well as the modus operandi of the National Mechanism for the Prevention of Torture, and of the People's Advocate Office. According to the law, the People's Advocate for the child rights' protection performs his/her duties to ensure the protection of child rights and freedoms, at the national level, by the central and local public authorities, by the decision making officials at all levels of the provisions of the UN Conventions for the Protection of the Rights of the Child. In addition, the People's Advocate for the rights of the child provides protection and assistance to the child at his/her request, without seeking the parents' or legal representatives' consent. The Parliamentary advocates appointed in conformity with the Law no.1349/1997, on the parliamentary advocates shall perform their duties up to the expiry of their mandate. Following this, the Parliament should initiate the selection and appointment procedure of the new People's Advocates.

The National Council on Child Rights Protection (NCCRP) operates based on the Regulation approved by Government Decision No. 409/1998. The Council is the governmental body empowered to develop and implement state policy on children's rights protection. The NCCRP is competent to coordinate the activity of central and local public authorities envisaging children's rights and family protection; to evaluate and monitor the observance of legal provisions regulating children's rights protection in educational and care institutions etc. The Regulation stipulates that the local public authorities shall establish district municipal and local councils for child rights protection operating on the basis of regulation approved by the authorities that established the councils. The basic competencies of the rayonal, municipal and local councils for child rights protection (LCCRP) consist in: developing local programmes and action plans for children's rights and family protection; coordinating the activity of local bodies aiming at child and family support; evaluating the conditions for the development of children and adolescents' education in medical care and educational institutions, *in pre-trial detention facilities and penitentiaries*; monitoring of protection, development and education services provided by the community and public institutions to the child and family; examining the cases of *children coming in conflict with the law* and of parents not fulfilling parental responsibilities. The police territorial divisions refer the cases of children in conflict with the law to the LCCRP. However, it has been noted that many LCCRP are formally created and do not have a permanent activity. Frequently, the cases of children in conflict with the law, children in difficulty and parents not fulfilling the parental obligations are formally considered or are not considered at all. In the majority of cases, not a single representative of the institutions, which have initiated cases, are present during the consideration of the case. In 2013, police inspectorates submitted 2, 130 notifications to the local councils for child rights protection to apply public influence measures and to address the problems of the children in difficulty. Only 883 have been examined[139]. The limited efficiency of these councils shall be explained by the lack of a framework-document regulating the council's activity and status at local level. Frequently, the LCCRP members are participating in other local committees or councils, thus being confused on the competencies they have. In practice, there is no coordination between the local bodies to ensure children's rights protection in the community.

The Committee for the protection of child in difficulty has been established within the local public administration of second level, and operates on the basis of the Framework-regulation approved by Government Decision No. 1177/2007. The district/ municipal council approves the establishment

[138] Law on People's Advocate, no. 52 as of 03.04.2014

[139] The General Police Inspectorate, *Memorandum on the status of children coming in conflict with the law and the activity of the child security services during 12 months of year 2013.* Available at: http://www.politie.gov.md/ro/siguranta-copiilor-2013.

and composition of the Committee. The Committee reports to the district/ municipal council on the necessity to develop new child protection services or to extend those that already exist; ensures the monitoring of services provided to children in difficulty; receives and monitors the examination of complaints envisaging the protection of child in difficulty who benefits from various support services, etc. The Regulation stipulates that if a notification has been received about a child in difficulty who needs protection, or if a parent declares his or her powerlessness to no longer take care of the child, the specially appointed authority which initially received/ registered the notification shall immediately refer it for initial investigation to the Section for social assistance and family protection/ Municipal Directorate for children's protection. Since the Regulation does not offer a definition of *child in difficulty*, we may conclude that it was not developed for cases of children in conflict with the law.

The Municipal Directorate for the Protection of Children's Rights (MDPCR) is subordinate to the Municipal Council of Chisinau and operates on the basis of the Regulation approved by it.[140] The Directorate is empowered to control compliance with the standards on the organization and modus operandi of the services provided by the institutions that ensure the promotion and observance of children's rights, the welfare of children in difficulty; verify observance of the rights of the child in difficulty in the biological, extended or adoptive family; identify children in difficulty on the territory of the municipality, develop and approve protection measures, accepting the optimal form of child placement in the family (biological, extended, placement, etc.).The organizational structure of MDPCR includes the *Service for the Protection of the Child in Conflict with the Law*, with the following duties: supervise the activity of the sector specialist in charge of the protection of the child in conflict with the law (secretariat of the Committee for Children's Issues); cooperate with the Republican Centre for Temporary Placement of Children, apply measures aimed at protecting the "street children"; support and advise families on how to obtain rights in favour of children; evaluate and verify the cases reviewed by the Committees for Children's Issues.

The Working Group on Justice for Children (WG) was established in 2001 under the National Council for Child Rights Protection. From 2002-2008, the WG led a series of essential legislative reforms regarding children in conflict with the law, and actively involved in adopting complementary provisions to the Criminal Code and Criminal Procedure Code envisaging the special procedure for children. In 2009, the Parliament adopted the package of legal amendments proposed by the WG, especially addressing the problem of punishments and detention period (the minimal sanction was excluded from 36 articles of the Criminal Code, thus offering the judges the possibility to apply a milder sanction). The WG was reanimated in 2010 with the support of UNICEF, this time under the Ministry of Justice. It was empowered with larger competencies in the area of justice for children, including not only children in conflict with the law, but also children victims and witnesses. The WG's composition included representatives of the Ministry of Justice, the Ministry of the Interior, the Ministry of Education, MLSPF, the Supreme Court of Justice, the General Prosecutor's Office and NGOs. Despite the criticism and shortcomings which have been set forth, the WG managed to insert important provisions on justice for children into the National Human Rights Action Plan for 2011–2014 and in the Justice Sector Reform Strategy for 2011-2016. In addition, the WG developed draft amendments to the Criminal Procedure Code regulating the procedure of hearing the children (including the accused and witnesses) by the judge, the place for interviewing the child, the way the questions are addressed, limitations of the time for interviewing a child, etc. Nevertheless, the activity of the WG ceased again in 2012.

[140] In the municipality of Bălți there is no such municipal directorate. The Directorate for Education, Youth and Sport is the only authority with competencies in protection of children's rights.

Annex 3

METHODOLOGY TOOLS

ASSESSMENT ON THE NEED FOR AMENDMENTS TO PRIMARY AND SECONDARY LEGISLATIVE FRAMEWORK IN THE JUSTICE FOR CHILDREN AND JUVENILES SYSTEM

Methodology

The methodological framework of the assessment should consist of the following four components: 1) desk review of the national legal framework and international standards in the justice for children field; 2) analysis of the UN publications and other research published at both national and regional levels envisaging the JJ situation in Moldova; 3) conducting a series of semi-standardized and unstructured interviews with national level representatives and JJ professionals; and 4) carrying out a data collection campaign aiming at receiving relevant statistics from the authorities holding such information.

Desk review of the legal framework

The researcher will initially complete a desk review of relevant international and domestic laws, guidelines and policy documents regulating the aspects of justice for children. The national provisions will be analyzed against the list of 15 internationally recognized indicators assessing the conformity of domestic laws. The national policy and strategic documents will be assessed in terms of their inclusiveness for children in conflict and in contact with the law. This will mainly refer to strategies in the field of education, social inclusion, healthcare and other children related areas, including vulnerable groups. A comparative table will allow for tracking the progresses achieved since 2011 in terms of legal amendments and institutional developments against the CRC recommendations. A short section will be developed listing the international and European standards compared to the existing ones in Moldova, especially regulating the most sensible and problematic issues identified. This will allow for a better understanding of existing problems in Moldova.

Analysis of available publications and research at a national and regional level

The assessment will take into consideration and make use of recent publications at a national and regional level commissioned by UNICEF and Ministry of Justice. In addition, several regional reports will be consulted. The review will analyze and summarize main challenges and recommendations made by recognized national/international experts in their research and evaluation documents dated 2008 and 2011/2012. The findings will be analyzed against the latest legal developments in the country, with a particular focus on the justice sector, education reform and social services. This will allow for the improvements/successes achieved so far to be assessed and for challenges to be identified that still need to be addressed. The assessment will quote the opinions of international and national experts in this regard.

Interviews with national level representatives and JJ professionals

A series of unstructured interviews will be carried out with national level representatives. Of particular interest will be those authorities directly involved in the JJ system, such as the Ministry of Justice, the Interior Ministry, ,the Police General Inspectorate, the General Prosecutor's Office, the Department of Penitentiary Institutions, the Probation Service, the National Council for Free Legal Aid, the Ministry of Labour, Social Protection and Family (MLSPF), the Ministry of Education. This will allow for understanding of the inside perception of JJ situation in the country, and for administrative/institutional and legal problems impeding the effective reform implementation to be identified. Special focus will be on consultations with members of former Working Group on Justice for Children by the Ministry of Justice. The WG members will be consulted in order to find out their insights on each identified concern and identify potential solutions. Where necessary interviews will be carried out with the representatives of other institutions involved such as the Centre for Combating Human Trafficking, the Supreme Court and Superior Council of Magistrates, the National Torture Prevention Mechanism, the National Institute of Justice.

A clear understanding of the existing problems in the JJ system will only be achieved in discussions with independent experts and civil society representatives working in the area. Therefore, a

series of semi-standardized interviews will be carried out with JJ professionals from the Institute for Penal Reform, the UN Country Team, the Norway Mission of Rule of Law Advisers to Moldova (NORLAM), the National Child Abuse Prevention Centre (CN PAC), La Strada, NGO "Memoria," and other NGOs. Special focus will be on interviews with public defenders from the Public Defenders' Office who still are dealing with cases involving children offenders, victims and witnesses. This should be the key element in analysing how the reforms impact on the operation of the JJ system in practice, and will allow to assess the extent to which the legal and policy developments are implemented in practice.

Data collection

After all the interviews are carried out, letters of request for information will be sent to major institutions which, by their mandate, are entitled to collect and aggregate statistics envisaging children in conflict and in contact with the law. With this regard, data collection instruments (tables or questionnaires) will be developed and adapted to each authority. The main purpose of this exercise will be to assess the JJ situation in figures which may confirm or infirm the findings during the interviews. Another purpose of the exercise will be to find out what kind of statistics do authorities collect, and what information is missing. This will allow for recommendations to be made about data collection. The researcher will analyse available quantitative data on offending by children, and the operation of the juvenile justice system. Additional quantitative data may be sought, in order to clarify some unaddressed aspects.

It is worth mentioning that both interviews and the data collection campaign will try to reveal what guarantees exist for children in conflict with the law related to the length of criminal proceedings and detention, legal assistance, access to education and healthcare in detention, solitary confinement, protection against torture and the complaint mechanism. The situation of children under the age of criminal responsibility will be assessed along with diversion measures and alternatives to detention for minors, and mechanisms for the protection of children victims and witnesses. While developing these chapters, the researcher will pay attention to: international standards, domestic law and policies, practice and problems identified, as well as potential solutions.

In a separate chapter the researcher will assess the functionality level of the community based services through the prism of prevention of (re-)offence and rehabilitation/ reintegration services. The classical structure of this chapter should contain the following components: international standards, domestic law and policy, responsible Ministry/ agency, practices, problems identified and possible solutions.

A draft report will be developed based on collected data, assessing the current situation, comparing the level of compliance of Moldovan realties against international standards and formulating concrete legal and policy recommendations both generic and pertaining to specific normative acts, grouping them by areas and stakeholders. After being consulted with all relevant stakeholders, the report will be finalized according to comments and suggestions received, and presented for approval to UNICEF.

QUESTIONNAIRES

Schedule of Interview Questions for CRIMINAL DEFENCE LAWYERS

GENERAL INFORMATION

- Date
- Job Title and Position Description of Interviewee

A. EXTENT AND NATURE OF JUVENILE OFFENDING

- Is there a high juvenile offending rate in Chisinau and in the country?
- Do you know what the background of these children is? Do they come from poor or socially vulnerable families? Have they dropped out of school? Is such data officially available?
- What is the dynamic of child offence in the last five years? What do you think explains this dynamic?
- What are the main causes of juvenile offending? Are these causes taken into account when the child comes in contact with the justice system? Are these causes addressed (e.g. social or psychological support to the child and the family)?
- How would you assess the situation of children under the minimum age of criminal responsibility who have breached the law? What do law-enforcement workers do with children under 14 years old who have committed a crime? Are they referred to any social services, educational measures or psychological assistance? What are the services available for them? How often do they re-offend? Why?
- What is the legal and regulatory framework for children under the minimum age of criminal responsibility in Moldova?

B. CAPACITY AND SPECIALISATION

- Are there any specialist legal service providers for child defendants in Moldova? Same question for child victims.

If so, can you please state how many, in which area/s they are located and their capacity

- Are there a sufficient number of defence lawyers in the country to ensure that every child who is arrested has access to a lawyer? If so, which other organisations provide legal assistance / representation to child offenders? Do they provide a free service?
- How do children access free legal assistance? Is it always available to children in need? How about child victims and witnesses?
- How would you assess the quality of legal assistance provided? Are there any quality standards for free legal aid? Are free legal aid lawyers somehow monitored and evaluated? What do you think would improve access to legal assistance / representation for children?
- How many cases involving child defendants, victims and witnesses do you currently have open?
- How are child defendants, victims and witnesses referred to your firm?
- If you receive a referral of a child defendant, victim or witness and you are at capacity, what will you do? Where will you refer that child?
- What are the criteria, if any, for free legal aid lawyers working with child victims or child offenders?
- Have you or other lawyers in your organisation received any training on juvenile justice or the law on children in conflict with the law? Have you received training on handling cases involving child victims or witnesses of crimes?

C. ARREST AND DIVERSION

- Do police advise children of their right to have a lawyer? Do police contact a legal representative or other relevant adult whenever a child is arrested? If so, at what point? Do police officers wait for the child's lawyer to be present before questioning a child? Do you get the chance to speak to the child in private before questioning?
- Who else accompanies children at the police station? Do police contact the child's parents, a social worker or any other person? If so, at what point? Do police officers wait for the child's parent or carer or the so-

cial welfare officer to arrive before questioning the child?

- What role do defence lawyers play at the police station?
- Are all children registered when they are in contact with the police? How does police register children they apprehended or approached outside police facilities? Do they undergo a medical examination upon entering or leaving police facilities?
- In practice, what is the average time of child apprehension in police before a prosecutor is informed? Same question - before child legal representative, lawyer and psychologist (if need be) is informed?
- Do prosecutors wait for a lawyer to be present before a child is questioned?
- Are there time limits on the length of time that children can be questioned for? If so, do prosecutors adhere to these limits? If not, why not?
- Do police and prosecutors have special procedures for dealing with child suspects? How about child victims and witnesses? If so, can you please describe these procedures and how they treat children differently to adults?
- Do police and prosecutors handling child cases participate in specialized training? How are cases involving children distributed to specially trained prosecutors? Do prosecutors who have NOT been specially trained handle cases involving children?
- In your experience, how do police conduct themselves when they have arrested and are questioning a child suspect? Do police change their approach or behaviour in any way when arresting or interviewing children? If so, please describe how.
- In your experience, how often do prosecutors divert children in conflict with the law from the justice system? Why do you think the rate is so low/high? Where are these children diverted to (referred, sent)? Is the diversion rate increasing? What do you think should be done to increase the rate of diversion?
- In your experience, how often do prosecutors and judges apply measures alternative to detention for children in conflict with the law? Do you think the current law provides sufficient alternative measures for non-custodial sentences for children? Would you recommend any other non-custodial measures?
- In your experience, what proportion of children experience ill-treatment by police officers? What is the nature of this ill-treatment?
- Can children make a complaint about police treatment if they want to? If so, what is the nature of complaints mechanism? How is a complaint made? How can a complaint be resolved? Do children have access to legal assistance to help them to make a complaint?
- Is there a complaint mechanism available and functional for children in pre-trial (preventive arrest) and post-sentence detention?

D. PRE-TRIAL DETENTION

- How long can law-enforcement hold children for questioning / investigating offence etc. before a child has to be released or charged? Do law enforcement adhere to this time limit? If not, why not? What happens if they need to go over this limit?
- Do children have a right to make a complaint / application to the court if they are held beyond the maximum time limit in detention? If so, how many children make a complaint / application? Can they get access to legal assistance to help them make a complaint? Do you provide assistance / representation to children to help them make a complaint?
- Do courts review the need to place children in pre-trial detention? If so, how frequently? What do judges base their decision on? Do judges request assessment reports from probation authorities on children in conflict with the law? Do judges, police or prosecutors' request individual assessments of children victims or offenders from social workers, psychologists or other relevant experts at any stage of criminal justice? What is the quality of these evaluation (assessment) reports? How reliable are they? How often and to what extent justice professionals take them into account?
- Do children have access to appeal at these reviews?

E. CHARGE

- Do children have representation at the initial hearing (where initial hearing is required to lay charges)? If so, in which cases? If not, why not?
- What proportion of children who have been charged are released on bail, and what proportion are held in pre-trial detention? If a low proportion receiving bail: why?
- What proportion of children who have been charged are released on bail, and what proportion are held in pre-trial detention?
- Where children are held in pre-trial detention, is there a maximum length of time they can be held for? What happens if there is a need to extend this time limit?
- Have you seen a drop in the number of children held in pre-trial detention over the past three years? If so, why? What is the cause of this reduction?
- Have you seen a reduction in the average length of time children are spending in pre-trial detention over the past three years? If so, why? What is the cause of this reduction? If not, why? Are there cases when the maximum legal term for pre-trial detention of children (up to four months) is disregarded? Why do you think this is so?

F. TRIAL

- Do children always have legal representation during trials / sentencing hearings?
- Do children always benefit from legal aid during trials? If so, who provides it? What is the proportion of children benefitting from free legal aid as opposed to children whose families can afford a private lawyer? How is free legal aid funded? If they don't have a lawyer present, is any other person present to assist or represent them? Who?
- How do you prepare for a trial involving a child offender? How often will you speak to the child before the hearing? How do you advise him or her? Are you given sufficient time to prepare for a hearing? Are you able to represent them in court? What are the challenges in preparing a case involving a child offender and in representing the child?
- Are there any special procedures during the trials applicable to child victims and witnesses? Are you given sufficient time to prepare for a hearing? Are you able to represent them in court? What are the challenges in preparing a case involving a child victim or witness and in representing the child?
- Do judges change the way they conduct trials in cases involving child suspects? If so, how? [Are changes made to the way hearings are conducted? Are different questioning techniques employed? Is there informal dress?] How about child victims and witnesses? Are the same procedures applied to them as well? Are judges ruling on cases involving children specially trained?
- Do you think that child offenders and victims always receive a fair trial? If not, why not?
- Do you think that the needs of child victims are fully met at all stages of criminal proceedings? Do you think the best interest of the child principle is well-known, understood and applied by justice professionals?
- Are there any protection mechanisms in place for children victims and witnesses? If so, what are they according to the law and how effective are they?
- Can children lodge an appeal against a conviction or sentence? If not, why not? If so, how often do children make an appeal? Do they have access to legal assistance / representation when the appeal is made or heard?

G. DETENTION

- Are you able to visit your child clients in detention facilities? If so, are you able to see them alone? How often are you able to / do you visit them? For how long?
- Do you know any cases of solitary confinement of children in detention? If so, what is it happening? What should be done to prevent such practices?
- Do children in detention have the right to make a complaint about their treatment? If not, why not? If so, what proportion of your clients who have been in detention has made a complaint? What is the primary cause for complaints? What has happened as a result of these complaints? How do children know they can make a complaint? Do they have access to legal advice or assistance in making a complaint?

- What are the main obstacles to ensuring that children are not placed in detention where this is not, in your opinion, necessary?

H. CO-OPERATION WITH SOCIAL SECTOR

- How would you describe the co-operation between the justice and law-enforcement sectors with social, education and health sectors? Do you think there are sufficient social services to help prevent offence and recidivism, rehabilitate and reintegrate child suspects, offenders or victims and witnesses of crimes? What services do you think are also needed for this? How should justice and social professionals collaborate to achieve that?

Schedule of Interview Questions for JUDGES / MAGISTRATES

GENERAL INFORMATION

- Date
- Job Title and Position Description of Interviewee

A. EXTENT AND NATURE OF JUVENILE OFFENDING

- Is there a high juvenile offending rate in Chisinau and in the country?
- Do you know what the background of these children is? Do they come from poor or socially vulnerable families? Have they dropped from school? Is such data officially available?
- What is the dynamic of child offence in the last five years? What do you think explains this dynamic?
- What are the main causes of juvenile offending? Are these causes taken into account when the child comes in contact with the justice system? Are these causes addressed (e.g. social or psychological support to the child and the family)?
- How would you assess the situation of children under the minimum age of criminal responsibility who have breached the law? What do law-enforcement workers do with children under 14 years old who have committed a crime? Are they referred to any social services, educational measures or psychological assistance? What are the services available for them? How often do they re-offend? Why?
- What is the legal and regulatory framework for children under the minimum age of criminal responsibility in Moldova?

B. CAPACITY AND SPECIALISATION

- Are there specialised juvenile judges / magistrates in the country or do all judges / magistrates deal with child suspects, victims and witnesses? If not, why not? If so, how did they come to be specialised? Have they received specialised training? Have you received training on handling cases involving child victims or witnesses of crimes?

- How are cases involving children distributed to specially trained magistrates? Is the system for random case assignment applicable for cases involving children? Do judges who have not been specially trained handle cases involving children?

C. DIVERSION

- Do you have the power to decide to let a child suspect off if you feel it is not in their or your interests to charge them? i.e. to divert them out of the criminal justice system? If not, why don't you do this? If so, in what circumstances will you do this and for which offences?
- How frequently (in what percentage of cases)? (If a low estimation) why are diversion measures not used more often? Do you think the current law provides sufficient alternative measures for non-custodial sentences for children? What are the obstacles to using diversion measures? Would you recommend any other non-custodial measures?
- How is the decision made to divert children out of the criminal justice system? In particular:
  - Who makes the decision on whether to apply diversion measures?
  - Is this decision reviewed by someone (e.g. the Head of the DPP, a magistrate etc.)?
  - What are the criteria for imposing diversion measures (i.e. does the child have to agree? does the victim have to agree? Etc.)
  - What information helps you make the decision (e.g. do you receive reports from Probation Officers? Do Probation Officers otherwise help you to make a decision as to whether or not to apply diversion measures?)
- Do prosecutors decide on the particular diversion measures to apply (e.g. mediation / counselling etc.)? If so, how often do prosecutors divert children in conflict with the law from the justice system? Why do you think the rate is so low/high? Where are these children diverted to (referred, sent)? Is the diversion rate increasing? What do you think should be done to increase the rate of diversion?
- Can you please describe the nature of each diversion measure that can be imposed, in which circumstances it will be used and whether you think it is effective in rehabilitating juvenile offenders:
  - Warnings
  - Placing juveniles under the supervision of parents / other persons / state bodies
  - Requiring the juvenile to repay damage
  - Requirement to complete psychological or rehabilitative treatment
  - Placement of juvenile in a special education, re-education or medical institution
  - Mediation (is mediation currently used? In which circumstances? What is the procedure for mediation? Is it effective?)
- Do judges / magistrates oversee the implementation of diversion measures? If so, what does this involve? Do you meet with children? How often? Do you receive reports from Probation Officers?
- Which institution implements the diversion measures? How effective is the institution in implementing diversion measures?

D. PRE-CHARGE DETENTION

- At what point in the criminal justice process are children brought before the court? (does the court have to formally lay charges?)
- Before they are referred to the court, how long can police hold children for questioning / investigating the offence etc. before a child has to be released or referred to the prosecutor / court? Do police adhere to this time limit? If not, why not? What happens if police need to go over this limit?

E. CHARGE AND PRE-TRIAL DETENTION

- Is there a maximum time limit that applies between police arrest and formal charges being laid? Do police / prosecutors adhere to these time limits? If not, why not?
- Where are children held while the investigation is completed and before the decision is made to lay charges on them?

- What proportion of children who have been charged are released on bail, and what proportion are held in pre-trial detention?
- Where children are held in pre-trial detention, is there a maximum length of time they can be held for? What happens if there is a need to extend this time limit?
- Have you seen a drop in the number of children held in pre-trial detention over the past three years? If so, why? What is the cause of this reduction?
- Have you seen a reduction in the average length of time children are spending in pre-trial detention over the past three years? If so, why? What is the cause of this reduction? If not, why? Are there cases when the maximum legal term for pre-trial detention of children (up to four months) is disregarded? Why do you think this is so?
- Is there a complaint mechanism available and functional for children in pre-trial (preventive arrest) and post-sentence detention?
- Do courts review the need to place children in pre-trial detention? If so, how frequently? What do judges base their decision on? Do judges request assessment reports from probation authorities on children in conflict with the law? Do judges, police or prosecutors' request individual assessments of children victims or offenders from social workers, psychologist or other relevant experts at any stage of criminal justice? What is the quality of these evaluation (assessment) reports? How reliable are they? How often and to what extent justice professionals take them into account?

C. TRIAL

- Approximately what percentage of arrests ends up in a child being tried? (If a low percentage, what are the reasons for this? At what point are they removed from the justice system – police station? Before charge? After charge? Diversion Etc.)
- What is the usual lapse of time between charge and trial / sentencing? (If a significant time lapse: Why are there delays in juvenile cases being heard? What are the obstacles to ensuring that these trials are heard quickly following charge?)
- Do children always have legal representation during trials / sentencing hearings?
- Do children always benefit from legal aid during trials? If so, who provides it? What is the proportion of children benefitting from free legal aid as opposed to children whose families can afford a private lawyer? How is free legal aid funded? If they don't have a lawyer present, is any other person present to assist or represent them? Who?
- How would you assess the quality of legal assistance provided? Are there any quality standards for free legal aid? Are free legal aid lawyers somehow monitored and evaluated? What do you think would improve access to legal assistance / representation for children?
- Do you think that child offenders and victims always receive a fair trial? If not, why not?
- What do they think would improve the way hearings are conducted when there are child offenders and victims?
- Can children lodge an appeal against a conviction or sentence? If so, how often do children make an appeal? Do they have access to legal assistance / representation when the appeal is made or heard?
- Are there any special procedures during the trials applicable to child victims and witnesses?
- To what extent is the trial process in regular courts 'child friendly'? Do judges change the way they conduct trials? What do they think would improve the way hearings are conducted when there are child offenders, victims and witnesses?
- Do you think that the needs of child victims are fully met at all stages of criminal proceedings? Do you think the best interest of the child principle is well-known, understood and applied by justice professionals?
- Are there any protection mechanisms in place for children victims and witnesses? If so, what are they according to the law and how effective are they?

D. SENTENCING

- What criteria do judges / magistrates use when deciding which sentence to impose on a juvenile offender?

- Do judges / magistrates request pre-sentence probation or other reports from the Probation Service before imposing a sentence? If so, what is in these reports? Are they helpful? How could they be improved?
- Do Probation Officers appear in court to make oral submissions before a sentence is handed down?
- How often and in which circumstances will judges / magistrates impose a custodial sentence on a child offender? What alternatives are available? If a high percentage, why? What circumstances would have to change in order to reduce the use of custodial sentencing of children (e.g. better alternatives available to refer children to)?
- What options are available for non-custodial sentences?
- In your opinion are there enough options available for non-custodial sentences? If not, what is missing? What other options should be available?
- How effective are non-custodial sentences in rehabilitating child offenders?

  If effective, why? Have the options and effectiveness of these sentences improved in the past three years? If they are not effective, why not? What is needed to improve their effectiveness?
- Is there any rehabilitation services for child victims and witnesses? What should be done to improve the situation?
- In your opinion, how effective are the Probation Service at implementing non-custodial sentences and rehabilitating children?
- What will happen if a child breaches a non-custodial sentence? Will he or she be placed in custody?
- How often do children breach non-custodial sentences?

H. CO-OPERATION WITH THE SOCIAL SECTOR

- How would you describe co-operation between the justice and law-enforcement sectors with social, education and health sectors? Do you think there are sufficient social services to help prevent offence and recidivism, rehabilitate and reintegrate child suspects, offenders or victims and witnesses of crimes? What services do you think are also needed for this? How should justice and social professionals collaborate to achieve that?

Schedule of Interview Questions for POLICE representative (Central level)

GENERAL INFORMATION

- Date
- Job Title and Position Description of Interviewee

A. EXTENT AND NATURE OF JUVENILE OFFENDING

- Is there a high juvenile offending rate in the country?
- Do you know what the background of these children is? Do they come from poor or socially vulnerable families? Have they dropped out of school? Is such data officially available?
- What is the dynamic of child offence in the last five years? What do you think explains this dynamic?
- What are the main causes of juvenile offending? Are these causes taken into account when the child comes in contact with the justice system? Are these causes addressed (e.g. social or psychological support to the child and the family)?
- How would you assess the situation of children under the minimum age of criminal responsibility who have breached the law? What do law-enforcement workers do with children under 14 years old who have committed a crime? Are they referred to any social services, educational measures or psychological assistance? What are the services available for them? How often do they re-offend? Why?
- What is the legal and regulatory framework for children under the minimum age of criminal responsibility in Moldova?

B. CAPACITY AND SPECIALISATION

- Are there specialised juvenile police officers or units in your district / region or do all police officers deal with child offenders, victims and witnesses? If so, how did they come to be specialised?
- Have police received any training on dealing with child offenders, victims and witnesses?
- Do police have special procedures for dealing with child suspects? If so, can you please describe these procedures and how you treat children differently to adult suspects? How about special procedures for child victims and witnesses?
- Do police change their approach or behaviour in any way when arresting or interviewing children? If so, please describe how?

C. ARREST

- Are all children registered when they are in contact with the police? How does the police register children they apprehend or approach outside police facilities? Do they undergo a medical examination upon entering or leaving the police facilities?
- In practice, what is the average time of child apprehension in police before a prosecutor is informed? Same question - before child legal representative, lawyer and psychologist (if need be) is informed?
- What do you tell children when you arrest them? Are police required to issue a warning to children / advise them of their rights? Do police officers in your district do this on every arrest of a child?
- Do children have a right to have a lawyer present when they are interviewed? Do police advise children of their right to have a lawyer? Do police contact a legal representative whenever a child is arrested? If so, at what point? Are the legal representatives of a high standard? Do lawyers regularly visit police station to see whether there are any children detained?
- How would you assess the quality of legal assistance provided? Are there any quality standards for free legal aid? Are free legal aid lawyers somehow monitored and evaluated? What do you think would improve access to legal assistance / representation for children?
- Do Police contact parents / carers whenever a child is arrested? If not, why not? If only in certain circumstances – what circumstances? If so, at what point? Do police officers wait for the child's parent or carer to arrive before questioning the child?

- Do Police contact social workers or any other type of councillor or service provider when a child is arrested? If not, why not? If so, in which circumstances? At what point? What role do they play at the police station? Do police officers wait for a social worker to be present before a child is questioned?
- Are there time limits on the length of time that children can be questioned for? If so, what are these time limits and is it difficult to adhere to them? Why? How are police interviews with children recorded?
- From what age can a child be arrested and charged with an offence? How do police determine a child's age? What procedure do police follow if a child under the minimum age of criminal responsibility is found committing a crime?

Follow-up: are they brought to the police station? Detained? Questioned? Are parents and / or social workers contacted? What happens if parents cannot be located? Can Police refer children, where appropriate, to social workers or any other counselling or other services?

D. DIVERSION

- Do you have the power to decide to release a child suspect if you feel it is not in their or your interests to arrest them? i.e. to divert them out of the criminal justice system? If not, why don't you do this? If so, in what circumstances will you do this and for which offences? How frequently?
- What procedure do you follow if you decide to divert a child out of the criminal justice system?
- Which person / institution has the ultimate decision-making authority to divert a child out of the formal criminal justice system?

E. PRE-CHARGE (POLICE) DETENTION

- How long can police hold children for questioning / investigating offence etc. before a child has to be released or charged? Is it difficult to adhere to this time limit? Why? What happens if you need to go over this limit?
- Can Police apply for an extension of time to hold a child longer in police detention? If so, to which authority? How often does this happen? Is the order normally granted? What happens if extensions are not granted?
- Do police record times in a register or log book, so that they are made aware when time limits have expired?
- Have there been any reports of violence or abuse against children in police detention over the past year? If so, who has reported this? How many reports have there been in the previous year? Who are the most common perpetrators – police, other suspects / detainees?
- What will happen to children once they are released from police detention? Do police ensure that the child will be looked after? How? Can police refer children to social workers where appropriate?

F. CHARGE

- What procedure follows when police decide that there is enough evidence for charges to be laid against a child suspect? Who will make the decision to lay formal charges? In which circumstances does a child appear before a Magistrate / Judge for charges to be laid?
- Is there a maximum time limit that applies between police arrest and formal charges being laid? Do police / prosecutors adhere to these time limits? If not, why not?
- Where are children held while the investigation is completed and before the decision is made to lay charges on them?
- What proportion of children who have been charged are released on bail, and what proportion are held in pre-trial detention?
- Where are children held in pre-trial detention?
- Do you think that the needs of child victims are fully met at all stages of criminal proceedings? Do you think the best interest of the child principle is well-known, understood and applied by justice professionals?
- Are there any protection mechanisms in place for children victims and witnesses? If so, what are they according to the law and how effective are they?

G. COMPLAINTS AND MONITORING

- Can children make a complaint about police treatment if they wish to? If so, what is the nature of complaints mechanism? How is a complaint made? How can a complaint be resolved? How many complaints have there been against police officers in this district in the previous 12 months?
- Are police stations inspected? If yes, which authority inspects them? How frequently? What is the process / procedure? What is the result of the inspections? What powers do the inspectors have?

H. CO-OPERATION WITH THE SOCIAL SECTOR

- How would you describe the co-operation between the justice and law-enforcement sectors with social, education and health sectors? Do you think there are sufficient social services to help prevent offence and recidivism, rehabilitate and reintegrate child suspects, offenders or victims and witnesses of crimes? What services do you think are also needed for this? How should justice and social professionals collaborate to achieve that?

Schedule of Interview Questions for POLICE representative (Central level)

GENERAL INFORMATION

- Date
- Job Title and Position Description of Interviewee

A. EXTENT AND NATURE OF JUVENILE OFFENDING

- Is there a high juvenile offending rate in the country?
- Do you know what the background of these children is? Do they come from poor or socially vulnerable families? Have they dropped from school? Is such data officially available?
- What is the dynamic of child offence in the last five years? What do you think explains this dynamic?
- What are the main causes of juvenile offending? Are these causes taken into account when the child comes in contact with the justice system? Are these causes addressed (e.g. social or psychological support to the child and the family)?
- How would you assess the situation of children under the minimum age of criminal responsibility who have breached the law? What do law-enforcement workers do with children under 14 years old who have committed a crime? Are they referred to any social services, educational measures or psychological assistance? What are the services available for them? How often do they re-offend? Why?
- What is the legal and regulatory framework for children under the minimum age of criminal responsibility in Moldova?

B. CAPACITY AND SPECIALISATION

- Are there specialised juvenile police officers or units in your district / region or do all police officers deal with child offenders, victims and witnesses? If so, how did they come to be specialised?
- Have police received any training on dealing with child offenders, victims and witnesses?

- Do police have special procedures for dealing with child suspects? If so, can you please describe these procedures and how you treat children differently to adult suspects? How about special procedures for child victims and witnesses?
- Do police change their approach or behaviour in any way when arresting or interviewing children? If so, please describe how?

C. ARREST

- Are all children registered when they are in contact with the police? How does police register children they apprehended or approached outside police facilities? Do they undergo a medical examination upon entering or leaving police facilities?
- In practice, what is the average time of child apprehension in police before a prosecutor is informed? Same question - before child legal representative, lawyer and psychologist (if need be) is informed?
- What do you tell children when you arrest them? Are police required to issue a warning to children / advise them of their rights? Do police officers in your district do this on every arrest of a child?
- Do children have a right to have a lawyer present when they are interviewed? Do police advise children of their right to have a lawyer? Do police contact a legal representative whenever a child is arrested? If so, at what point? Are the legal representatives of a high standard? Do lawyers regularly visit police station to see whether there are any children detained?
- How would you assess the quality of legal assistance provided? Are there any quality standards for free legal aid? Are free legal aid lawyers somehow monitored and evaluated? What do you think would improve access to legal assistance / representation for children?
- Do Police contact parents / carers whenever a child is arrested? If not, why not? If only in certain circumstances – what circumstances? If so, at what point? Do police officers wait for the child's parent or carer to arrive before questioning the child?
- Do Police contact social workers or any other type of councillor or service provider when a child is arrested? If not, why not? If so, in which circumstances? At what point? What role do they play at the police station? Do police officers wait for a social worker to be present before a child is questioned?
- Are there time limits on the length of time that children can be questioned for? If so, what are these time limits and is it difficult to adhere to them? Why? How are police interviews with children recorded?
- From what age can a child be arrested and charged with an offence? How do police determine a child's age? What procedure do police follow if a child under the minimum age of criminal responsibility is found committing a crime?

Follow-up: are they brought to the police station? Detained? Questioned? Are parents and / or social workers contacted? What happens if parents cannot be located? Can Police refer children, where appropriate, to social workers or any other counselling or other services?

D. DIVERSION

- Do you have the power to decide to release a child suspect if you feel it is not in their or your interests to arrest them? i.e. to divert them out of the criminal justice system? If not, why don't you do this? If so, in what circumstances will you do this and for which offences? How frequently?
- What procedure do you follow if you decide to divert a child out of the criminal justice system?
- Which person / institution has the ultimate decision-making authority to divert a child out of the formal criminal justice system?

E. PRE-CHARGE (POLICE) DETENTION

- How long can police hold children for questioning / investigating offence etc. before a child has to be released or charged? Is it difficult to adhere to this time limit? Why? What happens if you need to go over this limit?

- Can Police apply for an extension of time to hold a child longer in police detention? If so, to which authority? How often does this happen? Is the order normally granted? What happens if extensions are not granted?
- Do police record times in a register or log book, so that they are made aware when time limits have expired?
- Have there been any reports of violence or abuse against children in police detention over the past year? If so, who has reported this? How many reports have there been in the previous year? Who are the most common perpetrators – police, other suspects / detainees?
- What will happen to children once they are released from police detention? Do police ensure that the child will be looked after? How? Can police refer children to social workers where appropriate?

F. CHARGE

- What procedure follows when police decide that there is enough evidence for charges to be laid against a child suspect? Who will make the decision to lay formal charges? In which circumstances does a child appear before a Magistrate / Judge for charges to be laid?
- Is there a maximum time limit that applies between police arrest and formal charges being laid? Do police / prosecutors adhere to these time limits? If not, why not?
- Where are children held while the investigation is completed and before the decision is made to lay charges on them?
- What proportion of children who have been charged are released on bail, and what proportion are held in pre-trial detention?
- Where are children held in pre-trial detention?
- Do you think that the needs of child victims are fully met at all stages of criminal proceedings? Do you think the best interest of the child principle is well-known, understood and applied by justice professionals?
- Are there any protection mechanisms in place for children victims and witnesses? If so, what are they according to the law and how effective are they?

G. COMPLAINTS AND MONITORING

- Can children make a complaint about police treatment if they want to? If so, what is the nature of complaints mechanism? How is a complaint made? How can a complaint be resolved? How many complaints have there been against police officers in this district in the previous 12 months?
- Are police stations inspected? If yes, which authority inspects them? How frequently? What is the process / procedure? What is the result of the inspections? What powers do the inspectors have?

H. CO-OPERATION WITH THE SOCIAL SECTOR

- How would you describe the co-operation between the justice and law-enforcement sectors with social, education and health sectors? Do you think there are sufficient social services to help prevent offence and recidivism, rehabilitate and reintegrate child suspects, offenders or victims and witnesses of crimes? What services do you think are also needed for this? How should justice and social professionals work together to achieve that?

Schedule of Interview Questions for PROSECUTION SERVICE

GENERAL INFORMATION

- Date
- Job Title and Position Description of Interviewee

A. EXTENT AND NATURE OF JUVENILE OFFENDING

- Is there a high juvenile offending rate in the country?
- Do you know what the background of these children is? Do they come from poor or socially vulnerable families? Have they dropped from school? Is such data officially available?
- What is the dynamic of child offence in the last five years? What do you think explains this dynamic?
- What are the main causes of juvenile offending? Are these causes taken into account when the child comes in contact with the justice system? Are these causes addressed (e.g. social or psychological support to the child and the family)?
- How would you assess the situation of children under the minimum age of criminal responsibility who have breached the law? What do law-enforcement workers do with children under 14 years old who have committed a crime? Are they referred to any social services, educational measures or psychological assistance? What are the services available for them? How often do they re-offend? Why?
- What is the legal and regulatory framework for children under the minimum age of criminal responsibility in Moldova?

B. CAPACITY AND SPECIALISATION

- Are there specialised juvenile prosecutors in the country or do all prosecutors deal with child offenders, victims or witnesses? If not, why not? If so, how did they come to be specialised? Have they received specialised training?
- Have prosecutors received any training on dealing with child offenders, victims and witnesses? If so, describe the nature of the training.
- Do prosecutors have special procedures for dealing with child suspects? If so, can you please describe these procedures and how you treat children differently to adult suspects? How about child victims and witnesses? Are these procedures applicable to them as well?
- Do prosecutors change their approach or behaviour in any way when arresting or interviewing and prosecuting children? If so, please describe how

C. DIVERSION

- Do you have the power to decide to release a child suspect if you feel it is not in their or your interests to arrest them? i.e. to divert them out of the criminal justice system. If not, why don't you do this? If so, in what circumstances will you do this and for which offences?
- How frequently (in what percentage of cases)? (If a low estimation) why are diversion measures not used more often? Where are these children diverted to (referred, sent)? Is the diversion rate increasing? What are the obstacles to using diversion measures? What do you think should be done to increase the rate of diversion?
- How is the decision made to divert children out of the criminal justice system? In particular:
  - Who makes the decision on whether to apply diversion measures?
  - Is this decision reviewed by someone (e.g. the Head of the DPP, a magistrate etc.)?
  - What are the criteria for imposing diversion measures (i.e. does the child have to agree? does the victim have to agree etc.?)
  - What information helps you make the decision (e.g. do you receive reports from Probation Officers? Do Probation Officers otherwise help you to make a decision as to whether or not to apply diversion measures?)
- Do prosecutors decide on the particular diversion measures to apply (e.g. mediation /

counselling etc.)? If so, who is this decision made?

- Can you please describe the nature of each diversion measure that can be imposed, in which circumstances it will be used and whether you think it is effective in rehabilitating juvenile offenders:
  - Warnings
  - Placing juveniles under the supervision of parents / other persons / state bodies
  - Requiring the juvenile to repay damage
  - Requirement to complete psychological or rehabilitative treatment
  - Placement of juvenile in a special education, re-education or medical institution
  - Mediation (is mediation currently used? In which circumstances? What is the procedure for mediation? Is it effective?)
- Do prosecutors oversee the implementation of diversion measures? If so, what does this involve? Do you meet with children? How often? Do you receive reports from Probation Officers?
- Which institution implements the diversion measures? How effective is the institution in implementing diversion measures?
- Do you think the current law provides sufficient alternative measures for non-custodial sentences for children? Would you recommend any other non-custodial measures?

D. PRE-CHARGE DETENTION

- At what point in the criminal justice process are children referred to the prosecutor?
- Are all children registered when they are in contact with the police? How does police register children they apprehended or approached outside police facilities? Do they undergo a medical examination upon entering or leaving police facilities?
- Before they are referred to the prosecutor, how long can police hold children for questioning / investigating the offence etc. before a child has to be released or referred to the prosecutor? Do police adhere to this time limit? If not, why not? What happens if police need to go over this limit?
- What is the average time of child apprehension in police before a child legal representative, lawyer and psychologist (if need be) is informed?
- In your experience, what proportion of children experience ill-treatment by police officers? What is the nature of this ill-treatment?
- Where are children held in pre-trial detention?

E. CHARGE

- What procedure follows when police decide that there is enough evidence for charges to be laid against a child suspect? Who will make the decision to lay formal charges – the prosecutor? In which circumstances does a child appear before a Magistrate / Judge for charges to be laid?
- Is there a maximum time limit that applies between police arrest and formal charges being laid? Do police / prosecutors adhere to these time limits? If not, why not?
- Where are children held while the investigation is completed and before the decision is made to lay charges on them?
- What proportion of children who have been charged are released on bail, and what proportion are held in pre-trial detention?
- Where children are held in pre-trial detention, is there a maximum length of time they can be held for? What happens if there is a need to extend this time limit?
- In your experience, how do prosecutors conduct themselves when they are questioning a child suspect? Do prosecutors change their approach or behaviour in any way when interviewing children? If so, please describe how?
- Have you seen a drop in the number of children held in pre-trial detention over the past three years? If so, why? What is the cause of this reduction?
- Have you seen a reduction in the average length of time children are spending in pre-trial detention over the past three years? If so, why? What is the cause of this reduction? If not, why? Are there cases when the maximum legal term for pre-trial detention of children (up to four months) is disregarded? Why do you think this is so?

F. TRIAL

- Approximately what percentage of arrests ends up in a child being tried? (If a low percentage, what are the reasons for this? At what point are they removed from the justice system – police station? Before charge? After charge? Diversion Etc.)
- What is the usual lapse of time between charge and trial / sentencing? (If a significant time lapse: Why are there delays in juvenile cases being heard? What are the obstacles to ensuring that these trials are heard quickly following charge?)
- Do children always have legal representation during trials / sentencing hearings?
- Do children always benefit from legal aid during trials? If so, who provides it? What is the proportion of children benefitting from free legal aid as opposed to children whose families can afford a private lawyer? How is free legal aid funded? If they don't have a lawyer present, is any other person present to assist or represent them? Who?
- How would you assess the quality of legal assistance provided? What do you think would improve access to legal assistance / representation for children?
- Do you think that child offenders and victims always receive a fair trial? If not, why not?
- What do you think would improve the way hearings are conducted when there are child offenders, victims and witnesses?
- Do you think that the needs of child victims are fully met at all stages of criminal proceedings? Do you think the best interest of the child principle is well-known, understood and applied by justice professionals?
- Are there any protection mechanisms in place for children victims and witnesses? If so, what are they according to the law and how effective are they?
- Can children lodge an appeal against a conviction or sentence? If not, why not? If so, how often do children make an appeal? Do they have access to legal assistance / representation when the appeal is made or heard?
- Are there any special procedures during the trials applicable to child victims and witnesses?
- To what extent is the trial process in regular courts 'child friendly'? Do judges change the way they conduct trials? What do they think would improve the way hearings are conducted when there are child offenders, victims and witnesses?

G. SENTENCING

- Do prosecutors request social inquiry or other reports from the Probation Service, social workers, psychologists or other relevant experts at any stage of criminal justice? If so, what is in these reports? Are they helpful? How could they be improved? How often and to what extent justice professionals take them into account?
- How often and in which circumstances will prosecutors recommend that a child receives a custodial sentence? If a low percentage, why? What alternatives are available? If a high percentage, why? What circumstances would have to change in order to reduce the use of custodial sentencing of children (e.g. better alternatives available to refer children to)?
- What options are available for non-custodial sentences?
- In your opinion are there enough options available for non-custodial sentences? If not, what is missing? What other options should be available?
- How effective are non-custodial sentences in rehabilitating child offenders? If effective, why? Have the options and effectiveness of these sentences improved in the past three years? If they are not effective, why not? What is needed to improve their effectiveness?
- In your opinion, how effective are the Probation Service at implementing non-custodial sentences and rehabilitating children?
- What will happen if a child breaches a non-custodial sentence? Will he or she be placed in custody?

H. CO-OPERATION WITH SOCIAL SECTOR

- How would you describe the co-operation between the justice and law-enforcement sectors with social, education and health sectors? Do you think there are sufficient social services to help prevent offence and recidivism, rehabilitate and reintegrate child suspects, offenders or victims and witnesses of crimes? What services do you think are also needed for this? How should justice and social professionals collaborate to achieve this?

Schedule of Interview Questions for representative of SOCIAL AUTHORITIES (education, health, social service)

GENERAL INFORMATION

- Date
- Job Title and Position Description of Interviewee

A. EDUCATION

- Which are the most vulnerable children experiencing school drop-out and absenteeism? Why is it happening?
- Are there any national policies focusing on education of children in conflict with the law? If so, what are their provisions? Are there any plans to further developing these policies?
- How would you assess the education process in detention facilities? Do you see a difference in the quality of education in pre-trial detention facilities compared to penitentiaries? What difficulties exist in ensuring a proper education for children in detention?
- How many teachers are currently involved in educating children in detention? Do you think there are enough teachers in the country providing such services? If not, what are the problems?
- What disciplines do the children learn in detention? How many teaching hours does the curriculum include? Is it enough? How often do the teachers visit children in detention? How is curricula adapted to children's age and learning capacities?
- Do you think there is a continuity of learning process ensured in pre-trial detention facilities? If not, what are the shortcomings?
- Do the authorities issue a document certifying the completion of classes in detention? If so, is there any mentioning that the child graduated in a detention facility? Do the children face any problems in continuing their education upon release?
- Do the Ministry or local education authorities collect any statistics reflecting the education in detention facilities? If so, who is responsible for data collection and what is the purpose of collecting such data?

B. HEALTH

- Are there any national policies focusing on health services for children in conflict with the law? If so, what are their provisions? Are there any plans to further developing these policies?
- What are the (health) guarantees for children during legal proceedings? What kinds of healthcare services are available for these children? How often can a child request it?
- How would you assess the provision of healthcare services in detention facilities? Do you see a difference in the quality of healthcare in pre-trial detention facilities compared to penitentiaries? What difficulties exist in ensuring a high quality service for children in detention?
- How many medical staff are currently involved in the penitentiary system? Do you think there are sufficient specialists in the country providing such services? If not, what are the problems?
- What are the responsibilities of medical staff in detention facilities? Do they have to report on abuses or ill-treatment? If so, to whom are they reporting? Does the medical staff always fulfil this requirement? If not, what is the problem?
- Are there any healthcare and rehabilitation services provided for children released from detention? If so, who is providing such services?
- Do the Ministry or local healthcare authorities collect any statistics on children in detention? If so, who is responsible for data collection and what is the purpose of collecting such data?

C. SOCIAL SERVICE

- Does the current legal framework provide for any social guarantees for vulnerable children? How about children in conflict with the law? If so, what are these guarantees?
- Do you know about any programmes run by state authorities on preventing juvenile delinquency and re-offending? If not, who else is entitled to provide such specialized services?
- What is the role of social service in preventing juvenile delinquency at local level? How do the social assistants cooperate with other relevant actors in preventing juvenile delinquency and/or rehabilitating juveniles?
- What procedures are being applied to a child at risk of offending or re-offending?
- What happens with children upon their release from detention? Does the social service monitor or register them? If not, who is responsible for this?
- What social services are available for children while on probation? Are there any reintegration and re-socialization services for children released from detention? How about child victims?
- Have the social assistants in the country received any training on juvenile justice?
- Do the Ministry or social authorities collect any statistics reflecting the situation of children in conflict with the law? If so, who is responsible for data collection and how these data are being used?

D. CO-OPERATION WITH SOCIAL SECTOR

- Do judges, police or prosecutors request individual assessments of children victims or offenders from social workers, psychologists or other relevant experts at any stage of criminal justice? What is the quality of these evaluation (assessment) reports? How reliable are they? How often and to what extent justice professionals take them into account?
- How would you describe the co-operation between the justice and law-enforcement sectors with social, education and health sectors? Do you think there are sufficient social services to help prevent offence and recidivism, rehabilitate and reintegrate child suspects, offenders or victims and witnesses of crimes? What services do you think are also needed for this? How should justice and social professionals collaborate to achieve that?