



ASSESSMENT OF JUVENILE JUSTICE IN BOSNIA AND HERZEGOVINA

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“Children not treated professionally [by the police] often turn into recidivists.

We tend to forget that offenders are also victims...

Tolerance of violence encourages violence by juvenile offenders.”

– The head of a cantonal juvenile police department

Note on the Assessment Mission

The assessment mission took place from 12 to 23 April 2010. The team consisted of Dan O'Donnell, international consultant, and Eldar Jahić, national consultant. Support was provided by Selma Turkić and Mario Tokić of UNICEF.

The team interviewed the head of the Juvenile Justice Coordination Body, a judge of the Supreme Court of Bosnia and Herzegovina and the Ombudsperson of Bosnia and Herzegovina. The team also met a representative of the Ministry of Justice of the Federation of Bosnia and Herzegovina, a representative of the Ministry of Labour and Social Policy of the Federation, a Federal prosecutor and a representative of the Ministry of Internal Affairs of the canton of Sarajevo.

In Banja Luka, a focus group was convened with a judge, a representative of the municipal Centre for Social Welfare, two police officers and a representative of the Republika Srpska Ministry of Justice. A separate meeting was held with a representative of the Ministry of Health and Social Welfare.

Meetings were held with representatives of the Agency for Statistics of Bosnia and Herzegovina, the Federal Office of Statistics of the Federation of Bosnia and Herzegovina, and the Republika Srpska Institute of Statistics.

The team also met a representative of the Bureau for Human Rights, an NGO, a professor of the Faculty of Criminal Sciences at the University of Sarajevo, and a defence attorney.

Visits were made to the disciplinary centre in Vogošća, Sarajevo; the juvenile unit within the Zenica prison; the juvenile unit of the East Sarajevo prison; the educational-correctional unit located within the Tunjice prison in Banja Luka; and the day centre for the prevention of offending in Banja Luka. A planned visit to the educational-correctional unit located within the adult prison in Tuzla did not take place due to logistical constraints. Unfortunately, the assessment team was unable to visit any pretrial detention facility.

Meetings were held with the Organisation for Security and Co-operation in Europe (OSCE) and the Office of the Italian Development Cooperation. The final day of the assessment mission, the team debriefed the UNICEF Representative and personnel of the Country Office together with representatives of the Swedish International Development Agency and the Swiss Cooperation Office as well as the head of the Juvenile Justice Coordination Body.

In the final phase of the assessment mission, the draft report was shared with the stakeholders involved, who kindly provided feedback and inputs. Among them a particular thank goes to Judge Dragan Uletilović, for his exceptionally valuable contribution.

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

Background

Bosnia and Herzegovina became independent from the Socialist Federal Republic of Yugoslavia (SFRY) in 1992. Independence was followed by armed conflict and ethnic cleansing, which ended with the Dayton Agreement in 1995.

The Dayton Agreement led to the establishment of a state consisting of two 'entities', the Republika Srpska and the Federation of Bosnia and Herzegovina ('Federation'), and Brcko District. The Federation consists of 10 cantons, each having its own legislature and ministries. There are 141 municipalities, 79 in the Federation and 62 in the Republika Srpska.¹

The population is estimated at 3.447 million, including some 745,500 persons (21.6 per cent) under age 18.² The UNDP Human Development Report 2002 estimated the population to be 48.3 per cent Bosniak, 34.0 per cent Bosnian Serb and 15.4 per cent Bosnian Croat.³ The population of the Federation of Bosnia and Herzegovina is estimated at 2.2 million, or approximately 64 per cent of the total population, and that of the Republika Srpska at 1.16 million, or 33.8 per cent of the total population.⁴

The Constitution of Bosnia and Herzegovina was adopted in December 1995, as an annex to the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Agreement). The Constitution provides that duly ratified treaties are part of the national law and, in case of conflict, prevail over legislation. Annex I to the Constitution recognizes the applicability of 15 human rights treaties, including the Convention on the Rights of the Child. The Convention initially came into force for Bosnia and Herzegovina in 1991, as a result of ratification by the Socialist Federal Republic of Yugoslavia; Bosnia and Herzegovina became a State Party by succession in 1993.

Bosnia and Herzegovina became a member of the Council of Europe in 2002, and signed a Stabilization and Association Agreement with the European Union in 2008. It became a Party to the European Convention on Human Rights and Fundamental Freedoms in 2002.

The National Action Plan for Children in Bosnia and Herzegovina (2002–2010) included a section on the judicial system and law reform and another on 'children in conflict with the law'. The latter set forth 10 objectives regarding juvenile justice and child victims of crime. The Action Plan established a Council of Children of Bosnia and Herzegovina responsible for monitoring implementation,⁵ which ceased to function in 2007.

At the time it became a party to the Convention on the Rights of the Child, Bosnia and Herzegovina had only some elements of a juvenile justice system. There was no law specifically on juvenile justice: the legal framework for dealing with juvenile offenders was contained in provisions of the Criminal Code, the Code of Criminal Procedure and other legislation. There were no juvenile courts, although specific judges were assigned to handle cases in some courts. Juveniles given prison sentences were confined in a special section of the prison for men or prison for women.

¹ Agency for Statistics of Bosnia and Herzegovina, *Bosnia and Herzegovina in Figures 09*, Sarajevo, (undated), pp. 4–5.

² Ibid. (The last census took place in 1991, before the war, and another is planned for 2011. More than half the population was displaced during the conflict, which affects the reliability of estimates.)

³ United Nations Development Programme, *Human Development Report 2002 Bosnia and Herzegovina*, UNDP, Sarajevo, 2002, p. 112.

⁴ *Bosnia and Herzegovina in Figures 09*, supra, pp. 4–5. The last census took place in 1991.

⁵ Ministry for Human Rights and Refugees, *National Action Plan for Children in Bosnia and Herzegovina (2002–2010)*, Sarajevo, April 2002, pp. 9–10.

Children under age 14 involved in offending or antisocial behaviour could be confined in the Institution for the Education of Boys and Male Adolescents 'Hum' by decision of the 'guardianship authority'. There was no specialized police unit.

Published data on offending by juveniles are scarce and fragmentary. According to information obtained from the Federation, 2,675 offences were committed by juveniles from 1992 to 1996. The significance of these data is difficult to determine; offences committed during the war (1992–1995) no doubt were under-reported. In 1997, the number of reported offences by juveniles was 1,343, including 445 in the canton of Sarajevo.⁶

Data on offending by juveniles and juvenile justice in the Federation have been published regularly since the beginning of the decade. They indicate a 70 per cent increase of reported offending from 2001 to 2007.⁷ However, the increase in the number of juveniles prosecuted during these years is considerably less – 21 per cent – and a mere 6 per cent for the years 2000 to 2008.⁸ The number of juveniles sentenced appears to have declined in the Federation over this period, from 375 in 2001 to 279 in 2007.⁹

Data concerning Banja Luka, Republika Srpska's largest city, indicate that offending by juveniles fell significantly during the years immediately following the war, from 281 cases in 1995 to 171 in 1998.¹⁰ Reported offending later increased sharply, however, as shown in the following table:

Year	1999	2000	2001	2002	2003	2004	2005
Reported offenders ¹¹	354	416	n/a	635	676	1,039	942

Data for 2002 to 2005 include children under age 14. The exact extent of the increase over the whole period therefore is uncertain. Data on the number of juveniles convicted during these years are scarce, but they confirm that most reported offences do not result in conviction, and that there was a surge in offending in 2003 and 2004.¹²

⁶ Committee on the Rights of the Child, Consideration of reports submitted by States parties under Article 44 of the Convention, Initial report of Bosnia and Herzegovina, CRC/C/11/Add.28, 2004, paras. 355 and 382; and (for Sarajevo) see Sijerčić-Čolić, H., Bubalović, T., and Kosović, J., Criminal-Legal Provisions on Juveniles in the Federation of BiH Related to the Perpetrators of Criminal Offences, Soros Foundation-UNICEF, Sarajevo, 2001, para. 2.

⁷ Federation of Bosnia and Herzegovina, Federal Office of Statistics, Statistical Yearbook 2008, Sarajevo, 2008, Table 25-5.

⁸ Federation of Bosnia and Herzegovina, Federal Office of Statistics, Reported, Accused and Convicted Adults and Juveniles and Economic Contest [sic] in Federation of Bosnia and Herzegovina for 2008, Statistical Bulletin No. 130, Sarajevo, 2009, Table 2.6. (The English title for this table refers to 'accused and convicted' juveniles, but a comparison with other data reveals that it actually refers to juveniles prosecuted – see the section below on data.)

⁹ Statistical Yearbook 2008, supra, p. 339. (These figures include offenders given either sanctions or 'security measures'; excluding security measures, there was a much smaller decrease from 274 offenders given sanctions in 2001 to 267 offenders in 2007.)

¹⁰ Committee on the Rights of the Child, CRC/C/11/Add.28, supra, para. 399 (from 281 juvenile offenders in 1995 to 171 in 1998, a decrease of 39 per cent, in the city of Banja Luka).

¹¹ Judge M. Simović, Young Criminal Offenders in view of the Current Problems of Juvenile Criminal Justice in the Republic of Srpska, Faculty of Law, University of Banja Luka, 2001, p. 6 (for 1999 and 2000); Ministry for Human Rights and Refugees, The Strategy against Juvenile Offending for Bosnia and Herzegovina (2006–2010), Sarajevo, 2006, p. 5, citing reports of Republika Srpska Prosecutor's Office. Data for 2002 to 2005 include children under age 14; it is not clear whether data for earlier years do.

¹² The Strategy against Juvenile Offending for Bosnia and Herzegovina (2006–2010), supra, p. 5 (187 convictions recorded in 2003 and 414 in 2004).

The Initial Report of Bosnia and Herzegovina on the implementation of the Convention on the Rights of the Child was prepared in 2004 and examined by the Committee on the Rights of the Child ('the Committee') in 2005.¹³ A second report has been prepared and submitted, but has not yet been examined. The Committee expressed concern about a number of issues regarding juvenile justice, in particular:¹⁴

the stigmatization of children in conflict with the law;

the lack of sufficient data concerning the number of juveniles in conflict with the law;

inadequate research on prevention activities and mechanisms to evaluate the adequacy of existing measures;

the lack of alternatives to detention and community-based rehabilitation programmes; and

the detention of juveniles with adults, poor material conditions of detention and inadequate access to education.

The recommendations made by the Committee include:¹⁵

systematic training for judges should be ensured;

measures should be taken to guarantee respect for the 'last resort' principle;

conditions of detention should be improved, and juveniles in custody should be separated from adults and given access to a full programme of educational activities (including physical education);

more 'precise' legal regulations on diversion should be set up;

conditions of supervision of juvenile detainees ordered by the juvenile judge should be more clearly defined;

consideration should be given to amending the legal provisions on sentencing of offenders aged 16–17 years by eliminating the one-year minimum term of imprisonment as well as by reducing the 10-year maximum term;

in Republika Srpska, the right to a defence counsel should be established from the beginning of the criminal proceedings.

¹³ Committee on the Rights of the Child, CRC/C/11/Add.28, *supra*; Committee on the Rights of the Child, Consideration of reports submitted by States parties under Article 44 of the Convention, Concluding observations: Bosnia and Herzegovina, CRC/C/15/Add.260, 2005.

¹⁴ Committee on the Rights of the Child, CRC/C/15/Add.260, *supra*, para. 73.

¹⁵ *Ibid.*, para. 74.

Executive Summary

Bosnia and Herzegovina became independent in 1992. The armed conflict and ethnic cleansing that followed ended in 1995 with the Dayton Agreement, which established a complex political and administrative system that includes a central 'state' government and two 'entities', one of which is a federation composed of 10 cantons, each with its own ministries and legislature.

Data suggest that offending by juveniles may have increased during the present decade, but this conclusion must be treated with caution given the fragmentary nature of existing data.

The process of developing a juvenile justice system compliant with international standards began a decade ago. Situation analyses on juvenile offending and juvenile justice in the entities were published in 2001. The National Action Plan for Children in Bosnia and Herzegovina (2002–2010) contains a detailed section on juvenile justice. A national Strategy against Juvenile Offending (2006–2010) was adopted and a Juvenile Justice Coordination Body was established in 2009. A law on juvenile justice based on international standards was adopted by Republika Srpska in February 2010 and came into force in January 2011.¹⁶ A similar draft law is under consideration in the Federation, but had not been adopted as the present report was finalized (February 2011).

Implementation of the Strategy against Juvenile Offending has been limited. This is due in part to the complex structure of the country and to financial constraints, but it is also due in large part to insufficient political will. Although the Ministry for Human Rights and Refugees and some influential judges and police officials are strongly committed to strengthening and modernizing juvenile justice, other ministries and legislatures have different priorities.

A number of institutions implement good practices. Two are located in Banja Luka: a community-based 'day centre' for the prevention of offending and an 'educational-correctional unit' for convicted juveniles. The day centre offers a broad range of activities, including parent counselling; participation is voluntary. The educational-correctional unit is physically separate from the prison that it forms part of. It resembles a house, and offers a comprehensive programme of activities aiming to prevent reoffending.

The newly opened 'juvenile unit' in the East Sarajevo prison is also a positive development, because convicted juveniles are housed in a separate building designed specifically to meet their needs and ensure separation from older prisoners.¹⁷

The newly established 'disciplinary centre' for community-based rehabilitation of offenders in Sarajevo is another good practice. It offers an intensive and comprehensive programme to prevent reoffending. Residential placement is limited to 20 days, and most juveniles participate on a non-residential basis. Recidivism reportedly is low amongst juveniles who have attended this centre, and among those released from the educational-correctional unit in Banja Luka.

Specialized police units, responsible for investigating offences committed by juveniles as well as prevention, exist in some cities. Police violence against juveniles reportedly is rare.

The national Ombudsman has a unit for child rights that actively monitors conditions in facilities for juveniles. This is another positive development.

¹⁶ Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings, Official Gazette of Republika Srpska, 13/10.

¹⁷ Most juvenile offenders are actually over age 18, however, and there is no similar facility for female juvenile offenders.

Some courts have specialized judges and prosecutors for juvenile cases, although the law requiring this has not yet come into force. Some Centres for Social Work (CSWs) also have specialized units for dealing with juvenile offenders and juveniles at risk. These are also positive developments, although the capacity of the CSW teams needs to be strengthened, at least in the Federation.

In 2009, the UNICEF Country Office obtained financing for a three-year project on juvenile justice. Implementation began late in the year. The project is informed by research carried out by national experts. It builds on the results of previous projects and activities of other international actors and addresses most of the relevant issues.

A number of serious problems concerning children in residential settings remain to be addressed. One is the detention of juveniles awaiting trial in adult facilities, at least in the Federation.¹⁸ Another is the existence of a closed unit for younger juveniles within the adult prison in Tuzla. A third is the recent renovation of an open multipurpose facility in Sarajevo. The renovations are designed to reduce the risk of peer violence, but by increasing security they have created a prison-like environment unsuitable for children at risk.

Despite some advances in collecting and publishing data on juvenile offending and juvenile justice, in particular in the Federation, the data available remain fragmentary and insufficient. No data on offending by juveniles or on juvenile justice concerning the whole country are published.

The recommendations made by the assessment team include:

The next national strategy on juvenile offending should be based on a realistic assessment of risks and foreseeable constraints; a careful analysis of the changes to the system that are most urgently needed; and an evidence-based assessment of the cost-effectiveness of the possible approaches and measures for addressing problems identified as a priority.

Priority should be given to helping social welfare authorities develop the capacity to fulfil their responsibilities under the new law; the possibility of increased cooperation with civil society should be explored; and the role of new services should be defined so as to complement, and not duplicate, that of the CSWs.

Priority also should be given to closing existing gaps in secondary prevention programmes and strengthening diversion programmes, possibly by establishing more disciplinary centres¹⁹ and day centres (like the Banja Luka centre) where the need is greatest; the results of such programmes should be documented as a step towards the identification and consolidation of methodologies that are effective in the prevention of offending and reoffending.

The need for residential facilities, the appropriate use of existing facilities and the possible need for a new facility in the Federation should be reassessed, urgently, to ensure that all juveniles deprived of liberty are placed in specialized centres providing an appropriate level of security, adequate conditions and programmes designed to meet the needs of the respective populations.

The effectiveness of different dispositions, measures and sentences should be monitored and analysed to evaluate the impact of the new law and the way prosecutors and judges exercise their discretion.

¹⁸ The assessment team was unable to ascertain the extent to which this problem exists in Republika Srpska.

¹⁹ Republika Srpska's new Law on Protection and Treatment refers to these as 'educational centres for juveniles'. None exist there at present.

Consideration should be given to establishing a pilot project to provide legal assistance to accused juveniles, and possibly other children in need.

Standards on training in child rights and juvenile justice need to be developed, and such training should be incorporated into entry-level and in-service training programmes on a permanent basis; the feasibility of developing links between training programmes and research, and between practitioners and academia, should be explored.

PART I. The Process of Juvenile Justice Reform

1. Policy

Bosnia and Herzegovina became independent in 1992, and was consumed by armed conflict until 1995.

The issue of juvenile justice was beginning to appear on the social and political agenda by the end of the decade. In December 2001, parallel studies on juvenile justice in Republika Srpska and the Federation were published.²⁰ The latter ended with a series of recommendations that, inter alia, called for a new law on juvenile justice, for diversion measures, and for the creation of new facilities for juvenile offenders, child victims of crime and those in need of treatment for substance abuse and psychiatric problems.²¹ It also called for more research, a comprehensive system of data collection, training of professionals and community- and school-based prevention programmes.

In 2002, a National Action Plan for Children in Bosnia and Herzegovina (2002–2010), inspired by the World Summit for Children, was adopted, with the support of UNICEF.²² The Plan contained a section on 'children in conflict with the law', which covered children at risk and child victims of crime as well as juvenile offenders, and focused mainly on the role of law enforcement authorities.

In 2003, a symposium on juvenile justice was organized by the Open Society Fund and Save the Children UK. Some 80 experts attended. The proceedings of the symposium were circulated to the relevant authorities, and ultimately led to the adoption, in 2006, of the national Strategy against Juvenile Offending (2006–2010).²³

The Strategy was based on a superficial analysis of the scarce data available, and a list of the 'presumptions' (e.g., political will, coordination, allocation of resources) required for implementation.²⁴ It had five components: law reform, alternative measures, institutional treatment, prevention, and implementation of legislation. Each of the components contained a strategic goal and a list of activities, and each activity was accompanied by a list of 'duty bearers', resources required, time frame and progress indicators.

Of the 43 activities foreseen in the Strategy, no more than seven have been carried out to any significant extent. This is a disappointing result. One reason is that the coordination mechanism was not established until 2008, halfway through the period of implementation envisaged. Interestingly, it was not created until after certain tragic events that had a major impact on public opinion. In 2008, three young Roma boys with a long record of criminal conduct burnt an elderly woman to death, and a resident of the open facility in Sarajevo killed an adolescent in a tram. The public outcry led to the renunciation of the mayor of Sarajevo and the Prime Minister of the canton of Sarajevo. It had important consequences for juvenile justice, including the opening of a closed educational-correctional unit for juveniles aged 14–18 years within the Tuzla prison, the transfer of the Hum multipurpose facility from the canton to the Federation and the establishment of the Juvenile Justice Coordination Body.

²⁰ Judge M. Simović, *Young Criminal Offenders in view of the Current Problems of Juvenile Criminal Justice in the Republic of Srpska*, Faculty of Law, University of Banja Luka, 2001, p. 6; Judge J. Kosović, *Young People in Conflict with the Law in the Light of Topical Problems concerning Juvenile Criminal Justice*, Association of Criminal Law and Criminology, Sarajevo, 2001.

²¹ *Young Criminal Offenders in view of the Current Problems of Juvenile Criminal Justice*, supra, pp. 53–54.

²² Ministry for Human Rights and Refugees, *National Action Plan for Children in Bosnia and Herzegovina (2002–2010)*, Sarajevo, April 2002, pp. 2–3.

²³ Ministry for Human Rights and Refugees, *The Strategy against Juvenile Offending for Bosnia and Herzegovina (2006–2010)*, Sarajevo, 2006.

²⁴ *Ibid.*, pp. 4–5 and 10–11, respectively.

The efforts of the Coordination Body during the last two years are responsible for the most significant accomplishments that have taken place within the framework of the Strategy.

The Strategy is a good one in some ways. The emphasis on diversion and alternative sentences is sound. The emphasis on prevention and on developing effective approaches to rehabilitation in closed settings – issues that sometimes are overlooked – are also appropriate, as is the attention given to research, data collection and intersectoral cooperation. The biggest flaw in the Strategy was the failure to assess realistically the obstacles and foreseeable risks to its implementation.

Several of the authorities interviewed attributed the low level of implementation to the complex political structure of the country and, to a lesser extent, to shortage of funds. In effect, implementation of the Strategy requires action by the national authorities, the two 'entities' (Republika Srpska and the Federation), the ten cantonal governments, the municipal governments and Brcko District. This is certainly one reason, but the fact that implementation was taken more seriously after the tragic events of 2008 indicates that lack of political commitment was also a factor that impeded implementation.

The main accomplishments, to date, include the drafting of a law on juvenile justice and its adoption by the legislature of Republika Srpska, the adoption of a decree regulating alternative measures in Republika Srpska and the Federation, and the relatively effective functioning of the Juvenile Justice Coordination Body. At the time of the assessment mission, the draft law on juvenile justice was in its second reading by the legislature of the Federation, and the process of revising the national Strategy against Juvenile Offending was expected to begin soon. There are factors that will complicate the process of developing the juvenile justice system in the immediate future, including differences concerning the future of the Hum multipurpose facility, the large number of regulations ('by-laws') considered necessary to put the new law fully into effect, disagreements about the proper role of social welfare authorities, the limited capacity of the social welfare authorities and decentralized responsibility for financing them. Nevertheless, the advances observed since 2008 seem to indicate that the momentum and progress during the next four or five years should be greater than the results achieved during the 2006–2010 Strategy.

2. Law reform

After independence, priority was given to adopting new criminal codes and codes of criminal procedure for Bosnia and Herzegovina and the two entities, the Federation and Republika Srpska. These codes were adopted in 2003.

The idea of a law specifically on juvenile justice was first proposed by a judge for juveniles in the 2001 study on juvenile justice carried out in the Federation. A draft 'Law on Juvenile Offenders' was prepared in 2005. The need for such a law was recognized in the 2006–2010 Strategy, and a second draft was produced in 2008.²⁵ Originally, the intent was that it be adopted by the legislature of Bosnia and Herzegovina. The legislators determined, however, that juvenile justice is within the competence of the entities, so the draft law would need to be adopted by the legislatures of the Republika Srpska and the Federation (as well as Brcko District). At the time, it was agreed that the text would be adopted by both entities without amendments.

The law was adopted in Republika Srpska in February 2010, with the title Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings ('Law on Protection and Treatment'), and came into force in January 2011. Despite the understanding that the texts adopted should be identical, numerous changes were introduced into the version adopted by Republika Srpska, and changes have also been proposed by various

²⁵ This draft was entitled Law on Juvenile Criminal Offenders and Protection of Children under Criminal Legislation.

actors in the Federation.²⁶ The Juvenile Justice Coordination Body is playing a lead role in lobbying for the adoption of the law in the Federation.

The law was drafted with the intent of ensuring full compatibility with the relevant international standards, and is a good example in that respect (see Part II, below). It calls for two complementary regulations or laws, on diversion and on the conditions that can be imposed as part of alternative sentences. The former was drafted by a working group of the Juvenile Justice Coordination Body and is now in force in both Republika Srpska and the Federation.

The assessment team's main concerns are the feasibility of law implementation, in particular with regard to the numerous and important responsibilities assigned to social welfare authorities. They include:

- preparing or assisting in the preparation of pretrial reports on the background of accused juveniles/ juvenile suspects;²⁷
- attending preparatory or preliminary proceedings in the absence of parents;²⁸
- supervising accused juveniles not in detention;²⁹
- providing services to offenders under age 14;³⁰
- assisting juveniles given diversion measures;³¹
- supervising juveniles given alternative sentences, including 'intensive supervision';³²
- assisting parents to carry out 'intensive supervision';³³
- preparing reports on compliance with obligations imposed on juveniles given alternative sentences;³⁴
- preparing reports on juvenile offenders given suspended sentences;³⁵
- assisting in the 'selection and application' of appropriate diversion measures;³⁶
- escorting juveniles placed in educational institutions to the institution;³⁷
- conducting victim-offender mediation as a diversion measure and monitoring compliance with mediation agreements;³⁸
- providing information for consideration in judicial hearings on parole;³⁹ and

²⁶ The authors of the report had access to the 2008 draft law, but not to amendments to the draft under consideration by the legislature of the Federation; consequently, all references to the draft law refer to the 2008 draft.

²⁷ Law on Protection and Treatment, Articles 21(4) and (6), 87 and 92(2); see also draft law on juvenile criminal offenders, Article 68(1).

²⁸ Law on Protection and Treatment, Article 93(4); see also draft law on juvenile criminal offenders, Article 82(5).

²⁹ Draft law on juvenile criminal offenders, Article 76(1).

³⁰ Law on Protection and Treatment, Article 73(2) and (3); see also draft law on juvenile criminal offenders, Article 55.

³¹ Draft law on juvenile criminal offenders, Articles 69(2), 92(2) and 107(2).

³² Law on Protection and Treatment, Articles 120(3), 134, 137(1) and 146; see also draft law on juvenile criminal offenders, Article 23(8).

³³ Law on Protection and Treatment, Articles 37(3) and (5) and 140–143; see also draft law on juvenile criminal offenders, Article 25(3).

³⁴ Law on Protection and Treatment, Articles 92(2), 120(3), 121(2) and 137; see also draft law on juvenile criminal offenders, Article 23(8).

³⁵ Draft law on juvenile criminal offenders, Article 42(3).

³⁶ Law on Protection and Treatment, Article 27(4). (Diversion measures are called, in the English translation of the Law, 'correctional recommendations'.)

³⁷ Ibid., Article 164(2).

³⁸ Ibid., Article 26(3) and (5).

³⁹ Ibid., Article 177(3).

- maintaining contact with juveniles serving sentences and their families.⁴⁰

All this is in addition to assisting children at risk of offending, helping juveniles reintegrate into the community after serving a custodial sentence, assuming responsibilities with regard to child victims and witnesses and fulfilling the functions that the law assigns on an optional basis, such as “to submit motions and present facts and evidence...” at any stage of proceedings.⁴¹

The assessment mission visited two CSWs, one in Banja Luka and one in Sarajevo. Each has a small team working on juvenile justice issues. In Banja Luka, the team appears to have the capacity to perform its functions adequately. In Sarajevo, however, where about 30 per cent of all reported offending by juveniles in the Federation occurs, the team seemed to be overwhelmed by its juvenile justice caseload. If the situation in Sarajevo is typical of conditions prevailing in other cantons with a relatively high incidence of offending, then the limited capacity of the CSWs could well be a significant obstacle to proper implementation of the new law.

An evaluation of the capacity of the social welfare authorities to fulfil their role regarding juvenile justice is needed, and a plan for reinforcing their capacity should be developed. In defining this plan, it would be useful to clarify the role of the technical staff that, according to the new legislation, will be employed by courts and prosecutors, in order to ensure complementarity with the functions of CSW staff.⁴² Establishing more disciplinary centres and day centres will also help reduce the burden on CSW staff.

3. Administrative reform/restructuring

Few administrative reforms/restructuring have had a significant direct impact on juvenile justice, according to the information provided to the assessment team.

Certain changes in the prison system are the exception. They include the opening of an educational-correctional unit within the prison in Tuzla, the creation of a separate unit for convicted juvenile offenders in the East Sarajevo prison, and the renovation of the Hum multipurpose facility in Sarajevo, which was still underway at the time of the assessment mission.

The creation of a separate unit for convicted juvenile offenders from the Republika Srpska within the East Sarajevo prison is a positive development, for the reasons described in Part II of this report. Thus far, the significance of this development for offenders presently under age 18 is more potential than actual, since all the prisoners confined there at the time of the assessment mission were young adults.

The assessment team did not visit the educational-correctional unit within the Tuzla prison, but a subsequent visit by UNICEF personnel documented conditions that are seriously below accepted standards. This is no doubt due in large part to the location of this small unit within a prison for adults. The assessment team believes there was a real need for a closed facility for offenders aged 14–18 years from the Federation. At least some of the tragic events involving juveniles placed in the open multipurpose Hum facility could have been avoided by placing the juveniles concerned in a closed setting. The risk that some of the victims and perpetrators of these events posed to themselves, to the public and to their peers was known, and confinement while providing appropriate assistance would have been compatible with international standards. There is clearly a need for a secure facility that is not part of a prison and can receive juveniles aged 14–15 years when deprivation of liberty is necessary.

⁴⁰ Ibid., Article 180.

⁴¹ Ibid., Article 81(1); see draft law on juvenile criminal offenders, Article 63(1).

⁴² See Law on Protection and Treatment, Article 12, defining expert advisors as including social workers, psychologists, social pedagogues-defectologists' and 'special pedagogues-defectologists' and Article 21; see also draft law on juvenile criminal offenders, Article 13.

Putting the Hum facility under the responsibility of the Federation was a good decision, in the view of the assessment team, because it makes the services that the facility could potentially provide available within a broader area. Nevertheless, the assessment team does not agree with the decision to continue using this facility for the same purposes, while remodelling the infrastructure to provide for greater security. This was done in response to previous incidents of violence, including at least one in which one resident killed another. The measures taken, however, have for all practical purposes turned the facility into a jail – ironically, since it apparently is still considered an ‘open’ facility, although the legal basis for this reportedly is poorly defined. The bars that have been used to separate different parts of the facility are similar to those used in prisons, creating a repressive atmosphere that is totally inappropriate for children under age 14, especially those who are there for their own protection.

The assessment team considers that a possible solution to the location of the educational-correctional facility within the prison in Tuzla and to the conversion of the Hum facility into a prison-like building would be to (a) open a new facility for children who are not offenders but who need to be placed by the CSW in a residential facility and (b) redefine the purpose of the Hum facility to the use for which it is now best suited, namely, the confinement of juvenile offenders given ‘educational-correctional’ measures.⁴³ The Hum facility could also be used for accused juveniles when detention before trial is considered necessary, and who are now detained in close contact with adult detainees (see Part II, below).

The creation of specialized police units in the cantons of Sarajevo and Tuzla is an example of administrative restructuring that has had positive consequences for juvenile suspects and for children at risk, as well as child victims of crime. There are two specialized units in Sarajevo, one for juvenile offenders and one for child victims. The former comprises 10 carefully selected officers, five women and five men, most of whom have university degrees. In Tuzla, eight specialized officers deal with offending by juveniles and domestic violence. The teams have contact persons in each police station within the canton. One specialized officer is on duty at all times and handles the cases immediately whenever a juvenile is taken into custody in connection with an offence. The head of the Sarajevo team indicated, “The first contact with the police can be decisive for the life of a child. Our experience during the last 10 years has shown that talking to children informally, in the presence of a psychologist, helps avoid making mistakes in communicating with the child.”

The teams also play an active role in efforts to prevent offending, in cooperation with schools and other interested parties. The head of the Sarajevo team told the assessment team, “The police must work with the community. Everyone who comes into contact with the child [at risk] must contribute to prevention.”

4. Allocation of resources

Little information is available about the funds allocated to juvenile justice. However, budgetary constraints do not appear to have been a major obstacle to the development of juvenile justice in the last few years. Improvements have been made in the juvenile unit of the Zenica prison; the Hum facility is being renovated; a new separate unit for convicted juvenile offenders was built within the East Sarajevo prison; and two disciplinary centres have been established, one in 2007 and one in 2010.

Limited funds have affected some activities, in particular with regard to staff levels. The juvenile justice team of the Sarajevo CSW is understaffed. The Cantonal Action Plan on the prevention of offending calls for schools to add social workers to their staff, but only five have been recruited thus far. The capacity of the

⁴³ Whether or not it would be appropriate to use a single facility for children placed by the CSW and children who are not offenders placed temporarily by the police is a question that the assessment team does not have sufficient information to answer, and which should be considered not only from the viewpoint of the potential risks involved in the cohabitation of these two groups, but also the appropriateness of the respective roles of the police and CSW with regard to these groups. A better approach might be for the police to place children needing temporary shelter in the care of the CSWs. The recommendations made by OSCE in its 2008 report on the Hum facility should also be taken into account and implemented, to the extent they remain relevant.

disciplinary centre could be increased by hiring additional staff (see Part II, below).

In 2009, the impact of the world economic crisis on the economy of Bosnia and Herzegovina led the government to seek assistance from the International Monetary Fund. As part of the agreement reached, it made a commitment to reduce 'current expenditures' by 10 per cent.⁴⁴ The cantonal governments have been instructed to reduce their human resource budgets by 10 per cent. This indicates that budgetary constraints are likely to affect the implementation of the new juvenile justice laws and the new strategy on juvenile offending.

It is urgent to develop realistic plans, with regard to both implementation of the new laws – which will come into force in 2011 at the earliest – and medium-term plans for the development of juvenile justice, in the form of the national strategy that should be developed to replace the 2006–2010 Strategy. A first step might be to 'map' existing capacities – not only infrastructure, as envisaged by the 2006–2010 Strategy, but also programmes, human resources and caseloads. Another is to develop a more complete and reliable picture of 'demand' at the national level – incidence of offending, number of children at risk, number of serious offenders, number of habitual offenders, and the age, sex and other relevant characteristics of the children belonging to these different groups. Comparison and analysis of these two sets of information will help identify gaps in the system, needs and priorities. Given the budgetary constraints that can be anticipated, it will be important to calculate the costs and, as far as possible, compare the effectiveness of different programmes or activities (e.g., day centres, disciplinary centres, specialized technical personnel attached to courts and prosecutors' offices, specialized CSW staff, specialized police officers, and so on). Although calculating the effectiveness of various programmes or activities may well not be possible at this point, due to the limited information on their actual impact, it should at least be possible to compare the cost of different kinds of interventions, estimate the size and location of the intended beneficiaries and, perhaps, develop hypotheses about the desired impact that will serve as a basis for evaluating them in the future.

5. Training and capacity-building

A considerable amount of training has taken place, on an ad hoc basis. Prior to the adoption of the Strategy against Juvenile Offending (2006–2010), most training was done with the support of Save the Children UK and the Open Society Fund; more recently, training has been provided with the support of UNICEF and the Italian Development Cooperation.

The Bureau for Human Rights, an NGO, has trained some 200 judges, prosecutors and social workers since 2007. Training events usually last two to three days, and are based on a needs assessment. The objectives include the development of skills and appropriate attitudes. In 2010, a special training activity on the new decree on diversion was held. Some 40 judges and prosecutors participated. Training of social workers has begun, and the aim is to train at least one social worker from each CSW.

The Italian Development Cooperation has organized, jointly with national counterparts, training activities for judges, prosecutors and social workers from the Federation and Republika Srpska, for police officers from the Federation, and for journalists.

In Sarajevo, a training module on child rights has been incorporated into the curriculum of the Police Academy. The length of the training varies, but the minimum duration is seven days. All police officers participated in this training during 2008–2009.

⁴⁴ Letter of Intent, 16 June 2009, p. 5, available at the International Monetary Fund (IMF) website www.imf.org/external/np/loi/2009/bih/061609.pdf, accessed 15 January 2011.

6. Accountability mechanism

The rights of juvenile offenders can be violated by various actors. In most countries of the region, most of the violations that are documented, in particular those involving violence, are committed by the police. Although training in child rights can help reduce the prevalence of violence against adolescent suspects, defendants and prisoners, effective accountability mechanisms are also essential.

In Bosnia and Herzegovina, many sources interviewed by the assessment team, including an NGO, indicated that the violent treatment of juvenile suspects by the police is rare. One reason for this is probably that here, in contrast to most countries, the role of juvenile police units is not limited to the prevention of offending, but includes the investigation of offences attributed to juveniles. In addition, all the sources who spoke with the assessment team on this subject, including the Ombudsperson and a defence lawyer, agree that police investigators rigorously investigate the cases of abuse that do occur.

Conditions of detention that violate the rights of juveniles reportedly persist, at least in the Federation, especially in pretrial detention centres. (Considerable efforts have been made to improve conditions in centres for juvenile offenders serving sentences or other measures involving deprivation of liberty, as described below, in Part II of this report.)

The first national Human Rights Ombudsman was appointed in 1996, pursuant to the Dayton Agreement; ombudsmen were also appointed in the two 'entities', but until 2004 all ombudsmen were foreigners. In 2009, the three ombuds offices were merged into a single Institution of Human Rights Ombudsmen of Bosnia and Herzegovina. The Institution is very interested in the rights of children, including child victims of crime, and juvenile justice. At the time of the assessment mission, a study on children in residential institutions, including correctional facilities, was underway.

7. Coordination

Responsibility for coordinating action on juvenile justice, and in particular implementing the national Strategy against Juvenile Offending, lies with the Juvenile Justice Coordination Body. The Coordination Body was established in 2008. It has 13 members, including representatives of the relevant ministries of the national government, the Republika Srpska and the Federation.⁴⁵ It is convened by the Ministry for Human Rights and Refugees, and has five working groups, one for each of the components of the national Strategy (legislation, alternative measures, institutional treatment, prevention and implementation). It meets every six to eight weeks. Civil society plays a relatively small role in the Coordination Body.

8. Data and research

Data on juvenile justice are compiled by the police, prosecutors and courts. There are three statistical agencies: the Agency for Statistics of Bosnia and Herzegovina, the Federal Office of Statistics of the Federation of Bosnia and Herzegovina, and the Republika Srpska Institute of Statistics. Only the Federal Office of Statistics publishes data on crime on a regular basis, since the year 2000.

Data on offending by juveniles include the number of reported offenders, disaggregated by canton, sex and age of the offender and by the nature of the offence.⁴⁶ The criteria for classifying offences are based on the legal interest affected (life and body, property etc.).

⁴⁵ Specifically, the Ministry for Human Rights and Refugees, the Ministry of Security and the Ministry of Justice of Bosnia and Herzegovina; the Ministry of Justice, the Ministry of Health, the Ministry of Labour and Social Policy of the Federation and the Federal Police; the Ministry of Justice, the Ministry of Health and Social Welfare and the Criminal Police of Republika Srpska; and the Department of Health and Social Protection of Brcko District.

⁴⁶ Statistical Bulletin No. 130, *supra*, Tables 2.1 and 2.2.

Data are also disaggregated by whether the offence was prosecuted and, if not, the reason (e.g., lack of evidence).⁴⁷ Data on cases prosecuted are disaggregated by whether the case was dismissed, or a sanction or 'security measure' (e.g., confinement to a facility for the treatment of drug abuse) was imposed.⁴⁸ Data on cases prosecuted are also disaggregated by sex, by the nature of the offence, by prior conviction, and by whether detention was ordered.⁴⁹ The number of cases prosecuted but dismissed is identified.⁵⁰ All such data are further disaggregated by canton.

Data on the number of juveniles convicted are disaggregated by age group at the time of the offence (14–15 years; 16–17 years) and by the sentence or measure imposed.⁵¹ All such data are further disaggregated by canton.

This information is very useful, although it has some limitations and presents difficulties regarding interpretation. One is that the way offences are classified does not allow identifying the number of serious offences (e.g., homicide, rape). Some of the terminology used in English is misleading. The heading 'accused and convicted', for example, seems to refer to the number of cases prosecuted, i.e., brought to trial. And no explanation is offered for some data that are difficult to understand – for example, the discrepancy between the number of 'sanctions' imposed on convicted juveniles and the number of 'penalties' imposed on convicted juveniles.

No data are reported on a regular basis concerning juvenile offending and juvenile justice in Republika Srpska and, consequently, no data on this subject are available for the country as a whole.

Bosnia and Herzegovina's second periodic report to the Committee on the Rights of the Child indicates that the number of registered juvenile offenders in the whole country was 2,603 in 2005; 2,753 in 2006; and 2,640 in 2007.⁵² These data are difficult to reconcile with data from the Federation, which indicate that the number of reported offences by juveniles during the same years was 1,178, 1,200 and 1,094, respectively. (The population of the Republika Srpska aged 6–17 years is less than half that of the Federation.⁵³)

The assessment team met with the Republika Srpska Institute of Statistics and the Bosnia and Herzegovina Agency for Statistics. Both showed great interest in collecting data on juvenile offending and juvenile justice. The Juvenile Justice Coordination Body has also started compiling data on juvenile justice, beginning with 2008. Closer cooperation between the Coordination Body and the statistical agencies would no doubt improve the way data are reported.

⁴⁷ Ibid., Table 2.2.

⁴⁸ Ibid., Table 2.3.

⁴⁹ Ibid., Table 2.5.

⁵⁰ Ibid., Table 2.4.

⁵¹ Ibid., Table 2.7.

⁵² Combined Second, Third and Fourth Periodic Report of Bosnia and Herzegovina on its Implementation of the Convention on the Rights of the Child, Sarajevo, 2009, issued as United Nations document CRC/C/BIH/2-4, pp. 89–90.

⁵³ Bosnia and Herzegovina in Figures 09, supra, p. 5.

The Republika Srpska Institute of Statistics publishes annually a Social Welfare Statistics Bulletin, which contains data from 2003 to the present on the caseload of children 'inclined to committing criminal acts', disaggregated by sex and by age cohort (0–7 years; 7–14 years, 15–16 years; and 17–18 years).⁵⁴ The Bulletin also includes data on juveniles released from correctional facilities provided with assistance (all are 17–18 years of age) and data on juvenile offenders given measures that involve action by the social welfare authorities (e.g., supervision).⁵⁵ Data on the caseload of children in situations associated with a high risk of offending (e.g., 'alcoholics', 'drug addicts' and children 'inclined to vagrancy', to begging and to prostitution) are also published.⁵⁶ These data are extremely useful, although clearer definitions of the indicators would enhance their value. No similar data are published on a regular basis by the Federation and, consequently, no data on this subject are available for the country as a whole.

Some research on offending by juveniles, on juvenile justice and on public perceptions of juvenile justice has been carried out by experts associated with the departments of law and criminology at the universities of Sarajevo and Banja Luka.

⁵⁴ Republika Srpska Institute of Statistics, Social Welfare Statistics Bulletin No. 6, Banja Luka, 2008, Tables 1.1 and 1.2.

⁵⁵ Ibid., Table 3.2.

⁵⁶ Ibid., Tables 1.1 and 1.2.

PART II. The Juvenile Justice System in Bosnia and Herzegovina

1. Prevention

The national Strategy against Juvenile Offending (2006–2010) identifies prevention as one of five ‘strategic goals’.⁵⁷ The Programme for Prevention called for by the Strategy was drafted in 2009, but at the time of the assessment mission it had not been adopted. The Strategy itself includes seven other activities. The emphasis was on school-based activities, including training in non-violent conflict resolution, counselling, programmes to assist students requiring help with their studies, and raising the awareness of students and parents about offending. The development of programmes for children with antisocial behaviour intended to reduce the risk of offending, through cooperation between schools and social welfare authorities, was called urgent. Community-based activities envisaged the inclusion of programmes to improve parenting skills and to assist children and adolescents involved in substance abuse.

Some school-based activities have been implemented. Materials for teachers on the prevention and reduction of violence in schools, prepared by Save the Children UK, are widely used. The Educational Institute of Sarajevo, with the support of the Italian Development Cooperation, organized a seminar for the directors of all primary and secondary schools in the canton, social workers employed in these schools, and personnel of the Institute. In Sarajevo and Banja Luka, specialized police officers take part in activities aiming to make students more aware of the risks involved in offending. The staff of the disciplinary centre in Sarajevo (see below) also participates in such activities. A new programme on violence prevention was carried out in 20 schools in 2010, with the support of UNICEF.⁵⁸

Primary responsibility for the prevention of offending by juveniles lies with the social work authorities and the CSWs. Their mandate covers all children under age 18 and even juvenile offenders released from custodial facilities after reaching age 18, but are particularly important with regard to children under age 14. Since children under this age cannot be prosecuted, the role of the CSWs includes the prevention of reoffending by children who become involved in crime at an early age.

The CSW of Banja Luka, a municipality with an estimated population of 200,000,⁵⁹ has a staff of 67 persons. Four years ago, a specialized team of four professionals was established to handle all cases concerning juvenile offenders and children at risk of offending. A case manager is appointed for each case, and develops an individual plan, which invariably involves the child and his/her family. Depending on the needs of the individual, activities may include schoolwork help (some 80 per cent of this caseload have learning disorders), referral to clubs that provide structured leisure activity, parenting skills development and family therapy. A representative of the CSW informed the assessment team that the caseload of offenders under age 14 was low – perhaps 10 per year.

The CSW operates a closed ‘reception centre’ where street children, neglected and abused children and others in need of shelter can be housed for up to five days, under Republika Srpska’s Law on Social Welfare and Family Law. It also operates a ‘diagnostic centre’ where children suspected of offending may be held temporarily while a social report is prepared and, if necessary, during trial.

⁵⁷ The Strategy against Juvenile Offending for Bosnia and Herzegovina (2006–2010), *supra*, pp. 36–41.

⁵⁸ The pilot programme involved the definition of roles and responsibilities in each participating school level, training of school personnel, the establishment of codes of conduct, the identification of sources of support in the community, and greater support to child victims of violence and violent children.

⁵⁹ OSCE Regional Centre Banja Luka: Fact Sheet [undated].

The CSW office visited in Novi Grad, Sarajevo, has a staff of approximately 30 persons. Novi Grad is the largest of canton Sarajevo's nine municipalities, with a population of 124,000. A team of three professionals handle juvenile justice cases, including a psychologist who is also responsible for cases of domestic violence. The psychologist is in charge of 'the most difficult cases' of child offenders, while her two colleagues deal with cases of children at risk. The three professionals share a small crowded office. There are no rooms for interviews and no funds to pay for interpretation of interviews with children or parents who do not speak the national language. This has been a problem with some Roma. The team has not received any training in juvenile justice. The lack of facilities for the treatment of children and adolescents requiring psychiatric treatment or treatment for substance abuse was identified as a major gap in their ability to refer children requiring services that they themselves cannot provide.

In Banja Luka, responsibility for operating a 'day centre', established by Save the Children UK, was taken over by the municipal government in 2006.⁶⁰ The centre is non-residential, and participation is on a voluntary basis. There is a staff of three professionals, who are assisted by volunteers. The programme includes schoolwork help, computer literacy, life skills training, a weekly 'creativity workshop', field trips, individual psychosocial counselling, group counselling twice weekly, and parent counselling.⁶¹

The programme is designed for children aged 11–18 years, and the capacity is limited to 10. The centre is open from 9 a.m. to 5 p.m., and most children attend on a daily basis. All those who have participated fully in the programme have been boys, but some children, including girls, have taken part in certain activities (e.g., computer literacy and help with schoolwork). The programme has three full-time staff members, and volunteers. Offending by children who have attended the entire programme reportedly is 'almost zero'. The centre was visited by the assessment team, which considers it a good example of community-based prevention and believes that plans should be made to establish similar programmes in Sarajevo and other municipalities, where a need has been documented.

At the present time, efforts to prevent offending are fragmentary and insufficient. Both community- and school-based activities are needed, and the creation of a secondary prevention programme involving close cooperation with schools and the social welfare authorities, of the sort called urgent by the 2006–2010 Strategy, remains a priority. Strengthening community-based prevention programmes and developing joint community- and school-based programmes will require reinforcing the capacity of the CSWs, and appointing specialized teams where they do not exist.

Both the day centre and the disciplinary centre provide valuable services, and reportedly have good results in preventing offending among children at higher risk. The need for additional centres based on these models should be assessed, to complement the services provided by CSW offices.

2. The arrest and interrogation of suspects

The Law on Protection and Treatment provides, "An authorized official [i.e., police officer] may deprive a juvenile of liberty if there are grounds of suspicion that the juvenile has perpetrated a criminal offence," and if the reasons for ordering custody recognized by the Code of Criminal Procedure are present.⁶² The juvenile's

⁶⁰ In 2009, the centre was renovated with the help of the Italian Development Cooperation, which also donated computer and sports equipment as well as art and reading materials.

⁶¹ The Director stated that, in their experience, "The behaviour of children cannot be changed without changing the behaviour of parents."

⁶² Law on Protection and Treatment, Article 96(1); see also draft law on juvenile criminal offenders, Article 71(1).

parents or guardians, defence attorney and the CSW are to be notified immediately.⁶³ A juvenile in police custody must be brought before a prosecutor “immediately or within 12 hours.”⁶⁴ Failure to do so requires that he/she be released.⁶⁵

The prosecutor may decide to interrogate a juvenile suspect personally, or authorize the police to question the suspect. In Sarajevo, Tuzla and Banja Luka, juvenile suspects are interrogated by specialized juvenile police officers. In other cantons, police officers performing interrogations are not specialized.

Several sources interviewed by the assessment team, including the Ombudsperson, agreed that the use of violence during arrest or interrogation is rare, and that internal police authorities investigate rigorously the cases that do occur.

The Codes of Criminal Procedure now in force provide, “A minor must have defence attorney from the outset of the preparatory proceeding.”⁶⁶ Sources interviewed, including social workers and a defence lawyer, agreed that, in practice, lawyers are almost never present during the interrogation of a juvenile, unless the crime is a serious one. One reason for this is that appointed defence attorneys are not reimbursed for services provided before trial. Article 77 of the Law on Protection and Treatment recognizes the right to legal assistance in stronger terms, indicating, “A juvenile shall be represented by a defence attorney during the first questioning by a prosecutor or an authorized official person [i.e., police officer] as well throughout the entire proceedings.”⁶⁷ (Emphasis added.)

3. Detention prior to and during trial

The Code of Criminal Procedure of Bosnia and Herzegovina provides that detention before trial may be ordered “only if the same purpose cannot be achieved by another measure” and “The duration of custody must be reduced to the shortest necessary time.”⁶⁸ The grounds for such an order are the usual ones: risk of flight, risk of destruction of evidence or intimidation of witnesses, and risk of the commission of a serious offence.⁶⁹

Whenever a juvenile is taken into police custody, he/she must be presented to the prosecutor “immediately or within 12 hours,” according to the new legislation.⁷⁰ The prosecutor must examine the juvenile without delay or within 12 hours at the latest and decide either to release him/her or request a juvenile judge to order detention or a measure of temporary placement.⁷¹ Temporary placement means placement in a reception i

⁶³ Ibid., Article 96(2). (Note: The draft law on juvenile criminal offenders does not require notification of the attorney and does not specify that notice must be immediate. It provides that the CSW shall be notified only if it is not possible to notify the parents.)

⁶⁴ Ibid., Article 96(6); see also draft law on juvenile criminal offenders, Article 71(1).

⁶⁵ Ibid.

⁶⁶ Code of Criminal Procedure of Bosnia and Herzegovina, Article 343(1); Code of Criminal Procedure of the Federation of Bosnia and Herzegovina, Article 364(1); Law on Protection and Treatment, Article 77.

⁶⁷ See draft law on juvenile criminal offenders, Article 59.

⁶⁸ Code of Criminal Procedure of Bosnia and Herzegovina, Article 131(1) and (4); see also Code of Criminal Procedure of Republika Srpska, Article 189. (Unless otherwise indicated, citations to the Codes of Criminal Procedure refer to the Codes of Bosnia and Herzegovina and the Code of the Federation of Bosnia and Herzegovina; it was not feasible for the authors of this report to compare these Codes systematically with the Code of Republika Srpska.)

⁶⁹ Code of Criminal Procedure of Bosnia and Herzegovina, Article 132(1)(a)-(c).

⁷⁰ Law on Protection and Treatment, Article 96(6); see also draft law on juvenile criminal offenders, Article 71(1).

⁷¹ Law on Protection and Treatment, Article 98(1); see also draft law on juvenile criminal offenders, Article 71(3), establishing a limit of 24 hours.

The pretrial detention facilities for juveniles

Pretrial detention facilities are separate sections located within the prisons that exist in the Federation and in Republika Srpska. The assessment team was unable to visit any pretrial detention facility. Several persons familiar with such facilities were interviewed, however. They all agreed that juveniles detained before trial are kept in the same facilities as adults detained before trial, in separate cells but in close proximity to adults. An OSCE report published in March 2009 cites one case in which a juvenile was kept in the same cell as an adult, with the approval of a judge.⁷² The stated reason for this arrangement was that the adult “could have a positive influence” on the juvenile, but OSCE concluded that the actual reason was simply overcrowding. The European Committee for the Prevention of Torture visited the Sarajevo pretrial detention facility in 2009 and called the regime in which juveniles are confined there “totally inappropriate.”⁷³

Ensuring the separation of juvenile and adult detainees and access to educational and recreational programmes are objectives of the 2006–2010 Strategy on Juvenile Offending that have not yet been realized.⁷⁴

4. Diversion and restorative justice

The Criminal Codes adopted after independence introduced diversion for juvenile offenders.⁷⁵ Measures called ‘educational recommendations’ may be applied to persons aged 14–18 years who have committed an offence punishable by up to three years of imprisonment.⁷⁶ There are two requirements: “the juvenile’s admission that he has perpetrated the criminal offence, and his expressed willingness to make amends with the injured party.”⁷⁷

Under the Criminal Codes, diversion necessarily involves the imposition of some kind of requirement on the offender. Eight specific measures are recognized, and the locus of authority to divert depends on the nature of the measure. The prosecutor can impose personal apology to the victim, compensation of damage, school attendance and counselling, while judges may impose placement in a substitute family, home or institution, treatment in a health facility, employment or community service.⁷⁸ No diversion measure may be in effect for more than one year.⁷⁹ Both the selection and the application of the appropriate measure are to be done in cooperation with the offender’s parents (or guardians) and the social welfare services.⁸⁰

The Law on Protection and Treatment adopted by the Republika Srpska recognizes a new form of diversion:

⁷² Organisation for Security and Co-operation in Europe, *Juvenile Justice Findings in BiH: Submission to the Judicial and Prosecutorial Training Centres*, OSCE, Sarajevo, 2009, p. 8.

⁷³ Report to the Government of Bosnia and Herzegovina on the visit to Bosnia and Herzegovina carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 11 to 15 May 2009, CPT/Inf (2010) 10, Strasbourg, 2010, para. 40.

⁷⁴ Strategic goal 5, objective 6.

⁷⁵ Criminal Code of Bosnia and Herzegovina, Article 76 et seq.; Criminal Code of Republika Srpska, Article 65 et seq.; Criminal Code of the Federation of Bosnia and Herzegovina, Article 80 et seq.

⁷⁶ Criminal Code of Bosnia and Herzegovina, Article 76(1); Criminal Code of Republika Srpska, Article 65(1); Criminal Code of the Federation of Bosnia and Herzegovina, Article 80(1).

⁷⁷ Criminal Code of Bosnia and Herzegovina, Article 76(3); Criminal Code of Republika Srpska, Article 65(3); Criminal Code of the Federation of Bosnia and Herzegovina, Article 80(3).

⁷⁸ Criminal Code of Bosnia and Herzegovina, Article 78; Criminal Code of Republika Srpska, Article 67; Criminal Code of the Federation of Bosnia and Herzegovina, Article 82.

⁷⁹ Criminal Code of Bosnia and Herzegovina, Article 79(2); Criminal Code of Republika Srpska, Article 68(2); Criminal Code of the Federation of Bosnia and Herzegovina, Article 83(2).

⁸⁰ Criminal Code of Bosnia and Herzegovina, Article 79(4); Criminal Code of Republika Srpska, Article 68(4); Criminal Code of the Federation of Bosnia and Herzegovina, Article 83(4).

police warning.⁸¹ Police warnings may be imposed on first offenders by a police officer, with the approval of a prosecutor. In addition, this law makes the diversion measures previously recognized (called ‘correctional recommendations’ in the English translation of the law) applicable for any offence.⁸² The prosecutor must “consider the possibility and appropriateness of diversion before initiating proceedings.”⁸³ If the conditions for diversion are met, then diversion is, in principle, obligatory; if only some of the conditions are met, the prosecutor still has discretion to adopt a diversion order.⁸⁴ These are significant improvements over the Codes now in force.

⁸¹ Law on Protection and Treatment, Article 22. (There was no equivalent provision in the draft law on juvenile criminal offenders.)

⁸² Ibid., Articles 24(1) and 89(1). (A distinction is made between offences punishable by less than five years and those punishable by more than five years, but its significance is unclear.)

⁸³ Ibid., Article 90(1); see also draft law on juvenile criminal offenders, Article 69(1). (Note: The term ‘appropriateness’ is translated as ‘justification’ in the English version of some related legislation.)

⁸⁴ Law on Protection and Treatment, Article 90(4) and (5); see also draft law on juvenile criminal offenders, Article 69(2) and (3).

The prosecutor will be required to collect information on the personality and ‘mental development’ of the juvenile, as well as his/her living conditions and environment.⁸⁵ This responsibility may be delegated to specialized staff members of the office of the prosecutor.⁸⁶ Any person having relevant information is obliged to provide it on request, except the juvenile’s parents or guardian, attorney and minister/confessor.⁸⁷ Expert assessments of the juvenile’s health, mental development or personality by physicians, psychologists or pedagogues may be ordered.⁸⁸

The Law on Protection and Treatment recognizes the right to a defence attorney when the prosecutor decides to impose a diversion measure.⁸⁹ If the juvenile fails to comply with the diversion measure(s) imposed, the prosecutor must initiate proceedings.⁹⁰

The assessment team was unable to find any data on the use of diversion, but was informed that it is used rarely.

The Codes of Criminal Procedure now in force and the new draft law on juvenile criminal offenders recognize the ‘principle of opportunity’, or prosecutorial discretion. Under the Codes now in force, in cases involving offences punishable by up to three years of imprisonment, a prosecutor may decide not to prosecute if he/she considers that, although there is evidence that an offence has been committed, “it would not be purposeful to conduct a criminal proceeding against a juvenile in view of the nature of the criminal offence and the circumstances under which it was perpetrated, the minor’s previous life and his personal characteristics.”⁹¹ Under the new law adopted in Republika Srpska, this standard will apply to any offence.⁹²

In order to make this determination, the prosecutor may seek information from the juvenile, the child’s parents, and any other person or institution, summoning them to be interviewed if necessary.⁹³ The social welfare authority may be requested to give its opinion on the matter.⁹⁴

If the prosecutor considers a ‘personality profile’ of the juvenile necessary to reach an opinion on the usefulness of prosecution, the juvenile may be referred to a specialized facility for a period of up to 30 days.⁹⁵ The approval of the social welfare authorities is required to make such a referral, in the Federation.⁹⁶

Little data are available on the use of discretion not to prosecute. One study on Republika Srpska indicated

⁸⁵ Law on Protection and Treatment, Article 92(1); see also draft law on juvenile criminal offenders, Article 74(1).

⁸⁶ Law on Protection and Treatment, Article 92(3); see also draft law on juvenile criminal offenders, Article 74(3).

⁸⁷ Law on Protection and Treatment, Article 78; see also draft law on juvenile criminal offenders, Article 60. (Note: The former contains an important exception for information obtained by social workers in the course of preparing reports requested by a prosecutor or judge.)

⁸⁸ Law on Protection and Treatment, Article 92(4); see also draft law on juvenile criminal offenders, Article 74(4).

⁸⁹ Law on Protection and Treatment, Article 27(4); see also draft law on juvenile criminal offenders, Article 8(2).

⁹⁰ Law on Protection and Treatment, Article 90(6); see also draft law on juvenile criminal offenders, Article 69(4).

⁹¹ Code of Criminal Procedure of Bosnia and Herzegovina, Article 352 and Code of Criminal Procedure of the Federation of Bosnia and Herzegovina, Article 373(1). (Note: According to one source, Article 375 of the Code of Criminal Procedure of Republika Srpska recognizes the application of this principle for offences punishable by up to five years).

⁹² Law on Protection and Treatment, Article 89; under Article 68(1) of the 2008 version of the draft law on juvenile criminal offenders, it would apply only to offences punishable by up to five years.

⁹³ See, e.g., Code of Criminal Procedure of Bosnia and Herzegovina, Article 352(1) and Code of Criminal Procedure of the Federation of Bosnia and Herzegovina, Article 373(1).

⁹⁴ Ibid.

⁹⁵ Law on Protection and Treatment, Article 68(2).

⁹⁶ Code of Criminal Procedure of the Federation of Bosnia and Herzegovina, Article 373(2).

that, in 1998–2000, an average of 31 juvenile cases were resolved in this way annually.⁹⁷ The 28 per cent of juvenile cases in which proceedings were ‘halted’ without proceeding to trial in the Federation include cases in which the prosecutor had exercised this discretion.⁹⁸

5. Adjudication and sentencing

The minimum age for adjudication

Only persons 14 years of age or older at the time of an offence may be prosecuted as juveniles, and persons accused of an offence committed before reaching age 18 may only be prosecuted as juveniles.⁹⁹

Competence to adjudicate juveniles

The Codes of Criminal Procedure now in force provide that cases involving juveniles shall be tried before ‘judges for juveniles’ and appeals shall be heard by ‘panels for juveniles’ composed of three judges.¹⁰⁰ These provisions are not applicable to proceedings before courts for minor offences, however, and cases involving juveniles that come within their competence are not heard by judges for juveniles.

The new legislation on juvenile justice provides that each trial court must have a juvenile justice department composed of one or more ‘judges for juveniles’ and a ‘panel for juveniles’.¹⁰¹ In contrast to the legislation now in force, it further provides that judges for juveniles are required to have “a pronounced interest in the rearing, needs and interests of juveniles, as well as special expertise.”¹⁰² Prosecutors who handle juvenile cases also must be especially designated for this function, according to the new legislation, and are to have the same qualifications as juvenile judges.¹⁰³ Both courts and prosecutor offices must have specialized staff including psychologists, social workers and ‘social pedagogues-defectologists’.¹⁰⁴ Their role focuses largely on the preliminary stage of proceedings and includes collecting information and advising the judge or prosecutor on the personality of the juvenile and other data relevant to diversion and detention before trial.¹⁰⁵

The new legislation also specifies that the ‘juvenile panels’ of appellate courts must include at least one member who is a juvenile judge or has ‘special expertise’ in the area of child rights and juvenile offending.¹⁰⁶

⁹⁷ Young Criminal Offenders in view of the Current Problems of Juvenile Criminal Justice in the Republic of Srpska, *supra*, p. 8.

⁹⁸ Statistical Yearbook 2008, p. 338 (calculation by author).

⁹⁹ Criminal Code of Bosnia and Herzegovina, Articles 8–9; Criminal Code of Republika Srpska, Article 64; Criminal Code of the Federation of Bosnia and Herzegovina, Articles 9–10.

¹⁰⁰ See, e.g., Code of Criminal Procedure of Bosnia and Herzegovina, Article 351 and Code of Criminal Procedure of the Federation of Bosnia and Herzegovina, Article 372.

¹⁰¹ Law on Protection and Treatment, Articles 16–17; see also draft law on juvenile criminal offenders, Article 8(1).

¹⁰² Law on Protection and Treatment, Article 18; see also draft law on juvenile criminal offenders, Article 10.

¹⁰³ Law on Protection and Treatment, Articles 18–19; see also draft law on juvenile criminal offenders, Articles 57 and 10.

¹⁰⁴ Law on Protection and Treatment, Article 21; see also draft law on juvenile criminal offenders, Article 13.

¹⁰⁵ Law on Protection and Treatment, Article 21; see also draft law on juvenile criminal offenders, Article 13(2), which gives this staff a greater role with regard to the trial stage of proceedings.

¹⁰⁶ Law on Protection and Treatment, Article 17; see also draft law on juvenile criminal offenders, Article 10(3).

The right to be tried without delay

Under the Codes now in force, once the preparatory proceedings have been completed and the investigating judge for juveniles has forwarded the case to the prosecutor, the latter has eight days to file the case with the trial court.¹⁰⁷ Under the new legislation, the prosecutor will be responsible for the preparatory stage, but the same time limit of eight days applies to the filing of the case with the competent trial court once the preparatory stage of proceedings is completed.¹⁰⁸

Under the new legislation, when the case has been filed with the competent trial court it may be dismissed if the judge considers that there are no grounds for prosecution or no purpose would be served by prosecution, despite evidence that the accused has committed the offence.¹⁰⁹ Similarly, the judge may decide to impose a diversion measure.¹¹⁰ If the case is not dismissed or diverted, and it is decided to proceed to trial, then the trial must begin within eight days of the resolution of any preliminary motions.¹¹¹

Trials may not be adjourned unless exceptional circumstances exist.¹¹² Under the new legislation, judges must inform the president of the court to which they are attached about the status of pending cases every 15 days.¹¹³ Verdicts must be issued in writing within eight days after the end of a trial, or 15 days in exceptionally complex cases.¹¹⁴

The law also provides, “Authorities participating in the proceedings against a minor and other agencies and institutions from whom information, reports or opinions are sought must proceed with the greatest urgency so that the proceedings are completed as soon as possible.”¹¹⁵

‘Child-friendly’ procedures

The Codes of Criminal Procedure now in force contain some provisions intended to make proceedings ‘child friendly’. One provides,

*When actions are undertaken that are attended by the minor, and especially when he is examined, the bodies participating in the proceeding must be circumspect, mindful of the mental development, sensitivity and personal characteristics of the minor, so that the conduct of the criminal proceeding will not have an adverse effect on the minor’s development.*¹¹⁶

Article 76(1) of the new Law on Protection and Treatment is identical.

¹⁰⁷ See, e.g., Code of Criminal Procedure of the Federation of Bosnia and Herzegovina, Article 381(1) and Code of Criminal Procedure of Republika Srpska, Article 356.

¹⁰⁸ Law on Protection and Treatment, Article 104(1); see also draft law on juvenile criminal offenders, Article 77.

¹⁰⁹ Law on Protection and Treatment, Article 105(2); see also draft law on juvenile criminal offenders, Article 78.

¹¹⁰ Law on Protection and Treatment, Article 106(2)–(3); see also draft law on juvenile criminal offenders, Article 79(2).

¹¹¹ Law on Protection and Treatment, Articles 108 and 81(1) and (3)

¹¹² Code of Criminal Procedure of Bosnia and Herzegovina, Article 367(2); Code of Criminal Procedure of the Federation of Bosnia and Herzegovina, Article 388; see also Law on Protection and Treatment, Article 114(2) and draft law on juvenile criminal offenders, Article 87(2).

¹¹³ Law on Protection and Treatment, Article 114(2); see also draft law on juvenile criminal offenders, Article 87(4).

¹¹⁴ Code of Criminal Procedure of Bosnia and Herzegovina, Article 367(3); Code of Criminal Procedure of the Federation of Bosnia and Herzegovina, Article 388(4); see also Law on Protection and Treatment, Article 114(3) and draft law on juvenile criminal offenders, Article 87(3).

¹¹⁵ Code of Criminal Procedure of Bosnia and Herzegovina, Article 350; Code of Criminal Procedure of the Federation of Bosnia and Herzegovina, Article 371; see also Law on Protection and Treatment, Article 85 and draft law on juvenile criminal offenders, Article 66.

¹¹⁶ Code of Criminal Procedure of Bosnia and Herzegovina, Article 42(1); Code of Criminal Procedure of the Federation of Bosnia and Herzegovina, Article 363(2).

There are two forms of trial, called ‘session’ and ‘main trial’. The former is a summary proceeding, in which the judge may render a verdict and sentence after hearing the prosecution and defence, without hearing witnesses. The prosecutor and defence attorney must be present during the summary proceeding.¹¹⁷ The Law on Protection and Treatment indicates tacitly that the juvenile should also be present in person, but the 2008 draft law on juvenile criminal offenders states that the judge has discretion to proceed in the absence of the juvenile.¹¹⁸ If a parent or guardian of the accused is not present, a representative of the social welfare authority must be appointed to replace them and must be present throughout the proceeding.¹¹⁹ The presence of the juvenile and a representative of the social welfare authority as well as the prosecutor and defence attorney is required during the ‘main trial’.¹²⁰

Proceedings must be closed to the public.¹²¹ The new legislation also provides that the final judgment or decision shall be published but may not contain any information that could identify the juvenile concerned.¹²²

The assessment team was not able to identify any data on the pending caseload of juvenile cases, or the length of proceedings in practice. It was informed that some courts have a significant backlog of juvenile cases and that trials and other proceedings are often affected by lengthy delays.

The right to legal assistance

In an Article entitled ‘Mandatory Defence’, the Codes of Criminal Procedure now in force provide, “A minor must have defence attorney from the outset of the preparatory proceeding.”¹²³ However, another provision of the Codes seems to indicate that the presence of the defence attorney is not necessarily required: “The prosecutor and the defence attorney may be present during the actions in the preparatory proceedings.”¹²⁴ The defence attorney is required to be present during the main trial.¹²⁵ If the juvenile’s family does not retain a lawyer, then the court is to appoint one from a list maintained by the Bar Association. There is no special list for cases involving juveniles. A defence attorney informed the assessment team that most assigned attorneys have little motivation and no understanding of juvenile justice, and consequently provide poor quality services to juvenile defendants.

The new legislation provides, “A juvenile shall be represented by a defence attorney during the first questioning as well as throughout the entire proceedings.”¹²⁶ (Emphasis added.)

¹¹⁷ Compare the Law on Protection and Treatment, Article 109(1)-(3), with the draft law on juvenile criminal offenders, Article 82(2).

¹¹⁸ Draft law on juvenile criminal offenders, Article 82(2).

¹¹⁹ Law on Protection and Treatment, Article 109(4); see also draft law on juvenile criminal offenders, Article 82(5).

¹²⁰ Law on Protection and Treatment, Article 110(2); see also draft law on juvenile criminal offenders, Article 83(2).

¹²¹ Code of Criminal Procedure of Bosnia and Herzegovina, Article 365; Code of Criminal Procedure of the Federation of Bosnia and Herzegovina, Article 386(1); see also Law on Protection and Treatment, Article 111, and draft law on juvenile criminal offenders, Article 65.

¹²² Law on Protection and Treatment, Article 84(2); see also draft law on juvenile criminal offenders, Article 65(2).

¹²³ Code of Criminal Procedure of Bosnia and Herzegovina, Article 343(1); Code of Criminal Procedure of the Federation of Bosnia and Herzegovina, Article 364(1).

¹²⁴ Code of Criminal Procedure of Bosnia and Herzegovina, Article 356(2); Code of Criminal Procedure of the Federation of Bosnia and Herzegovina, Article 377(2).

¹²⁵ Code of Criminal Procedure of Bosnia and Herzegovina, Article 364(3); Code of Criminal Procedure of the Federation of Bosnia and Herzegovina, Article 385(3).

¹²⁶ Law on Protection and Treatment, Article 77(1); see also draft law on juvenile criminal offenders, Article 59(1).

Sentencing – non-custodial measures

Under the Criminal Codes now in force,¹²⁷ two kinds of ‘criminal sanctions’ may be imposed on juvenile offenders: ‘educational measures’ and ‘imprisonment’.¹²⁸ If the offender was 14 or 15 years of age at the time of the offence, only educational measures may be assigned; either may be imposed on an offender aged 16 or 17 years.¹²⁹ Sentences of imprisonment may only be applied ‘exceptionally’.¹³⁰ Juveniles may not be given a suspended sentence.¹³¹

There are three kinds of ‘educational measures’, some of which involve placement or confinement in a closed facility.¹³² The one category of measure that does not is ‘intensified supervision’ by parents, foster parents or the competent social welfare body.¹³³ These measures are intended for offenders who require longer-term treatment or rehabilitation but do not need to be completely isolated from their environment.¹³⁴

Attendance to a ‘disciplinary centre’ is intended for the offender “who does not need to be submitted to extended ... measures, in particular if he has perpetrated a criminal offence out of thoughtlessness or frivolity.”¹³⁵ Somewhat paradoxically, placement in a disciplinary centre may involve a deprivation of liberty for up to 20 days.¹³⁶ Offenders also may be ordered to attend a disciplinary centre on a non-residential basis, for a certain number of hours per day for up to 30 days.¹³⁷ There was no disciplinary centre in Republika Srpska at the time of the assessment mission.

The new Law on Protection and Treatment also distinguishes between two main kinds of dispositions that may be imposed on juveniles tried and found to have committed an offence, called ‘correctional measures’ and ‘juvenile imprisonment’.¹³⁸ It is similar to the Criminal Codes in that sentences of ‘imprisonment’ may only be imposed on juveniles aged 16–17 years at the time of the offence. Article 27 of the Law on Protection and Treatment, entitled ‘Gradual Application of Criminal Sanctions’, indicates that warnings, supervision and placement in ‘educational institutions’ should be preferred to sentences of imprisonment.¹³⁹ This Article appears to be designed to implement the ‘last resort’ principle of

¹²⁷ Three Criminal Codes, identical in many particulars, were in effect at the time this report was drafted: the Criminal Code of Bosnia and Herzegovina, the Criminal Code of the Federation of Bosnia and Herzegovina, and the Criminal Code of Republika Srpska.

¹²⁸ Criminal Code of Bosnia and Herzegovina, Article 80(1); Criminal Code of Republika Srpska, Article 69; Criminal Code of the Federation of Bosnia and Herzegovina, Article 84(1). (Note: Educational measures are called ‘correctional measures’ in translations of some texts.)

¹²⁹ Criminal Code of Bosnia and Herzegovina, Article 80(2) and (3); Criminal Code of Republika Srpska, Article 69(1) and (2); Criminal Code of the Federation of Bosnia and Herzegovina, Article 84(2) and (3).

¹³⁰ Criminal Code of Bosnia and Herzegovina, Article 80(3); Criminal Code of Republika Srpska, Article 69(3); Criminal Code of the Federation of Bosnia and Herzegovina, Article 84(3).

¹³¹ Criminal Code of Bosnia and Herzegovina, Article 80(5); Criminal Code of Republika Srpska, Article 69(4); Criminal Code of the Federation of Bosnia and Herzegovina, Article 84(5).

¹³² Criminal Code of Bosnia and Herzegovina, Article 82(1); Criminal Code of Republika Srpska, Article 71; Criminal Code of the Federation of Bosnia and Herzegovina, Article 87.

¹³³ Criminal Code of Bosnia and Herzegovina, Article 86; Criminal Code of the Federation of Bosnia and Herzegovina, Article 90.

¹³⁴ See, e.g., Criminal Code of Bosnia and Herzegovina, Article 82(3).

¹³⁵ Criminal Code of Bosnia and Herzegovina, Article 82(2); Criminal Code of the Federation of Bosnia and Herzegovina, Article 86(2).

¹³⁶ Criminal Code of Bosnia and Herzegovina, Article 85(2)(c); Criminal Code of the Republika Srpska, Article 74(2); Criminal Code of the Federation of Bosnia and Herzegovina, Article 89(2)(c).

¹³⁷ Criminal Code of Bosnia and Herzegovina, Article 85(2)(b); Criminal Code of the Republika Srpska, Article 74(2); Criminal Code of the Federation of Bosnia and Herzegovina, Article 89(2)(b).

¹³⁸ Law on Protection and Treatment, Article 31; see also draft law on juvenile criminal offenders, Article 19.

¹³⁹ It should be noted that the only existing ‘educational institution’ in Republika Srpska is a closed facility linked to a prison. Article 18 of the draft law on juvenile criminal offenders, which indicates that the imposition of a term of imprisonment must be ‘exceptional’, also appears to be designed to comply with the ‘last resort’ principle.

Article 37 of the Convention on the Rights of the Child. Sentences of imprisonment involve a finding of guilt; decisions imposing a correctional measure include a description of the offence committed and the circumstances that justify the imposition of the measure but not a finding of guilt.¹⁴⁰

The kinds of 'correctional measures' authorized by the new legislation are similar to those authorized by the Criminal Codes, although there are differences. One is that, whereas placement in a disciplinary centre or participation in the programme offered by a disciplinary centre is the only kind of 'disciplinary measure' authorized by the Criminal Codes of Bosnia and Herzegovina and the Federation, the new legislation recognizes warnings, reprimands and the imposition of 'special conditions'.¹⁴¹ 'Special conditions' are similar to diversion measures, and include school attendance, community service, and participation in programmes for the treatment of substance abuse and so on.¹⁴² The maximum duration of any such measure is one year.¹⁴³ The views of the offender are to be taken into account in selecting the obligation or obligations imposed.¹⁴⁴

A second difference is that the duration of intensive supervision, from one to three years under the Criminal Codes, will be reduced to six months to two years under the new legislation.¹⁴⁵

A third difference is that, under the new legislation, the maximum period of placement in a disciplinary centre – to be renamed 'educational centre' in the Republika Srpska – will be increased from twenty days to three months.¹⁴⁶

A fourth important difference is that the law on juvenile criminal offenders allows suspended sentences, which in effect is an alternative to the deprivation of liberty.¹⁴⁷ The criterion for imposing this disposition is simply that the fear of having to serve the sentence "may reasonably be expected [to] deter" the commission of future offences.¹⁴⁸ The period of 'probation' may not be shorter than one year or longer than three.¹⁴⁹

Data from the Federation for 2008 indicate that, of 92 juveniles convicted of offences committed before the age of 16 years, 58 were sentenced to supervision by parents and 26 to supervision by the CSW – a total of 91 per cent of all convicted juveniles of this age group. Similarly, 92 per cent of the juveniles convicted of crimes committed at ages 16–17 years were given sentences of supervision by parents or by the CSW.

During 2008, four younger juvenile offenders and four older juvenile offenders were ordered to attend a disciplinary centre, but the information does not indicate whether these measures involved residential placement or part-time attendance.

¹⁴⁰ Law on Protection and Treatment, Article 113(3); see also draft law on juvenile criminal offenders, Article 86(3).

¹⁴¹ Law on Protection and Treatment, Article 32; see also draft law on juvenile criminal offenders, Articles 20(1)a, 20(2) and 22. ('Reprimands' was recognized as a disciplinary measure by Article 71 of the Criminal Code of the Republika Srpska.)

¹⁴² Law on Protection and Treatment, Article 35; compare with draft law on juvenile criminal offenders, Article 23(2), which includes apologies and reparation of the victim.

¹⁴³ Law on Protection and Treatment, Article 35(4); see also draft law on juvenile criminal offenders, Article 23(4).

¹⁴⁴ Law on Protection and Treatment, Article 35(4); see also draft law on juvenile criminal offenders, Article 23(3).

¹⁴⁵ Law on Protection and Treatment, Article 37(4); see also draft law on juvenile criminal offenders, Article 25(4), 26(2) and 27(4).

¹⁴⁶ Law on Protection and Treatment, Article 36(2)(b); see also draft law on juvenile criminal offenders, Article 24(2)(b).

¹⁴⁷ The English translation of the law refers to this as 'postponed imposition' of the prison sentence, although it would be more accurate to say that it is the execution of the sentence, not its imposition, that is postponed.

¹⁴⁸ Law on Protection and Treatment, Article 54(1); see also draft law on juvenile criminal offenders, Article 42(1).

¹⁴⁹ Law on Protection and Treatment, Article 54(2); see also draft law on juvenile criminal offenders, Article 42(2).

Sentencing of juvenile offenders – custodial measures and sentences

One of the categories of ‘educational measures’ that, under the Criminal Codes now in force, may be imposed on juvenile offenders of any age (i.e., 14–15 years; 16–17 years) is called ‘institutional measure’.¹⁵⁰ This measure may be imposed for a period of up to five years “committal to an educational institution, to an educational reformatory home or some other training establishment.”¹⁵¹

There are no ‘educational facilities’ for offenders in Bosnia and Herzegovina. There are two educational-correctional facilities, one within the prison complex in Banja Luka (Republika Srpska) and another within the prison in Tuzla (Federation). The other training establishments referred to are those for children with mental or physical disabilities.¹⁵²

The new legislation on juvenile justice retains the category of ‘correctional measures’.¹⁵³ The most significant change is a new requirement that placement in a facility for children with disabilities be reviewed every three months.¹⁵⁴

Data from the Federation indicate that, in 2008, six juveniles convicted of crimes committed at the ages of 14–15 years were given ‘educational-correctional measures’ – 6.5 per cent of the dispositions imposed on juveniles of that age group after trial.¹⁵⁵ During the same year, four juveniles convicted of an offence committed at ages 16–17 years in the Federation were placed in ‘rehabilitation centres’, and two were placed in ‘special correctional institutions’.¹⁵⁶ All together, these dispositions represent 5 per cent of all juveniles aged 14–18 years convicted of an offence.

Under the Criminal Codes now in force, sentences of imprisonment may only be imposed on juvenile offenders aged 16–17 years at the time of the offence for offences punishable by five years of imprisonment, and only exceptionally, i.e., when “it would not be justifiable to apply an educational measure because of the grave consequences of the offence perpetrated and the high degree of criminal responsibility.”¹⁵⁷ The duration of prison sentences imposed on juveniles may not be less than one year, and the maximum sentence that may be imposed on a juvenile is 10 years.¹⁵⁸ Prison sentences are served in a special juvenile section of prisons for adult offenders. There are two such prisons, one in Republika Srpska and one in the Federation.

The maximum sentence that may be imposed on a juvenile for most offences is reduced to five years under the new legislation, although sentences of 10 years are still allowed for especially serious offences, and when a juvenile has committed two or more concurrent offences punishable by sentences of 10 years or

¹⁵⁰ Criminal Code of Bosnia and Herzegovina, Article 83; Criminal Code of Republika Srpska, Article 71; Criminal Code of the Federation of Bosnia and Herzegovina, Article 86.

¹⁵¹ Criminal Code of Bosnia and Herzegovina, Article 83(c) and 90; Criminal Code of the Federation of Bosnia and Herzegovina, Article 86(1)(c) and Articles 94–96; see also Criminal Code of Republika Srpska, Article 79–81.

¹⁵² Criminal Code of Bosnia and Herzegovina, Article 92; Criminal Code of the Federation of Bosnia and Herzegovina, Article 96(1).

¹⁵³ Law on Protection and Treatment, Article 30 and 31(1); see also draft law on juvenile criminal offenders, Article 20.

¹⁵⁴ Law on Protection and Treatment, Article 44(3); see also draft law on juvenile criminal offenders, Article 32(3).

¹⁵⁵ Statistical Bulletin No. 130, *supra*, Table 2.7.

¹⁵⁶ These are the terms used in the report, which do not correspond to the terms used in legislation and whose meaning, in consequence, is not clear.

¹⁵⁷ Criminal Code of Bosnia and Herzegovina, Article 95; Criminal Code of Republika Srpska, Article 87; Criminal Code of the Federation of Bosnia and Herzegovina, Article 99.

¹⁵⁸ Criminal Code of Bosnia and Herzegovina, Article 96(1); Criminal Code of Republika Srpska, Article 88(1); Criminal Code of the Federation of Bosnia and Herzegovina, Article 100(1).

more.¹⁵⁹

Data from Republika Srpska show that, during the years 1998–2000, prison sentences represented only 1.2 per cent of all sentences imposed on juvenile offenders.¹⁶⁰ Information for the period 2005–2007 indicates that prosecutors requested prison sentences in only 1.2 per cent of all cases involving juvenile offenders.¹⁶¹

According to data from the Federation, only one convicted juvenile received a prison sentence in 2008,¹⁶² and according to another source, three juvenile offenders were admitted to the juvenile unit of the Zenica prison in 2005, three in 2006 and none in 2007.¹⁶³

No data are published on early release.

6. The rehabilitation of convicted juveniles

This section contains reports on visits to four facilities: one 'disciplinary centre', a separate facility exclusively for juvenile offenders, which receives juveniles given short custodial sentences and which also has a programme for juveniles given non-custodial sentences; two juvenile sections of multipurpose prisons, dedicated to convicted juvenile offenders serving prison sentences; and one 'educational-correctional unit' attached to but physically separate from a multipurpose prison.

The disciplinary centre in Vogošća, Sarajevo

The assessment team visited the 'cantonal public disciplinary centre for juveniles' in Vogošća, Sarajevo, on 14 April 2010. Placement in a disciplinary centre or mandatory participation in the activities of such a centre on a non-residential basis are among the measures authorized by Article 89 of the Criminal Code and Article 48 of the draft law on juvenile criminal offenders. Under the former, residential placement was limited to 20 days; under the latter, it would be authorized for three months.¹⁶⁴ The Sarajevo disciplinary centre became operational in 2007, and a second one was opened in Tuzla during the assessment mission. Both are cantonal facilities, financed by the respective cantonal governments and serving juveniles placed by the courts of that canton.¹⁶⁵

The centre visited has two additional functions, at present: since 2008, it serves as a custodial facility for juveniles waiting for trial; adolescents at risk referred by parents, schools or the CSW can participate in the non-residential programme on a voluntary basis. The latter may be under age 14.

During the three years that the centre has been in operation, 40 juveniles have been placed by the competent court and 30 admitted on a voluntary basis. One juvenile of the former groups and two of the latter were girls. The present capacity of the centre for residential placement is six boys and two girls, which is sufficient to meet existing demand. The capacity for non-residential treatment is 10–15 persons, but the staff is only half of that needed.

¹⁵⁹ Law on Protection and Treatment, Article 51(1) ; see also draft law on juvenile criminal offenders, Article 39(1).

¹⁶⁰ Six prison sentences in 1998, four in 1999 and none in 2000. See Young Criminal Offenders in view of the Current Problems of Juvenile Criminal Justice in the Republic of Srpska, *supra*, p. 9.

¹⁶¹ *Ibid.*, p. 90.

¹⁶² Statistical Bulletin No. 130, *supra*, Table 2.7.

¹⁶³ Combined Second, Third and Fourth Periodic Report of Bosnia and Herzegovina on its Implementation of the Convention on the Rights of the Child, CRC/C/BIH/2–4, *supra*, p. 93.

¹⁶⁴ The law also would change its name to 'educational-upbringing centre'.

¹⁶⁵ In 2009, the disciplinary centre in Sarajevo received an important donation of IT and sports equipment, and art and reading material, from the Italian Development Cooperation.

The caseload of the centre has included juveniles convicted of theft, sexual offences, drug use and attempted murder. The programme is intensive, up to 16 hours per day, and based on individual plans. It includes educational work (learning styles and techniques, tutoring, homework help, foreign language learning), interpersonal relations (communication, non-violent conflict resolution, development of tolerance, acceptance of rules and social norms as well as attitude towards values and property), attitude towards self (self-concept, building of self-confidence, self-respect, concentration, managing emotions and channelling aggressive behaviour), occupational therapy, art therapy, sport activities, computer workshop, vocational training and medical treatment.

During the time that the centre has been in operation, only two cases of reoffending have been reported after completion of the programme. The assessment team believes that the opening of this centre is a positive development, because it provides intensive assistance on non-residential and short-term residential basis. The longer-term impact of treatment in this centre should be documented.

The juvenile unit, Zenica prison

The assessment team visited the prison in Zenica on 19 April 2010. This prison was established during the late nineteenth century. It has a capacity of 642, and a population of approximately 800, not including some 110 prisoners located in a semi-open facility situated outside the perimeter. The prisoners confined within the main complex include approximately 750 men serving sentences and some 40 men in pretrial detention.

The juvenile unit consists of a separate corridor in one of the smaller buildings. It contains 15 individual cells, in which nine offenders are serving sentences. The cells are small, perhaps 2 x 2 metres. Each contains a bed, television, toilet, and sink and shelving. The doors are solid, with no opening, and a small barred window. The facility was reasonably clean, and lighting, ventilation and bedding looked adequate. Soap and other sanitary products seemed plentiful. At night, a metal gate separating the corridor from the stairwell and entrance is locked, and there is a guards' unit just outside this gate. Individual cells are not locked, but there is video surveillance of the corridor.

Juvenile prisoners spend most of their time outside this unit, participating in different activities in which they have contact with prisoners in the medium security part of the prison. There is a large garden between the building containing this facility, two buildings housing other convicted prisoners and a building comprising classrooms and other activity rooms. Guards reportedly monitor the juvenile prisoners closely when they are in areas where contact with adults is possible. The feasibility of moving this unit to a more isolated building within the prison grounds is under consideration, although the Director is not sure that this would be in the interests of the nine juvenile prisoners, as they would be located further from the school and their movements would have to be more strictly regulated.

Schooling is provided within the facility by teachers from local schools, contracted by the prison. Other activities include employment in the bakery and the laundry, which is remunerated, sports and computer use.

Most of the juvenile prisoners are over age 18, although they are serving sentences for offences committed while under that age (one was 16 years old and one 17 years old). Eight of them are serving sentences for homicide; one is serving a sentence for robbery, but he also committed a homicide at age 13, while too young to be prosecuted.

The staff expressed a commitment to respecting international standards, concern for the young prisoners in their charge and willingness to consider any recommendations that would benefit them, all of which made a positive impression on the assessment team. The conditions in which juvenile prisoners are kept do not violate international standards, in the opinion of the assessment team, especially given that most such prisoners are actually over age 18 and all have committed serious crimes of violence without extenuating circumstances. The question of whether the unit should be relocated to a more isolated building that would facilitate separation from the general prison population (but not from young adults serving sentences for crimes committed while under age 18), although relocation could have other negative consequences for the population of the juvenile unit, is, in our view, an issue that the management may be trusted to resolve in the light of the best interests of juveniles potentially affected.

The juvenile unit, East Sarajevo prison

The assessment team visited the East Sarajevo prison on 19 April 2010. This prison is one of six in the Republika Srpska, and the only one to have a unit for 'juvenile' offenders. It also has units for adult men serving sentences, adult men detained before trial, and adult women. The total capacity is 220.

The prison is surrounded by a wire fence topped by razor wire, which permits a view of the surrounding area. The grounds are spacious, and contain a soccer pitch, a basketball court, gardens and lawns.

A separate, two-storey building for convicted juveniles was built and opened two years ago. The ground floor contains offices, a classroom with two computers and a small library, and an 'isolation' room. The isolation room is intended for solitary confinement, or temporary isolation for medical reasons. It is well furnished, and has a window and separate toilet. Regulations allow solitary confinement as a disciplinary measure, but it is not used in practice.

The upper floor has three cells or bedrooms, a living area, a dining area, and a guards' room. The population of this unit was four persons, at the time of the visit. The Director estimated the capacity to be 40.¹⁶⁶ The living area contains a television, table and chairs. Two were assigned to each of two cells or bedrooms. They contain small cupboards with lock for the prisoner's personal effects, a desk, a radio/CD player and a coat-rack. There are bars on the windows, no curtains and little or no decoration. The door is metal, with a small peephole. The facility as a whole is very neat and clean, and the furniture and fixtures are of good quality.

The staff of the juvenile section consists of the Director and an interdisciplinary team of six, comprised of pedagogues, social workers and a psychologist. Food is brought from the prison's main kitchen, and security is provided by guards assigned to the facility as a whole. The prison has a well-staffed health clinic, including a psychiatrist.

¹⁶⁶ Based on the minimum living space of 4 square metres per person, not the capacity of the staff or the number of beds.

Teachers from the local school visit the unit to provide classes. A sports instructor of the facility as a whole also visits the unit. Sports include soccer, basketball and weight lifting. Secondary education, which is not obligatory in Bosnia and Herzegovina, is not provided routinely, and most prisoners have not completed obligatory primary education. Vocational training (in cooking) was arranged for one prisoner who completed primary education.

Other activities include gardening (in season) and workshops on different subjects organized periodically. Religious counselling is available. The prisoners assigned to the juvenile unit rarely have contact with other prisoners, and when they do (for example, Easter mass, attending soccer match) they are accompanied by staff of the juvenile section. Two of them have the right to visit their families.

All the 'juvenile' prisoners are over age 18, although they were convicted of offences committed while under age 18. All are serving sentences for homicide. They are allowed to remain in the juvenile unit until reaching age 23.

The women's facility includes one prisoner convicted of an offence committed while under age 18, who is now over age 18. It was not possible to visit that facility, for logistical reasons.

The Director indicated that it would be possible to receive prisoners from the Federation, if the two governments reached an agreement to that effect. However, should the numbers be significant (e.g., 5–10 prisoners), efforts to prevent ethnic conflict would be required. There are no ethnic tensions at present.

The assessment team formed a very positive impression of this facility, in particular the living conditions, separation from the main facility, activities offered, staff-prisoner ratio and attitudes of the Director. Unfortunately, it was not possible to meet with the interdisciplinary team to discuss the approach to prevention of reoffending in use, and the assessment team consequently was unable to form an opinion on the issue.

The educational-correctional unit within Tunjice prison, Banja Luka

An educational-correctional unit, which forms part of the Tunjice prison, in the municipality of Banja Luka, was visited by the assessment team on 20 April 2010. The facility includes a house and a smaller building located between the fence surrounding the rest of the prison and a highway. It is surrounded by a chain link fence topped by barbed wire. There are bars on the windows, and doors to the buildings are locked, but staff members indicate that they would prefer not to have a perimeter fence.

The facility receives only boys placed by a court as a result of the commission of an offence while aged 14–18 years. The unit was established in 2006, and is the only of this kind in Republika Srpska. The only other educational-correctional unit in the country is located in Tuzla prison, in the Federation.

Placement in the facility visited is for a minimum of one year and a maximum of five years. Release (after the first year) depends on several factors, such as the offence committed and whether the offender has completed compulsory education and has made progress in resocialization. Most spend from two to two and a half years in the facility. Sixteen offenders have been treated and released since the facility opened.

Of the 10 offenders presently in the facility, one is 16 years old, one is 17, and the rest are 18 or older. Two of the juveniles were convicted of murders committed while under age 16 (the minimum age for a sentence to 'juvenile prison'), one was convicted of robbery, and the rest of 'serious theft'.¹⁶⁷

The smaller building contains a bedroom, a kitchen and an activity room. It serves as a reception and discharge unit, where juveniles recently arrived spend the first 30 days, and those about to be released spend the last three to seven days. It has a capacity of four. The staff of this unit includes one social worker and one psychologist. Upon admission, medical and psychological evaluations are performed; the social worker collects information from the juvenile's family and school, and a treatment plan is proposed. When the date of release approaches, a plan for transition to the community is developed, which includes establishing contacts with the CSW in the respective community, advice or assistance regarding employment, preparation for return to the family, and so on.

The two-storey house contains four bedrooms, a kitchen, offices and an activity room. The capacity of this part of the unit is 16 persons. The staff (excluding the two assigned to the 'reception/discharge' unit) is comprised of seven persons, plus eight guards. The staff includes one teacher. The population is divided into two 'educational groups'. One male staff and one female staff are assigned to each group, as substitute parents.

In addition to schooling, activities include gardening and caring for farm animals (chickens and rabbits), simple vocational training (e.g., cooking) and drama. Occasionally there are outings. Vocational training involves working in the prison kitchen and, consequently, having contact with adult prisoners. Otherwise, there is no contact with the prison population. The staff would prefer that the educational-correctional facility be relocated outside the prison complex, in the community. Together with a volunteer with experience in theatre, the juveniles have prepared a play called 'I want to go home' based on their lives. One staff member indicated, "It is based on true events, both tragic and comic, and can be easily adapted to include the stories of new juveniles." It has been presented widely outside the facility, and helps juveniles gain self-esteem while helping the community to better understand their lives.

The staff members judge their success by five criteria: no fights, no self-injuries, no abuse of privileges (e.g., failure to return from home visits), no use of drugs or alcohol and no prohibited items (e.g., cell phones). They indicated that, to their knowledge, none of the juveniles released from the facility in the last year or two have reoffended.¹⁶⁸ They also said that some of the juveniles placed in the facility for theft have extensive criminal careers at an early age (two or three thefts per day) and that, in their opinion, placement at the earliest possible age (14 years) would increase the chances of rehabilitation.

The assessment team considers this facility to be a good example of how to approach the treatment of juvenile offenders within a closed residential setting. The team agrees with the staff that, since many of the offenders placed there remain for a period of two years or more, it would be desirable to expand the range of educational and vocational activities offered, which might be facilitated by the establishment of a unit more closely integrated into the community.

Unfortunately, logistical problems prevented the assessment team from visiting the educational-correctional unit located within the prison in Tuzla. A visit by UNICEF personnel in July 2010 concluded that conditions do not meet international standards. Among the problems identified were self-injury, inadequate psychosocial care, irregular access to education, lack of vocational training, absence of other activities designed to promote rehabilitation, poor material conditions and shortage of specialized staff. Since the assessment

¹⁶⁷ Serious theft does not involve the use of violence against the person.

¹⁶⁸ One habitual offender is rumoured to have emigrated, however.

team could not visit this facility and did not interview persons having direct knowledge of conditions, it is unable to reach its own conclusions or recommend what should be done to solve the serious problems that are widely recognized as existing in this facility. (See box updating developments.)

Since the assessment mission, some significant improvements have been made in conditions in the educational-correctional unit located within the prison in Tuzla. An educator has been recruited on a full-time basis to coordinate work with the juveniles confined in this facility. Two educators have begun to provide psychosocial support and organize workshops and activities, including some involving contact with the community. Classes have been organized, including the standard curricula and art and drama classes. The physical infrastructure is being renovated to provide space for sports, reading, carpentry and other vocational workshops. The Italian Development Cooperation has agreed to provide equipment and supplies for vocational training programmes; UNICEF will offer temporary support to rehabilitation and social reinsertion programmes; and OSCE will continue to visit the institution to monitor developments.

Early release

The Criminal Codes and the new legislation on juvenile justice provide that a juvenile serving a prison sentence may be released after serving one third of his/her sentence. The prerequisites for parole are specified by the draft law on juvenile criminal offenders – mainly that the prisoner's conduct indicates he/she "may reasonably be expected to ... refrain from perpetrat [ing] criminal offences."¹⁶⁹

Post-release support

Responsibility for providing post-release support is one of the many responsibilities that lie with the social welfare authorities and, in particular, the CSWs.

The only published data about juveniles receiving services from CSWs after release from custody concern the Republika Srpska, and are based on the records of the Ministry of Health and Social Welfare. The most recent data available indicate that the caseload in recent years has been relatively small: 5 in 2003; 13 in 2004; 15 in 2005; 8 in 2006; and 9 in 2007.¹⁷⁰

Helping juveniles to successfully reintegrate into their community and family is a vital part of the prevention of reoffending. Although the number of juveniles referred to the CSWs for this purpose is relatively small, the heavy workload of the specialized teams in other areas of their mandate regarding juvenile suspects and offenders limits their ability to devote sufficient time and attention to this function, at least in some parts of the country.

7. Younger children involved in criminal activity

Underage offenders

The CSWs, as indicated above, have broad responsibilities in areas such as prevention of offending, supervision of non-custodial sentences, and support to released offenders. They also have primary responsibility for assisting children who become involved in criminal activity before reaching age 14.

The only published data about offending by children under age 14 concern the Republika Srpska and are based on the records of the Ministry of Health and Social Welfare. The most recent information

¹⁶⁹ Law on Protection and Treatment, Article 35(1); draft law on juvenile criminal offenders, Article 41(1).

¹⁷⁰ Social Welfare Statistics Bulletin No. 6, *supra*, Table 1.2.

released indicates that the number of children of all ages referred to CSWs because they are “inclined to commit criminal acts” was 548 in 2003; 810 in 2004; 441 in 2005; 338 in 2006; and 710 in 2007.¹⁷¹ Data on annual referrals are not disaggregated, but data on the year-end caseload indicate that 12 per cent of the children referred for this reason were under age 14 (including seven children under age seven).¹⁷² A social worker from the CSW of Banja Luka, the largest municipality in Republika Srpska, estimated that they receive less than one case of this kind per month.

The staff of the CSW in Novi Grad, Sarajevo, is comprised of a team of three persons in charge of all issues regarding children and offending (see above). One, a psychologist, who also handles cases of domestic violence, has primary responsibility for children under age 14 involved in criminal activity. In 2009, they provided services of some kind in 536 cases involving juvenile offenders.¹⁷³ The assessment team considers that the capacity of the CSW is insufficient to deal with this important issue, especially given the obstacles to referral for specialized services such as psychiatric evaluation.

There are now three community-based services providing assistance to such children, although it is not their sole purpose: the day centre in Banja Luka, which provides preventive services to children as from age 11; the disciplinary centre in Sarajevo; and the new disciplinary centre in Tuzla. The services offered, as indicated above, are valuable and mutually complementary. The assessment team strongly recommends creating additional centres of both kinds where data indicate they are most needed. Doing so would provide more intensive assistance and a broader range of services to children most in need, and also help reduce the burden on the small specialized CSW teams.

There is also one residential facility intended, in part, to receive children under age 14 involved in criminal activity. It is described in the following section.

The Hum multipurpose facility for children, Sarajevo

There is only one facility of this kind in Bosnia and Herzegovina. It was established in 1960. In 2009, responsibility for the facility was assumed by the Federation, in particular the Ministry of Labour and Social Policy.¹⁷⁴

The facility has four distinct functions, according to the Director: providing shelter to children referred by the CSW, including underage offenders and victims of abuse and neglect; placing offenders given ‘institutional measures’ by the competent court; holding accused juveniles awaiting trial; and ensuring the ‘reception’ of street children, child beggars, illegal child migrants and other children picked up by the police.¹⁷⁵ Authority to hold children placed by the police reportedly is based on the Law on Minor Offences, which allows placement without a court order for as long as 15 days. Placement of children by the CSW reportedly is governed by the cantonal Law on Social Protection. In reality, at the time of the assessment mission, the facility remained in a state of transition that caused uncertainty about operational matters, the budget and other responsibilities of concerned ministries.

It is an open facility. In 2009, one resident died of an overdose in an abandoned warehouse and, in 2010, another shot a shopkeeper during an attempted robbery, and was himself killed by the person he injured. This occurred while the court had under consideration the proposed transfer of these juveniles to a secure facility

¹⁷¹ Ibid., Table 1.1.

¹⁷² Ibid., Table 1.2.

¹⁷³ The total number of cases handled by the CSWs of all nine districts of the capital was 2,296.

¹⁷⁴ According to law, the Ministries of Education, Health and Justice also share responsibility for this institution, but in practice the facility was operated by the Ministry of Labour and Social Policy at the time of the assessment mission.

¹⁷⁵ The last two functions had not been implemented at the time of the assessment mission.

in Tuzla. Communications with courts regarding children placed by judicial order are performed through the CSW.

Until recently, the infrastructure did not allow for the separation of different categories of residents, which led to incidents of peer violence, including one murder. At the time of the assessment mission, the facility was being renovated in order to separate three units: one for children awaiting trial and those given 'institutional measures'; one for children placed by the CSW; and one for 'reception'. During renovation, five persons serving 'institutional sentences' were transferred, by court order, to the educational-correctional unit located within the prison in Tuzla. The facility has a capacity of 60, but at the time it was visited by the assessment team, on 14 April 2010, it had a population of 12 children, all placed by the CSW. Except for offenders, who must be over age 14, the facility is open to children aged 10–18 years.

The 'reception' facility has separate dormitories for girls and boys. It has a gymnasium and a large fenced yard. There are bars on windows and balconies. The physical infrastructure and furnishings in the newly renovated units – which were not occupied at the time of the visit – are good. Locked gates and video surveillance systems seem to provide appropriate security for different categories of residents, although naturally they also give the facility the air of a prison.

The facility has a staff of 25, including 8 professionals with degrees in pedagogy, psychology, speech therapy and other disciplines. The staffing plan calls for 54.

Residents attend school in the community. Most placements by the CSW or courts last between six months and three years. Staff members prepare a plan for the treatment of each child or juvenile placed by a court or CSW, based in part on information from parents obtained by social workers. The plan must be agreed by the child. The staff indicated that they believe representatives of the court or the CSW should participate in the teams responsible for monitoring the treatment of children and adolescents placed by such bodies.

The assessment team agrees that it is necessary to improve security within this facility, although it also believes that there were, and to some extent still are, more important underlying issues. One is the placement in an open facility of convicted juveniles who, at least in retrospect, clearly represented a threat to each other and the community. The 'last resort' principle allows deprivation of liberty of offenders who represent a danger. While assessments of the danger an individual represents to the society and his peers necessarily involves a risk of error, it appears that the authorities did not have or did not adequately apply tools for the assessment of risk before making placements to this facility.

The other underlying issue is the mixing in a single facility of children and adolescents of different ages placed for very different reasons. The solution to the security problems this entails has been solved by, in effect, turning a home for children into a small prison, an environment which is not compatible with the needs of children who are placed because they are neglected or abused by their parents, the group that seems likely to make up the largest part of the population.

In our opinion, the remodelling of this facility in order to improve security should be seen as a temporary measure, and consideration should be given to the identification of more appropriate options – family-based when possible – for children who are not offenders. This would not make the facility superfluous, but would allow it to be used for accused juveniles who need to be detained before trial and/or offenders serving custodial measures presently confined in units located within a prison.

Another issue is the confinement of juveniles by decision of the police for as long as 15 days. It may well be necessary, in some circumstances, to provide shelter to children for such periods before locating their

parents, making arrangements to reunify them with their families and, indeed, assessing the appropriateness of returning them to their parents. However, allowing children to be detained without a court order for such long periods creates a risk of arbitrary deprivation of liberty. Both the criteria and procedures for temporary placement for such reasons should be reviewed for their compatibility with international standards.

PART III. UNICEF's Support to Juvenile Justice Reform

Strategy

UNICEF began to support the development of juvenile justice around the year 2000, but it did not adopt an express strategy for this purpose until much later. A project proposal on support to juvenile justice reform adopted in September 2009 contains a section setting forth a strategy.

A tacit strategy is implicit in the approach to this issue followed by UNICEF during these years. At the beginning of the decade, it supported the preparation of two situation analyses on juvenile justice, one covering the Republika Srpska and one covering the Federation. Both were prepared by national experts and were very influential. UNICEF then supported the preparation of the National Action Plan for Children in Bosnia and Herzegovina, which was adopted in 2002. The Action Plan is unusual in that it addresses the issue of 'children in conflict with the law' in some detail.

A national symposium on offending by juveniles was held in 2003, and led to a decision to adopt a national strategy against juvenile offending, based on the relevant international standards.¹⁷⁶ The process of developing the strategy during these years (2001–2004) was supported by UNICEF in cooperation with two international partners, the Open Society Institute and Save the Children UK.¹⁷⁷

There was significant governmental ownership of the process, which also was noteworthy for its comprehensiveness. The strategy document adopted in 2006 stated, "...projects and initiatives implemented by domestic and international organizations in the area of juvenile justice – mostly partial and relatively modest in scope – have not resulted in substantial changes either in the approach to this issue or in practice..."¹⁷⁸

In 2006, cooperation with other international bodies was reinforced by the establishment of an Inter-Agency Working Group on Juvenile Justice comprising, in addition to the two organizations mentioned above, the Council of Europe, the European Commission, OSCE, and others. The Working Group is chaired by UNICEF.

The Ministry for Human Rights and Refugees participated actively in the activities mentioned above, but implementation of the Strategy against Juvenile Offending (2006–2010) was weak, initially. In 2008, a number of horrific crimes committed by juveniles focused public attention on this issue. The government responded, inter alia, by establishing an interministerial Juvenile Justice Coordination Body, which prepared the draft law on juvenile justice called for by the 2006–2010 Strategy. UNICEF began to support the work of the Coordination Body.

The characteristics of UNICEF's support during the period 2000 to 2001 – beginning with a situation analysis, supporting the development of a comprehensive strategy adopted after broad consultation with all relevant national actors, supporting the development of a national coordination mechanism, and coordinating support with other interested international actors – correspond to the profile of a coherent and well-designed strategy.

The preparation of the new draft legislation on juvenile justice led UNICEF to develop a three-year project. It has four strategic goals: to ensure the adoption and implementation of the law on juvenile justice, then still in draft form; to ensure the use of 'alternative measures'; to introduce 'more humane

¹⁷⁶ The Strategy against Juvenile Offending for Bosnia and Herzegovina (2006–2010), supra, pp. 2–3.

¹⁷⁷ Ibid., p. 2.

¹⁷⁸ Ibid., p. 3.

and progressive treatment' of offenders in correctional facilities; and to support prevention.¹⁷⁹ These aims are substantially identical to the five goals of the government Strategy against Juvenile Offending (2006–2010). Consistency between the scope and objectives of this project and those of the government Strategy is positive. The lack of a frank analysis of the reasons for the delay in implementing the government Strategy is unfortunate, however, because the successful implementation of the UNICEF strategy presumably will need to overcome these obstacles. A good approach should include a risk assessment, and there is none here.¹⁸⁰

The emphasis on prevention of violence in schools and the need for programmes designed specifically for Roma are positive features, although it seems odd that the programmes for Roma children are mentioned in the context of alternative measures rather than prevention.

While some activities (e.g., the adoption of laws and regulations) will be carried out at the national level, others are to be implemented in selected localities, including the main urban centres. This appears to be a realistic strategic decision, especially considering the peculiar political/administrative structure of Bosnia and Herzegovina. Experience in other countries suggests that the implementation of extensive reforms at the national level within the space of a few short years often is not feasible. Concentrating on the municipalities where offending is greatest is a logical approach.

In general, the activities envisaged seem calculated to help ensure achievement of the objectives. Campaigns designed to raise public awareness of issues relating to children in conflict with the law are an exception, in our opinion. Significantly, no examples are cited of campaigns of this sort that have had a measurable impact on the prevention of offending, or even on the treatment of juvenile offenders.

Most of the indicators for the implementation of the project are output indicators, and the few impact indicators that are recognized are quite vague. This is too often the case in national plans and strategies on juvenile justice. However, although baseline information is frequently insufficient to identify quantifiable targets both relevant and attainable, more concrete descriptions of what the project is intended to achieve would be both desirable and feasible.

The strategy has some other flaws, in the opinion of the assessment team. Some of the factual premises appear to be based on opinion or anecdotal evidence rather than data.¹⁸¹ The parts concerning prevention do not distinguish between primary and secondary prevention, and those on institutional treatment focus on humanizing treatment, with little mention of the prevention of reoffending. References to the crimes committed by juveniles in 2008 emphasize the tragic nature of these events, but they do not draw any lesson from them. In our view, they should have led to the realization that the mechanism for determining the appropriate response to dangerous juveniles was dysfunctional, and that the absence of a suitable closed facility for dangerous juveniles was a gap that needed to be addressed.

Yet another flaw, in our view, is the failure to recognize the need to develop more comprehensive and reliable data on offending and the functioning of the juvenile justice system. Accurate and relevant data are essential, in the long term, to understand better the causes of offending and the effectiveness of the approaches and programmes implemented for the prevention of offending and reoffending. The strategy mentions the need for data only in the context of gender.

¹⁷⁹ Protection of Children at Risk and Children in Contact with the Justice System in BiH – Support to Juvenile Justice Reform in BiH – project Proposal to the Swiss Agency for Development and Cooperation and the Swedish International Development Cooperation Agency, UNICEF, September 2009, p. 11.

¹⁸⁰ Ibid. There is a section on "Sustainability, Assumptions and Opportunities," but a frank assessment of risks is usually salutary.

¹⁸¹ Ibid. For example, a sentence on page 6 indicates that the age at which children commit their first offence is decreasing, although the preceding sentence indicates that data on offending are not disaggregated by age.

Planning, management and evaluation

Since the UNICEF project on juvenile justice was during its first year when the assessment mission took place, it would be premature to address in any detail the other issues normally covered by this Part of an assessment, such as planning, management and evaluation. The assessment team was favourably impressed by the good cooperation in planning and management between UNICEF and the Ministry for Human Rights and Refugees, which convenes and acts as secretariat of the Coordination Body. The contracting of a national NGO in 2009 to evaluate implementation of the strategy is another positive practice that deserves to be recognized.

PART IV. Conclusions and Recommendations

POSITIVE DEVELOPMENTS

1. A strategic approach to the development of juvenile justice has been adopted, on the state and cantonal levels.
2. A Juvenile Justice Coordination Body has been established and is active. Civil society participates when invited.
3. The new legislation on juvenile justice is well designed to bring the law into conformity with international and European standards.
4. Some key government officials are knowledgeable about child rights and juvenile justice, and committed.
5. A considerable amount of training in child rights and juvenile justice has taken place, for key sectors such as the police, judges, prosecutors and social workers. At least some training is based on needs assessments, and the aims include learning skills and developing appropriate attitudes and values, in addition to cognitive learning.
6. The disciplinary centre in Vogošća, Sarajevo, provides valuable professional services in the capital region in the prevention of offending for children at risk and in the prevention of reoffending. The creation of a second disciplinary centre in Tuzla is a recent, positive development.
7. The day centre operated by the CSW in Banja Luka, is a valuable example of secondary prevention.
8. The approach to socialization and the prevention of reoffending applied by the educational-correctional unit in Tunjice, Banja Luka, is creative, coherent and effective. The need for a similar facility in the Federation has been recognized, although the measure taken to fill this gap temporarily is not compatible with the rights of the juveniles concerned.
9. Improvements in the unit for juvenile offenders within the prison in Zenica are a positive development, and the creation of a separate unit for convicted juvenile offenders within the prison in East Sarajevo is a good example of the kind of facility that is appropriate for convicted juveniles who require confinement in a multipurpose prison.
10. Some CSWs (e.g., in Banja Luka and Sarajevo) have teams specializing in cases of juvenile offenders.
11. Special police units have been established to deal with offending by juveniles and criminal offences against children in two cantons, and in the municipality of Banja Luka. Their role includes the investigation of offences, in addition to prevention.
12. Mechanisms for investigating violations of the rights of suspects by police officers are effective and incidents of abuse of juvenile suspects are infrequent.
13. National standards on a number of key issues are substantially compatible with relevant international standards, including the minimum ages for prosecution as a juvenile and as an adult, the arrest and interrogation of juvenile suspects, time limits for detention before and during trial, and the right to legal assistance, trial procedures and sentencing.¹⁸²

¹⁸² This refers in particular to the standards contained in the new Law on Protection and Treatment and the draft law on juvenile criminal offenders.

14. Specialized judges and prosecutors exist in some courts. The new legislation on juvenile justice requires the appointment of specialized judges and prosecutors for juveniles, and specialized technical staff for both.
15. The Federal Office of Statistics publishes an annual report on crime that includes a section on juveniles, which contains much relevant data. There is strong interest in compiling data on juvenile justice on the part of the State Agency for Statistics as well as the Republika Srpska Institute of Statistics. The Coordination Body has begun to compile data from the relevant ministries and authorities with a view to using them to inform planning and policy-making.
16. There is expertise in juvenile justice and the criminological aspects of offending by juveniles within some universities, and some research has been carried out.
17. Diversion is allowed in many cases, and under the new legislation it will be available in a wider range of cases. Prosecutors will be required to consider the appropriateness of diversion in all cases in which it is allowed.
18. The national Ombudsman has a specialized unit for child rights and takes an active role in monitoring residential institutions for children, including those for juvenile prisoners and detainees and underage offenders.
19. The UNICEF project on juvenile justice reform (2010–2012) is informed by research carried out by national experts, builds on the results of previous projects and activities of other international actors, and enjoys strong support from the main implementing partner, the Ministry for Human Rights and Refugees. The scope of the project is appropriate, and it covers issues sometimes overlooked, including the rights of child victims of crime.

CHALLENGES

1. Implementation of the Strategy against Juvenile Offending (2006–2010) has been limited, especially during the first two years, before the creation of the Juvenile Justice Coordination Body.
2. Available resources for existing agencies and programmes have been reduced, as a result of the impact of the global economic crisis on the national economy, and for the foreseeable future it is unlikely that funding will be available from government budgets for new programmes or agencies.
3. Although there are many committed individuals in relevant agencies and institutions, the rights of children and juvenile justice are not a priority for some sectors of government, including the legislature of the Federation.
4. The social work authorities are expected to play an important role in the juvenile justice system, but their capacity to fulfil this role is very limited: staffing levels are insufficient, their broad mandate includes many other areas and some are funded by municipal governments.¹⁸³
5. Although the strategies that have been adopted on the national level and in some cantons recognize the importance of prevention, the preventive activities being carried out are fragmented. Programmes to assist adolescents who abuse drugs and those who require psychological treatment are weak or non-existent.

¹⁸³ This conclusion is based mainly on interviews in the Federation; the assessment team is uncertain of the extent to which it is applicable to the Republika Srpska.

6. The system of appointing lawyers to handle cases of accused juveniles does not effectively guarantee the right to adequate legal services.¹⁸⁴
7. The changes made to the infrastructure of the Hum facility in order to prevent violence and exploitation amongst the different categories of children placed there have made the facility inappropriate for children who are not offenders, especially younger children. In addition, responsibilities for funding and operating the facility are not clearly specified; aims and methodologies for the different categories of children it is expected to receive lack clarity; and the procedures for admitting some categories of children do not appear to comply with international standards.
8. In the Federation, accused juveniles detained before trial reportedly are usually placed in separate cells in pretrial detention centres, in proximity to adult detainees.¹⁸⁵
9. Policy development, law reform and planning have not been based on reliable data about offending by juveniles. Published data cover only part of the country; they are restricted to information received from the prosecutors and police, limited to offences committed by children over age 14 and not as detailed as could usefully be. There is little data and no research on recidivism, which is needed to assess the relative effectiveness of various kinds of measures for the prevention of reoffending by different groups of offenders.
10. Most training continues to be done on an ad hoc basis; it has not been incorporated into the curricula of relevant training academies and, although the law requires judges and prosecutors to undergo training, the content of this requirement has not been defined or regulated.

RECOMMENDATIONS

1. The next national strategy on juvenile justice and the prevention of offending should be based on a realistic assessment of risks and foreseeable constraints. Limited funding requires careful analysis of the activities and changes to the system that are most urgently needed, an evidence-based assessment of the cost-effectiveness of the possible approaches, and measures for addressing problems identified as deserving priority.
2. The role of technical staff (psychologists, social workers, pedagogues) that, according to the new juvenile justice legislation, will be attached to courts and prosecutors' offices, and the function of disciplinary centres should be defined so as to complement, and not duplicate, CSW responsibilities.
3. In some countries in the region, probation services have been established recently to provide the kind of social reports and services (e.g., supervision of offenders given non-custodial measures and those released on parole) that are entrusted to the social welfare authorities in Bosnia and Herzegovina.¹⁸⁶ If this is not an option in the short term, due to budgetary constraints, priority should be given to helping social welfare authorities develop the capacity to fulfil the responsibilities attributed to them by the law and by strategies on juvenile offending. This would be a gradual process, which would require the identification of priorities, realistic planning, political commitment and allocation of resources. The possibility of increased cooperation with civil society organizations in performing certain functions should be explored. It is urgent to strengthen the capacity of existing specialized units having the

¹⁸⁴ Ibid.

¹⁸⁵ The assessment team does not know whether the detention of juvenile suspects in such facilities has been eliminated in the Republika Srpska, or merely reduced.

¹⁸⁶ See, e.g., UNICEF assessments of juvenile justice reform achievements in Georgia, Kosovo and Moldova available at www.cecis.org/juvenilejustice/new/index.html#, accessed 15 January 2011.

heaviest caseloads. The need for establishing specialized units where they do not exist – perhaps on the cantonal level or in the largest municipalities – must be assessed.

The mandate of new specialized teams would not necessarily be limited to juvenile offenders. Since the risk factors for offending are closely linked to risk factors for other serious social problems, the specialized teams might, for example, be given a mandate for all issues involving adolescents, or older children and adolescents, or possibly even all children and adolescents.

4. The experience of many countries indicates that the only way of ensuring that accused juveniles receive adequate legal services is through a legal aid programme.¹⁸⁷ Several countries in the region have established publicly funded national legal aid programmes that defend accused juveniles and adults. In some others, pilot projects that provide services to juveniles have been established by non-governmental organizations, with support from international donors. Given budgetary constraints, the creation of a pilot project focusing on the rights of juveniles would seem to be the best option for the short term. Such a project would not necessarily be limited to providing legal services; one of the best examples in the region provides integrated legal and psychosocial services. Similarly, the mandate of such a project would not necessarily be limited to the defence of accused juveniles. It might also include other areas requiring similar expertise, such as assistance to child victims of violence.¹⁸⁸
5. An effort should be made to close the gaps in primary and secondary prevention. The disciplinary centre in Sarajevo has recently begun providing secondary prevention in the largest and second most populated canton, and plans to include outreach in municipalities outside the cantonal capital. The day centre in Banja Luka also provides valuable preventive services within a limited area. Because participation is voluntary, its role is complementary to that of the disciplinary centres, whose clientele consists mainly of juveniles given alternative measures. The need for such centres in other cantons and municipalities should be developed and a plan for establishing them adopted.

Activities aimed at reducing violence in schools no doubt help diminish the risk of offending, but they should be complemented by community-based programmes. Insufficient capacity has prevented CSWs from adequately fulfilling their responsibility in prevention, and civil society has played a very modest role, thus far. The gradual expansion of the network of disciplinary centres and day centres will have a positive impact on the juvenile justice workload of CSWs, allowing them to concentrate more on referral and providing preventive services in areas lacking such centres. Specialized police units are contributing to the efforts aiming to prevent offending in some municipalities, and should do so in other areas as the prevention network is consolidated and expanded. Creating a more cohesive approach, with better inter-agency cooperation, and adapting the programmes successfully introduced in the most populated areas to the needs and circumstances of other cantons and municipalities, should be a priority.

6. The experience of the disciplinary centre – which to date is quite positive – should be documented carefully, as a step towards the identification and consolidation of methodologies that are effective in the prevention of offending (amongst children at higher risk) and reoffending, and the circumstances in which the methods used are likely to be effective.
7. The purposes of the Hum residential facility should be reconsidered. It now has the infrastructure of a secure facility, which makes it unsuitable for children who are not offenders and pose no serious risk to

¹⁸⁷ Ibid., see, e.g., UNICEF assessments of juvenile justice reform achievements in Albania, Armenia, Georgia, Moldova, Turkey and Ukraine, *supra*.

¹⁸⁸ The Centre of Integrated Legal Services and Practices, in Albania, provides legal and psychosocial services to juvenile offenders and child victims.

themselves or the community. A new open facility should be created for such children and consideration should be given to using this as a secure facility, or a facility having separate units for offenders and accused juveniles who require confinement and offenders who require residential treatment in an open facility. This would help solve the problem of pretrial confinement in adult facilities, and placement of offenders with 'educational-correctional' measures in a prison.

8. Data collection systems need to be improved. The indicators used by the system in place in the Federation should be reviewed to distinguish serious crimes of violence (e.g., murder, rape) and to include indicators on diversion (educational recommendations), on detention before trial, on the participation of children under age 14 in criminal activities, and on juveniles serving prison sentences and custodial sentences.
9. The effectiveness of different dispositions, measures and sentences should be monitored and analysed. Information on the way offenders or children at risk with different profiles respond to various types of measures is needed to evaluate the way prosecutors and judges exercise their discretion and, ultimately, the relevant legal provisions. Better information of this kind might help avoid the repetition of some of the tragedies that have resulted from inappropriate placement of juveniles in the past.
10. Standards should be developed as to the kind and amount of training required for different professionals occupying posts in the juvenile justice system – especially judges, prosecutors, social workers and 'pedagogues' who work with offenders – and plans should be made for incorporating such training into entry-level and in-service training programmes on a permanent basis (development of curricula and training materials etc.). The feasibility of developing links between training programmes and research, and between practitioners and academia, should be explored.
11. The commitment of the highest political authorities, including the legislatures, needs to be strengthened to adopt and implement the new legislation on juvenile justice and the new strategy on juvenile offending that will be developed by an Expert Working Group (formed by the Ministry for Human Rights and Refugees and supported by UNICEF) in 2011.

Annex 1. Data collection and analysis

One of the aims of this assessment is to ascertain whether the information corresponding to global and regional indicators exists; to identify problems or difficulties concerning the use or definition of such indicators; and to explore the availability of other indicators of particular relevance.

The assessment reveals that data on juvenile justice are recorded by the police, prosecutors and courts. There are three statistical agencies: the Agency for Statistics of Bosnia and Herzegovina, the Federal Office of Statistics of the Federation of Bosnia and Herzegovina and the Republika Srpska Institute of Statistics. Only the Federal Office of Statistics publishes data on crime on a regular basis, since the year 2000. These data are detailed and useful, although they have some limitations and difficulties regarding their interpretation.

No data are reported on a regular basis on juvenile offending and juvenile justice in the Republika Srpska, and consequently no data on this subject are available for the country as a whole. However, the Republika Srpska Institute of Statistics publishes annually a Social Welfare Statistics Bulletin, which since 2003 contains some valuable data on children at risk and offenders under supervision. No similar data are published on a regular basis by the Federation.

The Juvenile Justice Coordination Body has also begun compiling data on juvenile justice, beginning with 2008. Closer cooperation between the Coordination Body and the statistical agencies would no doubt improve the way data are reported.

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

1. National data collection system and international and regional indicators

(a) Crimes committed by juvenile offenders

The TransMONEE¹⁸⁹ matrix defines this indicator as the “number of crimes committed by persons aged 14–17,” disaggregated by the kind of crime, i.e., violent, property or other.¹⁹⁰

No data on crimes committed by juveniles, as such, are published. However, the annual statistical bulletin on crime of the Federal Office of Statistics contains data on the number of reported juvenile offenders. They are disaggregated by canton, sex and age of the offender and the nature of the offence. The criteria for classifying offences are more detailed than those suggested by TransMONEE – 14 categories are used.

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

The term ‘arrest’ is defined by the UNODC-UNICEF Manual as “placed in custody by the police ... or other security forces because of actual, perceived or alleged conflict with the law.” ‘Conflict with the law’ is, in turn, defined as having “committed or [being] accused of having committed an offence,” although the definition adds that, “Depending on the local context,” the term may also mean “children dealt with by the juvenile justice or adult criminal justice system for reason of being considered to be in danger by virtue of their behaviour or the environment in which they live.”

Data on the number of juveniles taken into police custody are not published by any of the relevant

¹⁸⁹ TransMONEE is a database established by the UNICEF Innocenti Research Centre that contains social data provided by the national statistical offices of Central and Eastern Europe and the Commonwealth of Independent States (CEE/CIS). It is presently maintained by the UNICEF Regional Office for CEE/CIS. Available at www.transmonee.org/

¹⁹⁰ The UNODC-UNICEF Manual does not include this indicator. See United Nations, Manual for the measurement of juvenile justice indicators, Office on Drugs and Crime (UNODC) and UNICEF, New York, 2006, available at www.unodc.org/pdf/criminal_justice/06-55616_ebook.pdf, accessed 15 January 2011.

statistical agencies (i.e., of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina or Republika Srpska). The data on reported offenders published by the Federal Office of Statistics (see above) could be considered the equivalent to ‘children in conflict with the law’, but they do not cover the whole country.

(c) Children in detention

The UNODC-UNICEF Manual describes this indicator as “children detained in pretrial, pre-sentence and post-sentencing [sic] in any type of facility (including police custody)” at any specific date.¹⁹¹

Data on this indicator are not published in Bosnia and Herzegovina, in the Federation or in Republika Srpska.

(c) Children in pretrial or pre-sentence detention

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

Data on this indicator are not published in Bosnia and Herzegovina, in the Federation or in Republika Srpska.

(d) Duration of pretrial detention

Data on this indicator are not published in Bosnia and Herzegovina, in the Federation or in Republika Srpska.

(e) Duration of post-sentencing detention

Data on this indicator are not published in Bosnia and Herzegovina or in Republika Srpska.

The Federal Office of Statistics publishes data on the length of sentences imposed on older juveniles, but no data are published on the length of sentences actually served. Data on placement in facilities that are not part of the correctional system are published by this Office. However, as placement in them is not for a specific period of time, no data are published about the actual length of placements.

(f) Child deaths in detention

Data on this indicator are not published in Bosnia and Herzegovina, in the Federation or in Republika Srpska.

(g) Separation from adults

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

Data on this indicator are not published in Bosnia and Herzegovina, in the Federation or in Republika Srpska. In any event, juveniles who reach age 18 while serving a sentence are allowed to remain in juvenile units, and for this reason only a small minority of the population of juvenile correctional facilities is actually under age 18.

¹⁹¹ Manual for the measurement of juvenile justice indicators, supra, p. 11.

(h) Contact with parents and family

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

Data on this indicator are not published in Bosnia and Herzegovina, in the Federation or in Republika Srpska.

(i) Sentences

The UNODC-UNICEF Manual does not include this indicator, but the TransMONEE matrix includes the indicator “juveniles sentenced for criminal activity.” A glossary explains, “A competent authority passes a sentence when... it makes a final decision about a child’s case and rules that the child shall be subject to certain measures.”

Data on the number of juveniles sentenced are not released for the whole country, but are published in the Federal Office of Statistics’ annual bulletin. They are disaggregated by age group at the time of the offence (14–15 years; 16–17 years), by the sentence or measure imposed, and by canton. The data include both ‘sanctions’ (roughly equivalent to sentences) and ‘security measures’ such as confinement to a facility for the treatment of drug abuse or mental illness.

(j) Custodial sentences

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

The data on convictions published by the Federal Office of Statistics are disaggregated by the sentence or measure imposed, as well as other criteria (see above).

(k) Alternative sentences

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

Data on this indicator, as indicated above, are not published in Bosnia and Herzegovina or in Republika Srpska. The data on sentences and security measures published by the Federal Office of Statistics are disaggregated by the specific sentence or measure imposed. There are five measures that are non-custodial, and one (assignment to disciplinary centre) that may be either custodial or non-custodial.

(l) Pre-sentence diversion

The UNODC-UNICEF Manual defines this as “the percentage of children diverted or sentenced who enter a pre-sentence diversion scheme,” adding that it is intended to measure “the number of children diverted before reaching a formal hearing.” This is somewhat contradictory,¹⁹² and the Manual recognizes that what constitutes diversion “will need to be identified in the local context.”

Data related to this indicator are not published by the Agency for Statistics of Bosnia and Herzegovina or

¹⁹² Hearings often occur before trial begins, which means that diversion before any hearing takes place would be only part of ‘pre-sentence diversion’. And it is unclear why the percentage of offenders diverted should be calculated with reference to the number diverted or sentenced, rather than the number accused or prosecuted. In addition, diversion can consist of a mere warning, without entry into a programme.

by the Republika Srpska Institute of Statistics. The data on offending published by the Federal Office of Statistics are disaggregated by whether the offence was prosecuted and, if not, the reason it was not, but the criteria used for disaggregation do not clearly indicate the number of cases diverted.

(m) Aftercare

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

Data on this indicator are not published by the Agency for Statistics of Bosnia and Herzegovina or the Federal Office of Statistics, but the Social Welfare Statistics Bulletin published by the Republika Srpska Institute of Statistics does include data on the caseload of children ‘on release from imprisonment’ disaggregated by sex and age.

2. Other relevant data and information

Recidivism

Data on this indicator are not published by the Agency for Statistics of Bosnia and Herzegovina or by the Republika Srpska Institute of Statistics. Data on cases prosecuted published by the Federal Office of Statistics are disaggregated by prior to conviction, but data on convictions are not.

Ethnicity

No published data on offending are disaggregated by ethnicity.

Juveniles prosecuted

Data on this indicator are not published by the Agency for Statistics of Bosnia and Herzegovina or by the Republika Srpska Institute of Statistics. Data on juveniles prosecuted are published annually by the Federal Office of Statistics. Data on cases prosecuted are disaggregated by sex, by the nature of the offence, by canton and by the outcome of the prosecution.

Begging and vagrancy

Data on this indicator are not published by the Agency for Statistics of Bosnia and Herzegovina or by the Federal Office of Statistics. However, the Social Welfare Statistics Bulletin published by the Republika Srpska Institute of Statistics includes data on the caseload of children ‘inclined to committing criminal acts’, disaggregated by sex and age cohort (0–7 years; 7–14 years; 15–16 years; and 17–18 years) and by the situation associated with a higher risk of offending (e.g., dependency on alcohol, addiction to drugs, vagrancy, begging and prostitution). The data also indicate the kind of assistance provided or the measures taken.

Annex 2. List of persons interviewed

Government of Bosnia and Herzegovina

M. Smajević, State Coordinator on Juvenile Justice

J. Kosović, Judge of the Supreme Court

S. Popović, Agency for Statistics

M. Nenadić, Agency for Statistics

Government of the Federation of Bosnia and Herzegovina

G. Šimić, Ministry of Justice

A. Zečević, Ministry of Labour and Social Policy

Emira Slomović, Ministry of Labour and Social Policy

J. Pećanac, Prosecutor

J. Džumhur, Ombudsperson, Bosnia and Herzegovina

L. Zita, Office of the Ombudsman

M. Agić, Director, Hum correctional institution

N. Spahić, Director, Zenica prison

H. Alić, Director, Federal Office of Statistics

F. Strik, Federal Office of Statistics

Government of the Republika Srpska

N. Mirkonj, Ministry of Justice

L. Lepir, Ministry of Health and Social Welfare

P. Vuksan, educational-correctional facility, Tunjice, Banja Luka

N. Đajić, educational-correctional facility, Tunjice, Banja Luka

B. Radić, Institute of Statistics

D. Uletilović, Judge

S. Vuksan, Centre for Social Work

S. Bijelić, Juvenile police

V. Mandić, Director, Juvenile unit, Kula prison

Canton of Sarajevo

M. Letić, Head, Juvenile police

S. Suljagić, Director, disciplinary centre Vogošća

Đenita Ljuca, Deputy Director, disciplinary centre Vogošća

G. Kadić, Head, Social Protection Unit, Centre for Social Work, Novi Grad

Canton of Tuzla

J. Mijatović, Minister of Justice and Governance

I. Šarić, Spokesperson, Ministry of Internal Affairs

M. Dževdetbegović, Director, disciplinary centre

Civil society

E. Lukačević, NGO Bureau for Human Rights

M. Budimlić, Professor, Faculty of Criminal Sciences, University of Sarajevo

S. Bajraktarević, Attorney

UNICEF

F. Bauer, Representative

A-C. Dufay, Deputy Representative

S. Turkić, Child Protection Officer

Other international organizations

H. van Eck Koster, Organisation for Security and Co-operation in Europe

M. Velinas, Organisation for Security and Co-operation in Europe

I. Sladoje, Organisation for Security and Co-operation in Europe

S. Tabbò, Director, Italian Development Cooperation

O. Di Loreto, Italian Development Cooperation

Annex 3. List of documents consulted

Legislation

Code of Criminal Procedure of Bosnia and Herzegovina, 2003

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Code of Criminal Procedure of the Federation of Bosnia and Herzegovina, 2003

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Decree on the Application of Correctional Recommendations for Juveniles, Government of the Federation of Bosnia and Herzegovina, 2009

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Draft Law on Juvenile Criminal Offenders and Protection of Children under Criminal Legislation

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Other documents

Kosović, J., Young People in Conflict with the Law in the Light of Topical Problems concerning Juvenile Criminal Justice, Association of Criminal Law and Criminology, Sarajevo, 2001

Simović, M., Young Criminal Offenders in view of the Current Problems of Juvenile Criminal Justice in the Republic of Srpska, Faculty of Law, University of Banja Luka, 2001

Annex 4. Note on terminology

Since the English version of this report has been written for an international and multidisciplinary readership, generic terms frequently are used in preference to literal English translations of terms used in the relevant legislation. The terms used are based on international norms and indicators. The following is a list of some, with a definition, reference to international sources and the corresponding terms used in the relevant legislation.

References to domestic legislation are limited to the Criminal Code and Code of Criminal Procedure of the Federation of Bosnia and Herzegovina and the Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings of the Republika Srpska, which were the most relevant laws in force in Bosnia and Herzegovina at the time this note was prepared (January 2011).

accused: A person who has been formally charged with a crime or offence, and consequently is no longer a mere suspect – especially but not exclusively a person whose trial has not begun. See, e.g., Convention on the Rights of the Child, Article 40.1 and 40.2(b).

Article 20(b) of the Code of Criminal Procedure defines the term ‘accused’ as “a person against whom one or more counts in an indictment have been confirmed.” The chapter of that Code concerning juvenile proceedings uses the term ‘accused’ only once, in Article 369, which refers to a provision of the Code applicable to both juveniles and adults. It also refers to ‘bringing charges’ and ‘filing indictments’. Most references to juveniles in this chapter use the term ‘minor’ without an adjective, regardless of the stage of proceedings.

Article 12 of the Law on Protection and Treatment (Basic Terms) mentions ‘accused’ juveniles, but indicates that the preferred terms are ‘juvenile perpetrator of criminal offence’, ‘juvenile in conflict with law’, and ‘juvenile delinquent’ – terms that do not distinguish between persons who enjoy the presumption of innocence and those who have been found responsible for an offence. The term ‘accused’ is also used in Article 113(2). This law also refers to the placement of charges. See, e.g., Articles 5 and 87(1).

pretrial detention: Deprivation of liberty before trial has begun, especially after formal charges have been placed and, by extension, detention during trial. See, e.g., United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), Rule 13.

The Code of Criminal Procedure uses the term ‘pretrial custody’ (Articles 59(2), 61(2), 124(4) and 196). The term ‘custody’ seems to be used as a synonym, and is employed with regard to both juveniles and adults. See, e.g., Articles 10(3), 14(3), 62, 124(4), 137(1), 140(4), 141, 145–146, 148–152, 160, 261, 302 and 330 (custody during appeal of a verdict), 379–380 (juveniles). Persons in custody are referred to as ‘detainees’. ‘Placement in the care of the juvenile welfare authority’ (Article 158) is an alternative to ‘custody’ (Article 378).

The Law on Protection and Treatment recognizes different forms of detention during preliminary proceedings, including ‘temporary placement in the course of preparatory proceedings’, ‘prosecutorial custody’ and ‘custody’ ordered by a court (Articles 94, 97–98 and 99–103, respectively).

diversion: A decision not to prosecute an individual who recognizes his/her participation in a crime, that often (although not necessarily) involves voluntary acceptance of some measure intended to prevent reoffending. See, e.g., The Beijing Rules, Rule 11; also Convention on the Rights of the Child, Article 40.3(b).

Articles 8 and 12(n) of the Law on Protection and Treatment indicate that diversion consists of the resolution of criminal cases by application of 'correctional measures'. The decision to impose such measures is normally taken by the prosecutor, before the initiation of criminal proceedings (Article 90). The measures imposed (Article 22) are similar to diversion measures used in other countries, but this decision differs from diversion, as usually defined, in that it is not final: the juvenile may be prosecuted if he/she does not fulfil the measures agreed upon.

Prosecutors also may decide not to initiate criminal proceedings without 'correctional recommendations' on the grounds that prosecution would not be 'purposeful' (Article 89). This also can be considered a form of diversion, although the Law on Protection and Treatment does not identify it as such. Both decisions are governed by the 'principle of opportunity'. In addition, the police have discretion to dispose of cases by imposing warnings (Articles 22 and 88). This is another form of diversion, although the Law on Protection and Treatment does not identify it as such.

The Code of Criminal Procedure (Article 353) and the Criminal Code (Article 83) recognize measures similar to the 'correctional measures' described above, called 'developmental measures' in the former and 'educational recommendations' in the latter (not to be confused with 'educational measures', which are a sort of sentence for juveniles recognized by the Criminal Code).

sentence: A disposition of a case by a court. It is based on a finding that a juvenile is legally responsible for participation in a crime or offence and imposes a legal obligation (e.g., fine, supervision, confinement in a correctional facility) on the offender. See TransMONEE Glossary; UNODC-UNICEF Manual, indicator 9.

The Code of Criminal Procedure uses the term 'decision' to describe judicial rulings dismissing charges against juveniles or imposing a 'developmental' or 'educational measure' (see below), and 'verdict' to refer to the imposition of a prison sentence on a juvenile (Article 38).

Under Articles 31, 32, 47 and 50–59 of the Law on Protection and Treatment, the term 'sentence' is used only to refer to sentences of imprisonment; other dispositions imposed on juveniles found to have committed an offence – including confinement in 'educational' facilities – are properly referred to as 'decisions imposing a correctional measure'.

The term 'sanction' includes correctional measures and security measures (Article 30). Security measures are not separate dispositions but rather requirements (such as psychiatric treatment or treatment of substance abuse) imposed as part of a prison sentence or 'correctional measure' (Article 62).

suspended sentence: A sentence imposing a legal obligation on an offender, which the offender is not required to comply with, provided that he/she complies with certain requirements (e.g., avoiding further offending) for a specific period of time. See The Beijing Rules, Rule 17 (comment).

The Criminal Code recognizes suspended sentences (Articles 60 and 62–67), but provides that they may not be imposed on juveniles (Article 84(5)). The Law on Protection and Treatment also provides that suspended sentences may not be imposed on juveniles (Article 30(4)), but it nevertheless provides that the 'enforcement' of sentences of juvenile imprisonment may be 'postponed' if the court concludes that the possibility of serving the sentence may suffice to prevent further offending (Article 54). Conditions may be imposed during the period enforcement is postponed, known as the 'probation period'.

non-custodial sentence: A sentence that does not involve deprivation of liberty, i.e., placement in a residential facility of any kind. Examples include warnings, fines, compensation of the victim, community service, participation in counselling, vocational training, or any other non-residential programme designed to prevent reoffending. See, generally, Convention on the Rights of the Child, Article 40.4; UNODC-UNICEF Manual, indicator 9.

The Criminal Code recognizes a number of sentences or dispositions that do not involve deprivation of liberty, but there is no generic term for them. Although the term ‘educational measures’ refers to sentences other than imprisonment, it includes some dispositions – notably ‘institutional measures’ – that involve confinement in other kinds of facilities for juvenile offenders (see Articles 87, 89, and 94–96). The Law on Protection and Treatment likewise recognizes a number of dispositions that do not involve deprivation of liberty, but there is no generic term for them. A distinction is made between ‘sentences of imprisonment’ and ‘correctional measures’, but the latter include dispositions that involve deprivation of liberty, in particular ‘institutional measures’ (Articles 32, 36, 41 and 42).

References:

- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)
- Convention on the Rights of the Child
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- TransMONEE Glossary, UNICEF

Notes

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