



JUVENILE JUSTICE IN CENTRAL ASIA

REFORM ACHIEVEMENTS AND CHALLENGES
IN KAZAKHSTAN, KYRGYZSTAN, TAJIKISTAN,
TURKMENISTAN AND UZBEKISTAN



© The United Nations Children's Fund (UNICEF), 2012

This report has been prepared by Daniel O'Donnell
at the request of the UNICEF Regional Office for CEE/CIS

Front cover photos: © UNICEF/SWZCEECIS/2012/McConnico
Two boys in detention in the CEE/CIS region.

JUVENILE JUSTICE IN CENTRAL ASIA

REFORM ACHIEVEMENTS AND CHALLENGES IN KAZAKHSTAN, KYRGYZSTAN, TAJIKISTAN, TURKMENISTAN AND UZBEKISTAN

**UNICEF Regional Office for Central
and Eastern Europe/Commonwealth of Independent States**

April 2012

Contents

ACKNOWLEDGEMENTS	4
FOREWORD	5
EXECUTIVE SUMMARY	6
CONTEXT	8
PART I. Foundational Issues	11
1. Juvenile justice plans, policies and strategies.....	11
2. Law reform.....	14
3. Coordination mechanisms.....	17
4. Training and capacity-building.....	19
5. Data and research.....	20
PART II. Democracy and the Rule of Law	23
1. Accountability.....	23
2. Civil society.....	25
3. Juvenile courts or judges.....	27
4. Legal aid.....	27
5. Secondary prevention.....	29
PART III. Human Rights and Fundamental Freedoms	34
1. Apprehension, interrogation and detention.....	34
2. Correctional facilities.....	38
PART IV. Core Juvenile Justice Issues	41
1. Diversion, restorative justice and similar dispositions.....	41
2. Alternative sentences and educational measures.....	44
3. Suspended or conditional sentences.....	48
4. Custodial sentences.....	49
PART V. Four Legacies of the Soviet Era	54
1. Commissions on minors' affairs.....	54
2. Juvenile police.....	55
3. Special schools.....	58
4. Reception and distribution centres.....	60
RECOMMENDATIONS	63

Acknowledgements

This study is based on assessments of juvenile justice undertaken in 2010 and 2011 by the UNICEF Regional Office for Central and Eastern Europe and the Commonwealth of Independent States (CEE/CIS). The assessments, and the present study, have been prepared by Dan O'Donnell, international consultant.

The 2010 assessment of juvenile justice in Uzbekistan was prepared with the assistance of Kamil Asyanov, national consultant, and Alisher Abdusalomov, UNICEF Child Protection Officer. The 2010 assessment of juvenile justice in Turkmenistan was prepared with the assistance of Yolbars Kepbanov, national consultant, and the support of Shohrat Orazov, UNICEF Social Policy Officer. The 2011 assessment of juvenile justice in Kyrgyzstan was prepared with the assistance of Bakai Albanov, national consultant, and the support of Elena Zaichenko, UNICEF Child Protection Officer. The 2011 assessment of juvenile justice in Tajikistan was prepared with the assistance of Galina Derevenchenko, national consultant, and Nargis Karimova, UNICEF Child Protection Officer, and the support of Siyma Barkin Kuzmin of UNICEF Tajikistan. Since time constraints did not allow undertaking a new assessment mission in Kazakhstan, the report of a mission conducted by Mr. O'Donnell in 2008 was updated with information provided by Tatiana Aderkhina of UNICEF Kazakhstan, and Prof. Gulnara Suleimenova, Mrs. B. Svetlana Bychkova, and Judge G. Amanzholovna Abdigaliyeva, national consultants.

The governments of Kazakhstan, Kyrgyzstan and Tajikistan cooperated fully with the assessments, but the team was unable to visit the juvenile prison and the juvenile detention facilities in Turkmenistan and Uzbekistan, and it was not received by any governmental officials in Turkmenistan.

The present publication and the country assessments mentioned above are part of a series of assessments of juvenile justice reform achievements that began in 2008 and also cover Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Kosovo (under UNSC Resolution 1244/99), the Republic of Moldova, The former Yugoslav Republic of Macedonia, Turkey, and Ukraine. The assessments are available on the juvenile justice website of the UNICEF Regional Office for CEE/CIS.¹

The project was supervised by Jean-Claude Legrand, Regional Advisor on Child Protection, and Anne Grandjean, Child Protection Specialist, UNICEF Regional Office for CEE/CIS. Administrative support was provided by Elizabeth Platts and editorial assistance by Hélène Martin-Fickel.

The views expressed are those of the author, and do not necessarily reflect the position of UNICEF.

¹ See <http://www.ceecis.org/juvenilejustice/new/index.html>, accessed 15 April 2012.

Foreword

For any child, anywhere, coming into conflict with the law is terrifying and creates intense vulnerabilities.

In Central Asia, children in conflict with the law are especially vulnerable and marginalized. In many cases, they experience a double vulnerability.

The first is that poverty and exclusion are major causes for children committing acts that bring them into conflict with the law; the second is that juvenile justice systems are so poorly developed that children often suffer lengthy detention, ill-treatment and torture while awaiting trial.

This must stop.

This report is about making changes for those children and ensuring juvenile justice systems are fair and just, and work well for everyone.

UNICEF recommends that children should be taken into account in broader justice reform from the outset and should have access to equitable, effective and child-sensitive systems through which their rights are enforced and they can understand the consequences of their actions. Along with providing children with support to assume a constructive role in society, these steps will result in improved rule of law and realization of human rights.

UNICEF also sees the inclusion of children in access to justice strategies as a contribution to breaking cycles of poverty and exclusion.

We look forward to joining forces with the rule of law community towards these ends.



Marie-Pierre Poirier
Regional Director
UNICEF Regional Office for CEE/CIS

Executive Summary

Since their independence from the Soviet Union, the five countries of Central Asia – Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan – have made progress towards establishing juvenile justice systems in line with international standards. However, serious problems remain, and each country has a long way to go in order to reach full compliance.

This report looks at the challenges ahead and makes recommendations about how countries can endeavour to resolve the outstanding issues, many of which are most entrenched.

In brief, we find that, across the region, detention before trial is overused and often very long. Prevention and reintegration policies and programmes are almost non-existent. In all five countries, but one, police may detain suspects for up to three days without a court order. Conditions in most pretrial detention facilities are substandard, if not inhumane. There are continuing reports of torture and ill-treatment of children while in detention, especially in police custody. Monitoring and accountability mechanisms are weak. In Turkmenistan and Uzbekistan, where UNICEF does not have access to juvenile prisons and pretrial detention centres, the situation of detainees cannot be monitored.

Efforts to reform or develop juvenile justice in Central Asia have prioritized legislative changes and *ad hoc* training courses, often in isolation from other reformatory steps. The development of new institutions, such as juvenile courts, police units specialized in investigating crimes involving children, and services for juveniles who have been given suspended or alternative sentences, is lagging behind. Bringing juvenile justice into full compliance with the rights of children requires the construction of a system as comprehensive as possible, adequately resourced, and staffed by qualified and dedicated professionals; a system that allows authorities to respond to offending in a way that respects the rights of juvenile offenders while reducing the risk of reoffending, and thus protecting the rights of other members of society as well; a system that has appropriate links with other systems, such as education and social welfare; and a system that ensures accountability of those who fail to perform their professional responsibilities properly. Establishing or reforming juvenile justice systems is a complex, holistic, and long-term process.

UNICEF advocates that support to enable governments and civil society establish such comprehensive juvenile justice systems in Central Asia be enhanced as a matter of urgency. In particular, the following priorities have been identified:

1. Independent mechanisms for monitoring the rights of children in the context of juvenile justice, especially children deprived of liberty, must be reinforced. It is impossible to know how widespread ill-treatment is, but it is clear that ill-treatment exists. Mechanisms for investigating it and holding accountable those who violate the rights of children are weak, and impunity prevails. Arbitrary or illegal deprivation of liberty also remains a problem, and such mechanisms should play an active role in monitoring the reasons for children's detention. Although efforts to strengthen them have begun, they are still fragile and need strong political, material and technical support.
2. Detention before trial should be reduced. Authorities are often reluctant to use release under parental supervision, the most common alternative to pretrial detention in the region. Consequently, juveniles from poor and/or broken families are sometimes detained, even when by law they should remain in liberty. Diversion and alternatives to detention should be further developed and diversified to benefit these children as well, possibly following a constructive

example implemented by the Bishkek municipality (described later in this report). Dealing with children outside of the justice system as much as possible should also contribute to prevent abuse and intimidation in police and pretrial facilities, where violence and substandard conditions seem to be most common.

3. Strengthening prevention policies and programmes should be a priority, as well. Prevention still relies too heavily on monitoring by the police and placement of 'antisocial' children in special schools. Efforts are underway to develop non-residential services for children at risk of offending and, in one case, their families. Some have shown promising results, but the capacity of most such programmes remains extremely limited. Political, material and technical support is needed to recognize the role of social work in preventing conflict with the law, value the importance of developing and providing qualified social or interdisciplinary professional and paraprofessional assistance, and incorporate such efforts into programmes aiming to assist highly vulnerable children.
4. Finally, while conditions in correctional facilities for juveniles have improved in the three countries where UNICEF has had access to them, prison management practices and programmes for the prevention of reoffending and the return of detainees to the community are deficient. The lack of programmes designed to assist released prisoners reintegrate into their families and communities compounds this gap. Programmes for offenders given suspended or non-custodial sentences consist almost entirely of supervision and do not include any assistance to overcome the factors that contributed to offending. International cooperation has focused too narrowly on 'humanizing' the treatment of convicted juveniles; it is time to expand the focus and develop the capacity to implement effective programmes for the prevention of reoffending, including restorative justice programmes.

Changes will take place only through enhanced partnerships among rule of law actors and the inclusion of children in rule of law agendas. This implies that juvenile justice should become an integral part of justice sector reforms and that justice systems should be adapted to the rights of all children parties to judicial processes, including child victims and witnesses of crime.

Much remains to be done.

Context

Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan became independent from the Union of Soviet Socialist Republics (the former USSR) in 1991. They are all Member States of the United Nations, ‘participating States’ of the Organization for Security and Co-operation in Europe (OSCE), and parties to the Convention on the Rights of the Child. They also all participate in the two-year joint European Union programme on the Rule of Law that began in 2010.

The size of their population and territory varies considerably. One characteristic that they share is a large child population.

Countries	GNI per capita (PPP) ³	Total population ⁴	Adolescent population (aged 10–19) ⁵	Territory ⁶
Kazakhstan	US\$ 10,610	16.02 million	16%	2,724,900 km ²
Kyrgyzstan	US\$ 2,180	5.3 million	21%	199,951 km ²
Tajikistan	US\$ 2,060	6.9 million	24%	143,100 km ²
Turkmenistan	US\$ 7,160	5.1 million	21%	488,100 km ²
Uzbekistan	US\$ 3,090	27.4 million	22%	447,400 km ²

They all have relatively large ethnic minorities, although reliable data on the size of these populations are more difficult to obtain.

The economies of all five countries suffered after independence but improved subsequently. The strength of their economies and the levels of poverty vary considerably. Kazakhstan, an important exporter of petroleum, is an upper middle-income country. Turkmenistan and Uzbekistan, which also export petroleum and gas, are lower middle-income countries. Kyrgyzstan and Tajikistan, smaller mountainous countries that rely largely on agriculture, are classified as low-income countries.

Countries	GDP, 2010 ⁷	GDP, 2000 ⁸	Population in poverty ⁹	Human Development Index Rank ¹⁰
Kazakhstan	US\$ 149 billion	US\$ 18.2 billion	8.2% (2009)	68
Kyrgyzstan	US\$ 4.6 billion	US\$ 1.3 billion	33.7% (2010)	126
Tajikistan	US\$ 4.9 billion	US\$ 0.8 billion	46.7% (2009)	127
Turkmenistan	US\$ 20 billion	US\$ 2.9 billion	No data	102
Uzbekistan	US\$ 39 billion	US\$ 13.7 billion	No data	115

² United Nations Children’s Fund, *The State of the World’s Children 2012*, UNICEF, New York, 2012, Table 1.

³ Ibid., (data for 2010).

⁴ Ibid., Table 11.

⁵ UNdata country profiles, <http://data.un.org/CountryProfile.aspx>, accessed 15 April 2012.

⁶ World Bank Databank, <http://databank.worldbank.org>, accessed 15 April 2012.

⁷ Ibid.

⁸ Ibid. (Percentage of the population living below the national poverty line.)

⁹ United Nations Development Programme, *Human Development Report 2011*, UNDP, New York, 2011, Table 1, Human Development Index and its components. Available at: http://hdr.undp.org/en/media/HDR_2011_EN_Table1.pdf, accessed 15 April 2012.

The transition to independence and towards democracy has proceeded at different rates. In Kazakhstan and Uzbekistan, the presidents now in office have occupied that position since independence. The current president of Tajikistan took office in 1994 and was re-elected in 1999 and 2006. The current president of Turkmenistan was elected in 2007, after the death of the former president for life who had been in power since independence. Presidents of Kyrgyzstan were forced to resign due to public demonstrations in 2005 and 2010, following ethnic disturbances in which several hundred persons were killed.

Tajikistan and Uzbekistan have experienced violent disturbances since independence. In Uzbekistan, a protest was repressed with heavy loss of life in 2005,¹⁰ and Tajikistan underwent civil war from 1993 to 1997.

Data on offending from all the countries of the region show considerable decreases in the number of offences committed by juveniles or the number of juvenile offenders, since independence. Data provided by Kazakhstan indicate that the number of juvenile offenders increased significantly during the years immediately before independence but began to fall in 1994.¹¹ In 2009, the number of offenders was 46 per cent lower than in 1991. Data provided by Kyrgyzstan indicate that offending fell after independence, but spiked in 2002.¹² Since then, it reportedly has fallen by 57 per cent.¹³ Data provided by Tajikistan indicate that offending by juveniles decreased by 73 per cent from the year of independence to 2009.¹⁴ Data provided by Turkmenistan indicate that offending by juveniles has fallen every year since independence, resulting in a decrease of 91 per cent between the last year before independence and 2006.¹⁵ Such a decline in offending would be unprecedented, and there are reasons to believe that the data are not trustworthy. Difficulties also exist in some of the other countries concerning the reliability and/or interpretation of the data.¹⁶ In Uzbekistan, reported crime by juveniles increased by 7 per cent the year following independence, but fell dramatically by 1995, according to official data.¹⁷ In 2006, the most recent year for which data are available, offending by juveniles was less than half that of the last year before independence.¹⁸

¹⁰ Report of the Mission to Kyrgyzstan by the Office of the United Nations High Commissioner for Human Rights (OHCHR) concerning the events in Andijan, Uzbekistan, 13–14 May 2005, E/CN.4/2006/119, 1 February 2006.

¹¹ See United Nations Children's Fund, TransMonEE 2011 Database, UNICEF Regional Office for CEE/CIS, Geneva, May 2011, Table 9.4. (Although TransMonEE indicates that these data are offences by juveniles, a UNICEF assessment mission concluded that they actually refer to the number of offenders, not the number of offences.) From 9,272 in 1989 to 12,980 in 1992, and 11,199 in 1994.

¹² Ibid. (From 1,573 crimes in 1991 to 1,719 in 1992, and from 1,008 in 2001 to 1,954 in 2002.)

¹³ Ibid. (From 1,954 crimes in 2002 to 846 in 2009.)

¹⁴ Ibid. (From 1,528 crimes in 1991 to 415 in 2009.)

¹⁵ Ibid. (From 1,187 crimes in 1990 to 106 in 2006, the last year for which data are available.)

¹⁶ For example, Tajikistan's 2008 second periodic report to the Committee on the Rights of the Child contains data on offending by juveniles for the years 2001, 2002 and 2003 (CRC/C/TJK/2, p. 123, Table 36). For each year, the figures are lower than the figures contained in the TransMonEE Database – in one year, 25 per cent lower. (The TransMonEE Database uses data provided by the national statistical agency of the participating countries. Some independent observers believe that crime by juveniles has actually increased substantially since independence, and the decrease in reported offences is due to manipulation of data. The assessment team has no opinion on this, but does believe that official data must be viewed with great caution.)

¹⁷ See TransMonEE 2011 Database, *supra*, Table 9.4 (5,588 crimes in 1990; 5,728 in 1991; 6,146 in 1992; and 3,583 in 1995).

¹⁸ Ibid., (2,623 crimes in 2006).

Decrease in offending by juveniles 1991–2009*

Kazakhstan	- 46 per cent
Kyrgyzstan	- 57 per cent
Tajikistan	- 73 per cent
Turkmenistan	- 91 per cent
Uzbekistan	- 53 per cent

* Except Turkmenistan, 1991–2006

UNICEF's involvement with juvenile justice in Central Asia began in 1999 with a regional situation analysis, which summarized the situation in these terms:

From the moment of arrest, through the pretrial period to the hearing itself, the kind of sentence imposed and the length and conditions of sentences involving deprivation of liberty, the lack of protection of children's rights and compliance with international standards in the five countries is often blatant and severe. Thus, throughout the region, there are reports of police brutality and intimidation with a view to securing a confession. Too often, accused juveniles are deprived of their liberty during the pretrial period – whereas this should be the exception – and such detention may last many months. There is no juvenile court system, and judges rarely have any special training in dealing with juvenile cases. The range of sentencing options is very limited, in practice at least, and recourse to deprivation of liberty is consequently frequent, even for relatively minor offences. Conditions in correctional establishments are generally very poor, sometimes bordering on the inhumane.¹⁹

¹⁹ Cantwell, N., *Children in need of special protection*, UNICEF Innocenti Research Centre, Florence, 2000, p. 7.

PART I. Foundational Issues

1. Juvenile justice plans, policies and strategies

Only two countries in Central Asia have national plans or strategies on juvenile justice.²⁰ In both, they were adopted several years after efforts to develop juvenile justice began. In Kazakhstan, a Juvenile Justice System Development Concept and Plan of Action was approved in 2008.²¹ In Tajikistan, a National Plan of Action for Juvenile Justice System Reform (2010–2015) was adopted by the National Commission on Child Rights in 2009.²² The reason seems to be that governments only gradually grasp the complexity of the task of building a system of juvenile justice adapted to national conditions and fully compliant with international standards.

What were the main characteristics of these plans, and what impact have they had on the development of juvenile justice?

In Kazakhstan, the second stage of the project supported by the Open Society Institute began in 2001 and ended in 2006 with a comprehensive set of recommendations. In 2008, the President signed a Juvenile Justice System Development Concept that called for the creation of a juvenile justice system compatible with the Beijing Rules.²³ The Plan of Action for the implementation of the Concept lists 16 activities to be carried out during 2009–2011, under the coordination of the Ministry of Justice. Responsibility for its implementation was assigned to five ministries, the Office of the General Prosecutor and the Supreme Court. Most of the activities involved analysis, making proposals and giving consideration to certain reforms or actions. The cost of implementation was not estimated.

Many components of the Plan were not fully implemented, but significant changes in the juvenile justice system have taken place. Important amendments to the legislation have been made in 2009 and 2010.²⁴ Responsibility for operating the centres for temporary isolation, adaptation and rehabilitation of minors was transferred from the Ministry of Internal Affairs to the Ministry of Education and Science. New regulations were adopted, and prosecutors no longer have authority to place children in these centres. Monitoring of juvenile justice by the Ombudsman has been strengthened. The process of expanding the number of groups providing specialized legal services to children has begun. A law authorizing mediation has been adopted.²⁵

²⁰ The Inter-Agency Action Plan for the Reform of the Child Protection System adopted by Kyrgyzstan in 2009 included a component on juvenile justice. See United Nations Children's Fund, *Assessment of Juvenile Justice Reform Achievements in Kyrgyzstan*, UNICEF Regional Office for CEE/CIS, Geneva, 2011, pp. 9 and 10.

²¹ The Concept was approved by Presidential Decree and the Action Plan by the Council of Ministers.

²² The Commission on Child Rights replaced the Commission on Minors' Affairs in 2008.

²³ The main components of the system were to include: specialized juvenile courts throughout the national territory; specialized juvenile legal offices throughout the national territory; a juvenile criminal police having both preventive and investigative functions; a specialized service for supervising non-custodial sentences; an efficient system for the coordination of child protection institutions, including 'special schools' and 'centres for temporary isolation, adaptation and rehabilitation of minors'; social-psychological services in the juvenile justice system; and postgraduate programmes for the training of judges and other staff of the juvenile justice system.

²⁴ See the following section for details.

²⁵ Law No. 401-IV of 28 January 2011 'On mediation'.

In short, although implementation of the Plan as such was limited, significant progress was achieved in consolidating earlier developments and bringing the legislation into greater compliance with international standards. The legislative changes, and possibly changes in the legal culture encouraged by training, led to significant decreases in the population of juvenile prison colonies and the number of juveniles deprived of liberty, as the table below shows:²⁶

Year	2007	2008	2009	2010	2011
Juvenile prison population	425	427	449	386	153
Juveniles in pretrial detention	546	494	232	170	105

Support for the development of juvenile justice is continuing thanks to a decision by the European Union to include juvenile justice into a four-year (2010–2013) Project on Support to Judicial and Legal Reform.

The Tajikistan National Plan of Action for Juvenile Justice System Reform (2010–2015) has four main objectives:

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

The National Plan of Action is ambitious. It includes law reform, training, investments in infrastructure, new programmes and services, recruitment of new staff, the development of a centralized system of information management, monitoring of the impact of prevention, diversion and sentencing measures, and the publication of an annual report. More than 20 bodies share responsibility for the implementation of these activities. The Commission on Child Rights is, in principle, responsible for coordinating the implementation of the Plan. The Plan was adopted after some six years of efforts to develop juvenile justice. The problems that ultimately led to its adoption were described in the following terms:

“While a number of significant steps have been taken, overall reform has been slow. Responsibility for juvenile justice in Tajikistan is highly fragmented ...

All [the relevant] bodies have, to a certain extent, demonstrated a commitment to implementing the international juvenile justice standards. However, to date, there has been no agreed vision among these bodies of how a child rights compliant juvenile justice system in Tajikistan should look. Consequently, there has been a fragmented approach to the reform process. While individual ministries or agencies have undertaken valuable initiatives to reform parts of the system that are under their auspices/control, they have lost some of their value as they have not been effectively coordinated with the efforts of other bodies.

In addition, there has been resistance to some proposals because state bodies and ministries often struggle to see how the part of the system for which they are responsible will fit into the future juvenile justice system and the future child protection system, which are inextricably linked.”²⁷

²⁶ Data on the population of correctional facilities on 1 January provided by the Ministry of Justice to Penal Reform International and UNICEF

²⁷ National Plan of Action for Juvenile Justice System Reform (2010–2015).

Unfortunately, the adoption of the National Plan of Action did not solve these problems. Interministerial cooperation has not improved and may have deteriorated. The cost of implementation has not been calculated, and there is no centralized mechanism for collecting data. Few of the activities have been implemented. Many judges have attended an in-service training programme, but very few courts have designated judges with special training to handle juvenile cases. A new residential facility for girls has been established, but its purpose is defined in terms of sexual abuse and exploitation, not offending. The juvenile section of a pretrial detention centre was renovated, but most of the detainees are first offenders charged with minor offences. Conditions in the 'temporary isolation centre' for children have improved, but juveniles may still be confined there for 30 days by police order, and the number of children admitted has increased. The new Code of Criminal Procedure adopted in 2009 made some important improvements in juvenile justice, but it retains some provisions that are not compatible with international standards.

The overall picture is not as bleak as this list suggests. Many significant improvements have been made in juvenile justice during the last five or six years. The point is that, so far, the implementation of the National Plan of Action has not been a success. This is partly because the Plan coincided with the launch of a four-year UNICEF project that focuses on some of the activities envisaged by the Plan and the way this project has been implemented. As the project and Plan began, UNICEF's strategy shifted away from supporting the Commission on Child Rights towards greater reliance on line ministries, in particular the ministries of Justice and Education. Unfortunately, juvenile justice is not a priority for either. The Ministry of Justice established a Juvenile Justice Unit that to date has accomplished little. The main target, for the first two years of the project, was to expand the network of community-based centres for the prevention of offending and reoffending while transferring responsibility for their operation to the government. The transfer to local authorities has encountered serious difficulties, and the Ministry of Education has not supervised this process effectively.

Two assessments of juvenile justice were carried out in 2011, and the UNICEF Country Office is now seeking a more balanced approach to cooperation with line ministries and the Commission on Child Rights. Some of the problems that hindered implementation of the National Plan of Action in 2010 and 2011 might be overcome during 2012–2014.

Conclusions

What lessons can be drawn from the experience of these two countries?

The Kazakhstan Juvenile Justice System Development Concept and Plan of Action had obvious defects. The time period was too short – three years are not sufficient to develop a juvenile justice system where none exists; the activities were defined in tentative terms; and the issue of costs was not addressed. Despite this, significant progress was achieved, and the juvenile justice system may well be more highly developed than in any other country of the region, namely, the combined effect of the programme supported by the Open Society Institute and UNICEF's decision to step in to ensure continuity when it came to an end. It is also possible that the political commitment underlying the Plan and the interest in juvenile justice that it stimulated had positive consequences that transcended the content and mechanisms of the Plan itself.

The Tajikistan National Plan of Action for Juvenile Justice System Reform is more realistic in one particular – the period of implementation is five years rather than three. It also includes more activities. A few of the goals border on the utopian, however. It is hard to imagine, for example, that legislators and other authorities would support legislation restricting prison sentences to juveniles who commit violent crimes, when international standards do not require it.²⁸ This brings forth a strategic problem:

²⁸ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), Rule 17.1(c). This Rule allows them to be imposed, when necessary, for persistent commission of other serious crimes.

the adoption by an interministerial entity of a plan that some members have little commitment to undertake, and which it cannot compel them to carry out. UNICEF's decision to adopt a project that supports the implementation of only part of the plan and to sideline the Commission on Child Rights by giving priority to direct cooperation with line ministries (that proved to be ineffective partners) may have been understandable, to some extent. But it was not a valid response to the weaknesses of the Commission, and the need for a strong mechanism to coordinate implementation is greater than ever. The Tajikistan Plan may yet make a significant contribution to the development of juvenile justice – the implementation of the Kazakhstan Plan also got off to a slow start – provided it is adjusted and made more realistic, coordination and monitoring of implementation are improved, and key partners can be persuaded to gain a greater commitment to juvenile justice.

Have national plans made a significant difference in the development of juvenile justice in the region?

The system in Kazakhstan is probably the most developed, and the system in Turkmenistan the least developed. However, the plan is not the main reason for the progress achieved in Kazakhstan, and the lack of a plan in Turkmenistan is not the reason that development of juvenile justice has lagged behind. The progress made in Tajikistan, where the first National Plan of Action is still in the early stages of implementation, and in Kyrgyzstan, where no plan has been adopted, could be considered similar. The political situation in these two countries poses quite different challenges for advocacy and planning, however. (The situation in Uzbekistan cannot be compared with that in other countries due to the lack of access to the juvenile prison and to detention facilities.)

Perhaps the only conclusions to be drawn at this point are that substantial progress can be achieved without a plan and that, in the right circumstances, a plan can certainly accelerate the development of juvenile justice (even if it is not an ideal plan), but a plan that is unrealistic, whose coordination mechanisms are weak and that does not enjoy strong political support, may well make a limited contribution to the development of juvenile justice.

2. Law reform

None of the countries of Central Asia have adopted a law specifically on juvenile justice. In this, they are not alone – relatively few countries around the world have done so. Draft juvenile justice laws were prepared in two countries, as a result of advocacy and technical assistance from UNICEF consultants, and might still be enacted at some point.

All the countries of Central Asia have adopted new criminal codes and codes of criminal procedure since independence, in most cases during the 1990s.²⁹ In Kazakhstan, Kyrgyzstan and Tajikistan, significant changes have been made to these codes since they were adopted, generally in the sense of 'humanization'.

The adoption of new criminal codes and codes of criminal procedure was an inevitable consequence of independence, mainly because independence resulted from the collapse of a political and socio-economic system. Of course, the collapse of the system in the former USSR did not automatically lead to its disintegration throughout the former members of the Soviet Union. The process of political, social and economic evolution has progressed at different speeds throughout Central Asia. This has had implications for the development of juvenile justice systems, including in the area of law reform. International organizations, such as OSCE, and bilateral agencies offered support and assistance for

²⁹ Criminal codes were adopted by Uzbekistan in 1994, by Kazakhstan and Kyrgyzstan in 1997, by Tajikistan in 1998 and by Turkmenistan in 2010; Codes of criminal procedure were adopted by Uzbekistan in 1994, by Kazakhstan in 1997, by Kyrgyzstan in 1999, and by Tajikistan and Turkmenistan in 2009.

the drafting of new legal codes, but their experts had little interest or expertise in juvenile justice. This helps explain the wave of subsequent amendments of such codes, when the voice of specialized organizations like UNICEF began to be heard.

The new codes and subsequent amendments tended to incorporate international standards on due process, while leaving intact many principles and procedural features of Soviet criminal law. Some of these features are positive, but reluctance to touch certain prerogatives of the security forces – such as the authority to keep persons in custody for 72 hours before seeking judicial authorization to detain – is evident, as well. The similarity of the new codes also suggests a substantial amount of cooperation or coordination within the region.

Although the main focus has been on the criminal codes and codes of criminal procedure, new codes on the execution of sentences have been adopted by Kazakhstan, Tajikistan and Turkmenistan.³⁰ Kazakhstan and Uzbekistan have adopted interesting legislation on the prevention of offending that also shows signs of regional cooperation in law reform.

Criminal law and procedure

Kazakhstan adopted a considerable amount of new legislation concerning juvenile justice. In 2007, two specialized courts were established by Presidential Decree, one in Almaty and one in Astana. A law adopted in 2008 regulated their status and competence.³¹ A series of laws intended to humanize criminal law and procedure followed in 2009, 2010 and 2011.³² The resulting improvements in juvenile justice were far-reaching.³³ A law authorizing mediation, including victim-offender mediation, was adopted as well in 2011.

In Kyrgyzstan, a chapter on juvenile justice was drafted in 2005 as part of the process of revising the Children's Code, but it was not adopted.³⁴ Instead, a working group was created to develop amendments to the Criminal Code and the Code of Criminal Procedure. A package of amendments

³⁰ The laws on the prevention of offending are analysed below, in the section on 'prevention'.

³¹ Decree No. 385 of 23 August 2007 'On establishment of the specialized interregional juvenile courts'; Law No. 64-IV of 5 July 2008 'On amendments and additions to some legal acts of the Republic of Kazakhstan on the specialized interregional juvenile courts'.

³² Law No. 227-IV of 10 December 2009 'On the introduction of changes and addenda into Criminal, Criminal-Procedural and Civil-Procedural Codes of the Republic of Kazakhstan concerning issues of improving [the] justice system'; Law No. 354-IV of 23 November 2010 'On amendments to some legislative acts of the Republic of Kazakhstan concerning the issues of protection of child rights'; Law No. 375-IV of 29 December 2010 'On amendments to some legislative acts of the Republic of Kazakhstan on securing grounds, procedures and conditions for keeping persons in facilities of temporary isolation from society'; Law No. 393-IV of 18 January 2011 'On the introduction of changes and addenda into some legislative acts of the Republic of Kazakhstan concerning the issues of further humanization of criminal legislation and strengthening of lawfulness guarantees in the criminal process'.

³³ The improvements include: Charges against juveniles may be dropped due to reconciliation in cases in which a grave offence has been committed, provided that death or serious injury did not result; charges also may be dropped in cases in which the victim is the society or state, not a private individual; juvenile first offenders may not be given a prison sentence unless the crime is a serious one; a juvenile convicted of a serious offence may be placed in a special educational facility rather than a correctional facility; juveniles aged 14–15 years may not be prosecuted for simple theft, simple robbery or simple 'extortion'; in principle, juveniles may not be detained before trial unless accused of an offence that carries a sentence of five years of imprisonment; the maximum period of probation for a juvenile offender is one year; the duration of detention before trial is, in principle, two months; an extensive list of rights was incorporated into the law governing educational facilities for offenders and children at risk.

³⁴ Only two articles of the draft chapter on juvenile justice were included in the Children's Code when it was adopted in 2006.

known as the 'Law on Humanization', adopted in 2007,³⁵ led to a significant decrease in the number of prison sentences imposed on juveniles – from 178 in 2005 to 35 in 2011.³⁶ The number of cases closed because the offender has compensated the victim increased by 700 per cent between 2006 and 2010. Efforts to incorporate a chapter on juvenile justice into the Children's Code continue.

In Tajikistan, the Criminal Code of 1998, amended in 2004, prohibits the imposition of the death penalty and sentences of life imprisonment on juveniles, bans prison sentences for first-time, non-serious juvenile offenders, and introduces community service.³⁷ Another amendment that applies to some 40 offences allows a prison sentence to be replaced by a fine if a juvenile offender compensates the victim.³⁸ A revised Code of Criminal Procedure adopted in 2009 makes several key improvements in juvenile justice. It acknowledges the right of prosecutors to divert cases of first offenders accused of minor offences,³⁹ the right of a child to have legal assistance as from the moment of arrest, and the right of a child not to be questioned unless a lawyer is present.⁴⁰ Detention before trial is limited to two months, in principle, although this may be extended to six months, when the accused is a juvenile.⁴¹

In Turkmenistan, a new Code of Criminal Procedure came into force in 2009, and a new Criminal Code in 2010. Both have separate sections on juveniles. The new Criminal Code makes no significant changes in the law governing juvenile offenders, but the new Code of Criminal Procedure does.⁴²

In Uzbekistan, the Criminal Code and the Code of Criminal Procedure adopted in 1994 contain provisions more favourable to juveniles than the older codes. The new Code of Criminal Procedure, for example, requires that juveniles detained before trial be separated from adults; it specifies that an attorney must be appointed if a juvenile suspect or accused has not retained one; and it exempts juveniles suspected of serious crimes from solitary confinement.⁴³

³⁵ These amendments include: Authority to order detention before trial has been limited to judges; prison sentences have been eliminated for juveniles convicted of minor offences and juveniles under age 16 convicted of crimes of medium gravity; prison sentences for juveniles aged 14–15 years convicted of serious or very serious offences have been reduced to one half of the sentence that can be imposed on an adult; the maximum prison sentence for juveniles has been reduced from 15 years to 10 years; additional non-custodial sentences, including community service, have been recognized; the part of a prison sentence that must be served before a juvenile is eligible for early release has been reduced; and a provision allowing offenders to be exempted from criminal liability when the victim has been compensated has been extended to crimes of medium gravity.

³⁶ National Statistical Committee. (The figures refer to the population of the juvenile prison for boys only; data on girls serving prison sentences are not available.)

³⁷ Second periodic report of Tajikistan submitted to the Committee on the Rights of the Child under Article 44 of the Convention, published in 2009 as United Nations document CRC/C/TJK/2, para. 585.

³⁸ Criminal Code of Tajikistan, Article 49.8. (This provision applies, *inter alia*, to theft and destruction of property, but its impact is limited by the fact that fines may be imposed only on juveniles who have their own income.)

³⁹ Code of Criminal Procedure of Tajikistan, Article 432. (Police inspectors may divert cases as well, with the permission of a prosecutor.)

⁴⁰ *Ibid.*, Articles 49 and 227(3).

⁴¹ *Ibid.*, Articles 112(1) and 427(3). (The extension may be longer if the accused is an adult, in certain circumstances. See Article 427(3) and (4).)

⁴² The changes include: 'Pretrial' detention may be imposed only for grave offences and is limited to six months (Article 516.2 and 516.3); parents must be immediately notified of the detention of a juvenile (Article 141.2); the lawyer of a juvenile suspect or accused juvenile must be present during any interrogation (Article 512.1); juveniles may be interrogated only during day time, for no more than two hours at a time and four hours per day (Article 512.3); if an accused juvenile is removed from the court room during the hearing of testimony that may be harmful to him/her, when the juvenile returns the judge must summarize the testimony and allow the accused to question the witness who has testified (Article 517.2); before sentencing a convicted juvenile, the court must consider the possibility of probation or a non-custodial sentence (Article 520.2).

⁴³ Code of Criminal Procedure of Uzbekistan, Articles 244 and 550, respectively. (Not all the changes were favourable to juveniles, however. The new Criminal Code lowered the minimum age for prosecution from 14 years to 13 years, albeit only for the crime of murder. See Article 55.)

The preparation of a draft law on juvenile justice began at the suggestion of the National Centre on Human Rights.⁴⁴ A group of experts convened by an NGO⁴⁵ drafted a text that was presented to the Cabinet of Ministers in 2007. The draft law would make important improvements in juvenile justice and eliminate a number of legal provisions that are incompatible with international standards, but it has not been forwarded to the legislature due to opposition of the National Commission on Minors' Affairs and to its financial implications.

Prison codes

Kazakhstan, Tajikistan and Turkmenistan have adopted new codes on the execution of sentences.⁴⁶ The Tajikistan Criminal Executive Code, adopted in 2004, recognizes the right of juvenile prisoners to be informed about their rights and obligations; the right to make complaints to independent national authorities, NGOs and international human rights bodies; the right to an interpreter; the right to health care and to social benefits; the right to legal assistance; and the right to contact with their families.⁴⁷ It also provides, "public associations [NGOs] can take part in the work of the juvenile colonies" and envisages the creation of parents' committees.⁴⁸ Some of these provisions have not been implemented in practice, as indicated in the section of this report on 'prisons'.

The Turkmenistan Criminal Execution Code, adopted in 2011, incorporates relevant international norms directly into national law, and recognizes the right of prisoners to "treatment aimed at strengthening of their self-respect," to legal assistance, to health, including the right to psychological assistance, and to register complaints.⁴⁹ Torture, corporal punishment and other forms of ill-treatment are prohibited, but labour is required of all healthy prisoners (except the elderly), and placement in isolation can be used as a disciplinary measure.⁵⁰ The survival of provisions that are clearly incompatible with international standards illustrates the difficulty of creating a juvenile justice system fully compliant with international standards through piecemeal reforms of a series of codes and laws that apply mostly to adults.

3. Coordination mechanisms

None of the countries of the region have an interministerial or intersectoral body devoted specifically to the coordination of matters concerning juvenile justice.⁵¹ In some, such as Turkmenistan, this seems to reflect the low level of interest in juvenile justice. In others, it reveals the reluctance of the commissions on minors to share control over legal and social matters concerning children. More generally, it seems to denote the hesitation of ministries and other public institutions to submit established policies and practices to the scrutiny of other bodies. This, in turn, may illustrate an entrenched habit of putting institutional interests and prestige above the public interest. Finally, even within the government, decisions made by bodies such as commissions on minors are not implemented unless they are endorsed 'at the highest level', which no doubt undermines the perceived utility of inter-agency bodies.

⁴⁴ The entity responsible for follow-up to the recommendations of the United Nations human rights bodies.

⁴⁵ The Legal Problems Study Centre.

⁴⁶ Unfortunately, Chapter 17 of the Penal Execution Code adopted by Kazakhstan in 1997, on the treatment of juvenile prisoners, has not been translated into English.

⁴⁷ Criminal Executive Code of Tajikistan, Article 16.

⁴⁸ *Ibid.*, Article 150.

⁴⁹ Criminal Execution Code of Turkmenistan, Articles 1 and 8–10; see also Article 125.

⁵⁰ *Ibid.*, Articles 76 and 88–89; see also Articles 124 and 125. (Recommendations by UNICEF that juveniles be exempted from mandatory labour and placement in isolation were not heeded.)

⁵¹ The term 'intersectoral' is broader than 'interministerial', and refers to bodies whose members include representatives of sectors other than the executive branch of government, e.g., the legislature, judiciary, or civil society.

In Kazakhstan, an Experts Committee composed of representatives of the Office of the Presidency, the Office of the General Public Prosecutor, the Supreme Court, the Constitutional Court, and the ministries of Justice and Internal Affairs was responsible for coordinating the implementation of the project on juvenile justice that ended in 2006. It met at least twice a year and made recommendations on law reform, institutional reform and policies. A larger working group was responsible for the development of training programmes, manuals and recommendations on practice. They were effective, judging by the results of the project, and the final recommendations called for the establishment of a standing Council on Juvenile Justice. The Juvenile Justice System Development Concept and Plan of Action adopted in 2008 did not call for the creation of a coordination body of the kind that functioned from 2001 to 2006. The Ministry of Justice was responsible for ‘controlling’ the implementation of the Concept and Plan of Action, but this appears to fall short of full responsibility for coordinating the development of juvenile justice.

In Kyrgyzstan, the Inter-Agency Action Plan for the Reform of the Child Protection System and Development of Public Social Services 2009–2010 called for the establishment of a National Coordination Council on Juvenile Justice, but no such body has been established.

In Tajikistan, the National Commission on Child Rights headed by the Deputy Prime Minister was established in 2001 with the mandate to coordinate the implementation of the Convention on the Rights of the Child.⁵² It consists of 16 representatives of ministries, local governments and other official bodies, and two NGO representatives. In 2003, the Commission established an Expert Group on Juvenile Justice, composed mainly of representatives of various ministries and public institutions and agencies, which prepared a report on children in conflict with the law that was published by UNICEF in 2005.⁵³ The Group was then disbanded, and no other inter-agency body dedicated specifically to juvenile justice has existed since. The Commission on Child Rights is responsible for the overall coordination of child rights, including the execution of the National Plan of Action for Juvenile Justice System Reform, although it has no full-time staff. In 2011, the Ministry of Justice established a small Juvenile Justice Unit with a mandate that includes coordination, in cooperation with the National Commission on Child Rights; the Ministry of Education is also responsible for overseeing a key part of the Plan. Unfortunately, neither has shown much interest to date. Implementation of the National Plan of Action has encountered many difficulties, underscoring the need for a stronger inter-agency coordination mechanism.

In Turkmenistan, the National Institute for Democracy and Human Rights and the Inter-Ministerial Commission on the Implementation of the International Human Rights Obligations of Turkmenistan are involved in the development of juvenile justice.⁵⁴ However, neither has responsibility for the coordination of activities concerning juvenile justice.

In Uzbekistan, the National Commission on Minors’ Affairs is chaired by the Prosecutor General. It has a mandate to coordinate the activities of ministries and other public agencies in matters concerning the prevention of delinquency and the protection of the rights of children.⁵⁵ It meets quarterly, and its resolutions are binding, but it does not have an express mandate to coordinate juvenile justice as such.

⁵² The Commission in effect replaced the Soviet-era Commission on Minors’ Affairs.

⁵³ *Children in Conflict with the Law in Tajikistan: Report of the Expert Group on Juvenile Justice of the National Commission on Child Rights*, published by UNICEF Tajikistan as Child Research Digest No. 5, Dushanbe (undated).

⁵⁴ The Institute is attached to the Presidency and serves as Secretariat for the Inter-Ministerial Commission, which adopted the draft strategy on juvenile justice mentioned above.

⁵⁵ Cabinet of Ministers Decree No. 360 of 21 September 2000 on enhancing the activities of the Commissions on Minors’ Affairs, Annex No. 1 ‘Regulations governing Commissions on Minors’ Affairs’, para. 9; see also para. 11.

The experience of other countries suggests that strong coordination bodies can play a dynamic role in the development of juvenile justice systems.⁵⁶ Nevertheless, it would probably be a mistake to conclude that the absence of such mechanisms in this region is the cause of the slow or irregular pace of the development of juvenile justice. It seems more likely that – with the exception of Kazakhstan – the lack of stronger coordination bodies is an indication of the relatively weak political commitment to the development of juvenile justice.

4. Training and capacity-building

Training in child rights and juvenile justice has taken place in all the countries of the region. In most, it began about a decade ago, with the support of international organizations such as UNICEF, the Open Society Institute and OSCE. For most of the decade, it consisted almost entirely of short in-service training activities whose impact was rarely, if ever, evaluated. Recently, a trend towards the development of comprehensive training materials and the incorporation of the subject of juvenile justice into the curricula of relevant training institutions has emerged in most countries.

Kazakhstan has made the most progress in training. Participants in the project of the Open Society Institute received extensive training from 2001 to 2006. Efforts to institutionalize training in juvenile justice have been strengthened recently, thanks to a decision of the European Union to include the development of juvenile justice into a four-year (2010–2013) Project on Support to Judicial and Legal Reform. Manuals have been prepared for judges, prosecutors and the police, and training in juvenile justice has been integrated into the curriculum of the institute that trains judges. Three law faculties plan to pilot courses on child rights during the 2011–2012 academic year.⁵⁷

Some progress in institutionalizing training has also been made in Kyrgyzstan and Tajikistan. In Kyrgyzstan, a manual prepared by national experts for the training of the police, judges, prosecutors and attorneys was tested in 2009 and published in 2010, in Kyrgyz and Russian.⁵⁸ This led to the institutionalization of training for prosecutors and some police officers, but not for judges or the correctional service. In Tajikistan, more than half the judges in the country have reportedly participated in an annual two-week in-service training course that includes a two-day component on juvenile justice.⁵⁹ The curriculum of the Police Academy includes a special 34-hour course on juvenile offending for new officers, and three other courses also contain modules on juvenile justice related issues.⁶⁰ National experts and NGOs participate in the training of civil servants.

In Uzbekistan, the Republican Centre for the Social Adaptation of Children organizes training in juvenile justice for prosecutors, police inspectors, Commissions on Minors' Affairs and attorneys. A substantial number of persons have participated in such training activities, but the length of many of these activities was only one or two days, and their impact has not been assessed.

Less training in juvenile justice has taken place in Turkmenistan. In 2009, the National Institute for Democracy and Human Rights organized 2 three-day workshops to improve the skills of juvenile police officers. In 2010, a workshop designed in part to assess training needs took place in a provincial

⁵⁶ See, e.g., United Nations Children's Fund, *Assessment of Juvenile Justice Reform Achievements in Georgia*, UNICEF Regional Office for CEE/CIS, Geneva, 2010, pp. 13–14.

⁵⁷ Kazakh Humanitarian Law University, Eurasian National University of Astana and University of East Kazakhstan.

⁵⁸ The manual is designed for participatory training and aims to develop appropriate attitudes and skills as well as knowledge. A 'pocket book' based on the manual was also prepared.

⁵⁹ Van Welzenis, I., Results of the needs assessment and proposal for institutional capacity-building in eight CEE/CIS countries, UNICEF, Geneva, 2011 (unpublished report).

⁶⁰ Ibid. ('Investigation', 10 hours related to juveniles; 'Criminal Law', 16 hours; and 'Criminology', 8 hours.)

capital, and juvenile police officers participated in another two-day training activity. The impact of these activities has not been assessed.

The social work profession did not exist in the Soviet Union. Training programmes for professional social workers are underway in Kazakhstan, Kyrgyzstan and Tajikistan. The University of East Kazakhstan has trained more than 2,000 social workers, but government agencies do not recognize the importance of social work, and few graduates are employed in any aspect of juvenile justice. In Tajikistan, a Social Work Resource Centre has been established at the Tajik State National University, but the first class will not graduate until 2013, and criteria for recognizing professional social workers have not yet been adopted. The social workers currently employed by programmes and facilities for children are either paraprofessionals or professionals in other areas who have received some in-service training.

One problem concerning capacity-building that affects the region as a whole is the high turnover of persons who have been trained. This reflects the attitude that juvenile justice is irrelevant, particularly amongst the police, judges and prosecutors. Another problem is the shortage of clear professional criteria for hiring and promoting juvenile justice professionals. This is particularly evident in positions calling for social workers and psychologists, whether in schools, community-based programmes or correctional facilities. It is explained, in part, by the lack of trained professionals and low salaries for such positions. Training will have limited effect until such problems are addressed.

5. Data and research

The amount of data on offending by juveniles and juvenile justice published in the region is far from sufficient, although there are differences between the five countries. There is little awareness of the need for indicators that can be used to measure compliance with international legal standards, and most of the indicators used have not changed in decades. The tendency to see indicators as a tool for evaluating the productivity or efficiency of the police, prosecutors and other institutions has a negative effect on the reliability of data on juvenile justice, and may be the reason for the difficulty in reconciling data produced by different sources. Much of the data collected are published only selectively and occasionally, due to the lack of a culture of accountability to the public.

All the countries of the region provide some data to the TransMonEE Database but, during the past decade, none have released information on sentencing, and only two on the population of juvenile facilities.⁶¹ Data on female juvenile offenders are rare, and none of the countries in the region disaggregate data on juvenile justice by ethnicity.

In Kazakhstan, data on crime published annually by the Committee on Legal Statistics and Special Accounts of the General Prosecutor's Office include the number of crimes committed by juveniles.⁶² The Ministry of Internal Affairs has published more detailed data on offending by juveniles, but it does not do so regularly. The children's courts have provided UNICEF with ample information about their caseloads, but no information is available about the caseload handled by ordinary courts in the rest of the country.

The National Statistical Committee of Kyrgyzstan publishes more data on offending by juveniles and juvenile justice than any other institution in the region. Its Statistical Yearbook contains data on crime, disaggregated by the status of the offender (i.e., juvenile or adult). In 2005, the Committee published the first of a series of reports on crime, covering the years 2000–2004. It contains data on:

⁶¹ The TransMonEE Database, hosted by the UNICEF Regional Office for CEE/CIS, contains data on social indicators provided by the national statistical agencies of the countries in the region. Indicators on 'crime' include data on 'crimes committed by or with the participation of juveniles', 'homicides committed by or with the participation of juveniles', 'juveniles sentenced for criminal activity' and 'number of juveniles placed in correctional/educational/punitive institutions, at the end of the year'. (TransMonEE Database, *supra*, Tables 9.4, 9.8, 9.13 and 9.17.)

⁶² Committee on Legal Statistics, *Analytical and Statistical Information*, Astana, 2006, p. 20.

- the number of crimes committed by juveniles, disaggregated by the offences committed;
- the number of juvenile offenders disaggregated by the offences committed;
- the number of juvenile offenders disaggregated by sex, age group, educational/employment status, recidivism, and circumstances in which the offence was committed (alone or in a group, under the influence of drugs or alcohol);
- the number of children involved in criminal activity while too young to be prosecuted;
- the number of convicted juveniles disaggregated by offence;
- the number of convicted juveniles prosecuted, disaggregated by sex and age group, educational/employment status, recidivism, and circumstances of the offence;
- the sentences imposed on convicted juveniles and the length of prison sentences.

Unfortunately, this information is published only at five-year intervals. A report covering the years 2005–2009 is in preparation.

In Tajikistan, the Ministry of the Interior, the Office of the Prosecutor General, the Council of Justice and the Commission on Child Rights collect or compile information on children involved in offending and/or antisocial behaviour, but none of these data are published. The National Plan of Action for Juvenile Justice System Reform calls for a centralized information system on offending by juveniles and the publication of an annual report on juvenile justice, but work towards meeting these goals has not begun.

No data on juvenile justice are published in Turkmenistan. Some information is provided to TransMonEE, but its credibility is impossible to determine.

In Uzbekistan, no data are published within the country on a regular basis, and the data provided to TransMonEE sometimes contradict information given to the Committee on the Rights of the Child, raising questions about the reliability of official data.⁶³

Research

Most of the countries in the region have carried out one or more prominent studies on juvenile justice. Some of them were situation analyses or studies on the compatibility of national legislation with international standards, undertaken in preparation for, or as a component of, programmes supported by international organizations.

In Kyrgyzstan, an NGO conducted a survey of the population of the juvenile prison that documented the crimes for which prisoners had been convicted, disaggregated by place of residence and conviction, prior offences, level of education and ethnicity. In Tajikistan, the governmental Expert Group conducted an important study in 2003–2004. In Turkmenistan, the Children’s Legal Centre (UK) prepared a useful study on juvenile justice.⁶⁴ Studies undertaken in Kazakhstan (2004), Uzbekistan (2005) and Tajikistan (2011) were based in part on surveys of the experiences of juveniles and their parents.⁶⁵

⁶³ Committee on the Rights of the Child, Written replies by the Government of Uzbekistan concerning the list of issues received by the Committee on the Rights of the Child relating to the consideration of the second periodic report of Uzbekistan, published in 2006 as United Nations document CRC/C/UZB/Q/2/Add.1, p. 16.

⁶⁴ See, e.g., Legal Problems Study Centre, *Analysis of Legislation of the Republic of Uzbekistan and its Compliance with International Legal Documents in the Area of Juvenile Justice*, 2005 (mimeo); Harvey, R., and Hall, E., *System for Under-18s in Conflict with the Law in Turkmenistan: Analysis of law and practice*, The Children’s Legal Centre, Essex, 2008.

⁶⁵ Sange Research Center, *Development of the Model of Rehabilitation Center for Minors*, Almaty, 2004; Legal Problems Study Centre, *Results of sociological survey on unlawful behaviour among adolescents registered by bodies of the Ministry of Internal Affairs of Uzbekistan*, 2005 (mimeo); *Juvenile Justice Alternatives Project (2010–2014): Mid-Term Evaluation*, UNICEF, Dushanbe, 2011 (unpublished).

Although some useful research has been performed, most of it aimed at responding to specific needs or to the request of international organizations, with no continuity. Reliable, relevant data on offending by juveniles and the activities of the police, prosecutors, courts, prisons and other agencies that form part of a juvenile justice system are needed by the authorities to develop and implement evidence-based policies, laws and programmes, and monitor the impact of existing laws, policies and programmes. Moreover, in a democratic society, the public has a right to information that allows it to form opinions on how well the authorities are meeting their obligations regarding public security and the rights of the younger generation.

PART II. Democracy and the Rule of Law

1. Accountability

Offices of general prosecutors

In Central Asia, primary responsibility for investigating illegal action by public servants lies with the Office of the General Prosecutor. All countries in the region, save one, have special units for investigating violations of the laws concerning children, but none of them publish information on the number, nature and outcome of cases investigated that relate to violations of the rights of children by the police or other authorities.⁶⁶

In Kazakhstan, the General Prosecutor's Office established a special unit to coordinate and monitor compliance with legal standards concerning children in 2005.⁶⁷ In 2009, the United Nations Special Rapporteur on torture visited Kazakhstan and concluded that beatings of juveniles were common in police custody as well as in the prison's punishment cells, suggesting that the activities of the General Prosecutor had had little effect.⁶⁸ Some cases of ill-treatment have been prosecuted since then and, in 2011, some officials were convicted of torturing a juvenile.

In 2000, the Procurator-General of Kyrgyzstan issued an order to enhance the supervision of legal norms relating to juveniles, taking into account the provisions of the Convention on the Rights of the Child and the Beijing Rules. Some cases of ill-treatment have been prosecuted during the past three years.⁶⁹

In Tajikistan, a specialized unit of the Prosecutor General's Office has carried out inspections of the juvenile prison colony, the pretrial detention centres and other facilities for children and adolescents, but no information is available on the results of its monitoring activities.

In Turkmenistan, the Prosecutor General's Office has a department that monitors the implementation of law concerning children, but the assessment team was unable to obtain any concrete information on the work of this department.

In Uzbekistan, there is a special department for matters concerning children. A report published in 2010 states that no case of cruel treatment of a juvenile was confirmed during the previous two years, which tends to confirm the concerns expressed by the Human Rights Committee to the effect that investigations of abuse are inadequate or insufficient.⁷⁰

⁶⁶ Some have released information on an *ad hoc* basis. See, e.g., the information contained in the second and third periodic reports of Kazakhstan submitted to the Committee on the Rights of the Child under Article 44 of the Convention, published in 2006 as United Nations document CRC/C/KAZ/3, para. 182; third and fourth periodic report of Uzbekistan submitted to the Committee on the Rights of the Child under Article 44 of the Convention, published in 2010 as United Nations document CRC/C/UZB/3-4, para. 974.

⁶⁷ Second and third periodic reports of Kazakhstan, CRC/C/KAZ/3, *supra*, para. 182.

⁶⁸ Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak – Mission to Kazakhstan, A/HRC/13/39/Add.3, 2009, Appendix, paras. 54 and 55.

⁶⁹ Second periodic report of Kyrgyzstan submitted to the Committee on the Rights of the Child under Article 44 of the Convention, published in 2002 as United Nations document CRC/C/104/Add.4, para. 7; Monitoring of Torture and Ill-treatment of Children – Kyrgyzstan, presentation at the UNICEF Meeting on Torture and Ill-treatment in the Context of Juvenile Justice, Kyiv, October 2011, slide 6.

⁷⁰ Third and fourth periodic report of Uzbekistan, CRC/C/UZB/3-4, *supra*, paras. 974–975; Human Rights Committee, Consideration of reports submitted by States parties under Article 40 of the International Covenant on Civil and Political Rights, Concluding observations on the third periodic report of Uzbekistan, CCPR/C/UZB/CO/3, 2010, para. 11.

Ombudsmen and human rights commissioners

None of the countries of the region have a specialized independent authority with a statutory mandate to protect the rights of children. Human rights commissioners or ombudsmen exist in Kazakhstan, Kyrgyzstan and Uzbekistan. None of them are members of the National Human Rights Institutions Forum, an international body that requires compliance with United Nations standards on independence as a condition of membership.⁷¹

In Kazakhstan, a Human Rights Commissioner (Ombudsman) was appointed in 2002.⁷² His mandate and powers were expanded in 2004 and, in 2006, a special section for children's rights was established.⁷³ In 2009, the United Nations Special Rapporteur on torture concluded that the Commissioner's Office "lack[s] independence" and that, although it monitors correctional and detention facilities, its activities have "limited impact."⁷⁴ Subsequently, the Ombudsman, UNICEF and Penal Reform International signed a Memorandum of Understanding to recognize and train civil society organizations to monitor the situation of children in closed facilities.⁷⁵ This is a positive development, but it is too early to assess its impact.

In Kyrgyzstan, the Office of the Ombudsman (*Akiykatchy*) was established in 2002, and given constitutional status in 2010.⁷⁶ The Ombudsman is appointed by Parliament and makes an annual report to it. It has competence to examine complaints and refer them to the responsible authorities. There are offices in each of the six provinces and specialized departments, including one on child protection and another on the rights of prisoners. Despite these advantages, the assessment of juvenile justice carried out by the UNICEF Regional Office in 2011 concluded that the Ombudsman was not yet playing an effective role in protecting the rights of children in contact with the juvenile justice system. The Ombudsman has begun to cooperate more closely with civil society, which hopefully will strengthen the impact of its monitoring activities.⁷⁷

In Tajikistan, the Commissioner for Human Rights, established in 2008, has one staff member assigned to matters concerning the rights of women and children. Some cases involving torture of suspects and prisoners have been examined, but none of them concerned juveniles.

In Turkmenistan, a commission for reviewing citizen's complaints of abuse by law enforcement agencies was established in 2007. It is chaired by the President. It does not publish reports on its activities.⁷⁸

⁷¹ Standards for independence are found in the Paris Principles adopted by United Nations General Assembly resolution 48/134 of 20 December 1993.

⁷² Second and third periodic reports of Kazakhstan, CRC/C/KAZ/3, *supra*, para. 31.

⁷³ *Ibid*, para. 182.

⁷⁴ Human Rights Council, Report of the Special Rapporteur on torture, A/HRC/13/39/Add.3, *supra*, para. 65.

⁷⁵ Penal Reform International is an international NGO that has an office in Kazakhstan.

⁷⁶ Constitution of Kyrgyzstan (2010), Article 108.

⁷⁷ See, generally, Monitoring of Torture and Ill-treatment of Children – Kyrgyzstan, *supra*.

⁷⁸ Initial report of Turkmenistan submitted to the Human Rights Committee under Article 40 of the International Covenant on Civil and Political Rights, published in 2010 as United Nations document CCPR/C/TKM/1, para. 14.

In Uzbekistan, the Parliamentary Human Rights Commissioner (Ombudsman), established in 1995,⁷⁹ has regional offices throughout the country and publishes an annual report of activities.⁸⁰ The powers of the Ombudsman's regional representatives to visit prisons and communicate with detainees in private were strengthened recently. The Ombudsman received over 6,000 complaints in 2009, but data on complaints are not disaggregated by the age of the victim.⁸¹ The number of cases resolved is small. The Ombudsman's annual report contains explicit descriptions of the problems raised by complaints. Some government officials have been disciplined or dismissed as a result of the action taken by the Ombudsman, but the outcome of a recent case concerning the beating of two adolescent girls during arrest suggests that the effectiveness of the Ombudsman's interventions remains limited at this time.⁸²

Conclusions

The fact that most of the general prosecutors' offices have special units to investigate violations of the rights of children by public officials and that four out of five countries in the region have established statutory human rights monitoring bodies is good news. However, the creation of such bodies is useful only to the extent that they contribute to the elimination of impunity for violations of the rights of children, in particular in the context of law enforcement and correctional systems.

Information on the prevalence of ill-treatment of juveniles by police and prison staff remains too scarce to assess objectively the degree of impunity. More transparency is needed about the cases investigated by general prosecutors' offices and monitoring by ombudsmen and human rights commissioners. The number of cases concerning children, the nature of the complaints, and the findings and actions taken should all be published annually, while protecting the confidentiality of those concerned, both victims and offenders. Some ombudsmen lack the independence required to protect the rights of children with determination and fearlessness, and some are short of sufficient human and material resources. The trend towards closer cooperation with civil society is a positive one that can be expected to make ombudsmen more independent and more effective.

Above all, what is needed is a strong political commitment at the highest level to no longer tolerate violence against children seen as threatening or antisocial.

2. Civil society⁸³

The role of civil society is recognized by the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules):

⁷⁹ Core document forming part of the reports of States parties (to United Nations treaty monitoring bodies), published in 2004 as United Nations document HRI/CORE/1/Add.129, para. 51. The Ombudsman's activities are governed by the Human Rights Commissioner of the *Oliy Majlis* (ombudsman) Act of 25 April 1997, which was replaced in 2004 by a new law (Law No. 669-II).

⁸⁰ Reports are available at www.ombudsman.uz, accessed 15 April 2012; see also Human Rights Committee, Concluding observations on the third periodic report of Uzbekistan, CCPR/C/UZB/CO/3, *supra*, para. 3(b).

⁸¹ Report on the Activities of the Authorized Person for Human Rights (ombudsman) of the *Oliy Majlis* of the Republic of Uzbekistan for 2009, Tashkent, 2010, p. 202.

⁸² *Ibid.*, pp. 226 and 231. (A criminal investigation was initiated as a result of the Ombudsman's intervention, but in the end a minor disciplinary sanction was imposed, according to UNICEF.)

⁸³ Different kinds of organizations and institutions can be considered part of civil society. The first consists of non-governmental organizations (NGOs). They include officially recognized national organizations representing sectors such as women and youth, as well as organizations freely established by individuals to pursue goals identified by them. Educational and professional institutions such as universities and associations of lawyers can be considered part of civil society when they are autonomous, even though they often have a statutory basis and may be financed by the State. In some countries of the region, there are what could be described as neighbourhood associations, whose main purpose is to link the lowest level of government (e.g., village or district) to the family or household.

Sufficient attention shall be given to positive measures that involve the full mobilization of all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law.⁸⁴

The United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) also calls for community involvement, including the participation of youth, in the prevention of offending.⁸⁵

NGOs play a significant role with respect to juvenile justice in Central Asia. In all the countries of the region, they have carried out research on juvenile justice and participated in training of police, prosecutors, judges and other professionals. In most (Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan), they provide valuable legal and psychosocial assistance to accused juveniles and/or juvenile prisoners.

In Kyrgyzstan, NGOs operated a pilot project on mediation and, in Tajikistan, they have organized the first community-based centres for the prevention of offending and reoffending. In Kyrgyzstan, Tajikistan and Uzbekistan, they have participated in the drafting of new legislation on juvenile justice. In Tajikistan, one NGO is a member of the National Commission on Child Rights, and some regional and local commissions also include NGO members. In Turkmenistan, the Women's Union supports Family Support Centres that provide basic social assistance, coaching in parenting skills, sports, cultural activities and help with schoolwork to children and families in need. In Uzbekistan, the 'self-government' associations, known as *Mahallas*, also play a large role in prevention.

International NGOs and foundations have also made important contributions to the development of juvenile justice in some countries of the region. In Kazakhstan, the pilot project supported by the Open Society Institute initiated the process of developing a juvenile justice system that, in some ways, is now the most advanced in Central Asia. Penal Reform International has recently begun to play an active role there. In Tajikistan, the Children's Legal Centre (UK) prepared a situation analysis, carried out some training and provided technical expertise and guidance in the development of new approaches to juvenile justice.

Although civil society plays a vital role in the development of juvenile justice and/or the provision of services in four of the five countries of Central Asia, its contribution remains limited to certain facets of the juvenile justice system. There is no country, at present, where civil society is fully involved in a broad range of activities including research, training, law reform, policy-making, the provision of legal services, and the operation of community-based programmes for prevention, diversion and rehabilitation of offenders. In each, there is a potential for it to make greater contributions to the development and operation of juvenile justice.

For civil society to contribute fully to the development of juvenile justice, governments must create conditions that are conducive to their legitimate activities and growth. In particular, the independence of NGOs and their right of access to information and freedom of expression must be respected. Unfortunately, in some countries NGOs face obstacles that limit their effectiveness. For example, the Committee on the Rights of the Child recently encouraged Tajikistan "to support initiatives aimed at strengthening the role of NGOs," and the Human Rights Committee called on Uzbekistan to guarantee human rights defenders "the right to freedom of expression."⁸⁶

⁸⁴ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), Fundamental perspective 1.3.

⁸⁵ United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), Fundamental principle 9(f)-(h).

⁸⁶ Committee on the Rights of the Child, Consideration of reports submitted by States parties under Article 44 of the Convention, Concluding observations on the second periodic report of Tajikistan, CRC/C/TJK/CO/2, 2010, para. 23; Human Rights Committee, Concluding observations on the third periodic report of Uzbekistan, CCPR/C/UZB/CO/3, supra, para. 24.

3. Juvenile courts or judges

The Convention on the Rights of the Child recognizes the right of every child accused of violating the law to “have the matter determined ... by a competent, independent and impartial” authority.⁸⁷ The Committee on the Rights of the Child has recommended that States parties “establish juvenile courts either as separate units or as part of existing regional/district courts. Where that is not immediately feasible for practical reasons, States parties should ensure the appointment of specialized judges or magistrates for dealing with cases of juvenile justice.”⁸⁸

Specialized courts have been established only in Kazakhstan, and none of the countries in Central Asia have a national network of specialized juvenile judges. In 2007, two specialized courts were created, one in Almaty and one in Astana. A law concerning the jurisdiction and competence of these courts was adopted in 2008. Their competence includes child protection cases and family law cases involving children, in addition to crimes committed by juveniles, but excludes cases of juveniles accused of especially grave crimes.⁸⁹ In principle, the prosecutors who act in such courts should be specialized, but specialized prosecutors have not yet been appointed and trained. A presidential decree calls for the creation of such courts throughout the country, and there are plans to create 14 additional courts in 2012.

The Supreme Court of Kyrgyzstan designated certain judges to handle cases involving juvenile offenders in some courts in 2009, but this arrangement collapsed in 2010, when more than half the judges in the country were dismissed and the caseload of the courts increased significantly.

In 2006, the Supreme Court of Tajikistan issued a decree calling for the designation of an experienced judge in every district court to deal with cases of juveniles, but in practice this decree has been implemented only in a few courts.

Specialized judges have not been appointed in either Turkmenistan or Uzbekistan.

The appointment and training of specialized judges and prosecutors should be a priority. Authorities in Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan should consider following the example of Kazakhstan in establishing specialized juvenile or children’s courts in the cities where the caseload is sufficient to justify this investment.

4. Legal aid

Article 12 of the Convention on the Rights of the Child recognizes the right of every child “to be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative...”⁹⁰ Article 37 provides, “Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court...”⁹¹ Article 40 recognizes the right of the child accused of an offence “to have legal or other appropriate

⁸⁷ Convention on the Rights of the Child, Article 40.2(b)(iii). (The same obligation is recognized with respect to all accused persons, regardless of age, by Article 14.1 of the International Covenant on Civil and Political Rights.)

⁸⁸ Committee on the Rights of the Child, Children’s rights in juvenile justice, General Comment No. 10, CRC/C/GC/10, 2007, para. 93.

⁸⁹ Code of Criminal Procedure of Kazakhstan, Article 290-1.

⁹⁰ Convention on the Rights of the Child, Article 12.2.

⁹¹ *Ibid.*, Article 37(d).

assistance in the preparation and presentation of his or her defence” and to have the issue resolved “in the presence of legal or other appropriate assistance.”⁹²

All these rights require access to legal assistance, and the principle of equality ensures that such assistance is available even if those concerned are unable to pay for it. The Committee on the Rights of the Child has stated, “It is left to the discretion of States parties to determine how this assistance is provided, but it should be free of charge.”⁹³ It also recommends that, whenever possible, States should provide children accused of an offence with “adequate trained legal assistance, such as expert lawyers or paralegal professionals.”⁹⁴

The legislation of all five Central Asian countries recognizes the right of juvenile suspects and accused juveniles to have a lawyer present during questioning, as well as the right to be represented during legal proceedings.⁹⁵ In most of the countries, legal representation is mandatory, and the right to free legal services is acknowledged. In the year 2000, the Supreme Court of Uzbekistan adopted a Decision stating, *inter alia*, that any evidence obtained in violation of the rule that a lawyer must be present is unacceptable, and that failure to observe this requirement nullifies any sentence that may have been imposed.⁹⁶

In all countries of the region, except Turkmenistan, specialized legal services are available in at least some parts of the country. In Kazakhstan, two groups of lawyers in Almaty and Astana provide legal services to juvenile suspects, accused juveniles and juvenile prisoners.⁹⁷ They work with psychologists and students of psychology who provide assistance to clients and prepare background reports for use in legal proceedings. In Kyrgyzstan, too, some NGOs have begun to provide specialized legal services to juvenile suspects and accused juveniles, in some cases in cooperation with psychologists or social workers who prepare background reports. In Tajikistan, the Child Rights Centre has a staff of eight lawyers who offer free legal assistance to juveniles. In Uzbekistan, five legal clinics provide legal aid to children, including juvenile suspects, accused juveniles and juvenile offenders.

The existence of groups of specialized lawyers who provide representation at no cost to juvenile clients is a decisive breakthrough, especially when psychosocial assistance is offered together with legal assistance. Specialized legal services are essential to efforts aiming at achieving better implementation of the law and greater respect in practice for the rights of children and the Rule of Law. Unfortunately, the capacity of existing programmes is limited, and efforts to enhance their capacity are needed in all these countries.

⁹² Ibid., Article 40.2(b)(ii)-(iii).

⁹³ General Comment No. 10, CRC/C/GC/10, *supra*, para. 49.

⁹⁴ Ibid.

⁹⁵ Codes of Criminal Procedure of Kazakhstan (Articles 71, 74 and 486.2), Kyrgyzstan (Articles 44.3 and 46.4), Tajikistan (Articles 51.1, 51.3 and 52.3), Turkmenistan (Article 512.1), and Uzbekistan (Articles 51.1, 51.3 and 549–550).

⁹⁶ Uzbekistan’s Supreme Court Plenary Decision No. 21 of 15 September 2000, on judicial practice in juvenile criminal cases, para. 3. (It also confirmed that legal provisions on the mandatory presence of lawyers in proceedings concerning juveniles apply regardless of the age of the suspect, accused or defendant at the time of the proceeding.)

⁹⁷ They are private practitioners remunerated by the government at the rate of about US\$ 5 or US\$ 6 per hour, in 2010.

5. Secondary prevention

There are three kinds of prevention. Primary or general prevention consists of programmes that serve broad social groups, such as primary school students or families living in poverty. Secondary prevention refers to programmes specifically for children at higher risk of offending, such as those who do not attend school, run away from home, associate with offenders, show hostility towards authorities or aggressive behaviour towards their peers etc. The term 'individual prevention', used in some Central Asian countries, is similar but not identical: similar in that it refers to children whose behaviour and/or conditions are associated with a higher risk of offending, but different in that secondary prevention often focuses on groups rather than individuals.⁹⁸ Tertiary prevention, also called resocialization or rehabilitation, refers to the prevention of reoffending.⁹⁹ UNICEF's assessments of juvenile justice in the CEE/CIS region cover secondary and tertiary prevention, not primary prevention.

The United Nations has not adopted guidelines on secondary prevention.¹⁰⁰ The Committee on the Rights of the Child has emphasized the importance of primary prevention but has also drawn attention to the "positive results" achieved by "risk-focused" prevention strategies and programmes.¹⁰¹ In the year 2000, the Council of Europe adopted an important recommendation on 'early psychosocial intervention' in the prevention of criminality that calls for measures "aimed at distinguishing children at risk and reducing the likelihood of engaging in future ... criminal behaviour."¹⁰²

Preventive programmes are in the best interests of children, families and society, provided they "respect the privacy and integrity of children and their families and take due account of the principles of proportionality, non-stigmatization and non-discrimination."¹⁰³ Since the factors associated with an increased risk of offending are also associated with greater risks of social problems such as drug use and risky behaviour, efforts to reduce the risk of offending should be conceptualized as part of broader efforts to provide all children with an environment that favours healthy development.¹⁰⁴ The Riyadh Guidelines states,

The successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious development of adolescents, with respect for and promotion of their personality from early childhood.

[A] child-centred orientation should be pursued. Young persons ... should not be considered as mere objects of socialization or control.¹⁰⁵

⁹⁸ The terms also differ in that individual prevention covers children who have participated in criminal acts but do not have criminal responsibility (such as younger children), offenders whose cases have been diverted, and children released from facilities for offenders.

⁹⁹ Parts of the United Nations Rules on the Protection of Juveniles Deprived of their Liberty (Havana Rules), approved by the General Assembly in 1990, concern tertiary prevention. See Rules 27, 51, 54, 59, 81, 83 and 85, and sections E and N.

¹⁰⁰ The United Nations Guidelines on the Prevention of Juvenile Delinquency (The Riyadh Guidelines), approved by the General Assembly in 1990, are concerned mainly with primary prevention, although a few Guidelines on truancy, street children and drug abuse implicitly address secondary prevention. See Guidelines 30, 35, and 38.

¹⁰¹ General Comment No. 10, CRC/C/GC/10, *supra*, paras. 18 and 19.

¹⁰² Council of Europe, Recommendation Rec(2000)20 of the Committee of Ministers to member states on the role of early psychosocial intervention in the prevention of criminality, 6 October 2000, Appendix I, Definitions.

¹⁰³ *Ibid.*, section II, para. 2.

¹⁰⁴ See Convention on the Rights of the Child, Preamble and Articles 6.2 and 27.1.

¹⁰⁵ United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), Fundamental principles 1 and 2.

During the Soviet era, responsibility for the prevention of offending was closely linked to the prevention of child neglect and antisocial behaviour by children and was entrusted primarily to the commissions on minors and the juvenile police. This approach had some characteristics that can only be described as repressive: heavy reliance on institutional placement, supervision of conduct without the provision of psychosocial assistance, and treating victims of poverty, discrimination, broken homes, abuse and neglect as if they were offenders.

For the most part, this institutional framework for prevention remains in place in Central Asia. However, considerable efforts have been made to eliminate the errors and excesses of the past and to transform the culture and methodologies of these institutions by adopting policies that respect the rights of children.¹⁰⁶ One consequence of these efforts is the dramatic reduction of the population of ‘special schools’ for children with antisocial behaviour (see below, Part V).

Laws and policies on the prevention of offending

Kazakhstan, Kyrgyzstan and Uzbekistan have adopted laws on the prevention of offending.¹⁰⁷ The mere existence of such laws is a step towards the Rule of Law, because the operation of the triad of institutions that traditionally dominated this area – the commissions on minors, the juvenile police and ‘special schools’ – was governed mainly by obscure regulations and decrees.

During the Soviet period, prevention was governed largely by regulations and decrees that were unavailable to the public, not always up to date, and sometimes contradicted one another. The mere fact that legislation on this subject is being adopted represents a step towards strengthening the Rule of Law – all the more so since prevention often involved the institutionalization of children for ‘antisocial’ behaviour. The laws adopted by Kazakhstan in 2004 and by Uzbekistan in 2010 also introduce significant changes in the treatment of children at risk.¹⁰⁸

In Kazakhstan, the Law on the Prevention of Juvenile Delinquency, Child Neglect and Homelessness continues to recognize the mandate of the Commissions on Juvenile Affairs and Protection of Minors to identify and remove the “causes and conditions leading to child neglect, abandonment, delinquencies, and antisocial actions,” but it acknowledges the principle of legality; competence to place children in special schools because of their behaviour is limited to courts.¹⁰⁹ Children at risk include those who are neglected or abandoned, who abuse alcohol or drugs, truants, and children who commit administrative offences. The police, the Ministry of Education and Science and health authorities share responsibility for secondary prevention.¹¹⁰ Individual prevention is to be carried out with respect to both children and their parents.¹¹¹ Participation is not voluntary and can be triggered by the request of parents, a decision of a Commission on Juvenile Affairs and Protection of Minors, diversion or by court order.¹¹² The Law recognizes essential principles, including the principle of legality, humane treatment, confidentiality, support to families and the importance of an individual

¹⁰⁶ Unfortunately, stigmatizing terminology such as ‘deviant behaviour’ has not been completely eliminated.

¹⁰⁷ The text of the law adopted by Kyrgyzstan in 2005 is not available in English.

¹⁰⁸ Law on the Prevention of Juvenile Delinquency, Child Neglect and Homelessness of Kazakhstan and Law on the Prevention of Child Neglect and Juvenile Delinquency of Uzbekistan. (The former was amended in 2007 and 2010.)

¹⁰⁹ Law on the Prevention of Juvenile Delinquency, Child Neglect and Homelessness of Kazakhstan, Articles 3.2, 6.1, 13.2, 14.2, 22.1 and 23.

¹¹⁰ *Ibid.*, Articles 10.1, 12.3, 12.6, 15.4 and 15.6.

¹¹¹ *Ibid.*, Article 19.

¹¹² *Ibid.*, Articles 19.1 and 20.

approach to each child at risk.¹¹³ The relevance of cooperation with civil society is acknowledged, and the Law provides, “If any international treaty ratified by the Republic of Kazakhstan prescribes rules other than those contained in this Law, the rules of international treaty are applied.”¹¹⁴

In Uzbekistan, the Law on the Prevention of Child Neglect and Juvenile Delinquency adopted in 2010 has some of the same positive features as the Kazakhstan law. Protection of the rights of children is one of the key objectives, and basic principles recognized include the Rule of Law, humanity, support to families and respect for the child’s individuality.¹¹⁵ In contrast to the Kazakhstan law, it contains a relatively narrow definition of antisocial behaviour, i.e., systematic use of alcohol or drugs, begging, prostitution and other acts that violate the rights of third persons.¹¹⁶ The importance of psychosocial assistance is acknowledged.¹¹⁷ More due process is introduced to procedures for admission to residential facilities such as the ‘special educational institutions’ and the Centres of Social and Legal Assistance; there is an Article specifically on the rights of persons subject to “individual preventive work.”¹¹⁸

Responsibility for providing psychological and/or social assistance is assigned to the educational system, the public health system and the Ministry and departments of Labour and Social Protection. However, the staff in these institutions qualified to give psychosocial care to children and adolescents is relatively small, and there are no community-based programmes that provide professional assistance on a regular basis to children at risk. The Republican Centre for the Social Adaptation of Children provides some assistance on an *ad hoc* basis. Some parts of the Law also seem to see children as objects of social control rather than persons whose well-being and development are the primary concern. Provisions on legal procedures do not emphasize listening to children and making decisions based, at least in part, on their views.¹¹⁹ On balance, however, the Law represents a valuable step forward.

Turkmenistan has no law on the prevention of offending, no national plan or strategy on the prevention of offending, and no state body responsible for coordinating preventive efforts. The most significant development was the closure of all ‘special schools’ some ten years ago. Turkmenistan is the only country in Central Asia to have taken this step. Paradoxically, despite the lack of a national law or policy, the lack of an interdisciplinary approach to prevention and the lack of any entity responsible for coordinating prevention, official figures indicate that juvenile offending has fallen by 91 per cent since independence.¹²⁰ The government attributes this to basic social policies. If this decline were real, it would be a remarkable accomplishment. Unfortunately, the lack of transparency makes it impossible to take these figures at face value.

¹¹³ Ibid., Article 3.2; see also Article 3.3.

¹¹⁴ Ibid., Article 3.3, paras. 7–8 and Article 3.4, paras. 7 and 2.1, respectively.

¹¹⁵ Law on the Prevention of Child Neglect and Juvenile Delinquency of Uzbekistan, Articles 4 and 5.

¹¹⁶ Ibid., Article 3.

¹¹⁷ Ibid., Articles 13 and 15–17. (A study found that half of juveniles involved in crime have some degree of mental retardation or psychological disorder. See Results of sociological survey on unlawful behaviour among adolescents registered by bodies of the Ministry of Internal Affairs of Uzbekistan, Legal Problems Study Centre, 2005, (mimeo), p. 9.)

¹¹⁸ Ibid., Article 24.

¹¹⁹ For example, when a child is admitted temporarily to a Centre of Social and Legal Assistance, the staff has 48 hours to prepare and submit documents to the court that is responsible for confirming or terminating placement, and the court has 24 hours to make a decision, whereas the Committee on the Rights of the Child has recommended, “Every child arrested and deprived of his/her liberty should be brought before a competent authority to examine the legality of (the continuation of) this deprivation of liberty within 24 hours.” General Comment No. 10, CRC/C/GC/10, *supra*, para. 83.

¹²⁰ See TransMonEE 2011 Database, *supra*.

Community-based programmes to assist children at risk

Between 2004 and 2011, thirteen non-residential centres for ‘children in conflict with the law’ were opened in Tajikistan to provide a framework for diversion and non-custodial sentences. Diversion is a discretionary decision not to prosecute, often in exchange for a voluntary agreement by the offender to participate in a community-based programme to prevent reoffending.¹²¹ Some 472 children were referred to these centres between 2005 and 2010. The programme includes remedial education, vocational training, life skills training, and family counselling. Most of the children were either below the age at which they could be prosecuted, or referred for ‘antisocial’ activities, like skipping school, rather than a criminal offence. This means that, in practice, secondary prevention has become one of the main aims – if not the main objective – of these centres. A survey of past participants indicates that almost all of them (28 out of 29) appreciated the programme and found it useful, although reliable data on the effectiveness of the centres in preventing offending do not exist.

The Child Rights Departments and Units established in 2008 have some paraprofessional social workers who work in close cooperation with the local Commissions on Child Rights. Although the capacity of these new bodies is very limited at present, the creation of bodies mandated to provide psychosocial assistance, in addition to material support and guidance, is an important step forward in societies that previously relied heavily on the threat of law enforcement and institutional placement to solve social problems.

Other community-based programmes have been established in Kyrgyzstan, as well. The rehabilitation centre for street and homeless children run by the municipal government of Bishkek is primarily a residential facility that provides medical, psychological and social support to boys and girls aged 3–17 years.¹²² It also assists children living at home and their parents in order to overcome problems that could lead to institutional placement or disintegration of families. In Batken, a small rural community, a centre for prevention and psychological support to children in conflict with the law provides assistance to children at risk referred by social workers and to children diverted to the programme by the police. A social worker, a psychologist and an educator provide various kinds of support after school.

In Turkmenistan, the Women’s Union established Family Support Centres aiming to help children at risk and their families, in particular children living with single parents or relatives other than their parents (e.g., children of migrant workers living with grandparents).¹²³ Most of the staff are volunteers; all services are free of charge; participation is voluntary. Unfortunately, even though the approach seems promising, the impact of these Centres has not been evaluated and documented.

Conclusions

There has been reportedly a significant decline of juvenile offending throughout Central Asia, since independence: by 46 per cent in Kazakhstan, 57 per cent in Kyrgyzstan, 73 per cent in Tajikistan, 91 per cent in Turkmenistan, and 53 per cent in Uzbekistan.¹²⁴ The reasons for this decline are far from clear. The improvement of national economies since the severe crises that followed independence is no doubt part of the explanation. However, the extent to which the decline can be attributed to

¹²¹ See The Beijing Rules, Rule 11.

¹²² Some enter voluntarily, while others are placed by the child welfare authorities. Legal assistance is also available through agreements with NGOs.

¹²³ Services for children consist mainly of help with schoolwork, computer and internet literacy, sport, sewing, dance, other cultural activities, help in obtaining legal documents, and support to older children who are seeking employment. Services for parents and other caretakers include awareness-raising about the rights of children and coaching on parenting skills.

¹²⁴ TransMonEE 2011 Database, *supra*, 1991–2009 (except Turkmenistan, 1991–2006).

primary or secondary prevention, changes in the legislation, changes in law enforcement or changes in data management, is unknown.

The new laws on the prevention of offending are important. Their relevance lies in the introduction of greater safeguards against arbitrary deprivation of liberty of children and, more generally, in a greater recognition of the rights of children, and more transparency and accountability with regard to the powers and responsibilities of law enforcement and administrative bodies. They also represent a transition towards a more interdisciplinary, less repressive approach to prevention. Their implementation and impact should be monitored closely.

Positive steps are being taken to diversify the approach to secondary prevention, both through community-based centres and the establishment of small psychosocial teams on the local level. Steps are underway towards school-based secondary prevention, as opposed to the traditional lectures about the dangers of drug use and the importance of respecting the law.¹²⁵ Most of these initiatives are too recent for their impact to be assessed and, unfortunately, the efficiency of some of the older ones has not been sufficiently documented. Moreover, the capacity of most new programmes is very limited. More balance is needed between investments in law enforcement and institutional programmes for juvenile offenders and investments in community-based programmes for assisting children and families at risk.

¹²⁵ In Kyrgyzstan, a school-based programme on the prevention of peer violence that began in 2011 includes mediation, training in conflict resolution and the establishment of referral mechanisms to provide violent children and their victims with access to psychosocial services.

PART III. Human Rights and Fundamental Freedoms

1. Apprehension, interrogation and detention¹²⁶

The most fundamental obligation of law enforcement officers with respect to juvenile suspects is to treat them in a way that takes into account their age and fosters their sense of dignity and worth.¹²⁷ Cruel, inhuman or degrading treatment is prohibited; the child has the right to be presumed innocent, the right to privacy, and the right not to be compelled to give testimony or to confess guilt.¹²⁸ No child shall be deprived of liberty unlawfully or arbitrarily; deprivation of liberty must be a measure of 'last resort'; and the child must be released as soon as deprivation of liberty is no longer necessary.¹²⁹ Every child deprived of liberty must be separated from adults and have the right to prompt access to legal and other appropriate assistance.¹³⁰

The Committee on the Rights of the Child recommends that every child taken into custody "should be brought before a competent authority to examine the legality of (the continuation of) this deprivation of liberty within 24 hours."¹³¹ Parents should be notified immediately when a child is taken into custody.¹³² Contact with parents is necessary to preserve family ties, protect the child's emotional well-being, and help determine whether deprivation of liberty is necessary.

Other than the "shortest appropriate period of time" principle, there are no specific standards regarding the length of detention during legal proceedings ('pretrial detention' or detention on remand). However, the Committee has indicated that judicial proceedings concerning accused juveniles should not exceed six months from the accusation to final judgment, regardless of whether or not the accused is detained. Legislation that limits detention *before* trial to six months does not meet this standard.

Apprehension and police custody

The legislation of most countries in Central Asia concerning custody and detention of juveniles does not explicitly recognize the 'last resort' and 'shortest appropriate period of time' principles and, in general, the legislative standards on the grounds for apprehension are the same for adults and juveniles. In all the countries of the region, except Kyrgyzstan, police may hold suspects in custody for up to 72 hours, regardless of their age. In Kyrgyzstan, this has been reduced to 48 hours for juveniles,¹³³ which still exceeds the limit of 24 hours recommended by the Committee on the Rights of the Child. None of the laws in Central Asia require that parents be informed immediately that their child has been taken into

¹²⁶ The term 'apprehension' refers here to the temporary restriction of a child's freedom of movement in order to confirm his/her identity, contact his/her parents or legal guardian, or question the child about an offence; 'detention' refers to the confinement of a juvenile in a closed facility by order of a competent authority (usually a prosecutor or judge) during the investigation of a crime in which the juvenile is suspected of participating, or after a juvenile has been accused of an offence and further legal proceedings are pending or in process.

¹²⁷ Convention on the Rights of the Child, Article 40.1.

¹²⁸ *Ibid.*, Articles 37(a) and 40.2(b)(i), (vii) and (iv) respectively. The Committee on the Rights of the Child has referred to this as the "right to remain silent," although the duty of the authorities to contact the child's parents implies their right to require the child to identify himself/herself and provide information that would allow the parents or guardian to be contacted. General Comment No. 10, CRC/C/GC/10, *supra*, para. 45.

¹²⁹ Convention on the Rights of the Child, Article 37(b).

¹³⁰ *Ibid.*, Article 37(c) and (d).

¹³¹ General Comment No. 10, CRC/C/GC/10, *supra*, para. 83.

¹³² *Ibid.*, para. 54.

¹³³ Code of Criminal Procedure of Kyrgyzstan, Article 144.3.

custody.¹³⁴ Both of these requirements – judicial authorization of deprivation of liberty and notification of parents – are designed in part to prevent ill-treatment. Anecdotal evidence suggests that physical and psychological abuse is most likely to occur shortly after deprivation of liberty.

Police custody invariably occurs in police stations or jails that lack special units for juveniles, and regulations consistently require that juveniles may not be detained together with adults. In practice, this usually means that they are assigned to different cells.¹³⁵ In many police facilities, juveniles have little or no direct contact with adults because cells have solid doors, and suspects are not allowed to leave the cell except for interrogation and for their daily ‘walk’ in a cell with no roof. Consequently, although conditions may be substandard and even inhumane, isolation from all prisoners except one’s cellmates minimizes contact with adults.¹³⁶ Some police officers ignore the rule requiring the separation of juveniles and adults, but there are no reliable data on how widespread this practice is.

Interrogation

In general, the legislation of Central Asian countries regarding interrogation of juvenile suspects or accused juveniles is compatible with international standards. In all countries, except Uzbekistan, it is limited to two 2-hour sessions per day; in Uzbekistan, the limit is two 3-hour sessions.¹³⁷ In principle, the suspect’s attorney must be present.¹³⁸ Most of the legislation also provides that a teacher or psychologist must be present during interrogation of suspects below age 16. In Tajikistan and Turkmenistan, the juvenile’s parent or guardian must be allowed to be present.¹³⁹ These safeguards are designed to prevent physical or psychological coercion during interrogation, but information about their effectiveness is scarce.

The Committee on the Rights of the Child has stated, “A comprehensive juvenile justice system further requires the establishment of specialized units within the police...”¹⁴⁰ All countries in the region have juvenile police, but their mandate is limited to prevention. To ensure fair treatment during interrogation, officers who investigate crimes should also be specialized. To date, specialized investigators have been designated only in Kazakhstan (in Almaty and Astana), and in Kyrgyzstan. Kazakhstan and Kyrgyzstan are also the only countries in the region where some police stations have a special room for the questioning of children and juveniles.

Detention during legal proceedings (‘pretrial’ detention)

The grounds for detention during legal proceedings (i.e., after police custody, during the pretrial investigation, and during the trial) are basically the same for juveniles and adults: reason to believe that an accused will flee, interfere with justice or commit new offences. The legislation of all countries in the region also establishes a threshold to prevent the detention of juveniles accused of minor offences.

¹³⁴ In Kazakhstan and Tajikistan, parents must be notified within 12 hours, and in Turkmenistan notification shall be made ‘promptly’. See Codes of Criminal Procedure of Kazakhstan (Article 138), Tajikistan (Article 100.1), and Turkmenistan (Article 141.2).

¹³⁵ In police stations, they are sometimes placed in a room that is not a cell.

¹³⁶ The jail in the police headquarters in Bishkek is one example.

¹³⁷ See Codes of Criminal Procedure of Kazakhstan (Article 485), Kyrgyzstan (Article 395.1), Tajikistan (Article 429), Turkmenistan (Article 512), and Uzbekistan (Article 345.5).

¹³⁸ See Codes of Criminal Procedure of Kazakhstan (Article 486.2), Kyrgyzstan (Articles 46 and 395.2), Tajikistan (Article 227.3), Turkmenistan (Articles 255.3, 512.1 and 512.3), and Uzbekistan (Article 550).

¹³⁹ See Codes of Criminal Procedure of Kazakhstan (Article 487.1), Kyrgyzstan (Article 396), Tajikistan (Article 430), and Turkmenistan (Articles 512.2 and 514).

¹⁴⁰ General Comment No. 10, CRC/C/GC/10, *supra*, para. 92.

Offences for which juveniles may be detained, and duration of detention¹⁴¹

Country	Gravity of offence	Validity of initial detention order	Maximum duration
Kazakhstan	First offender: grave crime Repeat offender: medium gravity		6 months
Kyrgyzstan	Especially serious crime or repeated serious crimes	2 months	1 year
Tajikistan	Especially serious crime	2 months	6 months
Turkmenistan	Serious crime	2 months	18 months
Uzbekistan	Crime of medium gravity	3 months	1 year

There are, however, exceptions to these thresholds, and they are not always respected in practice. For juveniles, the most common alternative to detention before trial is release under parental supervision. Consequently, juveniles are sometimes detained if they are homeless or come from a home where supervision is weak, even if they are accused of a minor offence. Although it is logical to take the home situation of an accused person into account in determining whether detention before trial is necessary, ordering the detention of children from poor and broken families who are accused of less serious offences is inappropriate when, in principle, the law does not authorize the detention of juveniles accused of such offences. This is especially true when the offence is not punishable with a prison sentence.¹⁴² While the reason for imposing the measure may be legitimate, in principle, deprivation of liberty for a minor offence in these circumstances resembles punishment without conviction. In Kyrgyzstan, an effort is being made to solve this problem by allowing juveniles to remain in freedom under the supervision of the Bishkek centre for street and homeless children.

In most countries of the region, detention before trial must be authorized by a judge. Detention orders are valid for two months initially, but may be extended.

Country	Detention authorized by	Validity of initial detention order	Maximum duration
Kazakhstan	Judge		6 months
Kyrgyzstan¹⁴⁴	Judge	2 months	1 year
Tajikistan¹⁴⁵	Judge	2 months	8 months
Turkmenistan¹⁴⁶	Prosecutor	2 months	6 months
Uzbekistan	Judge	3 months	1 year

¹⁴¹ In this report, the term 'detention' refers to deprivation of liberty by order of a court or prosecutor before and during legal proceedings, not to imprisonment pursuant to a sentence.

¹⁴² As indicated below, prison sentences may not be imposed on juveniles convicted of a minor offence or juveniles below age 16 convicted of an offence of medium gravity.

¹⁴³ Code of Criminal Procedure of Kyrgyzstan, Article 111(1)–(3).

¹⁴⁴ Code of Criminal Procedure of Tajikistan, Articles 112(1) and 427(3).

¹⁴⁵ In Turkmenistan, prosecutors may order detention. See Code of Criminal Procedure of Turkmenistan, Article 110.

Data from Kazakhstan, Kyrgyzstan and Tajikistan indicate that the use of pretrial detention is decreasing.¹⁴⁶ Pretrial detention declined by 80 per cent from 2007 to 2011 in Kazakhstan; by 52 per cent from 2006 to 2011 in Kyrgyzstan; and by 47 per cent between 2004 and 2011 in Tajikistan. Data on the duration of pretrial detention in practice are almost non-existent, but anecdotal evidence suggests that detention for the maximum period is rare.

Kyrgyzstan is the only country in the region with a separate facility for the detention of boys that is not part of a facility for adults. In the other countries, regulations requiring that juveniles be detained separately from adults are often interpreted to mean separate cells, insofar as boys are concerned. This usually allows some contact, sometimes extensive, between juveniles and adults. When accused girls are detained, they are often confined in the same cells as women.

Conditions in detention centres vary. One common problem is that detainees remain in their cell 22 hours per day, with little or no access to organized activities of any kind and no contact with juveniles other than their cellmates. Prison legislation inherited from the former Soviet Union recognizes the right to outdoor 'walks' rather than exercise; the place provided for this purpose is usually a cell with no roof and no sports equipment.

Conclusions

The willingness of the governments of Kazakhstan, Kyrgyzstan and Tajikistan to allow representatives of international organizations to visit detention centres is a valuable indication of their commitment to transparency and to human rights; the unwillingness of Uzbek and Turkmen governments to do so is regrettable. The recent trend towards allowing civil society to participate in monitoring detention (and prison) conditions, in Kazakhstan and Kyrgyzstan, is also highly positive.

The right not to be detained before trial unless detention is strictly necessary is one of the most fundamental rights of any person. Consequently, decreased use of detention in Kazakhstan, Kyrgyzstan and Tajikistan is a very positive development.

Limiting the detention of juveniles to those accused of serious offences is a positive measure. Exceptions should not be made because the accused comes from a home where supervision is inadequate. The adoption of alternatives that prevent this should be a priority. The gravity of the crime alone should not suffice to order detention. The 'last resort' principle requires substantial reasons to believe that other measures would fail to ensure that the accused does not escape justice, does not interfere with justice or does not continue to commit crimes while awaiting adjudication.

When detention is necessary, as a 'last resort', detaining juveniles in appropriate conditions for two to three months is acceptable. However, prolonging detention to six months or more can have serious consequences for juveniles, and is rarely if ever necessary. Consideration should be given to the elimination of exceptions allowing for extended periods of detention.

In general, conditions in detention centres are worse than those in juvenile prisons. Efforts should be made to minimize the time spent in cells and to provide access to physical exercise, entertainment, recreation, religious services and appropriate forms of education and life skills training.

¹⁴⁶ Data from Uzbekistan are somewhat contradictory. They indicate a small decline of 5 per cent between 2003 and 2008.

2. Correctional facilities¹⁴⁷

Article 37 of the Convention on the Rights of the Child recognizes the right of any child deprived of liberty to “be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age,” the right not to be confined with adults, and the right to contact with his/her family. Article 40 requires that convicted juveniles should be treated in a way that “reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account ... the desirability of promoting the child’s reintegration and the child’s assuming a constructive role in society.”

These are not the only provisions of the Convention that are relevant for juveniles serving prison sentences. Juvenile prisoners are entitled to the same basic rights as any child, although the way these rights are enjoyed inevitably reflects the constraints of life in a correctional institution. As the Havana Rules indicates,

*The deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles. ... Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty.*¹⁴⁸

The UNICEF assessment team was allowed to visit juvenile prisons in only three countries in Central Asia: Kazakhstan, Kyrgyzstan and Tajikistan. No reliable information on conditions in juvenile prisons is available in Turkmenistan and Uzbekistan.

The number, capacity and population of correctional facilities for juveniles

None of the countries in Central Asia have more than one facility for juvenile offenders. In Kazakhstan, there were four until recently, but three were closed due to changes in law and policy that led to a sharp decrease in the number of juveniles serving sentences. Kyrgyzstan is the only country that has a special unit for juveniles within the women’s prison.

The existence of separate facilities for juvenile offenders avoids some of the problems frequently caused by the confinement of juveniles in separate sections of adult facilities, such as the lack of educational programmes, limited access to recreational facilities, and staff without specialized training. It does not, however, prevent contact between juveniles and adults. As juveniles are allowed to remain in juvenile facilities after reaching age 18, young adults make up a significant part of the population of juvenile prisons. Avoiding the transfer of juveniles to adult facilities when they reach age 18 is a humane policy. Permission to remain in a juvenile facility usually requires good behaviour, and it is possible that, in most cases, the interests of the younger prisoners are compatible with those of their peers who reach age 18. Ideally, however, the criteria for determining when young adults may remain in juvenile facilities should recognize explicitly that the interests of the younger residents are primary. Some degree of separation between younger and older juveniles (e.g., separate wings, recreational areas or dormitories) may also help reduce the risk of exploitation or abuse.

Individualized treatment is essential for effective rehabilitation. The Havana Rules states, “The number of juveniles detained in closed facilities should be small enough to enable individualized

¹⁴⁷ This section covers only facilities that are part of the correctional system; see Part V, below, for ‘special schools’ and ‘reception and distribution centres’.

¹⁴⁸ United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), Rules 12 and 13.

treatment.”¹⁴⁹ Although the capacity of many of the juvenile prisons in the region is large, the population of most has fallen to the point where individual treatment is feasible.

Recent data on the population of juvenile prisons

Kazakhstan	153 (in 2011)
Kyrgyzstan	35 (in 2011)
Tajikistan	91 (in 2011)
Turkmenistan	No data
Uzbekistan	104 (in 2010)

Programmes and policies

The programmes provided in juvenile prisons are as important, if not more important, than the infrastructure and living conditions. Juvenile prisoners, like all children, have the right to living conditions that favour their “physical, mental, spiritual, moral and social development.” The Havana Rules emphasizes the importance of education, vocational training, sports, paid employment and, for those who are interested, religious services.¹⁵⁰ A psychosocial profile of each prisoner should be prepared to help determine the rehabilitation programme needed, and treatment should be provided for any “condition that may hinder the integration of the juvenile into society.”¹⁵¹

Basic education is provided in the juvenile prisons in Kazakhstan, Kyrgyzstan and Tajikistan. The prisons in Kazakhstan and Kyrgyzstan also offer organized sports activities, vocational training and access to religious services, but availability of psychosocial assistance is more limited. In Kazakhstan, psychologists develop individual rehabilitation plans and provide group and individual counselling. In Kyrgyzstan, psychologists employed by an NGO provide assistance to prisoners about to be released and for six months after release. In Tajikistan, there is no psychologist on the staff, and no efforts are made to provide individualized treatment based on a professional assessment of the needs of prisoners.

In Tajikistan, juvenile prisoners are separated into groups mainly, if not exclusively, on the basis of the crime committed and their previous record, if any. They wear uniforms, have shaved heads, stand to attention when in the presence of staff and march from one activity to another. These practices, which most countries in the former Soviet Union have abandoned, do not comply with the principle that prisoners should be treated as individuals entitled to all the rights and freedoms that are compatible with the legitimate requisites of the prison regime.¹⁵²

Recent, reliable information on violence in juvenile prisons is rare; little research has been undertaken on the impact of prison on juveniles.

Girls in prison

Information about the situation of girls in women’s prisons is limited. The number of adolescent girls serving sentences in women’s prisons reportedly is usually small: 5 in Kazakhstan, 2 in Kyrgyzstan, 2 in Tajikistan, and 23 in Uzbekistan.¹⁵³ Kyrgyzstan is the only country in Central Asia where a separate

¹⁴⁹ Ibid., Rule 30.

¹⁵⁰ Ibid., Rules 38–48.

¹⁵¹ Ibid., Rules 27 and 51.

¹⁵² The Beijing Rules. Rule 36 states, “To the extent possible juveniles should have the right to use their own clothing.”

¹⁵³ Information provided to the UNICEF assessment teams in 2010 (Kyrgyzstan and Tajikistan) and 2011 (Uzbekistan).

facility for adolescent girls convicted of offences has been established, within the perimeter of a women's prison. The new separate juvenile unit in the women's prison is very comfortable but, given the small size of the juvenile population, the girls are allowed to participate in activities with adult prisoners. A 2004 study of girls confined in the women's prison in Kazakhstan indicates that they suffered from certain disadvantages: the secondary school curriculum was poor, and the remote location of the facility deterred voluntary associations and religious groups from visiting.¹⁵⁴

Conclusions

Greater efforts should be made to ensure that juvenile prisoners are protected from violence and exploitation. Juvenile prisoners should be classified with a view to ensuring "the protection of their physical, mental and moral integrity and well-being," in accordance with Beijing Rule 28. This implies separation of vulnerable prisoners from dangerous prisoners. Rule 33 also provides, "During sleeping hours, there should be regular, unobtrusive supervision of all sleeping areas... in order to ensure the protection of each juvenile."

Legislation on prisons is not in full compliance with international standards, in particular with regard to forced labour and solitary confinement.¹⁵⁵ More effective programmes for monitoring prison conditions and investigating violations of the rights of prisoners should be introduced. Efforts to upgrade infrastructure should continue. All prisons should offer organized sports and recreational activities and access to religious services, in cooperation with community-based organizations. A concerted, long-term effort is needed to improve the professional capacity for providing psychological and social assistance.

The classification of juvenile prisoners should not be based primarily or exclusively on the offence committed or decisions made before their entry into the prison; it should be based largely on an assessment of the prisoner's personal qualities and an individualized treatment plan developed and monitored by specially trained professionals.

In most countries of the region, the small group of adolescent girls serving prison sentences rules out separate prisons for convicted girls. Effective protection of the rights of adolescent girls in such circumstances requires an approach that includes:

- use of non-custodial measures or placement in special schools whenever appropriate;
- ensuring that girls in women's prisons have access to education and other services comparable to those available in facilities for boys;
- specialized staff trained in the needs and treatment of adolescents; and
- policies designed to ensure that contact with adult prisoners is limited to those likely to have a positive influence.¹⁵⁶

Programmes are needed to assist released prisoners reintegrate into their family and/or community, with the assistance of community-based groups where possible. More research should be undertaken on the impact of prison on juveniles – as well as the impact of diversion, probation, mediation and other alternatives to prison sentences.

¹⁵⁴ *Development of the Model of Rehabilitation Center for Minors*, supra, pp. 12–13.

¹⁵⁵ See the section on 'law reform' 'prison codes', above.

¹⁵⁶ See Convention on the Rights of the Child, Article 37(c), which provides, "Every child deprived of liberty shall be separated from adults *unless it is considered in the child's best interest not to do so...*", and Havana Rule 29, which states, "Under controlled conditions, juveniles may be brought together with carefully selected adults as part of a special programme that has been shown to be beneficial for the juveniles concerned."

PART IV. Core Juvenile Justice Issues

1. Diversion, restorative justice and similar dispositions

Diversion is a way of resolving criminal cases without adjudication when an offender is prepared to admit a responsibility for an offence. The Convention on the Rights of the Child encourages States to establish “measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.”¹⁵⁷ This is based on Beijing Rule 11, which provides,

11.1 Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority....

11.2 The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose

11.3 Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian...

11.4 In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programmes, such as temporary supervision and guidance, restitution, and compensation of victims.

Diversion is often linked to restorative justice, but the concepts are not identical. On one hand, diversion does not necessarily imply an agreement by the offender to take any action benefiting the victim. Indeed, victimless crimes may be resolved through diversion. On the other hand, restorative measures are not always an alternative to prosecution. They may form part of a sentence, or an agreement between the parties reached during adjudication.

One purpose of diversion is to reduce the risk of the stigma associated with prosecution. The prompt resolution of criminal charges and voluntary assumption of responsibility can also help prevent reoffending, and diversion contributes to reduce the caseload of prosecutors and courts. The Committee on the Rights of the Child has indicated that diversion should be used because it is an effective way of implementing the ‘last resort’ principle, “has good results for children and is in the interests of public safety, and has proven to be more cost-effective.”¹⁵⁸

The UNICEF Regional Office for CEE/CIS uses the term ‘diversion’ only when a child could be prosecuted for an offence. Children involved in criminal activity while too young to be prosecuted may be given warnings or referred to programmes designed to prevent further illegal conduct, but they cannot be diverted because adjudication is not possible. Diversion often involves referral to some kind of community-based programme (‘diversion measures’), although this is not an essential part of the concept. Many cases are diverted with a mere warning.

Tajikistan and Uzbekistan have similar procedures for the diversion of first offenders accused of minor offences. In Tajikistan, prosecutors have discretion to dismiss proceedings and apply ‘informal correctional measures’ if they conclude that the offender may be “corrected without criminal punishment.”¹⁵⁹ The measures that may be imposed include warnings, compensation of the victim,

¹⁵⁷ Convention on the Rights of the Child, Article 40.3(b).

¹⁵⁸ General Comment No. 10, CRC/C/GC/10, supra, para. 25.

¹⁵⁹ Code of Criminal Procedure of Tajikistan, Article 432.

and supervision.¹⁶⁰ In Uzbekistan, prosecutors have discretion to refer such cases to the Commission on Minors' Affairs if they conclude that 'correction' is possible without the imposition of a sentence.¹⁶¹ The Commission may impose a warning or order placement for up to one year under the supervision of the child's parent(s) or guardian, the *Mahalla*, or some other individual or group.¹⁶² In Tajikistan, the prosecutor may revoke diversion and prosecute if the child fails to respect the conditions imposed.¹⁶³ A similar procedure existed in Turkmenistan but was eliminated in 2009.¹⁶⁴

Diversion is similar in some ways to procedures that allow prosecutors not to prosecute either because the victim and offender have reconciled, or because prosecution is not needed to serve the interests of society.¹⁶⁵ Such procedures are recognized by all the countries in the region and apply to juveniles and adults alike.

In both Kazakhstan and Kyrgyzstan, an accused may be exempted from criminal liability if he/she reaches an agreement with the victim on compensation for the offence.¹⁶⁶ In Kazakhstan, the law was amended in 2010 to authorize juvenile first offenders to be released from liability for grave offences, provided that death or serious bodily harm was not caused, and to allow cases to be closed when the victim is society or the state, rather than a private individual.¹⁶⁷ This procedure was rarely applied in the past, but recent data provided by the children's court in Astana indicate that 22 per cent of the cases of accused juveniles were resolved by reconciliation. In Kyrgyzstan, the number of cases of juveniles resolved in this way increased by 700 per cent after this procedure was made available for cases of moderate gravity, in 2007. Many cases are closed for this reason after the trial has begun, in which case it cannot be considered diversion.

Similar procedures exist in Tajikistan and Turkmenistan.¹⁶⁸ In Tajikistan, they reportedly are not applied to juveniles, in practice. No information is available on the procedures in Turkmenistan.¹⁶⁹

Diversion measures

Community-based centres for the prevention of offending and reoffending have been established in Kyrgyzstan and Tajikistan. They provide services to children involved in antisocial behaviour and children involved in criminal conduct while too young to be prosecuted, as well as to diverted offenders.

¹⁶⁰ Ibid., incorporating by reference Article 82(2) of the Criminal Code.

¹⁶¹ Criminal Code of Uzbekistan, Article 87.

¹⁶² Uzbekistan's Cabinet of Ministers Decree No. 360 of 21 September 2000 on enhancing the activities of the Commissions on Minors' Affairs, Annex No. 1 'Regulations governing Commissions on Minors' Affairs', para. 23. (The Commission may also request a court to impose an obligation to apologize, or to compensate the victim, or to place the child in a specialized educational institution, para. 27.)

¹⁶³ Code of Criminal Procedure of Tajikistan, Article 432.2.

¹⁶⁴ Previous Code of Criminal Procedure of Turkmenistan (1961), Article 6.

¹⁶⁵ For example, Article 73 of the 2009 Code of Criminal Procedure of Turkmenistan provides, "A person who has committed a crime of small or average gravity for the first time may be exempted from criminal responsibility if it has been established that due to the change of situation that person or the action committed by him is no more dangerous to society."

¹⁶⁶ Criminal Codes of Kazakhstan (Article 67) and Kyrgyzstan (Article 66). (These dispositions are available to juveniles and adults alike.)

¹⁶⁷ Law No. 354-IV of 23 November 2010 'On amendments to some legislative acts of the Republic of Kazakhstan concerning the issues of protection of child rights'.

¹⁶⁸ Codes of Criminal Procedure of Tajikistan (Article 26) and Turkmenistan (Article 71).

¹⁶⁹ Investigating officers, prosecutors and courts have discretion to exempt first offenders charged with a minor offence from criminal responsibility because they have repaired the damage caused (and if they have repented or voluntarily reported the crime). See Code of Criminal Procedure of Turkmenistan, Article 33.2.

In Kyrgyzstan, a 'centre for prevention and psychological support to children in conflict with the law' was established in 2009 in Batken, a poor agricultural community. Children aged 12–18 years, most of whom are referred by the police, attend five days per week, after school, for a period of three months to one year. Activities include help with homework, art therapy, reading, computer use and cultural activities. A psychosocial evaluation is done upon entry into the programme, and a psychologist and social pedagogue 'work with' parents, whenever possible. Fifty-six boys and girls were referred to the centre during the first two years, and to date none of them have reoffended. The staff of the Bishkek centre for street and homeless children also facilitates negotiations between offenders and victims with a view to reaching an agreement that includes both compensation and agreement to participate in a programme designed to prevent reoffending.

In Tajikistan, thirteen community-based centres that provide diversion measures were established between 2004 and 2011. Children usually attend the centres after school for a period of six months. The services provided include remedial education and psychosocial assistance. The first centres opened were operated by NGOs, but they have now been transferred to local authorities.¹⁷⁰ A 2011 survey of children who had attended the centres indicated that the experience had been profitable and appreciated.¹⁷¹ Unfortunately, the number of referrals to the centres has declined, and the diversion of accused juveniles has almost ceased. Most children are now referred for antisocial behaviour, especially refusal to attend school.¹⁷² The reasons for these changes remain unclear, although they are manifestly related to the transfer of responsibility for these centres to the government. The decrease in diversion was followed, in 2010, by an increase in the number and percentage of convicted juveniles given prison sentences.¹⁷³

Mediation

Until recently, victim-offender mediation was unknown in Central Asia. This is changing. In Kazakhstan, a law on mediation came into force in August 2011.¹⁷⁴ It authorizes mediation in various kinds of cases, including minor crimes and crimes of medium gravity committed by juveniles. Mediation may be performed before legal proceedings or during trial.¹⁷⁵ An agreement to mediate does not stay criminal proceedings, but a settlement allows the prosecutor to close the case. In Kyrgyzstan, an NGO started providing mediation in 2008. Almost half the cases referred were resolved through mediation, resulting in dismissal of the charges.¹⁷⁶ This illustrates the potential value of mediation for juvenile justice in the region.

Conclusions

Limited data make it difficult to know to what extent diversion occurs. In general, diversion does not seem to be widely used. The closure of cases because of compensation of the victim appears to be more prevalent. While compensation of victims is desirable, the focus on compensation should not overshadow the importance of diversion. Poverty prevents some offenders from compensating victims and, more importantly, the authorities should have discretion not to prosecute whenever

¹⁷⁰ One continues to be operated by an NGO, under the direction of the local authorities.

¹⁷¹ O'Donnell, D., *Juvenile Justice Alternatives Project (2010–2014): Mid-Term Evaluation*, UNICEF, Dushanbe, 2011 (unpublished).

¹⁷² The 2011 assessment concludes that the problem of truancy should be addressed by making schools more child friendly and introducing school-based programmes to provide remedial education, social assistance and other support, as needed.

¹⁷³ See the section on 'sentencing', below.

¹⁷⁴ Kazakhstan Law No. 401-IV of 28 January 2011 'On mediation'.

¹⁷⁵ *Ibid.*, Article 20.2.

¹⁷⁶ 57 cases out of 119.

prosecution is unnecessary to prevent reoffending, regardless of whether the victim agrees. For this reason, diversion should not be limited to minor crimes.¹⁷⁷ The Committee on the Rights of the Child has stated, “the obligation of States parties to promote measures for dealing with children in conflict with the law without resorting to judicial proceedings ... is certainly not limited to children who commit minor offences ... and first-time child offenders.”¹⁷⁸ The recent expansion of diversion in Kazakhstan to serious crimes committed by juveniles is a positive development.

Reconciliation and compensation focus primarily on negotiations concerning the amount of compensation.¹⁷⁹ In contrast, mediation focuses on making the offender understand the human cost of the offence, which is one of the reasons it helps to prevent reoffending. The closure of cases during trial because of reconciliation of the victim and the offender is, of course, desirable, but it does not have the same effect as diversion in terms of minimizing stigma, facilitating quick resolution of conflicts and reducing the workload of courts. Consequently, recent initiatives to establish mediation in Kazakhstan and Kyrgyzstan are important for the region as a whole.

In most countries where diversion is recognized the decision to divert a case is final, but in most Central Asian countries a juvenile who fails to comply with the diversion measures may be prosecuted. This does not seem to be incompatible with international standards although, in time, it may come to be seen as unnecessary. A strict approach to monitoring compliance should be avoided, however. Diversion involves a combination of support and control, but the emphasis should be on efforts to assist, which require showing confidence in the offender.

The creation of centres to prevent reoffending is a positive development. The kinds of activities that help reduce the risk of reoffending are largely identical to those that help prevent reoffending. Therefore, in principle, the provision of services to children at risk, in addition to offenders diverted before prosecution, should not be a problem.¹⁸⁰ In practice, however, a shift towards prevention may reduce the positive impact such centres can have on the functioning of the juvenile justice system. The experience of Tajikistan shows that giving priority to children at risk may reduce support to children who have offended and who could benefit from assistance in a community setting.

2. Alternative sentences and educational measures

Article 37(b) of the Convention on the Rights of the Child contains a principle of fundamental importance for juvenile justice. It states, in part, “The ... imprisonment of a child ... shall be used only as a measure of last resort...” This provision is based on Beijing Rule 19, which states, “The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.” Similarly, Rule 17.1 provides, “Deprivation of personal liberty shall not be imposed ... *unless there is no other appropriate response.*” Rule 18 contains a list of alternative sanctions “that have been practised and proved successful thus far, in different legal systems.”¹⁸¹ The United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules) contains a more comprehensive list that includes, in addition to the measures mentioned by the Beijing Rules,

¹⁷⁷ The Commentary to Beijing Rule 11 states that diversion “need not necessarily be limited to petty cases... The merits of individual cases [may] make diversion appropriate, even when more serious offences have been committed.”

¹⁷⁸ General Comment No. 10, CRC/C/GC/10, *supra*, para. 25.

¹⁷⁹ This may well reflect regional values or traditions, which is one reason why it is unfortunate that the practice and the perception of this way of resolving cases by those concerned (victims and offenders) have not been documented.

¹⁸⁰ There may be a risk of stigma for children referred to these centres who are not offenders, but there is no evidence whether, in practice, attendance is stigmatizing or not.

¹⁸¹ Commentary to Beijing Rule 18.1.

warnings, suspended or deferred sentences and “referral to an attendance centre.”¹⁸² The European Rules for juvenile offenders subject to sanctions or measures covers the rights and treatment of juvenile offenders in considerable detail.¹⁸³

The legislation of many countries belonging to the civil law tradition recognizes a distinction between two classes of measures that can be imposed on juveniles involved in criminal activity. One, often called ‘penalties’ or ‘punishment’, is based on a finding of ‘criminal responsibility’. The other, sometimes referred to as ‘educational measures’, is based on a finding that the individual participated in criminal behaviour, but for some reason deserves to be exempted from ‘criminal responsibility’ and subjected to a different kind of treatment.¹⁸⁴ The criteria for determining which regime applies include the age and maturity of the offender and the nature and circumstances of the offence. This aspect of Soviet law is followed by the five Central Asian countries.

These categories do not correspond to the distinction between custodial and non-custodial measures. Sentences that may be imposed on juveniles found to have criminal responsibility include some that are non-custodial such as fines; in most countries, educational measures include placement in closed schools.¹⁸⁵

Alternative sentences

In Turkmenistan and Uzbekistan, there are only two non-custodial sentences that may be imposed on convicted juveniles: fines and correctional labour.¹⁸⁶ ‘Correctional labour’ involves withholding part of the earnings of a convicted person who is employed. In Kazakhstan and Tajikistan, the non-custodial sentences that may be imposed on juveniles include, in addition to fines and correctional labour, community service and ‘restriction of liberty’, which is similar to a combination of home arrest and compulsory school attendance.¹⁸⁷ In Kyrgyzstan, they also include apology and compensation for damages.¹⁸⁸

All criminal codes in force require that the juvenile’s level of development, living conditions, upbringing, personality and the reasons for committing the crime shall be taken into account in sentencing.¹⁸⁹ In Tajikistan and Turkmenistan, the law expressly provides that, before pronouncing sentence, a court must consider whether a convicted juvenile is eligible for a non-custodial or suspended sentence.¹⁹⁰

¹⁸² This appears to refer to centres offering programmes that offenders are required to attend on a part-time basis, for example, after school or on weekends.

¹⁸³ Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures. These Rules are based, in part, on the Convention on the Rights of the Child and the Beijing Rules.

¹⁸⁴ Often, the legislation also allows measures of this kind to be imposed on children involved in activity that is antisocial but not criminal.

¹⁸⁵ The term ‘closed’ is used here to refer to facilities where the residents are deprived of liberty in the sense of the definition in Rule 11 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, i.e., placement by order of a public authority in a facility where the juvenile “is not permitted to leave at will.”

¹⁸⁶ Criminal Codes of Turkmenistan (Articles 85 and 86(1)) and Uzbekistan (Article 81).

¹⁸⁷ Criminal Code of Kazakhstan, Articles 45 and 79.1. (There is also a sentence called ‘deprivation of the right to engage in certain activity’, which has fallen into disuse. Criminal Code of Tajikistan, Article 87.)

¹⁸⁸ Criminal Code of Kyrgyzstan, Article 78.

¹⁸⁹ Criminal Codes of Kazakhstan (Article 80), Kyrgyzstan (Article 79), Tajikistan (Article 88), Turkmenistan (Article 83), and Uzbekistan (Article 86).

¹⁹⁰ Codes of Criminal Procedure of Tajikistan (Article 435.1) and Turkmenistan (Article 520.1).

Eligibility for certain sentences is generally restricted. Fines may be imposed only if a juvenile has income or property, but in practice they are often paid by the offender's family. Sentences to correctional labour may be imposed only on a convicted juvenile over the minimum age for employment. In general, although few convicted juveniles are sentenced to prison, the number of non-custodial sentences is relatively small; the most frequently imposed dispositions are educational measures and conditional sentences (see below).

Conclusions regarding alternative sentences

The introduction of community service by Kazakhstan, Kyrgyzstan and Tajikistan is a positive development. Since most offenders come from poor families, it is important that the range of sentences available includes some that are non-custodial and can be imposed regardless of the age and economic situation of the offender. Ideally, sentences of community service should not be merely punitive; they should let the offender obtain some practical work experience, or make reparation for his/her crime.

In Tajikistan, in some districts, there is an informal arrangement that allows community service sentences to be served by attending community-based centres for the prevention of offending and reoffending.¹⁹¹ This is a positive development, but throughout the region greater efforts are needed to improve the potential of community service sentences.

The Criminal Code of Kyrgyzstan is the only one that recognizes sentences of apology and compensation of victims. In most countries of the region, however, compensation of a victim may lead to the dismissal of charges, and the educational measures that can be imposed on convicted juveniles include compensation of the victim. The significance of failure to provide for sentences involving reparation must be seen in this context and depends, to a large extent, on the availability of restorative measures in these other contexts. If compensation of the victim may lead to the dismissal of charges of quite serious offences, for example, then its availability at sentencing is less important.

Educational measures

In all the countries of the region, educational measures may be imposed on juvenile offenders instead of a sentence, in certain circumstances. The decision to impose an educational measure is discretionary, although in Tajikistan and Uzbekistan courts are obliged to consider the imposition of an educational measure if the offender is eligible. In Uzbekistan, decisions whether or not to impose such a measure must include a statement of reasons and may be appealed.¹⁹²

The ultimate criterion for exercising this discretion is usually a conclusion that a sentence is not needed to prevent reoffending.¹⁹³ Eligibility is defined partly in terms of the gravity of the offence, partly in terms of the age and previous record of the offender, and partly in terms of the kinds of measures considered necessary to prevent reoffending.

¹⁹¹ The practice also exists of putting unemployed juveniles sentenced to 'correctional labour' to work in closed facilities, which may be an arbitrary or illegal deprivation of liberty.

¹⁹² Code of Criminal Procedure of Uzbekistan, Article 564.2-3.

¹⁹³ Codes of Criminal Procedure of Kyrgyzstan (Article 401), Tajikistan (Article 437), and Turkmenistan (Article 521). Criminal Codes of Kazakhstan (Article 81), Kyrgyzstan (Article 83), Tajikistan (Article 90), Turkmenistan (Article 89.1), and Uzbekistan (Article 87).

Country	Eligibility for educational measures
Kazakhstan ¹⁹⁵	Minor offences by any juvenile; medium offences by first offenders aged 16–18 years
Kyrgyzstan ¹⁹⁶	Medium offences
Tajikistan ¹⁹⁷	First offenders, minor offences
Turkmenistan ¹⁹⁸	First offenders, medium offences
Uzbekistan ¹⁹⁹	First offenders, medium offences or multiple minor offences

In Kazakhstan, Tajikistan, Turkmenistan and Uzbekistan, educational measures include reparative measures such as apologies and compensation or reparation of the damage caused.¹⁹⁹ Other educational measures include warnings, supervision by parents or other bodies and orders limiting activities or imposing obligations (e.g., curfew, school attendance).²⁰⁰ In all countries, except Turkmenistan, the educational measures that may be imposed on offenders include placement in closed facilities known generically as special schools (see below). In Kazakhstan²⁰¹ and Tajikistan,²⁰² offenders may not be placed in special schools for minor offences. In the past, placement in a special school was usually for an indefinite period or until the offender reached age 18. Some legislation now limits placement to shorter periods.

Conclusions regarding educational measures

Giving judges the possibility of imposing educational measures is positive. It does not only preclude imprisonment, since the measure is not penal in nature, it also reduces the risk of stigmatization. In addition, it may be useful as a deterrent to continued offending. For these reasons, such measures should be widely available – while, of course, respecting the ‘last resort’ and the ‘shortest appropriate period of time’ principles with regard to placement in special schools.

There are, as indicated above, significant differences in the eligibility of juvenile offenders for this kind of treatment and the nature of the measures recognized. A composite model of the most positive features of this institution as is now exists in the region would be a valuable model for all countries to strive towards.

¹⁹⁴ Criminal Code of Kazakhstan, Article 81.

¹⁹⁵ Criminal Code of Kyrgyzstan, Article 83 and Code of Criminal Procedure of Kyrgyzstan, Article 401.

¹⁹⁶ Code of Criminal Procedure of Tajikistan, Article 437.

¹⁹⁷ Code of Criminal Procedure of Turkmenistan, Articles 89(1) and 521. (Minor offences are those punishable by a sentence of two years or less, while crimes of medium or average gravity are those punishable by a sentence of eight years or less. Criminal Code of Turkmenistan, Article 11(2).)

¹⁹⁸ Criminal Code of Uzbekistan, Articles 87–88. See also Supreme Court Resolution No.21, *supra*, para. 6.

¹⁹⁹ Criminal Codes of Kazakhstan (Article 82), Tajikistan (Article 89), Turkmenistan (Article 90), and Uzbekistan (Article 88).

²⁰⁰ Criminal Codes of Kazakhstan (Article 82), Tajikistan (Article 89.2), and Turkmenistan (Article 90).

²⁰¹ *Development of the Model of Rehabilitation Center for Minors*, *supra*, p. 24, citing Resolution 2449-XII of 18 October 1993 'On conditions of placement of children and juveniles having committed socially dangerous acts into special education facilities', and Cabinet Resolution 415 of 21 April 1994 'On confirmation of resolution on special educational facility for children and juveniles who need special education conditions'.

²⁰² Criminal Code of Tajikistan, Article 90.

Composite model based on best law and practice in the CEE/CIS region

- Obligation to consider the imposition of educational measures when the offender meets the criteria for eligibility.
- Eligibility of juveniles convicted of offences of moderate gravity, and perhaps even serious offences, regardless of whether or not they are first offenders.
- Recognition of the prevention of reoffending as the main criterion for the imposition of educational measures.
- Availability of restorative measures and community-based programmes for the prevention of reoffending, as well as warnings, supervision and obligations/restrictions on activities.
- Placement in special schools only as a measure of ‘last resort’, for relatively serious offences, and only for the time required to provide appropriate assistance.

3. Suspended or conditional sentences

In Central Asia, conditional or suspended sentences are the most common dispositions. In a sense, they are not non-custodial, because they involve the imposition of a prison sentence, although one that need not be served if the offender complies with the conditions imposed.²⁰³ Such conditions may include an obligation to compensate the victim, find employment, enrol in school, avoid certain places, participate in the treatment of substance abuse and, of course, not to reoffend.

The ultimate criterion for suspending a sentence is usually the same for juveniles and adults, i.e., whether serving a prison sentence is necessary to prevent reoffending. Eligibility for suspended sentences is usually much broader than for non-custodial sentences. In Kyrgyzstan, the sentence for any offence, except especially serious crimes, may be suspended.²⁰⁴ The duration of the period of supervision is relatively short, compared to the corresponding prison sentence.

Probation is a form of supervision imposed as part of a suspended or conditional sentence, in many countries.²⁰⁵ No country in Central Asia has a probation department.²⁰⁶

Conclusions

Data on the number of juveniles given suspended or conditional sentences are fragmentary, but those that are available suggest that it is the most common sentence.²⁰⁷ The increasing use of this disposition in some countries of the region is a positive development, which no doubt reflects a growing understanding of and commitment to the ‘last resort’ principle.

²⁰³ The Beijing Rules and the Tokyo Rules nevertheless list them amongst alternative, non-custodial sanctions.

²⁰⁴ Criminal Code of Kyrgyzstan, Article 63(1)–(2).

²⁰⁵ The term is sometimes used loosely to refer to the period of time a conditional sentence is in force even if, in practice, supervision is minimal. In some countries, probation may be imposed as part of a ‘mixed sentence’, the first part of which is a prison sentence that is not suspended.

²⁰⁶ In some countries, the Ministry of Justice has a department responsible for prisons and the supervision of the execution of non-custodial sentences; in others, the police have primary responsibility for supervising offenders given suspended sentences, and when the offender is a juvenile, this duty falls to the juvenile police. In Uzbekistan, the court must consider the appointment of a ‘social educator’ who might be a reliable relative, teacher, employer or representative of the *Mahalla* (see Code of Criminal Procedure of Uzbekistan, Article 563).

²⁰⁷ In Kyrgyzstan, recent data indicate that more than half of all sentences imposed on juveniles are conditional sentences: 59 per cent in 2009 and 51 per cent in 2010; in Kazakhstan, the children’s court in Astana reported that more than 90 per cent of the sentences imposed in 2010 were suspended.

It is unfortunate that juveniles who get suspended sentences but need assistance to overcome economic, social or psychological difficulties that have contributed to offending have rarely access to it. Priority should be given to focusing on the development of services specifically for juveniles. Since the capacity of the police to supervise is more developed than the capacity of other bodies to assist, priority should be given to the latter. The most appropriate framework for this capacity must be determined on a country-by-country basis, and does not need to be limited to any single institution. This is an area where cooperation between government and civil society is particularly relevant.

4. Custodial sentences²⁰⁸

The key international norm regarding sentences involving a deprivation of liberty is that contained in Article 37(b) of the Convention on the Rights of the Child: “The detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.” This norm is based on Beijing Rule 19, which states, “The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period.” The link between these two provisions underlines the relevance of Beijing Rule 17.1, which interprets the ‘last resort’ principle thus:

Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or persistence in committing other serious offences and unless there is no other appropriate response;...

The laws of all the countries in the region recognize the ‘last resort’ principle in some form. It is acknowledged in broad terms by the Criminal Code of Uzbekistan and by the Criminal Code and Children’s Code of Kyrgyzstan.²⁰⁹ In Kazakhstan, Tajikistan and Turkmenistan, it has been incorporated into the legislation only in certain narrow contexts, not as a fundamental principle applicable to all decisions regarding sentencing.²¹⁰

The legislation of most of the countries establishes thresholds for the imposition of prison sentences on juveniles, based on the gravity of the offence.²¹¹ The criminal codes of the region all identify four categories of offences that, for present purposes, will be called minor offences, offences of medium gravity, serious offences and very serious offences. The way these categories are defined and the way specific crimes are classified vary from one country to another, and the gravity of some offences depends on the circumstances (whether the perpetrator acted alone, whether violence was used, and the extent of the loss or injury caused). Throughout the region, juveniles below age 16 can be prosecuted only for certain offences, which involve serious and very serious offences and, in most countries, some offences of medium gravity.

²⁰⁸ This section refers only to sentences to correctional facilities; placement in special schools is considered below, in Part V. The issue of confinement in facilities for the treatment of mental illness or substance addiction is not addressed.

²⁰⁹ Criminal Code of Uzbekistan, Article 7, recognizing the ‘principle of humanity’, i.e., that all sentences imposed must be intended to prevent reoffending and that the most lenient measure that will satisfy this objective must be imposed; Criminal Code of Kyrgyzstan, Articles 53(2) and 79(1); and Children’s Code of Kyrgyzstan, Article 48.2, which states, “In accordance with the generally recognized rules of international law, custody ... deprivation of liberty can be imposed on children only as a matter of last resort.” (The Criminal Codes of Kazakhstan, Tajikistan and Turkmenistan also recognize the principle of humanity, but do not define it in terms similar to the ‘last resort’ principle.)

²¹⁰ In Tajikistan, for example, the principle is applied as the criterion for diversion of first offenders accused of a minor offence (see Criminal Code of Tajikistan, Articles 89 and 90).

²¹¹ In some cases (Kazakhstan, Uzbekistan), these thresholds are express; in others, they are indirect, i.e., a consequence of provisions concerning the offences for which younger juveniles may be prosecuted.

Thresholds for prison sentences

Country	Offenders below age 16	Offenders aged 16–18 years
Kazakhstan ²¹³	Serious offence	Serious offence
Kyrgyzstan ²¹⁴	First offender: serious offence Repeat offender: medium offence	Medium offence
Tajikistan ²¹⁵	Medium offence	Any offence
Turkmenistan	Any offence	Any offence
Uzbekistan ²¹⁶	Medium offence	Medium offence

The ‘shortest appropriate period of time’ principle

The Convention on the Rights of the Child and the Beijing Rules do not specify how the ‘shortest appropriate period of time’ principle should be interpreted, and the European Rules for juvenile offenders subject to sanction or measures does not contain concrete indications as to the maximum length of prison sentences.²¹⁶

There are two ways of approaching the issue of the length of custodial sentences imposed on juveniles. One is based on the principle of proportionality. Beijing Rule 5 indicates, “The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.” The other is based on the idea that the main, or only, purpose of a prison sentence is to prevent reoffending. Interpreting the principle in the light of this aim would suggest that prison sentences should not exceed the time needed to rehabilitate the offender. This interpretation is in harmony with the principle that the best interests of the child shall be a primary consideration in any decision taken by a court that affects a child.

The General Comment of the Committee on the Rights of the Child on children’s rights in juvenile justice contains a paragraph that seems to reconcile these two approaches. It states,

*In cases of severe offences by children, measures proportionate to the circumstances of the offender and to the gravity of the offence may be considered, including considerations of the need of public safety and sanctions. In the case of children, such considerations must always be outweighed by the need to safeguard the well-being and the best interests of the child and to promote his/her reintegration.*²¹⁷

In other words, the nature and gravity of the offence can be considered in sentencing when a juvenile is convicted of a severe offence, but the sentence imposed – even though it may take into account concerns related to the public’s expectation that justice must be served – may not be so long as to prejudice the development of the offender and become an obstacle to his/her rehabilitation and

²¹² Criminal Code of Kazakhstan, Article 79.7.

²¹³ Criminal Code of Kyrgyzstan, Article 82(3) and (4).

²¹⁴ Article 23.3 of the Criminal Code of Tajikistan provides that persons aged 14–16 years may be prosecuted only for certain offences, none of which are minor offences.

²¹⁵ Criminal Code of Uzbekistan, Articles 15, 17, 164–166 and 85.

²¹⁶ Article 37(a) of the Convention on the Rights of the Child prohibits “life imprisonment without possibility of release,” but this does not mean that any prison term shorter than life imprisonment is compatible with the Convention.

²¹⁷ General Comment No. 10, CRC/C/GC/10, supra, para. 71. (The ‘best interests’ principle relied on by the Committee in reaching this conclusion is recognized by Article 3 of the Convention on the Rights of the Child.)

reintegration.²¹⁸ The General Comment does not address more directly the issue of what would be the maximum length of sentences compatible with this principle.²¹⁹

Maximum sentences in national law

In Central Asia, the maximum sentence that may be imposed on a juvenile depends on the gravity of the offence and, in Tajikistan and Uzbekistan, his/her age. The law also provides that, as indicated above, the circumstances of the offender and the offence shall be taken into consideration in deciding whether to impose the maximum sentence of imprisonment, a shorter sentence, or a non-custodial sentence.

Maximum sentences that may be imposed on juveniles

Country	Serious crimes	Especially serious crimes	Multiple crimes
Kazakhstan ²²¹	10 years	12 years	
Kyrgyzstan ²²²	5 years	10 years	10 years
Tajikistan ²²³	7 years (age 14–15) 10 years (age 16–17)	7 years (age 14–15) 10 years (age 16–17)	10 years (age 14–15) 12 years (age 16–17)
Turkmenistan ²²⁴	10 years	15 years	
Uzbekistan ²²⁵	6 years (age 14–15) 7 years (age 16–17)	10 years ²²⁶	12 years (age 14–15) 15 years (age 16–17)

Early release

The legislation of all the countries in the region recognizes the possibility of early release. In some, such as Kyrgyzstan and Uzbekistan, the criterion for early release is the prisoner’s work and study record.²²⁶ In others, including Kazakhstan and Turkmenistan, progress made in rehabilitation or the need for continued imprisonment to prevent reoffending are the criteria.²²⁷ Courts also have discretion to reduce the sentence after a prisoner has served part of it. The reductions allowed are substantial in most countries, and the effect of these two measures may be cumulative. In Uzbekistan, for example, a sentence for a very serious crime may be reduced by one third, and prisoners serving sentences for such crimes may be released after serving half their sentence.²²⁸

²¹⁸ This interpretation seems to be supported by one of the basic principles recognized by the European Rules for juvenile offenders subject to sanctions or measures, which states, “The imposition and implementation of sanctions or measures shall be based on the best interests of the juvenile offenders, limited by the gravity of the offences committed (principle of proportionality) and take account of their age, physical and mental well-being, development, capacities and personal circumstances (principle of individualization) as ascertained when necessary by psychological, psychiatric or social inquiry reports.”

²¹⁹ On two occasions, the Committee on the Rights of the Child has indicated that it considered sentences of 10 years too long, but it has not taken this position consistently. See Committee on the Rights of the Child, Consideration of reports submitted by States parties under Article 44 of the Convention, Concluding observations on the second periodic report of Azerbaijan, CRC/C/AZE/CO/2, 2006, para. 67(d) and Concluding observations on the initial report of Bosnia and Herzegovina, CRC/C/15/Add.260, 2005, para. 74(g).

²²⁰ Criminal Code of Kazakhstan, Article 79.7.

²²¹ Criminal Code of Kyrgyzstan, Article 82.

²²² Criminal Code of Tajikistan, Articles 87–88.

²²³ Criminal Code of Turkmenistan, Article 87(1).

²²⁴ Criminal Code of Uzbekistan, Articles 85–86.

²²⁵ This sentence may also be applied to 13-year-olds convicted of murder.

²²⁶ Criminal Codes of Kyrgyzstan (Article 87) and Uzbekistan (Article 89).

²²⁷ See, e.g., Criminal Code of Kazakhstan, Article 70.1.

²²⁸ Criminal Code of Uzbekistan, Article 89.

Custodial sentences in practice

In most countries of Central Asia, the number or percentage of convicted juveniles given prison sentences has declined during the last decade. In Kyrgyzstan, the percentage of convicted juveniles given prison sentences has fallen in recent years, from an average of 67 per cent at the beginning of the decade to 37 per cent in 2010.²²⁹ This is due in part to changes in the legislation concerning sentencing introduced in 2007 (see above). In Kazakhstan, the number of juveniles given custodial sentences reportedly has fallen dramatically from 1,668 in the year 2000 to 660 in 2009.²³⁰ In Uzbekistan, the number of juveniles given prison sentences between 2006 and 2008 fluctuated between a low of 216 and a high of 263.²³¹ During the period 2006–2008, this represented 16–18 per cent of convicted juveniles.

Tajikistan recently became an exception to this trend. Between the years 2006 and 2008, the number of juveniles given prison sentences reportedly fell from 87 to 29, and the percentage of convicted juveniles given prison sentences fell from 19 per cent to 8 per cent. However, in 2010, the number of juveniles given prison sentences increased to 179, and the percentage of convicted juveniles given a prison sentence increased to 43 per cent.²³² The explanation for this dramatic increase in prison sentences is unknown.

Unfortunately, data on the length of the sentences imposed are not available. Data from Kyrgyzstan and Tajikistan do indicate that most juvenile prisoners do not serve their entire sentence. In Kyrgyzstan, 96 per cent were released before serving their entire sentence. In Tajikistan, more than 75 per cent were released before serving their full sentence.²³³

Conclusions

It is difficult to reach a conclusion on the compatibility with international standards of the law and practice as regards sentencing, because the standards are formulated in very general terms and the competent international bodies have not indicated how they should be interpreted and applied.²³⁴ The most appropriate approach at this point might be to consider the laws and practices within the region that are most favourable to juveniles as a standard to which the others should aspire – especially if data indicate that more humane standards and practices have no adverse consequences for public security. (More research on recidivism would be useful, as it would help monitor the extent to which sentencing – and other dispositions – contribute to the prevention of reoffending.)

The recent amendment to Kazakhstan’s legislation that limits prison sentences to offenders convicted of serious offences is one of the most promising developments in the region. Express recognition of the ‘last resort’ principle by the new Criminal Codes of Kyrgyzstan and Uzbekistan is also an exemplary development, as is a resolution of the Supreme Court of Uzbekistan requiring courts to state the reasons for imposing custodial sentences when they do so.

²²⁹ National Statistical Committee of Kyrgyzstan. (A total of 3,711 prison sentences were imposed from the year 2000 to 2004 out of a total of 5,557 sentences.)

²³⁰ Number of convicted juveniles: 5,393 in 2000; 2,654 in 2009. See UNICEF, *Situation Analysis: Mid-Term Review of the Country Programme of Cooperation between UNICEF and the Government of the Republic of Kazakhstan*, Astana, 2007, Annex 19.

²³¹ Combined third and fourth report of Uzbekistan to the Committee on the Rights of the Child, CRC/C/UZB/3-4, *supra*, para. 956.

²³² Data for 2009 are incomplete.

²³³ Data for 2005–2010 and 2006–2008, respectively.

²³⁴ Particularly regarding the length of sentences involving deprivation of liberty.

The law of all the countries in the region provides that the background of the offender and the circumstances of the offence must be taken into account in adjudication and sentencing. Authorities also have some discretion to divert cases or to impose non-penal measures, based on their appreciation of the likelihood of reoffending. Provisions such as these are in harmony with the 'last resort' principle.

An argument can be made, as indicated above, that prison sentences should not be longer than the time needed to rehabilitate the offender. At first glance, legislation that determines the length of prison sentences in function of the gravity of the offence may seem incompatible with the 'shortest appropriate period of time' principle. However, sentencing tariffs also protect the rights of offenders by preventing disproportionate imprisonment for minor crimes. In addition, they serve to accommodate the victim's sense of justice, i.e., an expectation that serious crimes will not go unpunished, unless there are exceptional circumstances. This is a legitimate aim that is not incompatible with the rights of juvenile offenders, provided that the sentences are not so long as to prejudice the right to rehabilitation, to healthy development and to social reintegration.²³⁵

The legislation of Kazakhstan, Kyrgyzstan and Tajikistan limits sentences for minor offences to one year – in Kazakhstan only for older juveniles. The legislation of all countries in the region now limits sentences for the most serious offences to ten years, and the legislation of Tajikistan and Uzbekistan imposes lower limits when a juvenile below age 16 commits such offence. The countries whose legislation permits longer sentences should consider reducing the maximum sentences authorized to these levels, or lower.

Theft is the most common offence committed by juveniles throughout the region and, in most countries, juveniles – even first offenders – may be given prison sentences for theft. The Beijing Rules, as indicated above, provides that prison sentences should not be imposed on juveniles unless they are convicted of a "serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response."²³⁶ Legislation should be reviewed to ensure that juveniles who have committed theft may not be sentenced to prison unless they are repeat offenders or have used violence, or previous efforts to assist them through non-custodial measures have failed.

The legislation allowing parole or early release, as well as the reduction of sentences, is very positive. The practice of releasing most juvenile prisoners before completion of their full sentence in Kyrgyzstan and Tajikistan is a good practice that deserves consideration by other countries.

²³⁵ See Convention on the Rights of the Child, Articles 27(1), 39 and 40; and International Covenant on Civil and Political Rights, Article 10.3.

²³⁶ The Beijing Rules, Rule 17.1.

PART V. Four Legacies of the Soviet Era

1. Commissions on minors' affairs

Commissions on minors' affairs or equivalent bodies exist throughout Central Asia. In Kyrgyzstan, they have been renamed Commissions on Children's Affairs. In Kazakhstan, they are now called Commissions on Juvenile Affairs and Protection of Minors. In Tajikistan, they have been renamed Commissions on Child Rights.

The commissions are collegial bodies that, on the national level, are formed of representatives of various ministries and have broad mandates regarding child protection and prevention of offending. Their powers typically are numerous but weak: they can issue instructions to regional and local commissions, but they cannot adopt decisions binding on the ministries and other members of the national commission.²³⁷ They have few if any full-time staff.

In Tajikistan, the Commission on Child Rights has taken a lead role in planning and policy-making with regard to juvenile justice. In 2003, it established an Expert Group on Juvenile Justice that prepared a report on children in conflict with the law.²³⁸ In 2009, it adopted a National Plan of Action for Juvenile Justice System Reform (2010–2015), and is responsible for coordinating its implementation.²³⁹ Unfortunately, implementation of the Plan has been weak, to date, due to the Commission's limited capacity and authority.

Traditionally, local commissions on minors had authority to place children in residential facilities because of parental abuse, neglect or abandonment, truancy and other 'antisocial' conduct, and offending. The Committee on the Rights of the Child has criticized their powers to institutionalize.²⁴⁰ In most countries, this role has been curtailed or is evolving towards greater respect for due process. In Tajikistan, the Commissions on Child Rights no longer have authority to place children in special schools because of offending, although their procedures for placing children in special schools with parental consent continue to be abused.²⁴¹ In Uzbekistan, only courts may place children in special schools because of offending.²⁴² In Kyrgyzstan, the authority of the Commissions on Children's Affairs to place children in the special school is now subject to the right of appeal to a court.²⁴³ In Turkmenistan, the Commissions on Minors still have authority to place children in special schools, but such schools no longer exist.

The commissions have other, potentially positive, roles with respect to juvenile justice. In Kyrgyzstan, they monitor compliance with educational measures imposed on juvenile offenders.²⁴⁴ In Turkmenistan, they have competence over children involved in criminal activities while too young

²³⁷ Local commissions are chaired by a representative of the local government and composed of representatives of the police, education department and other relevant local departments or bodies, sometimes including the women's organization and local NGOs.

²³⁸ *Children in Conflict with the Law in Tajikistan: Report of the Expert Group on Juvenile Justice of the National Commission on Child Rights*, published by UNICEF Tajikistan as Child Research Digest No. 5, Dushanbe (undated).

²³⁹ The literal translation of the name of the Commission is 'Commission on Child Rights under the Government of Tajikistan'; many English language documents refer to it as the National Commission on Child Rights.

²⁴⁰ See Committee on the Rights of the Child, Consideration of reports submitted by States parties under Article 44 of the Convention, Concluding observations on the second periodic report of Kyrgyzstan, CRC/C/15/Add.244, 2004, para. 67(e).

²⁴¹ Regulation of the Commission on Child Rights, Annex to Government Decision No. 377 of 1 August 2008 'On Safeguarding Protection of the Rights of the Child', Articles 15.f and 21.e; see also Code of Criminal Procedure of Tajikistan, Article 11.2.

²⁴² Cabinet of Ministers Decree No. 360 of 21 September 2000 on enhancing the activities of the Commissions on Minors' Affairs, including Annex No. 1 'Regulations governing Commissions on Minors' Affairs', para. 23.

²⁴³ Children's Code of Kyrgyzstan, Article 16.4 and 16.6.

²⁴⁴ Code of Criminal Procedure of Kyrgyzstan, Article 401.

to be prosecuted and may issue warnings or reprimands, order compensation or reparations, and place children under supervision.²⁴⁵ In Uzbekistan, they coordinate and participate in the prevention of offending.²⁴⁶

Whether the role they play is effective in practice depends on many factors, including their capacity to provide the services they are mandated to provide. In Tajikistan, some local and regional governments have created Child Rights Departments and Units to provide legal and psychosocial services to children, under the guidance of the Commissions on Child Rights. This is a step in the right direction, although their capacity remains very limited.

Conclusions

The curtailment of the power of commissions to place children in closed facilities for antisocial behaviour or offending at an early age is a very positive development. Their authority to take other action in cases of this kind – warnings, parental supervision orders and referral to community-based programmes – is largely compatible with international standards on the rights of children. Other roles they have in some countries, such as supervising offenders given non-custodial sentences or educational measures and assisting offenders returning to the community, are positive as well, in principle. Unfortunately, no research has been undertaken on the effectiveness of the commissions in this area.

Because of their composition, the commissions would seem to be well placed to coordinate activities related to juvenile justice on the national and local levels. In most countries, however, their contribution to the development of juvenile justice has been limited. Tajikistan has been more active in developing plans and policy, but has had limited success in ensuring the implementation of plans and recommendations. On the local level, attempts to use the commissions to coordinate efforts in order to bring practice into greater compliance with the relevant international principles have met with mixed success. Experience suggests, then, that commissions cannot be expected to make more significant contributions to the development of juvenile justice unless both their capacity and authority are strengthened.

2. Juvenile police

Beijing Rule 12 provides,

In order to best fulfil their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose.

The Committee on the Rights of the Child has endorsed this recommendation, stating, “A comprehensive juvenile justice system ... requires the establishment of specialized units within the police.”²⁴⁷

Specialized juvenile police were a feature of the Soviet system, but their role was limited to the prevention of offending. They monitored the way parents raised their children, gave talks in schools and carried out raids to capture street children. They participated in the commissions on minors’ affairs, cooperated closely with schools and operated special facilities for the temporary confinement

²⁴⁵ Until recently, cases of older juveniles could be diverted to the Commissions, but this procedure was not retained in the Code of Criminal Procedure adopted in 2009.

²⁴⁶ Law on the Prevention of Child Neglect and Juvenile Delinquency of Uzbekistan, Articles 4 and 13–19.

²⁴⁷ General Comment No. 10, CRC/C/GC/10, supra, para. 92.

of children. All the countries of Central Asia still have juvenile police for the prevention of offending, but only two have established specialized police units for investigating offences committed by juveniles.

In Uzbekistan, the juvenile police prepare reports on the background of accused juveniles, including health status, living conditions, personality, upbringing and motives and circumstances of the crime. The preparation of such reports requires professional expertise beyond that of police officers and involves potential conflicts of interest.²⁴⁸

Specialized units for investigating offending by juveniles

In Kyrgyzstan, a special police unit for investigating crimes committed by juveniles was established in 2011. It consists of a small team in the headquarters of the Ministry of Interior and one designated officer in each police station – approximately 87 designated officers throughout the country. In the headquarters of this unit, three rooms have been set aside for questioning juveniles and, more generally, for receiving juveniles who want to speak with the officer.²⁴⁹ One of their priorities is investigating the exploitation of juveniles for criminal purposes by adults. In Kazakhstan, teams of specialized police officers established in Almaty and Astana investigate crimes committed by juveniles and crimes against children; a Ministerial Order issued in 2011 called for such teams to be expanded throughout the country.

Juvenile police and prevention

In Kazakhstan, a category of police officer called ‘school inspector’ has been created. In 2011, 1,595 school inspectors were assigned to 56 per cent of Kazakh schools. They work in close cooperation with the school authorities, give talks on the law, supervise drug testing, and monitor the conduct of students. When necessary, they meet with parents to encourage them to fulfil their responsibilities. They can also refer students to the Commissions on Juvenile Affairs and Protection of Minors. The police claim that offending has declined in districts having school inspectors, but data supporting this statement have not been published.

In Kyrgyzstan, each police station assigns officers to the function of juvenile police.²⁵⁰ One of their main tasks is to maintain presence in schools, where they watch the conduct of children and warn those with antisocial behaviour about the possible consequences. The approach varies from one police station to another. A few are more proactive and creative, reaching out to adolescents through sports and community-improvement activities. Primary prevention, such as giving talks in schools, is also one of the main activities of the juvenile police in Tajikistan and Uzbekistan.²⁵¹ The juvenile police seem to have primary responsibility for the prevention of offending in Turkmenistan, where there is no national plan or strategy on prevention and no entity responsible for coordinating prevention.²⁵²

Registration and supervision

‘Registration’ is a practice inherited from Soviet times that, in essence, consists in maintaining lists of persons seen as likely to commit crimes or administrative offences in order to monitor their behaviour and pressure them to be law-abiding. Different kinds of registration exist, such as the

²⁴⁸ For example, expecting the accused to provide information about the role of other persons.

²⁴⁹ Examples mentioned during the visit of the assessment team include adolescents who were present during the commission of crimes by peers or may have been involved in a minor way, and are afraid of the consequences.

²⁵⁰ The literal translation of the title of these officers in Kyrgyzstan is ‘Inspectors of Minors’ Affairs’.

²⁵¹ Second periodic report of Uzbekistan submitted to the Committee on the Rights of the Child under Article 44 of the Convention, published in 2005 as United Nations document CRC/C/104/Add.6, para. 298.

²⁵² *System for Under-18s in Conflict with the Law in Turkmenistan*, supra, pp. 94–97.

registration of juveniles given alternative or suspended sentences, registration of released offenders, and registration of children involved in 'antisocial' behaviour such as truancy or consumption of alcohol. A child may be registered in response to a request (e.g., by the head of a school) or at the initiative of the police themselves. The grounds for registration usually are defined by regulations, not by law.

In Kazakhstan, registered children are visited monthly, and a report on their conduct is prepared. Few services are available, although police sometimes provide social assistance informally. In Kyrgyzstan, too, supervision does not include any assistance and appears to be intended primarily to deter offending through fear of the consequences. In Tajikistan, registration in principle involves the preparation of individual plans and periodic meetings between the police and the child and his/her parents and teacher. In some cases, a responsible adult such as a teacher is designated to give the child guidance and emotional support, and some registered children are referred to the community-based centres for the prevention of offending.

The number of children registered is quite high. In Kazakhstan, 18,431 children reportedly were registered during the 2009–2010 school year. In Kyrgyzstan, 3,229 juveniles were registered by the juvenile police in 2010. In Uzbekistan, 7,381 children were registered by the juvenile police in 2005.

Conclusions

Little research exists on the impact of the preventive work done by the juvenile police and few efforts have been made to document the views of children who have been registered and their families or teachers. One study carried out in Kazakhstan some years ago concluded, "Problem juveniles do not trust police officers and do not try to develop friendly relations with them."²⁵³ A study in Uzbekistan observed that registration for a minor offence "can negatively affect the whole life of a young person" due to stigmatization and discrimination.²⁵⁴ There is also anecdotal evidence of discrimination by the police themselves, in the investigation of crimes.

Registration no doubt has positive benefits for some children.²⁵⁵ Strengthening the capacity of the juvenile police is seen as a priority in most countries of the region – certainly a much higher priority than strengthening the capacity of programmes to provide psychosocial assistance to children at risk and their families. This appears to be due in part to political considerations, rather than an objective assessment of the effectiveness of the juvenile police as a tool for the prevention of offending. More research and information about the experiences of children and their families would help to evaluate objectively the advantages and disadvantages of registration and the other preventive activities of the juvenile police.

In considering the role of the juvenile police, it is important to recall the widespread use of suspended sentences in the region and their valuable role in ensuring compliance with the 'last resort' principle. Primary responsibility for supervising offenders usually lies with the police. Since the offender has been convicted, many of the reservations one could have about the registration of children who are

²⁵³ *Development of the Model of Rehabilitation Center for Minors*, supra, p. 33.

²⁵⁴ *Ibid.*, p. 31.

²⁵⁵ The assessment teams heard anecdotal evidence, for example, that police warnings convince some parents to treat their children better; that juvenile police sometimes manage to informally assist in resolving social problems regarding issues such as unemployment, housing or contact with parents working abroad; and that some children respond positively to the advice and moral support provided. However, there is no objective evidence from any country in the region as to how common and widespread positive impacts are, and whether they outweigh negative consequences such as stigmatization, for which there is anecdotal evidence as well.

not offenders do not apply.²⁵⁶ Although efforts should be made to give higher priority to assisting offenders given suspended sentences, and not just supervising them, until such time as probation departments are established the role of the juvenile police in supervising juveniles given suspended sentences must be seen as beneficial.

3. Special schools

‘Special schools’ is a generic term for closed residential schools for diverse groups of children, including those with antisocial behaviour, younger children involved in criminal activity, and older children involved in minor offences. They existed in all the countries of Central Asia at independence but have been closed in Turkmenistan. In most countries, there were separate special schools for older and younger children, and for boys and girls. Those for older children were often called ‘special vocational schools’.

In Kazakhstan, there are ten ‘schools for children with deviant behaviour’ for boys and girls aged 11–18 years who have left home or school or are involved in other antisocial behaviour. There are also two ‘educational institutions with particular treatment’ for offenders given educational measures and children who have committed criminal acts while too young to be prosecuted.²⁵⁷ Placement requires a court order, and children may not be placed in the school for minor offences. The Law on the Prevention of Juvenile Delinquency contains an extensive list of the rights of students.²⁵⁸

In Kyrgyzstan, there is only one special school, for boys aged 11–14 years. A special vocational school for older boys was closed in response to mistreatment documented by NGOs. The remaining school has a capacity of 100; it had a population of 55 in 2010. Most juveniles had been placed for truancy or running away from home; only seven had been admitted for offending. It is a closed facility, in principle, although in practice permission to visit parents is freely granted and some students are allowed to participate in activities in the community. The UNICEF assessment team visited the school in 2010 and was favourably impressed with conditions and the attitude of the staff, but an NGO has documented evidence of injuries caused by strenuous physical exercise used as punishment.²⁵⁹

In Tajikistan, there is a special school for younger boys and a special vocational school for older boys.²⁶⁰ Children who have committed an offence may be placed in the special school only by court order.²⁶¹ Children with problem behaviour may be placed by the Commission on Child Rights, with their consent and that of their parents.²⁶² The population of the special school was 80 in 2011. Most of the students were not offenders, and the Director of the school indicated that too many are being placed unnecessarily at the request of parents. Conditions in the special school have improved considerably.

²⁵⁶ A conviction gives the State the right to take measures affecting liberty or privacy that would not be appropriate otherwise.

²⁵⁷ Law on the Prevention of Juvenile Delinquency of Kazakhstan, Articles 13.2–3 and 14.1.

²⁵⁸ Rights included are the following: the right to appeal decisions taken by the administration, to unlimited visits by parents, to humane treatment, to education, to religious worship, to payment for work done as part of vocational training, to personal security, to legal advice, and to medical care, including psychiatric care. Article 22 of the Law also recognizes the principles of legality, humane treatment, confidentiality, respect for the individuality of children at risk, a comprehensive approach to prevention and support for the family.

²⁵⁹ Monitoring of Torture and Ill-treatment of Children – Kyrgyzstan, *supra*, slide 11. (Blisters on the palms caused by repeated traversing of metal gym bars.)

²⁶⁰ Since 2009, girls are no longer placed in the special school.

²⁶¹ Regulation of the Commission on Child Rights, *supra*, Articles 15.f and 21.e; see also Code of Criminal Procedure of Tajikistan, Article 11.2.

²⁶² *Ibid*, Article 10.e.

A psychologist visits daily, and the school can now be considered a semi-open facility.²⁶³ The special vocational school is a closed institution for boys aged 14–18 years. The population was 36 boys in 2011. Most were not offenders. Material conditions are very poor. The programme consists of secondary education, vocational training and informal counselling. There is no social worker or psychologist. An interministerial commission recommended transforming the special vocational school into an open or non-residential facility several years ago, but this has not been done.

In Uzbekistan, there are four special schools: one for younger boys, one for older boys, one for older girls and, since 2006, one for younger girls. New legislation allows placement as diversion, as a non-custodial sentence or for the commission of a crime while too young to be prosecuted. Placement for antisocial behaviour may be authorized by a court as a ‘last resort’ and for the ‘shortest appropriate period of time’, defining ‘antisocial behaviour’ narrowly as systematic use of alcohol or drugs, begging, prostitution and other acts that violate the rights of third persons.²⁶⁴

Conclusions

Whether there is a genuine need for special schools is a difficult question. Some offer valuable services to children with behavioural problems and children from criminogenic environments. Similar services should be available in the community so that placement in a special school is not the only way of obtaining access to them, and the separation of children from their families should be a last resort, especially when it involves deprivation of liberty. For these reasons, the creation of community-based programmes for assisting children at risk and their families, such as those that have been established in Tajikistan and more recently in Kyrgyzstan, is an important development.

The fact that some students are placed in special schools arbitrarily or for insufficient reasons does not justify their closure, if a significant legitimate need exists for services that can be provided only in a residential setting. Changes in the legislation to require a court order is an important safeguard against arbitrary placement. Placement with the consent of the child and his/her parents is compatible with the rights of the child, in principle, but practice indicates that free consent of the child and exhaustion of other options often are insufficient guarantees.

The transformation of some schools into open or semi-open facilities, efforts to maintain contact between students and their families, and the return of children to their families, in some countries, are positive developments, as well.

The fact that placement in these schools is an alternative for convicted juveniles cannot be overlooked. Of course, sentences that do not involve deprivation of liberty are preferable to placement in a special school, but when there are valid reasons to conclude that rehabilitation requires separation from the community, placement in a special school is clearly a better option than a prison sentence.

Finally, too little is known about how children perceive the experience of placement in special schools and about the positive or negative impact of placement on their life after release. This information is essential, both for evaluating the value of these schools and determining what may need to be done to make them more effective.

²⁶³ Some of the students attend classes in the community, and many return home on weekends; all may return home for the annual school vacation if their parents are willing to receive them.

²⁶⁴ The Regulations governing Commissions on Minors’ Affairs previously allowed children to be placed in these schools for “maliciously and systematically violating the social behaviour rules.”

4. Reception and distribution centres

Centres for temporary confinement of children run by the police are another legacy of the Soviet era. These centres received boys and girls of almost all ages, for a variety of reasons.²⁶⁵ They still exist in all the countries of the region, although in Kazakhstan they have been transferred from the Ministry of Interior to the Ministry of Education and Science.

In Kazakhstan, the police operated 18 ‘centres for temporary isolation, adaptation and rehabilitation of juveniles’, whose main purpose was to house temporarily children in need of protection while they were identified, their situation was evaluated, and a suitable placement was arranged.²⁶⁶ Children involved in criminal activity while too young to be prosecuted could also be confined there for up to 30 days on the order of a prosecutor or court.²⁶⁷ In 2009, the United Nations Special Rapporteur on torture visited a centre and reported that corporal punishment was common. The following year, the centres were transferred to the Ministry of Education and Science and renamed ‘centres for adaptation of adolescents’. Their main tasks were redefined to include social and psychological assistance to children and their parents in order to create conditions for the return of children to their families.²⁶⁸ In principle, the centres are now open facilities; their number has been reduced, and conditions in those that remain have improved.²⁶⁹ Children who are homeless or neglected, or whose lives or health are at risk, may be placed by the guardianship authority for up to three months. Placement for any other reason requires a court order.²⁷⁰

In Uzbekistan, Soviet-era reception and distribution centres have been transformed into Centres of Social and Legal Assistance. There are 14 such centres throughout the country.²⁷¹ They receive boys and girls aged 3–18 years who are neglected or abandoned, have ‘escaped’ from orphanages or special schools, or whose placement in a special school is under consideration by a court. Children who have committed crimes while too young to be prosecuted may be admitted if their identity is unknown, they are homeless, or there is a risk of continued offending.²⁷² Authorities refer to the centres as ‘open’, although the regulations stipulate that they are not.²⁷³ Placement is usually for 30 days, which may be extended to 45 days in exceptional cases.²⁷⁴ Under the new Law on Prevention, placement may be authorized temporarily by ranking police officials, but a prosecutor must be notified within 24 hours, documentation supporting the reasons for placement must be forwarded to

²⁶⁵ The usual minimum age for placement was three years.

²⁶⁶ United Nations Children’s Fund, *Assessment of Juvenile Justice Reform Achievements in Kazakhstan*, UNICEF Regional Office for CEE/CIS, Geneva, 2009, p. 18.

²⁶⁷ There was some reason to believe that prosecutors used this as a form of summary punishment. Sometimes, older juveniles accused of a crime were detained there as well for up to six months on the order of a prosecutor or court, separately from the rest of the children. During the 2009–2010 school year, 7,598 children were placed in these centres, including 6 underage offenders and 117 accused juveniles.

²⁶⁸ Rules of Minors’ Placement in Centres for Minors’ Adaptation Approved by the Order of the Ministry of Education and Science of the Republic of Kazakhstan on 10 January 2011, No. 1, Article 5, paras. 1, 2 and 5.

²⁶⁹ *Ibid.*, Article 7 provides, “Technical facilities of the Centre shall provide conditions for 24-hour control of minors with a possibility of free entrance and exit outside the Centre.”

²⁷⁰ *Ibid.*, Articles 8.1–8.3, 9.1–9.2, 12, 15 and 17.

²⁷¹ The first was established in 2002, in Tashkent.

²⁷² Law on the Prevention of Child Neglect and Juvenile Delinquency of Uzbekistan, Article 12 (also children who are foreigners or homeless). The corresponding purposes of the Centres include: confirming children’s identity, protecting their life or health, identifying the causes of neglect, homelessness, delinquency or antisocial conduct, prevention, providing shelter while authorities render decisions regarding children and take steps to implement the measures approved.

²⁷³ Cabinet of Ministers Decree No. 269 of 26 November 2010 on approval of regulation of Centres of Social and Legal Assistance to adolescents under the bodies of Internal Affairs., paras. 6 and 19.

²⁷⁴ Law on the Prevention of Child Neglect and Juvenile Delinquency of Uzbekistan, Article 12.

a court within 48 hours, and the court must approve or disapprove placement within 24 hours.²⁷⁵ The child must be present at the hearing, and must be heard.²⁷⁶

In Kyrgyzstan and Tajikistan, the number of such centres is small, and changes in their functions and their procedures for placement are more modest.

In Kyrgyzstan, only one centre is functioning at present. Children are placed by the police – no other administrative or judicial authority is involved – and do not attend school while in the centre. In principle, they may not be held more than 30 days, but in practice they are confined for longer periods. In 2007, an NGO began to provide services in a second centre then operational.²⁷⁷ The number of children admitted was almost two per day. Most had run away from home due to physical or sexual abuse or exploitative labour, but the practice was to return them to their families as soon as they could be located. Services to address the problems that led children to leave homes were practically non-existent, and the NGO estimated that efforts to help the children were successful in only 3–4 per cent of cases.

In Tajikistan, the police operate two centres for children separated from their families.²⁷⁸ Regulations recognize the rights of children and the obligation to return children to their families within 30 days if it is safe and appropriate to do so. The centre in the capital has become more child friendly, and the number of children admitted more than doubled between 2007 and 2010. The reasons for this increase are unknown.

In Turkmenistan, there were reception and distribution centres in the capital and each of the five regions at independence. The regional centres were closed a decade ago. Nothing is known about the legal basis, procedures, conditions or caseload of the remaining centre.

Conclusions

Data on the number of children placed in these centres and the reasons for placement are fragmentary. Without data – and information from children themselves about their experiences in such facilities – it is impossible to assess their impact on the lives of children and the extent to which there may be a legitimate need for them. The data that are available suggest that, in practice, the main purpose of the centres is to give children protection and assistance.²⁷⁹ In that sense, they are somewhat peripheral to the juvenile justice system. Nevertheless, certain rights and principles must be respected whether they are part of the juvenile justice system or the child protection policy.

Most of these centres are closed facilities, yet the legislation and regulations governing most of them do not endorse the ‘last resort’ and ‘shortest appropriate period of time’ principles. Even when the purpose of placement is the protection of the child’s rights, one cannot presume that deprivation of liberty and separation from one’s family for a period as long as 30 days is required. Some recent legislation, especially the Uzbekistani Law on the Prevention of Child Neglect and Juvenile Delinquency, introduces guarantees of due process that show a significant improvement over the broad discretion of police to place children. The requirement that children be heard in person is a significant advance as well, although they should have access to independent advice and assistance in order to better understand the proceeding and express their views.

²⁷⁵ Ibid., Articles 12 and 26.

²⁷⁶ Ibid.

²⁷⁷ *Ulybka* (Smile). This centre, located in Osh, was destroyed during the 2010 disturbances.

²⁷⁸ The National Plan of Action for Juvenile Justice System Reform calls for the establishment of a third centre. See Objective 3, Activity 18.

²⁷⁹ The extent to which they do so is another question.

Explicit recognition that the centres aim at creating conditions for the child to return to his/her family and for families to overcome problems that have led the child to leave or to be removed from his/her home – as in the new legislation of Kazakhstan – is a notable improvement, as well. Inviting community-based organizations to provide legal and psychosocial services to children and their families is very positive. The transformation of centres into open or semi-open facilities is another step that other countries in the region should give serious consideration.

There is, no doubt, a need for short-term shelters for runaways and other children at risk. In principle, police forces are not the agencies best prepared to care for children, although their logistical and communication capacities and expertise in identifying and locating persons are useful. However, it would be unfair to presume that the risk to the children's rights is necessarily greater in centres operated by the police than in centres run by ministries of education or social welfare. From the child's perspective, the treatment and conditions provided are more relevant than the identity of the agency that runs a shelter. Still, the experience of Kazakhstan suggests that, when a culture of violence or mistreatment is discovered, the transfer of responsibilities for such centres to another agency may well be the most effective solution.

Recommendations

All countries in Central Asia should pursue efforts to develop comprehensive juvenile justice systems that are adapted to their needs and circumstances, respect the rights of children, and are effective in reducing reoffending. Continued advocacy is necessary to strengthen political support for the development of juvenile justice. A strong political commitment at the highest level is indispensable to ensure effective coordination, guarantee allocation of sufficient resources and eliminate impunity for violence.

Efforts to bring the legislation into full compliance with international standards should continue. Legislation should require that juveniles placed in custody be brought before a judge within 24 hours and their parents be notified immediately. The duration of detention during legal proceedings should be limited to two or three months, or a maximum of six months in exceptional circumstances. Prison sentences should be authorized only when a juvenile is convicted of a "serious act involving violence against another person or of persistence in committing other serious offences and ... there is no other appropriate response."

Policy and practice should be reviewed to ensure that children are not kept in police stations or jails unless all feasible alternatives are exhausted, and guarantee that they are confined in appropriate conditions when short periods of custody are unavoidable. Programmes should be developed to supervise accused juveniles from poor and broken homes in order to make detention unnecessary. Officials who interrogate children, whether as suspects or victims, should be specially selected and trained. Judges and prosecutors should monitor strictly the treatment of juveniles and the admissibility of confessions, and medical personnel should have operational independence and training in how to recognize signs of physical and mental ill-treatment.

Further efforts are needed to bring conditions in pretrial detention facilities up to international standards, not only with respect to separation from adults and material conditions, but also with regard to physical exercise and recreation, religious services, remedial education and/or life skills training.

Rehabilitation programmes in juvenile prisons must be strengthened to include vocational training, sports, a wide range of cultural and recreational activities and psychosocial evaluations and assistance. The treatment provided should be based on the needs of the individual; solitary confinement and forced labour should be prohibited; and programmes for assisting prisoners after release should be developed. When the confinement of girls in women's prisons is unavoidable, staff should receive appropriate training; educational and other programmes adapted to the needs of adolescents should be made available; and contact with adult prisoners should be restricted to those likely to have a positive influence. Information should be collected on the impact of alternatives to prosecution and imprisonment, including diversion, dismissal of charges due to compensation of the victim, educational measures, non-custodial sentences, and suspended sentences, in order to evaluate their impact on children and their effectiveness in preventing reoffending.

Efforts should be made to further reduce placement in special schools by ensuring that remedial education, psychosocial assistance and life skills training are available in the community. Consideration should be given to converting closed schools into open or semi-open facilities. Special schools should embrace the goal of returning students to their families as soon as possible and adopt appropriate methods for working with the families of students. The need for special police facilities for street children and other children not suspected or accused of offending should be re-evaluated, taking into account the views and experiences of children themselves. Court orders should be required for placement in such centres beyond 24 hours, and the right of children placed in such facilities to basic or remedial education should be respected.

Consideration should be given to creating children's courts, as has been done in Almaty and Astana. Where this is not feasible, specialized judges and prosecutors should be appointed, and measures

should be adopted to ensure they have the appropriate skills, knowledge and aptitude. Greater resources should be allocated to the development of legal assistance to make sure all juveniles receive adequate services – together with complementary psychosocial services, whenever possible.

Mechanisms for investigating violations of the rights of children should be more transparent, and when sanctions are imposed for ill-treatment, they should be proportionate to the gravity of such crimes. The independence of ombudsmen should be respected; their capacity to monitor the rights of children should be strengthened; and older children should be part of their activities. Civil society should participate in the monitoring of mechanisms to ensure their independence, and strategies for eliminating impunity should be adopted. Competent international bodies should be given access to facilities where juveniles are deprived of liberty, in all countries.

Programmes to identify children at risk of offending and provide them with appropriate assistance should be developed and integrated into broader programmes to ensure that all children are raised in an environment that promotes healthy development. Capacity should be developed to provide legal and psychosocial assistance to children at risk and their families. Schools should contribute by providing an environment that encourages the personal development of all children and provides special assistance or support to students who need it. All such efforts should respect the rights and dignity of children and their families and avoid stigmatizing them.

The impact of measures imposed or executed by commissions on minors (e.g., warnings, parental supervision orders and supervision of educational measures imposed by courts) should be documented, and efforts should be made to strengthen their capacity to provide children at risk and their families with access to the type of services they need. The activities of the juvenile police should be recorded and assessed objectively in order to identify effective approaches and methods compliant with international principles and eliminate those that are either ineffective or incompatible with the rights of children. Police supervision of diversion, educational measures or suspended or non-custodial sentences should be reconceptualized as part of a comprehensive approach to the prevention of reoffending. It should also be linked to the capacity of other institutions and agencies, including civil society, to provide other forms of material, legal and psychosocial assistance.

The incorporation of training in child rights and juvenile justice into the curricula of professional training academies should continue. Training should include methodologies and techniques for communicating with children, assessing their best interests and ensuring that their views are heard effectively and taken into account. The impact of training should be evaluated, and regulations requiring professionals to demonstrate relevant knowledge or skills should be adopted. Efforts to strengthen the capacity of university departments of social work should be expanded to psychology departments.

Governments should respect the independence of NGOs and their right of access to information and freedom of expression to enable them make the fullest possible contribution to the development of juvenile justice. Civil society should be encouraged to participate in planning, law reform, policy-making, and the development and provision of services in areas such as prevention, legal assistance, rehabilitation and reintegration into society.

Indicators should be identified to undertake evidence-based planning and monitor compliance with international standards; tools for collecting them should be developed; national systems for compiling and analysing data should be created; and key data should be published annually. The capacity to carry out research on juvenile offending should be strengthened. Research on the experiences of children should be undertaken, to ensure that children themselves are able to contribute to the development of juvenile justice systems that respect the rights of all concerned, victims and offenders, regardless of their age, sex, beliefs, ethnicity and socio-economic status.

UNICEF Regional Office for CEE/CIS

Child Protection Unit
Palais des Nations
1211 Geneva 10, Switzerland

www.unicef.org/ceecis