



DEVELOPMENT OF SPECIALIZED INTER-DISTRICT COURTS ON ISSUES OF MINORS IN KAZAKHSTAN



UDC 343.121.5
LBC 67.408
C 21

DEVELOPMENT OF SPECIALIZED INTER-DISTRICT COURTS ON ISSUES OF MINORS IN KAZAKHSTAN/

Carolyn Hamilton, Awaz Raoof. – Astana, 2015, 76 p.

ISBN 978-601-7523-23-7

The report “Development of Specialized Inter-district Courts on Issues of Minors in Kazakhstan” is the result of a study conducted by the Supreme Court of the Republic of Kazakhstan jointly with the UN Children’s Fund (UNICEF) in Kazakhstan, with the support of the Delegation of the European Union to the Republic of Kazakhstan. The report comprises 10 chapters, containing information on study methodology, jurisdiction of juvenile courts, specialized personnel and institutions, order of proceedings, funding, key findings and recommendations. It is intended for use by judges, by professionals working with children in contact with the law, by law students, by undergraduates of special Master’s courses, and by a wide range of readers interested in issues of justice and protection of children’s rights.

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ACKNOWLEDGEMENTS

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The principal authors of this report are consultants involved by UNICEF: Professor Carolyn Hamilton, and Awaz Raoof, from the Coram Children’s Legal Centre. It was prepared with support from the European Union, as part of a joint programme by the European Union and UNICEF in Kazakhstan: ‘Improving the System of Justice for Children and Child Rights’.

The authors would like to give particular thanks to members of the Supervisory Judicial Board on Civil and Administrative Cases, the Supervisory Judicial Board on Criminal Cases, and the Department for Supporting Courts Functioning of the Supreme Court of the Republic of Kazakhstan, for their collaboration and support throughout the development and implementation of this study. The authors would also like to thank all of the stakeholders who generously gave their time to participate in this study, particularly judges of the Specialized Inter-district Courts on issues of minors and Specialized Inter-district Criminal Courts, parents, prosecutors, police, juvenile inspectors, lawyers, social workers, pedagogues, psychologists, mediators, Akimats, Guardianship and Custody Bodies and civil society representatives in Astana and Almaty, and in East Kazakhstan, Karaganda, Kyzylorda, Mangystau and South Kazakhstan Regions, as well as the ‘Phoenix’ Centre in Ust-Kamenogorsk, and the ‘Chance’ Centre in Astana.

Special thanks go to child participants for their valuable contribution to this study.

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LIST OF ABBREVIATIONS

ACADEMY	Academy of Public Administration under the President of the Republic of Kazakhstan
ADMINISTRATIVE OFFENCES CODE	2014 Code on Administrative Offences of the Republic of Kazakhstan
CCLC	Coram Children's Legal Centre
CIVIL PROCEDURE CODE	1999 Civil Procedure Code of the Republic of Kazakhstan
CRC	Convention on the Rights of the Child
FAMILY CODE	2011 Code on Marriage and Family of the Republic of Kazakhstan
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
JJ CONCEPT REPORT	Report on the Overview of the Results of the Implementation of the 2009-2011 Juvenile Justice System Development Concept in the Republic of Kazakhstan
JJ DEVELOPMENT CONCEPT	Juvenile Justice System Development Concept of the Republic of Kazakhstan for 2009-2011
JUVENILE CONSULTATION UNIT	Specialized legal consultation units established in certain cities in Kazakhstan
LPRC	Legal Policy Research Centre
MOE	Ministry of Education and Science of the Republic of Kazakhstan
SICIM	Specialized Inter-district Court on the Issues of Minors
SPECIALIZED CRIMINAL COURTS	Specialized Inter-district Criminal Courts
UN	United Nations
UNICEF	United Nations Children's Fund



1. INTRODUCTION

This Report on the 'Development of Specialized Inter-district Courts on Issues of Minors in Kazakhstan' was written as part of a study conducted by the Supreme Court of the Republic of Kazakhstan, jointly with the United Nations Children's Fund (UNICEF) in Kazakhstan and international consultants, Professor Carolyn Hamilton and Awaz Raoof, from the Coram Children's Legal Centre (CCLC), with the support of the General Prosecutor's Office of the Republic of Kazakhstan, the Ministry of Internal Affairs of the Republic of Kazakhstan, the Ministry of Education and Science of the Republic of Kazakhstan, the National Collegium of Advocates, a team of national researchers from the Legal Policy Research Centre (LPRC) led by Tatyana Zinovich, and national consultants, Aina Shormanbayeva and Gulzhan Alimbekova. Research for the report was undertaken between April and October 2014.

This assessment was carried out in parallel with an assessment by the authors on the implementation of Kazakhstan's Juvenile Justice System Development Concept for 2009-2011. This Report should be read in conjunction with the 'Overview of the Results of the Implementation of the 2009-2011 Juvenile Justice System Development Concept in the Republic of Kazakhstan' (the JJ Concept Report).

2. CONTEXT AND AIMS OF THE ASSESSMENT

Kazakhstan is party to a range of international treaties under which it has agreed to guarantee the full range of child rights. These treaties include the Convention on the Rights of the Child (CRC), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR), all of which Kazakhstan has ratified without reservation.¹

As a step towards securing child rights in the country, on 23 August 2007, the Kazakhstan's President passed a Presidential Decree 'On the Establishment of Specialized Inter-district Courts on Issues of Minors'; this provided for the establishment of the pilot Specialized Inter-district Courts on Issues of Minors (SICIM) in Astana and Almaty.² The Decree specifies that the SICIMs have jurisdiction over criminal, administrative and civil cases relating to juveniles.³

The Government's strategy to promote and protect child rights in Kazakhstan was further elaborated in the 'Juvenile Justice System Development Concept in the Republic of Kazakhstan for 2009-2011' (JJ Development Concept). The JJ Development Concept contains a series of proposed reforms to develop and implement a child justice system in the country.⁴ The Government uses the term 'child justice' to describe a system guaranteeing full observance of child rights across all aspects of life.⁵ The establishment of 'specialized juvenile courts' is described as a central and 'most important part' of this initiative.⁶ It is also a feature of the Government's 2002 Legal Policy Concept, on the overall development of the judicial system.⁷ After recalling the Presidential Decree passed on 23 August 2007, and its requirement to establish a pilot SICIM in Astana and Almaty, it added

that the work would continue on the establishment of SICIMs countrywide.⁸

The Action Plan for Implementing the Juvenile Justice System Development Concept in the Republic of Kazakhstan for 2009-2011⁹ required the consideration of the establishment of specialized juvenile courts throughout Kazakhstan. The Presidential Decree 'On the Establishment of Specialized Inter-district Courts on Issues of Minors and the Introduction of Amendments to Certain Decrees', dated 4 February 2012, provided for the scaling-up of the SICIMs countrywide. At the time of writing, there were 19 SICIMs throughout Kazakhstan.¹⁰

The SICIMs currently have a threefold jurisdiction: family cases concerning children and child protection cases (civil jurisdiction); administrative jurisdiction, mainly covering administrative offences committed by parents/adults with respect to children; and criminal jurisdiction, covering offences committed by children (other than where a child is charged with an especially grave crime, or where the case falls within the jurisdiction of the Specialized Inter-district Military Court for Criminal Cases or the Garrison Military Court) and certain crimes committed by adults against children.¹¹

According to the Terms of Reference for assessing the SICIMs, a preliminary assessment of the functioning of the SICIMs identified the need to develop clear instructions, codes of conduct and working protocols for proceedings involving children. A more in-depth analysis of the SICIMs was deemed necessary, to identify legal gaps in the system compared to international standards, barriers to the efficient functioning of the system, lessons learnt, and best practices, taking into account the jurisdiction of the SICIMs.

¹ Kazakhstan has been party to the CRC since 12 August 1994, and to the ICCPR and ICESCR since 24 January 2006; UN Treaty Collection, <https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>, accessed on 6 May 2014.

² Presidential Decree on the Establishment of Specialized Inter-district Courts on Issues of Minors, 23 August 2007, para 1.

³ Presidential Decree on the Establishment of Specialized Inter-district Courts on Issues of Minors, 23 August 2007, para 1.

⁴ 'Juvenile Justice System Development Concept in the Republic of Kazakhstan for 2009-2011' (JJ Development Concept), para 2.

⁵ JJ Development Concept, Introduction.

⁶ JJ Development Concept, Introduction and para 4.1.

⁷ JJ Development Concept, para 4.1.

⁸ JJ Development Concept, para 4.1.

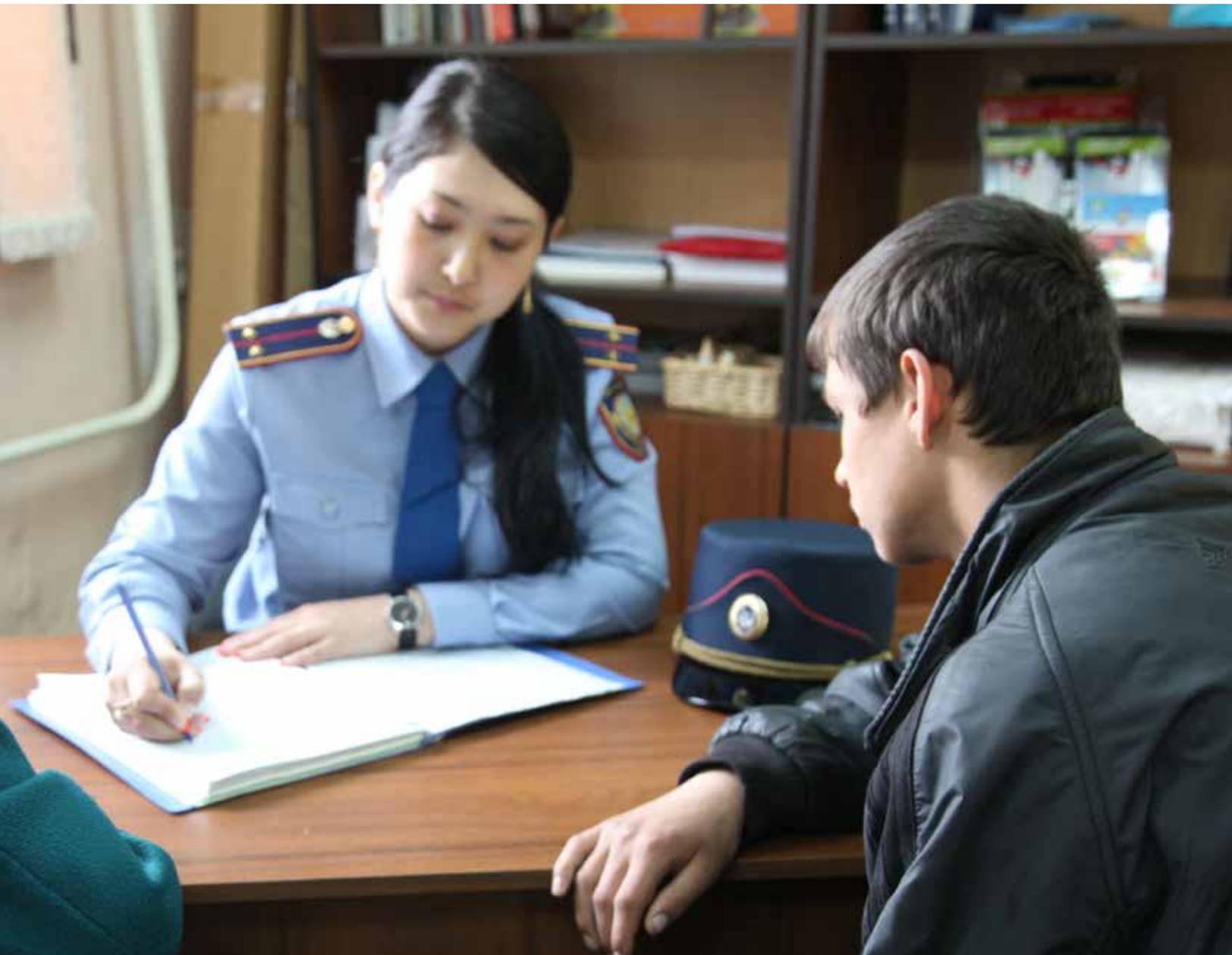
⁹ 18 November 2008, No. 1067.

¹⁰ Meeting with the Supreme Court, Astana, 29 October 2014; there are two SICIMs in Almaty, and in the East Kazakhstan and Karaganda regions, and one SICIM in each of the other regions of Kazakhstan.

¹¹ More detailed analysis of the jurisdiction of the SICIMs is conducted later in this report.

THE PURPOSE OF THIS ASSESSMENT IS THREEFOLD:

- To provide technical assistance to the Supreme Court and the Government of Kazakhstan to assess and document the development of the SICIMs in the country, including their interaction with the police and prosecutors, the use of legal aid, their impact on children's rights in the justice system, and key enablers and bottlenecks that have promoted or impeded progress and impact;
- To determine the extent to which current practices implement international standards;
- To develop and make recommendations to strengthen further the SICIMs, to enable them to address the needs of children in contact with the justice system as alleged offenders, victims or witnesses of crime, or as participants of civil and administrative procedures, in line with international child justice standards.



3. METHODOLOGY

The methodology and project design for this assessment was developed by international consultants in close collaboration with the Supreme Court, the Office of the General Prosecutor of the Republic of Kazakhstan, the Ministry of Internal Affairs of the Republic of Kazakhstan, the Ministry of Education and Science of the Republic of Kazakhstan, the National Collegium of Advocates, the LPRC, UNICEF Kazakhstan and national experts. It included participatory multi-stakeholder meetings and discussions held in Astana. Initial findings of the study and working recommendations were presented and discussed at meetings with the Supreme Court, the Ministry of the Internal Affairs, and the Office of the General Prosecutor, and at a multi-stakeholder national conference and workshop, featuring judges from each of the 19 SICIMs. Comments from these meetings were taken into account in the finalisation of this Report.

3.1 ROLE OF NATIONAL EXPERTS AND NATIONAL RESEARCHERS

International consultants worked alongside a team of national experts¹² and national researchers¹³ coordinated by the LPRC, a non-political, independent think tank based in Almaty.

National researchers were responsible for assisting international experts in conducting semi-structured individual interviews and court observations in sampled regions.¹⁴

3.2 METHODS OF DATA COLLECTION

Consultants employed a combination of quantitative and qualitative data collection techniques: a desk review; semi-structured individual interviews and group interviews; the distribution of quantitative surveys completed by the SICIMs; online surveys for judges of the SICIMs and Specialized Inter-district Criminal Courts (Specialized Criminal Courts); online surveys for the heads of Prosecutors' Offices; and observations of hearings and trials in the SICIMs. Each method of data collection is discussed below.

¹² The national experts were: Aina Shormanbayeva, a lawyer qualified in Kazakhstan, who was engaged to provide domestic legal expertise, to ensure completion of statistical data charts, to analyse the results of the completed statistical data charts, and to assist with conducting interviews in Almaty; and Gulzhan Alimbekova, a social sciences expert, who was primarily responsible for analysing the responses of the SICIM judges to the online surveys.

¹³ The team of national researchers comprised eight members, including civil society representatives and legal defenders.

¹⁴ Between 7 and 8 July 2014, national experts and national researchers were trained by international consultants to use semi-structured interview tools, trial/hearing checklists and quantitative surveys for the data collection phase of this study (see Section 3.2 for more details on data collection methods).

3.2.1 DESK REVIEW

International consultants and national legal expert reviewed secondary data and literature to review the framework, jurisdiction and procedures of the SICIMs, to inform the development of methodology and data collection tools. Data included qualitative and (where relevant and available) disaggregated quantitative data on SICIM procedures and practices. Where possible, the desk review sought to identify existing studies examining these procedures and practices.¹⁵

3.2.2 SAMPLING AND SEMI-STRUCTURED INDIVIDUAL AND GROUP INTERVIEWS

The following eight SICIMs were selected as the focus for in-country data collection:

- SICIM of Almaty city;
- SICIM of Astana city;
- SICIM of East Kazakhstan Region in Semey city;
- SICIM of East Kazakhstan Region in Ust-Kamenogorsk city;
- SICIM of Mangystau Region in Aktau city;
- SICIM of Kyzylorda Region in Kyzylorda city;
- SICIM of Karaganda Region in Karaganda city; and
- SICIM of South Kazakhstan Region in Shymkent city.

The eight SICIMs were selected using a purposive sampling technique, based on the following criteria: geographical diversity within Kazakhstan; relative economic status of the region; relative rates of juvenile offending; and numbers of SICIMs in the region.

In addition:

- The SICIMs in Almaty and Astana were selected as they were the pilot courts established in 2008, and may highlight best practices or challenges which are not yet apparent in other SICIMs;
- The SICIMs in the regions of East Kazakhstan, Mangystau and Kyzylorda were selected as joint Kazakhstan-UN programmes were being implemented or planned in these regions; the findings of this assessment may inform the implementation of those programmes; and
- The SICIMs in the regions of East Kazakhstan, Mangystau and Kyzylorda were also selected as UNICEF, jointly with European Union, are implementing 'Justice for Children' programmes in these regions. The findings may serve as a good baseline study for the implementation of these programmes.

¹⁵ Note that it has not been possible for the international consultants to conduct a full desk review of the extent to which the laws and regulations relating to the SICIMs are in line with international standards, as full English translations of the relevant materials were not available for review.

The plan for conducting stakeholder interviews relating to each SICIM, for the data collection phase of the project, is enclosed in Annex A. Participants were selected using a purposive sampling technique, according to criteria developed with partners, including: sector/specialism; age; gender; and category of SICIM case in which participants were involved (criminal v. administrative v. civil).

Interviews aimed to gather qualitative data on: how the SICIMs function in practice; participants' experiences, views and perceptions of the SICIMs; the impact that the SICIMs have had on participants; participants' knowledge of and views upon relevant law and policy relating to the SICIMs; and practice and outcomes in actual cases. The interviews did not aim to constitute a representative sample.

In practice, some child victims and witnesses did not wish to participate in interviews for the assessment, even in the presence of a legal guardian. Furthermore, the number and categories of participants available for interview largely depended on the cases timetabled by the SICIMs. These limitations were foreseen during the development of the methodology.

To mitigate limitations regarding the number and types of hearings that consultants and national researchers were able to observe, and regarding the number of respondents available for interview, the consultants chose to extend the data collection period by approximately one month, to ensure that appropriate samples were obtained. In all, 181 semi-structured individual interviews and group interviews were conducted with key stakeholders (listed in Annex B) throughout the eight sampled SICIMs.

In addition to these interviews, consultants and researchers also asked participants involved in the 'Overview of the Results of the Implementation of the 2009-2011 Juvenile Justice System Development Concept in the Republic of Kazakhstan' questions relating to SICIM operations. A full list of participating stakeholders is set out in the JJ Development Concept Report. During the course of data collection, consultants were unable to conduct interviews with representatives of the Penitentiary Committee, or to visit and interview respondents at a police isolator and pre-trial detention facility.

However, consultants were able to visit the Colony for boys in Almaty JA 155/6, the 'institution with a special regime of detention' in East Kazakhstan, and 'special schools for children with offending behaviour' in Almaty and Aktau cities. Furthermore, the consultants were able to interview other respondents, including prosecutors and stakeholders falling under the Ministry of Internal Affairs, on matters relating to the facilities/services that they were not able to visit.



3.2.3 QUANTITATIVE SURVEYS

Consultants developed quantitative surveys to collect quantitative data from each of the SICIMs in Kazakhstan. The purpose of this quantitative data was to supplement qualitative research with a broader national sample. Surveys were designed to measure quantifiable indicators, such as the number of criminal, civil and administrative cases dealt with in each SICIM and per SICIM judge, from 2011-2013. Due to matters relating to access and permissions, it was not possible for national experts to work with each SICIM to complete statistical data charts. National experts therefore worked with the Committee for Legal Statistics and Special Records of the General Prosecutor's Office and with statistical data of the Supreme Court and the Ministry of Internal Affairs, which was already available to UNICEF, to complete the



quantitative data collection charts as far as possible.¹⁶ Statistics obtained mostly relate to the period from 2011 to 2013, during which time the SICIMs were still being established countrywide.¹⁷ As a result, statistics obtained from the Committee for Legal Statistics and Special Records of the General Prosecutor's Office may not reflect the full picture of the outcome of criminal, civil or administrative cases involving children in Kazakhstan or in the SICIMs. For more information

¹⁶ The statistics provided do not factor in, reportedly, appeals initiated by the Prosecutor's Office; Aina Shormanbayeva, The analysis of statistics on cases connected with minors, provided by the Prosecutor General's Office, 9 January 2015, p 1.

¹⁷ Only the SICIMs in the cities of Almaty and Astana were functioning in 2011. The SICIMs in the Almaty and Kyzylorda regions began work in April 2012, with most other SICIMs launching in July 2012; Aina Shormanbayeva, The analysis of statistics on cases connected with minors, provided by the Prosecutor General's Office, 9 January 2015, pp. 1-2.

relating to data collection and monitoring of the SICIMs, see Section 8 (Data collection and monitoring of SICIM cases) of this Report.

3.2.4 ONLINE SURVEYS

The Supreme Court distributed an online survey created in 'SurveyMonkey' to all SICIM judges. There are, reportedly, 57 judges sitting in the SICIMs,¹⁸ of whom 31 completed the online survey: a response rate of approximately 54.4 percent of SICIM judges. The survey comprised 21 closed questions, with the possibility of including additional comments through an 'other' option for certain questions. The survey aimed to obtain both qualitative and quantitative data on the following areas:

¹⁸ Information provided by the Supreme Court to CCLC, via UNICEF, 2 February 2015.

- Judges' access to and experience of specialist training in handling children's cases;
- Barriers to effective handling of cases in the SICIMs;
- Judges' recommendations for improving the effective handling of cases in the SICIMs; and
- Key principles adopted by judges when making decisions on cases.

A similar online survey was developed for Specialized Criminal Court judges, for the JJ Concept Report. Forty-eight judges replied: a response rate of 60 percent.¹⁹ A third online survey was circulated among the representatives of all local Prosecutor Offices, receiving 74 replies.

3.2.5 TRIAL OBSERVATIONS

International experts and national researchers observed hearings and trials in the eight sampled SICIMs, using pre-prepared checklists piloted by international consultants in the Astana SICIM in May 2014.

National experts and national researchers were trained to use these in July 2014, before the data collection phase. This data aimed to produce a descriptive account of how criminal, administrative and civil proceedings involving children are conducted in practice, including descriptions of:

- The role of different types of participants in proceedings;
- The purpose of hearings;
- The courtroom environment and the use of child friendly practices and equipment; and
- The extent of child participation in proceedings.

Observations did not aim to constitute a representative sample. The plan for conducting court observations is enclosed in Annex C.²⁰ Consultants and national researchers conducted 62 observations of civil, criminal and administrative hearings in the sampled SICIMs, a full breakdown of which is enclosed in Annex D.

¹⁹ There are reportedly 80 judges in Specialized Criminal Courts; Information provided by the Supreme Court to CCLC via UNICEF, 2 February 2015.

²⁰ As mentioned above, the number and types of hearings that consultants and national researchers were able to observe depended on the cases timetabled by the SICIMs. In order to obtain an appropriate sample of cases, the data collection period was extended by one month.

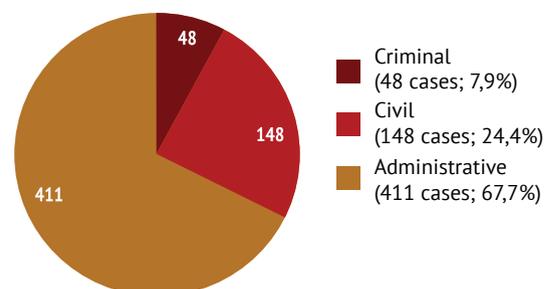


4. MANDATE AND USERS OF THE SICIMS

The SICIMs have a broad mandate covering certain categories of criminal, administrative and civil cases involving children.²¹ Statistical data on the total number of criminal, administrative and civil cases dealt with by each SICIM was unavailable. However, data obtained via individual/group interviews and surveys suggests that the caseload of the SICIMs largely comprises civil (family) cases and administrative cases. Criminal cases form only a small portion of the caseload. As demonstrated in Chart 1, the vast majority of cases dealt with by the Astana SICIM from 1 January 2014 to 28 May 2014 were administrative (68 percent), while 24 percent of cases were civil, and 8 percent were criminal.²²

Chart 1.

Number of cases dealt with by the Astana SICIM from 1 Jan 2014 to 28 May 2014

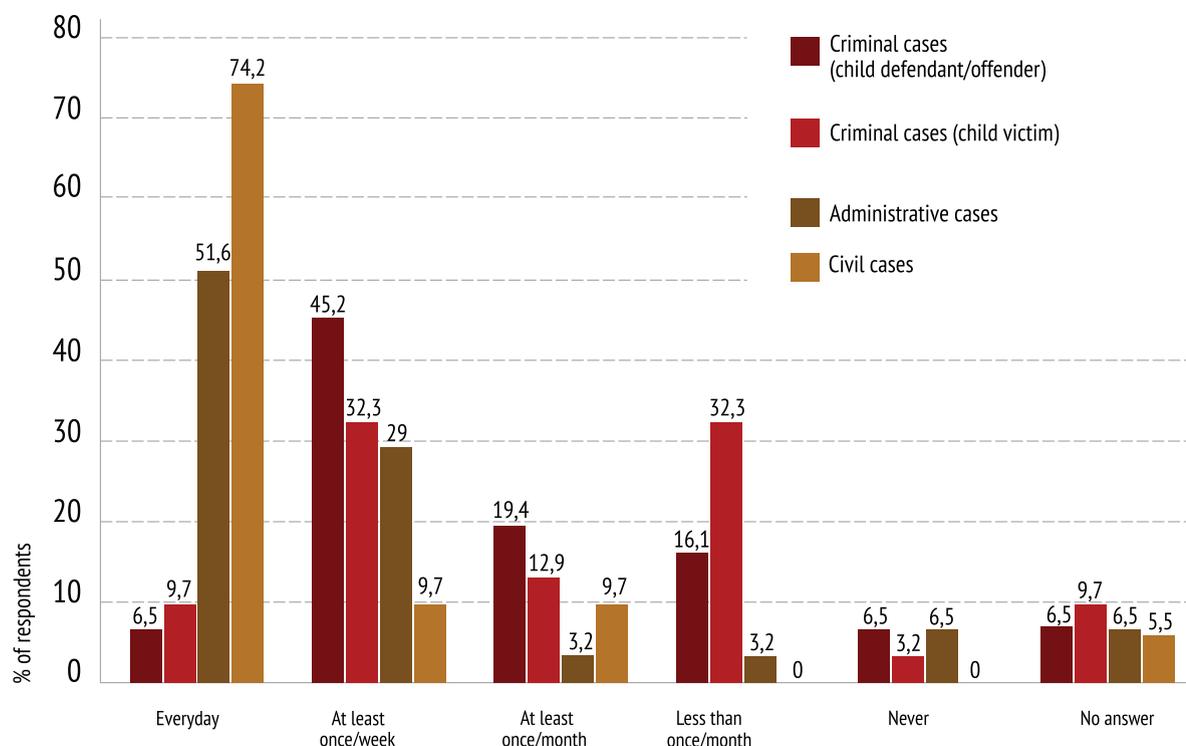


²¹ Details of types of criminal, administrative and civil cases dealt with by the SICIMs are explained in more detail later in Section 4.

²² Group Interview, Astana SICIM judges, Astana, 29 May 2014.

Chart 2.

Frequency at which judges deal with criminal, administrative and civil cases in the SICIMs (source: online surveys)



Based on SICIM judges' responses to online surveys, as outlined in Chart 2, most of the SICIMs' workload comprises civil and administrative cases, with criminal cases constituting the smallest proportion of their work.

As Chart 2 shows, over half of respondent SICIM judges deal with civil and administrative cases daily. Around 82 percent deal with administrative and civil cases either daily or at least once weekly.²³ Only 6.5 percent of respondent SICIM judges deal with criminal cases involving a child offender every day, while around 42 percent deal with such cases at least once a month, less than once a month or never. Criminal cases involving child victims are dealt with even less frequently in the SICIMs.

4.1 CIVIL CASES

Under Article 30(1-3) of the Civil Procedure Code of 1999 (as amended) (Civil Procedure Code),²⁴ the SICIMs have civil jurisdiction over the following matters:

- Place of residence of a child and communication with/ access to the child;
- Deprivation (restriction) or restoration of parental rights;
- Adoption of a child;
- Cancellation of adoption of a child;
- Referral of minors to special educational organizations or organizations providing particular treatment; and

²³ 80.6 percent and 83.9 percent of respondent SICIM judges, respectively.

²⁴ For the purposes of this Report, we have relied on the English translation of the Civil Procedure Code of 1999, as amended, retrieved on 15 May 2014 from <http://adilet.zan.kz/eng/docs/K990000411>.

- Disputes regarding the guardianship and patronage of minors pursuant to matrimonial legislation in Kazakhstan.

The most common category of civil cases observed for this study relates to the deprivation of parental rights²⁵ (41.4 percent of civil cases observed), followed by the determination of a child's place of residence (31.0 percent) and cases relating to access rights (13.8 percent).²⁶ Types of civil cases observed are outlined in more detail in Chart 3, below.²⁷

Children involved in civil cases in the SICIMs fall within a range of age groups, as indicated in Chart 4, below.²⁸

In the civil hearings observed for this study, 36.1 percent of children were under the age of 6 years, while 22.2 percent were between the ages of 6 and 11 years, and 30.6 percent were between 12 and 17 years of age.²⁹ Of the children subject to civil applications, 38.9 percent

²⁵ No quantitative data was available on the total number and types of civil cases dealt with in all SICIMs.

²⁶ Court observation checklists required the researcher to categorize the subject matter of the hearing into one of the following categories: payment of child maintenance; limitation of parental rights; deprivation of parental rights; guardianship of a child; custody dispute; access to the child; adoption; and other (to be specified by the researcher). A total of 29 civil hearings were observed.

²⁷ Court observations did not aim to constitute a representative sample. Therefore, these figures are not necessarily representative of the sampled SICIMs or all the SICIMs across Kazakhstan more generally.

²⁸ Ibid.

²⁹ Observations of civil hearings in the SICIMs in sampled regions. A total of 36 children were involved in 29 civil hearings observed for this study. Court observations did not aim to constitute a representative sample. Therefore, these figures are not necessarily representative of the sampled SICIMs or all the SICIMs across Kazakhstan more generally.

Chart 3. Civil cases in the SICIMs (%) (Source: observations of court hearings)

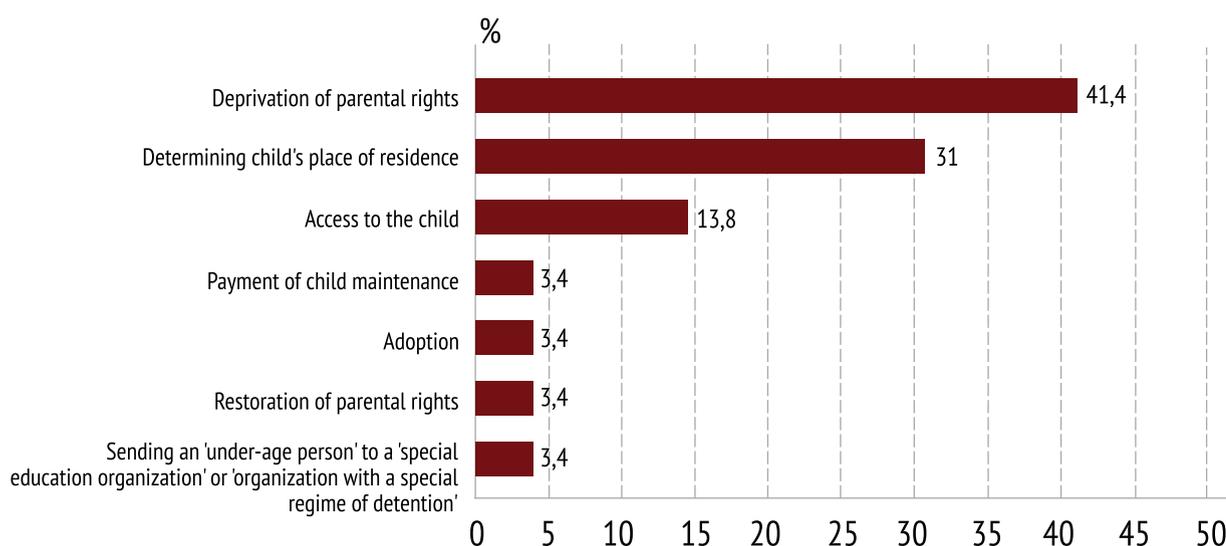
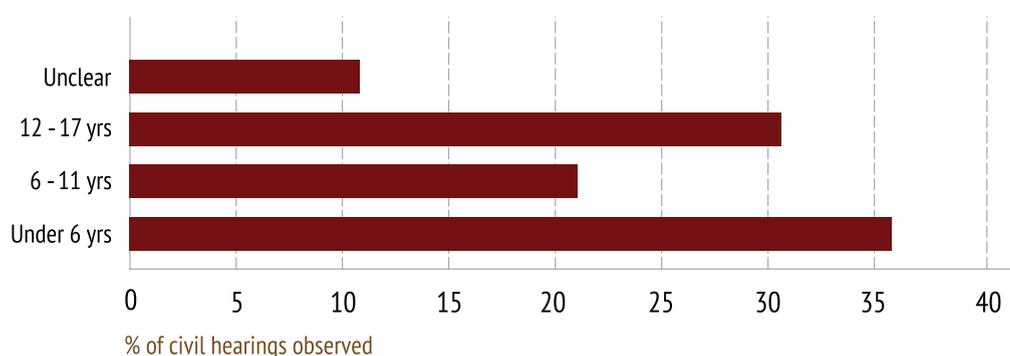


Chart 4. Age of child subjects of civil cases



were female and 61.1 percent were male (see Chart 5).

In most civil cases observed, the claimant in the case was a parent of the child. Chart 6 sets out in more detail the categories of claimant in the civil cases observed for this study.³⁰

Similar findings were obtained from statistics of the Committee on Legal Statistics and Special Records of the Prosecutor General's Office. These indicate that the

vast majority of civil cases dealt with by the SICIMs relate to private civil claims rather than civil (child protection) applications made by State bodies. In 2013, 8,832 private civil claims were made to the SICIMs (compared to 114 public civil suits).³¹

³⁰ Court observations did not aim to constitute a representative sample. Therefore, these figures are not necessarily representative of the sampled SICIMs or all the SICIMs across Kazakhstan more generally.

³¹ Aina Shormanbayeva, The analysis of statistics on cases connected with minors, provided by the Prosecutor General's Office, 9 January 2015, pp. 19-20.

Chart 5. Gender of children involved in civil cases observed (%)

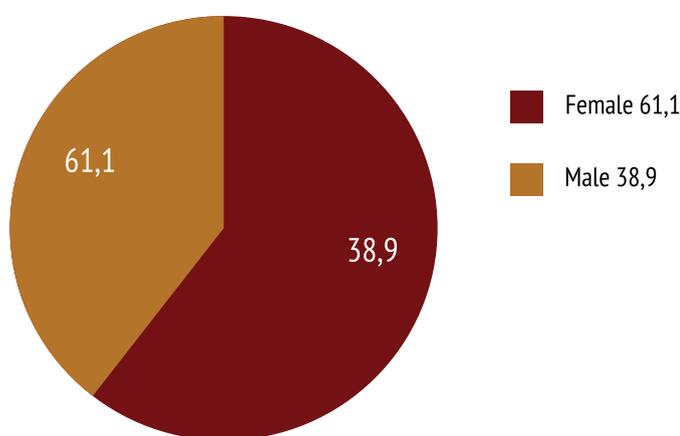
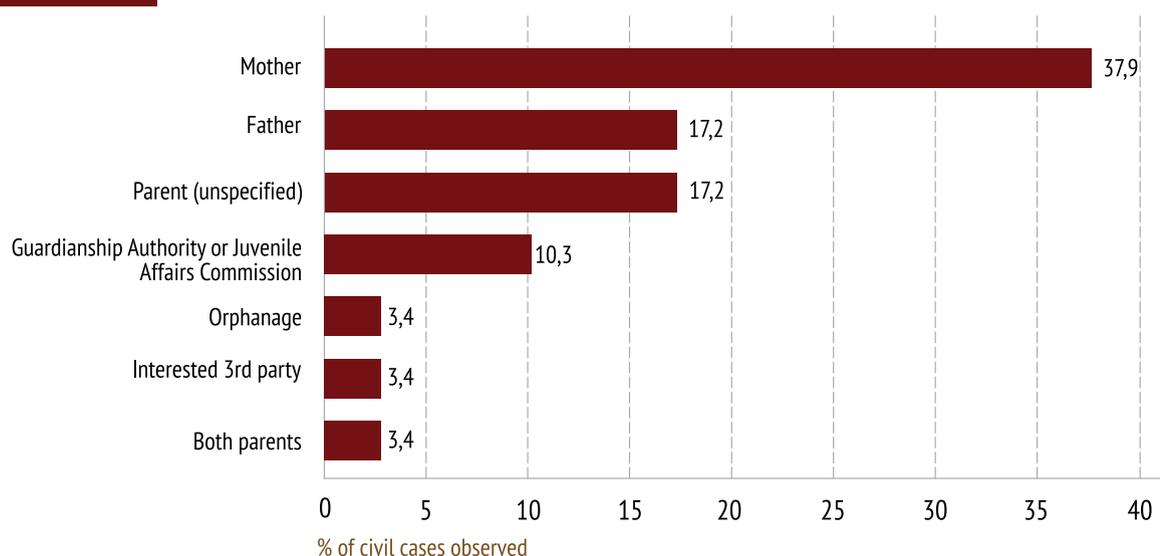


Chart 6. Types of claimant in civil cases



In 2012, 4,751 private civil claims were made to the SICIMs (compared to 67 public civil suits).³² In 2011, 872 private civil claims were made to the SICIMs (compared to only 6 civil claims made by public bodies).³³ The considerable increase in the number of civil claims over this period of three years should be noted and merits further research. It is possible that the trend is related to the spread of SICIMs countrywide.

4.2. ADMINISTRATIVE CASES

Administrative offences falling within the jurisdiction of the SICIMs are set out in Article 684(2) of the 2014 Code on Administrative Offences (Administrative Offences Code), and are as follows:

- Minor hooliganism or hooliganism³⁴ committed by minors between the ages of 14 and 16 years,

punishable with a fine to be paid by parents/legal guardians;³⁵

- The shooting of weapons using fire or gas, or pneumatic weapons, or launching pyrotechnic substances or products in inhabited localities, by a child under the age of 16 years, punishable with a caution or fine to be paid by parents/legal guardians, and confiscation of the pyrotechnic device;³⁶
- A child between the ages of 14 and 16 years deliberately making a misleading call to the special services, punishable with a caution or fine to be paid by parents/legal guardians;³⁷
- A child under the age of 18 years drinking alcoholic beverages or appearing in a public place intoxicated, where the parent/guardian has been twice subject to administrative punishment during the year for the same offence, punishable with administrative

³² Ibid

³³ Ibid

³⁴ As specified in Article 293(1) of the 2014 Criminal Code.

³⁵ Administrative Offences Code, Article 435.

³⁶ Administrative Offences Code, Article 436(3).

³⁷ Administrative Offences Code, Article 438(3).



arrest of the parent/legal guardian for up to five days;³⁸

- Children being in entertainment establishments or outside their home at night, unaccompanied by a legal representative, punishable with a caution or fine to be paid by the legal representative;³⁹ and
- Vandalism committed by children under the age of 16 years, punishable with a fine to be paid by the parents/legal guardians.⁴⁰

The SICIMs also have jurisdiction over the following administrative offences committed by an adult or entity towards a child:

- Failure by parents or other legal representatives to perform child-rearing responsibilities, punishable with a fine or administrative arrest of up to 15 days;⁴¹

- Involving a minor in committing an administrative offence, punishable with a fine;⁴²

- Failure by officials of local executive bodies and/or legal representatives of a child to perform responsibilities for registering orphans or children left without parental care who are in need of housing, punishable with a fine;⁴³

- Failure by officials of local executive bodies and/or legal representatives of a child to perform responsibilities for ensuring a safe home for orphans or children left without parental care, punishable with a fine;⁴⁴

- Causing children to become intoxicated, punishable with a fine or administrative arrest for up to five days;⁴⁵

³⁸ Administrative Offences Code, Articles 50(2), 66(3) and 440(4)-(5).

³⁹ Administrative Offences Code, Article 442.

⁴⁰ Administrative Offences Code, Article 448.

⁴¹ Administrative Offences Code, Article 127.

⁴² Administrative Offences Code, Article 128.

⁴³ Administrative Offences Code, Article 129.

⁴⁴ Administrative Offences Code, Article 130.

⁴⁵ Administrative Offences Code, Article 131.

- Allowing children to be in entertainment establishments during the night time, unaccompanied by a legal representative, punishable with a fine and, in certain circumstances, suspension of certain activities;⁴⁶
- Sale of tobacco or tobacco products to persons and by persons under the age of 18 years, punishable with a fine on the individual or business and, in certain circumstances, suspension of certain activities;⁴⁷
- Sale to minors of products or materials of erotic content, punishable with a fine and, in certain circumstances, confiscation of the products or materials;⁴⁸
- Violation of the procedure or deadlines for submission of information about minors in need of adoption, supervision (guardianship), or upbringing in a family, punishable with a fine;⁴⁹
- Evasion by parents, or persons acting in substitution, of treating 'minor children' for diseases that may be of danger to others, punishable with a fine;⁵⁰ and
- Violation of the obligation to ensure attendance of an accused (suspected) minor at the investigator or court, causing his/her evasion of the investigation or trial, punishable with a fine.⁵¹

As the description above indicates, children may not be held legally responsible for an administrative offence in the SICIMs. Rather, the jurisdiction of the SICIMs covers certain administrative offences committed against a child, or certain wrongful acts committed by a child, for which the child's parent/guardian is held legally responsible, rather than the child.

In practice, court observations suggest that a large proportion of administrative cases dealt with by the SICIMs relate to children's 'anti-social' behaviour, issues of parental management and child protection. As indicated in Chart 7, below, 36.4 percent of administrative cases observed in the SICIMs related to the non-fulfilment of parental responsibilities,⁵² while 22.7 percent related to minors being found outside the home at night, unaccompanied by a legal representative,⁵³ and 18.2 percent concerned minors being found drinking alcohol or staying outside in a drunken state.⁵⁴ These three categories of cases comprised approximately 77 percent of all administrative cases dealt with by the SICIMs observed for this study.⁵⁵

⁴⁶ Administrative Offences Code, Article 132.

⁴⁷ Administrative Offences Code, Article 133; note that as the wording of this provision largely tracks the wording of Article 114 of the former Administrative Offences Code and that new Article 684(2) (concerning the jurisdiction of the SICIMs) largely tracks the wording of its equivalent in the former Administrative Offences Code (Article 541(1-1)), the consultants understand that this provision should continue to be interpreted as entailing administrative responsibility only on the responsible adult or business, and not on the child him/herself.

⁴⁸ Administrative Offences Code, Article 134.

⁴⁹ Administrative Offences Code, Article 135.

⁵⁰ Administrative Offences Code, Article 430(2).

⁵¹ Administrative Offences Code, Article 663.

⁵² Former Administrative Offences Code, Article 111.

⁵³ Former Administrative Offences Code, Article 336-4.

⁵⁴ Former Administrative Offences Code, Article 336.

⁵⁵ A total of 22 administrative hearings were observed for this study. Court observations did not aim to constitute a representative

In practice, the non-fulfilment of parental responsibilities can cover a range of situations, including truancy by the child, and alcoholism and neglect by the parent. As one SICIM judge stated when asked about the most common category of case dealt with in court:

"Article 111 [of the Administrative Offences Code] regarding the failure to perform parental obligations. For example, failure to provide education or upbringing.... If [the child] skips school without reason for more than ten days, it's the parents' obligation to ensure that they go."⁵⁶

Some administrative cases concern relatively minor acts, such as throwing a cigarette butt in a public place.⁵⁷

Based on court observations, there is normally one hearing for each administrative case in the SICIMs; according to court observations, such hearings tend to last between 10 and 60 minutes. The hearing normally consists of the parent and child (if present) apologising for their behaviour, and the judge reproaching the defendant and child for their acts, and providing advice on why and how such behaviour should be avoided.⁵⁸ Occasionally the judge may release the defendant from administrative responsibility if the offence is considered to be insignificant.⁵⁹ The judge sanctions the defendant for the offence, which primarily involves imposing a fine, to be paid by the parent/guardian.⁶⁰

sample. Therefore, these figures are not necessarily representative of the sampled SICIMs or all the SICIMs across Kazakhstan more generally. However, these figures are very broadly in line with statistics collected from the Committee on Legal Statistics and Special Records of the Prosecutor General's Office (provided to UNICEF on 25 August 2014) on the total number of administrative cases against parents in administrative courts in Kazakhstan. According to these statistics, in 2013, approximately 59 percent of administrative cases against parents concerned the non-fulfilment of duties by parents or other lawful representatives regarding child-rearing responsibilities (under Article 111 of the former Administrative Offences Code). Meanwhile, 17.5 percent concerned the sale of tobacco or tobacco products to persons and by persons under the age of 18 years (under Article 114 of the former Administrative Offences Code). 12.6 percent concerned allowing a minor to frequent an entertainment institution at night, unaccompanied by a legal representative (under Article 112-1 of the former Administrative Offences Code). 8.4 percent concerned hooliganism committed by a minor (under Article 331 of the former Administrative Offences Code). 2.5 percent concerned bringing a minor to a state of intoxication (under Article 112 of the former Administrative Offences Code), and 0.2 percent concerned involving a minor in the commission of an administrative offence (under Article 111-1 of the former Administrative Offences Code). The statistics for 2012 and 2011 provide the same overall ranking for the most common to least common categories of administrative cases against parents in the courts of Kazakhstan (although the number of such cases varies slightly).

⁵⁶ Individual Interview with an SICIM judge, [City/Region withheld], 2014. For more examples, see an observation of an administrative hearing, [location of SICIM withheld], August 2014.

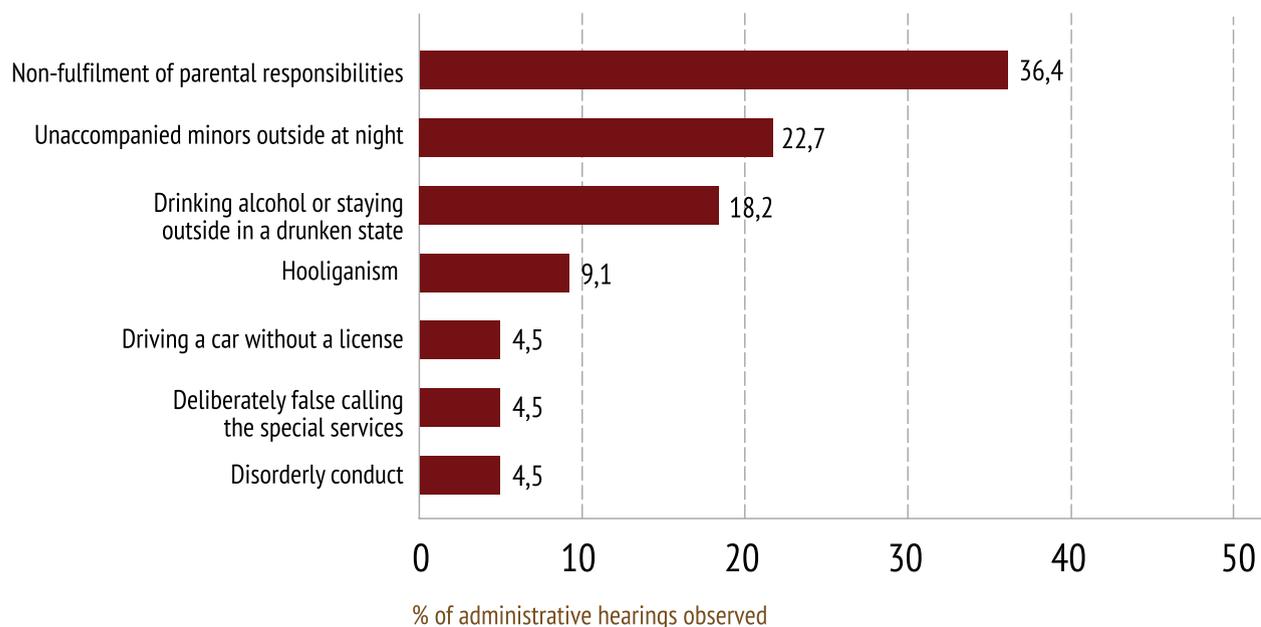
⁵⁷ See, for example, an Individual Interview with a parent, Administrative Case, Almaty SICIM, 21 August 2014.

⁵⁸ Based on observations of administrative hearings in the SICIMs in sampled regions.

⁵⁹ Administrative Hearing 1, Astana SICIM, 6 August 2014.

⁶⁰ See, for example, Administrative Offences Code No. 155 (2001) as amended, Articles 111, 336(1-1) and 336-4(2) (references from the previous version of the Code are used as this was the law in force at the time of data collection), as well as outcomes of observations

Chart 7. Subject matter of administrative cases in the SICIMs



Some respondent SICIM judges considered the purpose of these fines to be deterrence (for parents and/or children) from committing future offences, and to encourage parents/guardians to take better care of their child.⁶¹ However, imposing fines on parents for the acts or offences of their children may not address the reasons for a child's anti-social behaviour. As some SICIM judges acknowledge, these offences are often the result of deep-rooted family problems, and fining parents/guardians is unlikely to bring about change:

"In your opinion, does finding a parent/guardian guilty of an administrative offence improve the way that the parent/guardian looks after the child in future?"

"In some cases, yes, but in some cases, [it's a] recurring [problem, so] the police proceed to file a petition to send the child to a special educational institution."⁶²

"It depends on their social situation. If the parents are drug abusers, it's difficult to expect them to correct their behaviour. If it's a 'normal family', there's a chance that they'll feel shame."⁶³

"Does it deter the child from future wrong-doing?"

"I think so [but] punishment alone doesn't work – [you] need a holistic approach."⁶⁴

Feedback obtained from parents involved in administrative cases also suggests that fining parents for children's wrongdoing is unlikely to improve their

of administrative cases and individual interviews with judges.
⁶¹ See for example, an Individual Interview, SICIM judge, [City/Region withheld], 2014.

⁶² Individual Interview, SICIM judge, [City/Region withheld], 2014.

⁶³ Individual Interview, SICIM judge, [City/Region withheld], 2014.

⁶⁴ Individual Interview, SICIM judge, [City/Region withheld], 2014.

parenting, particularly if they are from low-income families. In some cases, a fine makes matters worse: parents do not have the money to pay and it has a negative impact on their relationship with their child.⁶⁵

In addition to the imposition of fines on a parent or guardian, children may also be subject to measures, even if they are under the minimum age of administrative responsibility. Responses indicate that the civil powers of the SICIMs to place children in a special educational establishment (under Chapter 33-1 of the Civil Procedure Code) are an integral mechanism for dealing with administrative cases and the behaviour of children. Under this provision, 'guardianship and custody bodies' and 'bodies of internal affairs' may apply to the SICIM to place the child in a 'special school for children with offending behaviour' or within an 'institution with a special regime of detention'.⁶⁶

In practice, the Guardianship and Custodianship Authority, police and other public bodies, including schools and orphanages, can use these powers to apply for the detention of children considered to have 'deviant behaviour'.⁶⁷ However, descriptions by participants of a child involved in a case of this type illustrate that such children may also be at risk of abuse, and may be in need of care and protection, while being at risk of coming into conflict with the law, and/or having psychological health issues:

"[She] systematically violates discipline at school, exhibits rudeness in dealing with school teachers, and can use physical force against those weaker. She

⁶⁵ Parent in Administrative Case, Semey SICIM, August 2014.

⁶⁶ Civil Procedure Code, Article 308-1(1).

⁶⁷ National researcher, Trial Observation, [city and region withheld] SICIM, 2 September 2014.

has been brought up in an orphan home since July 2002. Her mother regularly drank alcohol...Preventive maintenance [was carried out] but, despite this, she does not draw necessary conclusions. Her behaviour was considered by the Juvenile Affairs Commission, which ordered... sending [the child] to a special school for children with deviant behaviour... [The child] repeatedly ran away from school.

If they happen, we always try to solve escapes of children with our own forces. However, when [the child] ran away from the orphan home and was absent for more than a day, local inspectors were able to find her wandering the streets and bring her back to us...[The child] is studying in the same group as her brother, who treats her kindly, although she sometimes beats him too. We even thought that she needed psychological help. She can grab kids, shake them and beat [them].⁶⁸

A considerable amount of court time is spent on administrative cases and it is questionable whether this is the most effective use of court time. As indicated by the administrative cases observed for this study, most of the anti-social behaviour of children appears to be related to family functioning, substance misuse or psychological health problems. These are all issues that cannot be resolved by the court within administrative proceedings alone, but require social work input. Consideration should be given to reviewing the jurisdiction of the SICIMs in this respect. It may be more effective to refer certain types of administrative cases (relating to the failure of parents to care for their children adequately) to child protection services, rather than to a court, or to a non-judicial programme for anti-social behaviour. Any decision to send a child to a 'special school for children with offending behaviour' should, however, continue to require an order from the court. The requirement to obtain a court order upholds the rights of the child and should be maintained.

4.3. CRIMINAL CASES

The SICIMs have jurisdiction to try cases against children (namely, persons under the age of 18 years) who are above the minimum age of criminal responsibility⁶⁹ and who are charged with a criminal offence, except for cases that fall within the jurisdiction of the Specialized Criminal Courts (i.e. those concerning especially grave crimes), the Specialized Inter-district Military Court for Criminal Cases and the Garrison Military Court.⁷⁰

In addition, the SICIMs have jurisdiction over criminal cases involving adult defendants in the following

⁶⁸ National researcher, Trial Observation Notes Relating to Submissions of the Representative of the Guardianship and Custodianship Authority, [city and region withheld] SICIM, 2 September 2014.

⁶⁹ 14 years for certain crimes listed in Article 15(2) of the 2014 Criminal Code; 16 years for all other crimes (2014 Criminal Code, Article 15(1)).

⁷⁰ The 2014 Criminal Procedural Code, Articles 307 and 308; cases falling within the jurisdiction of Specialized Criminal Courts, Specialized Inter-district Military Courts for Criminal Cases and Garrison Military Court fall outside of this assessment.

circumstances:

- Criminal cases in which at least one of the participants is a juvenile and it is impossible to separate the proceedings (except for cases concerning especially grave crimes or cases falling within the jurisdiction of Specialized Inter-district Military Courts for Criminal Cases or the Garrison Military Court);⁷¹ and
- Certain crimes committed against children, namely:
 - Intentional infliction of grievous bodily harm committed against a minor (which does not result in the victim's death and is not committed by a criminal group);⁷²
 - Intentional infliction of moderate bodily harm committed against a minor, the offender being aware of the fact that the victim was a minor;⁷³
 - Sexual intercourse, sodomy, lesbianism or other sexual acts with a person known to be under 16 years of age;⁷⁴
 - Indecent assault without violence against an obvious juvenile (minor) (unless committed repeatedly);⁷⁵
 - Certain acts of inducing a juvenile to engage in criminal activity;⁷⁶
 - Inducing a juvenile to engage in the commission of anti-social actions;⁷⁷
 - Inducing a juvenile to engage in prostitution;⁷⁸
 - Certain acts relating to child trafficking;⁷⁹
 - Substitution of a child;⁸⁰
 - Illegal adoption activities;⁸¹
 - Violation of privacy in cases of adoption;⁸²
 - Non-performance of obligations to pay child support;⁸³
 - Non-performance of duties in the upbringing of a child;⁸⁴

⁷¹ 2014 Criminal Code, Article 315.

⁷² Criminal Procedure Code 2014, Article 307(2); Criminal Code 2014, Article 106(2)(11).

⁷³ Criminal Procedure Code 2014, Article 307(2); Criminal Code 2014, Article 107(2)(8).

⁷⁴ Criminal Procedure Code 2014, Article 307(2); Criminal Code 2014, 122(1)-(2).

⁷⁵ Criminal Procedure Code 2014, Article 307(2); Criminal Code 2014, 124(1)-(2).

⁷⁶ Criminal Procedure Code 2014, Article 307(2); Criminal Code 2014, Article 132(1)-(2).

⁷⁷ Criminal Procedure Code 2014, Article 307(2); Criminal Code 2014, Article 133.

⁷⁸ Criminal Procedure Code 2014, Article 307(2); Criminal Code 2014, Article 134.

⁷⁹ Criminal Procedure Code 2014, Article 307(2); Criminal Code 2014, Article 135(1)-(3).

⁸⁰ Criminal Procedure Code 2014, Article 307(2); Criminal Code 2014, Article 136.

⁸¹ Criminal Procedure Code 2014, Article 307(2); Criminal Code 2014, Article 137.

⁸² Criminal Procedure Code 2014, Article 307(2); Criminal Code 2014, Article 138.

⁸³ Criminal Procedure Code 2014, Article 307(2); Criminal Code 2014, Article 139.

⁸⁴ Criminal Procedure Code 2014, Article 307(2); Criminal Code 2014,



- Improper performance of duties to protect the life and health of children;⁸⁵
- Abuse of trustee or care-giver rights;⁸⁶
- Illegal trafficking of a child outside Kazakhstan;⁸⁷ and
- Involvement of juveniles in the production of products with erotic content.⁸⁸

No quantitative data was available via the Committee on Legal Statistics and Special Records of the Prosecutor General's Office on the types of criminal cases most commonly dealt with specifically in the SICIMs.⁸⁹

Article 140.

⁸⁵ Criminal Procedure Code 2014, Article 307(2); Criminal Code 2014, Article 141.

⁸⁶ Criminal Procedure Code 2014, Article 307(2); Criminal Code 2014, Article 142.

⁸⁷ Criminal Procedure Code 2014, Article 307(2); Criminal Code 2014, Article 143.

⁸⁸ Criminal Procedure Code 2014, Article 307(2); Criminal Code 2014, Article 144.

⁸⁹ The Committee on Legal Statistics and Special Records of the Prosecutor General's Office provided general statistics to UNICEF on the number of pre-trial charges made against minors between 2011 and 2013 according to category of offence, on 25 August 2014. According to these statistics, the highest number of charges made in 2011, 2012 and 2013 were for crimes relating to physical violence (1,602, 1,554 and 1,217 charges, respectively), with the second highest number of charges made against minors in 2011, 2012 and 2013 concerning property-related crimes (1,559, 1,279 and 1,077 charges, respectively). However, it is unclear which crimes comprise these categories of offences. Similarly, the highest number of minors convicted in 2011, 2012 and 2013 were for offences relating to physical violence (778, 855 and 604 convictions, respectively); the second highest number of minors convicted in 2011, 2012 and 2013 were for property-related crimes (342, 188, and 214 convictions, respectively). Again, it is unclear which crimes comprise these categories of offences; Aina Shormanbayeva, The analysis of statistics on cases connected with minors, provided by the Prosecutor General's Office, 9 January 2015.

However, the majority (70 percent) of criminal hearings observed for this study concerned child defendants charged with offences relating to property (principally, theft or robbery).⁹⁰ Feedback from participants across the regions generally echoed the finding that property-related offences, particularly theft and robbery (usually of cell phones, bikes or cars) committed by children, are the most common offences dealt with by the SICIMs.⁹¹ A breakdown of types of criminal cases dealt with by the SICIMs, according to trial/hearing observations conducted for this study, is illustrated in more detail in Chart 8, below.⁹²

Although criminal cases are not those most frequently dealt with in the SICIMs, over half (51.6 percent)⁹³ of

⁹⁰ Collated with reference to trial/hearing observations conducted by consultants and national researchers, of the 20 criminal hearings observed for this study, 14 concerned property-related offences. Six cases were of theft (under Article 175 of the former Criminal Code); six cases were of robbery (under Article 178 of the former Criminal Code); one case was of theft and the illegal taking of possession of an automobile or other transport vehicle without the purpose of stealing (under Articles 175 and 185 of the former Criminal Code, respectively); and one case was of brigandage (under Article 179). Court observations did not aim to constitute a representative sample. Therefore, these figures are not necessarily representative of the sampled SICIMs or all the SICIMs across Kazakhstan more generally.

⁹¹ See for example, Representative of the Juvenile Consultation Unit, Karaganda, 22 September 2014; Defence Lawyer 1, Aktau SICIM, 25 September 2014; Defence Lawyer 2, Aktau SICIM, 26 September 2014; Prosecutor 1, Almaty SICIM, 19 September 2014; Prosecutor 2, Almaty SICIM, 20 September 2014; Defence Lawyer 3, Kyzylorda SICIM, [undated].

⁹² Court observations did not aim to constitute a representative sample. Therefore, these figures are not necessarily representative of the sampled SICIMs or all the SICIMs across Kazakhstan more generally.

⁹³ 16 of 31 respondent SICIM judges gave this response.

Chart 8. Subject matter of criminal hearings observed in the SICIMs

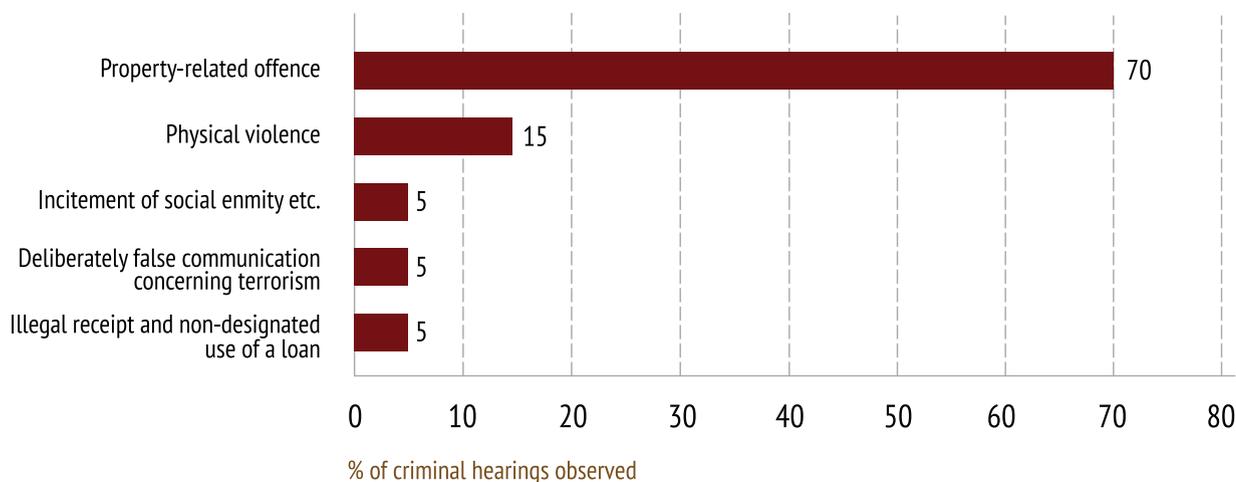
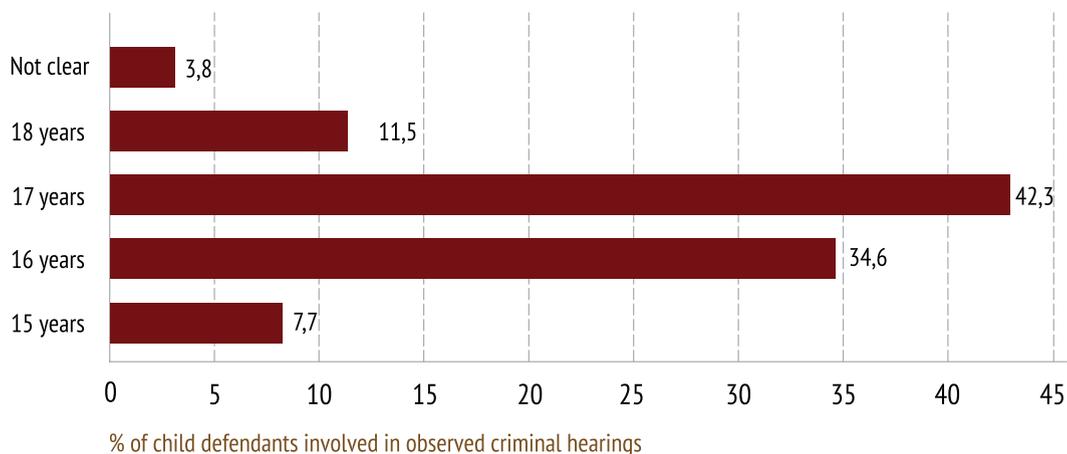


Chart 9. Age of child defendants in observed criminal hearings



SICIM judges responding to the online survey indicated that they deal with criminal cases involving a child defendant or offender every day or at least once a week (see Chart 2, above, for more detail). 41.9 percent of SICIM judges⁹⁴ indicated that they dealt with criminal cases involving a child victim either every day or at least once a week.

Based on figures obtained from observations of criminal hearings, the vast majority (96.2 percent) of child defendants involved in criminal cases before the SICIMs were male. In addition, as indicated by Chart 9, child defendants tend to be older children. The most common age (at the time of the hearing) was 17 years old.⁹⁵

Regarding criminal cases involving a child victim,⁹⁶ the

majority of victims (66.7 percent) were boys.⁹⁷ The ages of victims ranged from 8 years to 17 years.⁹⁸ Only three cases involving a child witness were observed. In those cases, the witnesses were all male, aged 15, 16 and 17 years.

4.4. VIEWS ON THE ESTABLISHMENT AND MANDATE OF THE SICIMs

The majority of respondents considered that the SICIMs are beneficial, the primary reason being that they are a specialist forum able to respond to each child's particular needs and psychological characteristics, enabling better protection of child rights and minimizing the risk of trauma or harm to the child (see Section 5, below, for detailed analysis of 'Specialized actors and institutions').⁹⁹ Only a minority of respondents stated

⁹⁴ 13 of 31 respondent SICIM judges gave this response.

⁹⁵ Court observations did not aim to constitute a representative sample. Therefore, these figures are not necessarily representative of the sampled SICIMs or all the SICIMs across Kazakhstan more generally.

⁹⁶ A total of eight criminal hearings were observed involving a child victim.

⁹⁷ 11.1 percent were girls; 22.2 percent were unclear. Court observations did not aim to constitute a representative sample. Therefore, these figures are not necessarily representative of the sampled SICIMs or all the SICIMs across Kazakhstan more generally.

⁹⁸ *ibid*

⁹⁹ Judge 1, Aktau SICIM, 23 September 2014; Judge 2, Aktau SICIM,

that the establishment of the SICIMs conferred no benefits on children or were unnecessary for handling children's cases.¹⁰⁰ Other reasons in favour of the SICIMs, cited by stakeholders, included the following:

- The interests of the child are a 'priority';¹⁰¹
- The SICIMs are more 'humane' and impose more lenient sentences according to the age and gender of the child (see Section 6.12 for analysis on 'Sentencing');¹⁰²
- The SICIMs have a rehabilitative function, having a 'preventive and educational impact on the child' and help the child play a 'useful role in the community';¹⁰³
- The SICIMs have a more comfortable environment and are less stressful than other courts (see Section 6.9 for analysis of 'Courtroom environment');¹⁰⁴
- The SICIMs are more 'competent' and have more qualified and experienced judges than those in general courts, with knowledge of international child rights standards, such as the Beijing Rules and the UN Convention on the Rights of the Child (see Section 5 for analysis of 'Specialized actors and institutions');¹⁰⁵
- The SICIMs treat the child with 'respect' and allow the child to be heard, allowing their views to be taken into account, and be treated as an 'equal' (see Section 6.5 for analysis on 'Child participation');¹⁰⁶ and
- The SICIMs do not have large numbers of people awaiting court hearings, lack 'red tape' when considering cases, and hear cases in more depth or more thoroughly than other courts.¹⁰⁷

23 September 2014; Civil Lawyer 2, Aktau SICIM, 25 September 2014; Representative of NGO Meirim, Aktau, 27 September 2014; Civil Lawyer 1, Almaty, 1 October 2014; Psychologist 1, Almaty, 29 September 2014; Psychologist 1, Astana, 18 September 2014; NGO Representative, Karaganda, 19 September 2014; Psychologist, Karaganda SICIM, [undated transcript]; Pedagogue, Karaganda SICIM, [undated transcript]; Prosecutor 1, Kyzylorda SICIM, 9 September 2014; Education Authority Representative 1, Kyzylorda SICIM, 11 September 2014; Social Worker 1, Shymkent SICIM, 17 September 2014; Prosecutor 2, Ust-Kamenogorsk SICIM, 15 September 2014; Judge 1, Ust-Kamenogorsk SICIM, 16 September 2014; Psychologist 1, Ust-Kamenogorsk SICIM, 17 September 2014; Psychologist 2, Ust-Kamenogorsk SICIM, 16 September 2014; Prosecutor 1, Aktau, 16 July 2014.

¹⁰⁰ Defence Lawyer 2, Astana SICIM, 18 September 2014; See also Representative of the Juvenile Consultation Unit, [location withheld], 18 September 2014; Defence Lawyer 2, Karaganda SICIM, 19 September 2014; Defence Lawyer 3, Karaganda SICIM, 22 September 2014; Civil Lawyer 2, Astana SICIM, 18 September 2014; Prosecutor 1, Ust-Kamenogorsk SICIM, 15 September 2014; Civil Lawyer 1, Ust-Kamenogorsk SICIM, 12 September 2014; Defence Lawyers 1, 2 and 3, Ust-Kamenogorsk SICIM, 17 September 2014.

¹⁰¹ Judge 2, Karaganda SICIM, 19 September 2014.

¹⁰² Defence Lawyer 3, Aktau SICIM, 26 September 2014; Civil Lawyer 2, Karaganda, 22 September 2014; Defence Lawyer 2, Shymkent SICIM, 18 September 2014.

¹⁰³ Civil Lawyer 1, Aktau SICIM, 25 September 2014; Civil Lawyer 1, Almaty, 1 October 2014; Psychologist 1, Shymkent SICIM, [undated transcript].

¹⁰⁴ Representative of NGO Meirim, Aktau, 27 September 2014; Defence Lawyer 1, Karaganda SICIM, 19 September 2014.

¹⁰⁵ Education Authority Representative 2, Kyzylorda SICIM, 9 September 2014; Defence Lawyer 1, Karaganda SICIM, 19 September 2014.

¹⁰⁶ Judge 1, Astana SICIM, 21 August 2014; Civil Lawyer 1, Almaty, 1 October 2014; Judge 1, Karaganda SICIM, 19 September 2014; Judge 2, Ust-Kamenogorsk SICIM, 16 September 2014.

¹⁰⁷ Judge 1, Almaty SICIM, 22 September 2014; Judge 1, Kyzylorda

Several stakeholders shared their views on the scope of the jurisdiction of the SICIMs, all agreeing that the scope of SICIM jurisdiction should be expanded, rather than narrowed, to cover other categories of cases currently dealt with by other courts. Among those cited were child maintenance cases, and cases concerning especially grave crimes involving children, which are currently dealt with by Specialized Criminal Courts.¹⁰⁸ One judge remarked that SICIM judges had asked for the Supreme Court to expand the jurisdiction of the SICIMs, to cover this latter category, since SICIM judges are both willing and able to deal with such cases:

"Our judges are ready to investigate such cases as well; we have the knowledge and practice."¹⁰⁹

General feedback provided by judges representing each of the 19 SICIMs was that any transfer of jurisdiction from the SICIMs to other courts would undermine (or undo) the last decade's efforts to develop specialist courts and specialist judges for handling children's matters.¹¹⁰

Although this study did not extend to a consideration of how cases involving children are dealt with by courts other than the SICIMs, international standards require that state parties to the CRC establish juvenile courts to handle cases concerning children in conflict with the law.¹¹¹ Where the establishment of specialized courts is 'not immediately feasible for practical reasons', State parties may appoint specialist judges or magistrates to deal with juvenile justice cases,¹¹² although the CRC Committee frames this as a temporary measure until specialized juvenile justice courts can be feasibly established. For this reason, the consultants recommend transferring jurisdiction over cases involving children suspected/accused of especially grave crimes from the Specialized Criminal Courts to the SICIMs.

The consultants consider that the caseload of criminal cases before the SICIMs should be streamlined through the introduction of pre-trial diversion measures, and that consideration should be made as to whether certain types of administrative cases should be investigated by child protection services rather than the SICIMs (for more details on which, see the recommendations below and Section 6.13 on 'Diversion'). However, this study has not highlighted any particular problem in the SICIMs having multi-disciplinary jurisdiction.

SICIM, 9 September 2014.

¹⁰⁸ Judge 2, Almaty SICIM, 10 July 2014; Civil Lawyer 1, Almaty, 1 October 2014; Judge 3, Almaty SICIM, 10 July 2014; Representative of the Collegium of Lawyers, Aktau, 15 July 2014.

¹⁰⁹ Judge 3, Almaty SICIM, 10 July 2014.

¹¹⁰ Judicial Seminar attended by CCLC and a Judge from each of the 19 SICIMs in Kazakhstan, Astana, 31 October 2014.

¹¹¹ Committee on the Rights of the Child, General Comment No. 10 (2007), 'Children's Rights in Juvenile Justice', CRC/C/GC/10, paras 92-93.

¹¹² Committee on the Rights of the Child, General Comment No. 10 (2007), 'Children's Rights in Juvenile Justice', CRC/C/GC/10, para 93.

RECOMMENDATIONS RELATING TO THE MANDATE AND USERS OF THE SICIMS

SCOPE OF JURISDICTION

- Consider transferring jurisdiction over cases involving children suspected/accused of especially grave crimes from the Specialized Criminal Courts to the SICIMs.

CRIMINAL JURISDICTION

- Consider designating specific judges within the SICIMs to specialize in juvenile justice cases. Such judges should receive more intensive training, to allow them to develop a specialism and expertise in this difficult area (see Section 5.1 for more detail on specialist training of judges).
- While a high percentage of property-related offences in the SICIMs is to be expected, it raises the issue of whether more cases could be resolved through reconciliation, mediation or other alternative pre-trial diversion measures, which would prevent the child from being brought to trial, with all the negative consequences that this can cause to the child.

ADMINISTRATIVE JURISDICTION

- Consider whether some administrative acts and offences, especially where neglect and poor parental care are involved, should be treated as child protection issues and referred to child protection services for investigation and assessment before or instead of being prosecuted in the SICIMs.
- Consider amending laws relating to administrative offences, to allow prosecutors and judges to divert parents who have committed administrative offences to parenting programmes or other professional services. These would provide parenting advice and promote better parenting, instead of placing parents 'on trial' and sanctioning with a fine.
- Increase the range of measures open to the SICIMs when dealing with administrative offences, including child protection measures and parenting orders, requiring parents to undergo a parenting course to teach them how to manage child behaviour.

5. SPECIALIZED ACTORS AND INSTITUTIONS

The right of a child to have his/her best interests taken as a primary consideration in all matters affecting him/her is a fundamental principle of child rights, as enshrined in Article 3(1) of the CRC, and applies to proceedings before the SICIMs. As each child has unique characteristics and needs, the determination of a child's best interests can only be adequately assessed by professionals, who have expertise in matters relating to child and adolescent development.¹¹³ As highlighted by the CRC Committee:

'This is why the formal assessment process should be carried out in a friendly and safe atmosphere by professionals trained in, inter alia, child psychology, child development and other relevant human and social development fields, who have experience working with children and who will consider the information received in an objective manner. As far as possible, a multidisciplinary team of professionals should be involved in assessing the child's best interests.'¹¹⁴

In relation to juvenile justice, Article 40(3) of the CRC requires State parties to promote the establishment of authorities and institutions specifically applicable to children in conflict with the law. The CRC Committee interprets this to mean that a State party should establish 'specialized units' within the police, judiciary, court system, and prosecutor's office, and specialized defenders or other representatives who provide legal or other appropriate assistance to the child.¹¹⁵

Consultants assessed whether specialist personnel or units have been established to handle SICIM cases, whether these actors receive regular specialist training in handling children's cases, how useful this training has been (if provided), and whether any areas exist for further training.

5.1. JUDGES

SICIM judges have a difficult job, dealing with a range of cases. Some are complex, involving difficult human dimensions. Under Kazakhstan's law, judges are not required to have undergone any specialist training in handling children's cases before sitting as an SICIM judge. All SICIM judges taking part in the online survey and in individual interviews were asked about training

¹¹³ UN Committee on the Rights of the Child, General Comment No. 14 (2013), Right of the child to have his or her best interests taken as a primary consideration (Article 3(1)), para 94.

¹¹⁴ UN Committee on the Rights of the Child, General Comment No. 14 (2013), Right of the child to have his or her best interests taken as a primary consideration (Article 3(1)), para 94.

¹¹⁵ UN Committee on the Rights of the Child, General Comment No. 10 (2007) Children's Rights in Juvenile Justice, para 92.



received on children's rights, juvenile justice and child protection. The majority (71 percent) of SICIM judges responding to the online survey had not received any pre-service professional training on criminal cases involving children.¹¹⁶ Similarly, 74.2 percent had not received any pre-service professional training on administrative or civil cases involving children.

Under Kazakhstan's law, SICIM judges are not required to undergo regular in-service training specifically on child rights, juvenile justice or child protection issues. The majority (77.4 percent) of the SICIM judges responding to the online survey had not received any specialist training for criminal cases involving children in the previous 12 months.¹¹⁷ Similarly, 80.6 percent of the respondent SICIM judges had not received any specialist training for civil or administrative cases involving children.¹¹⁸

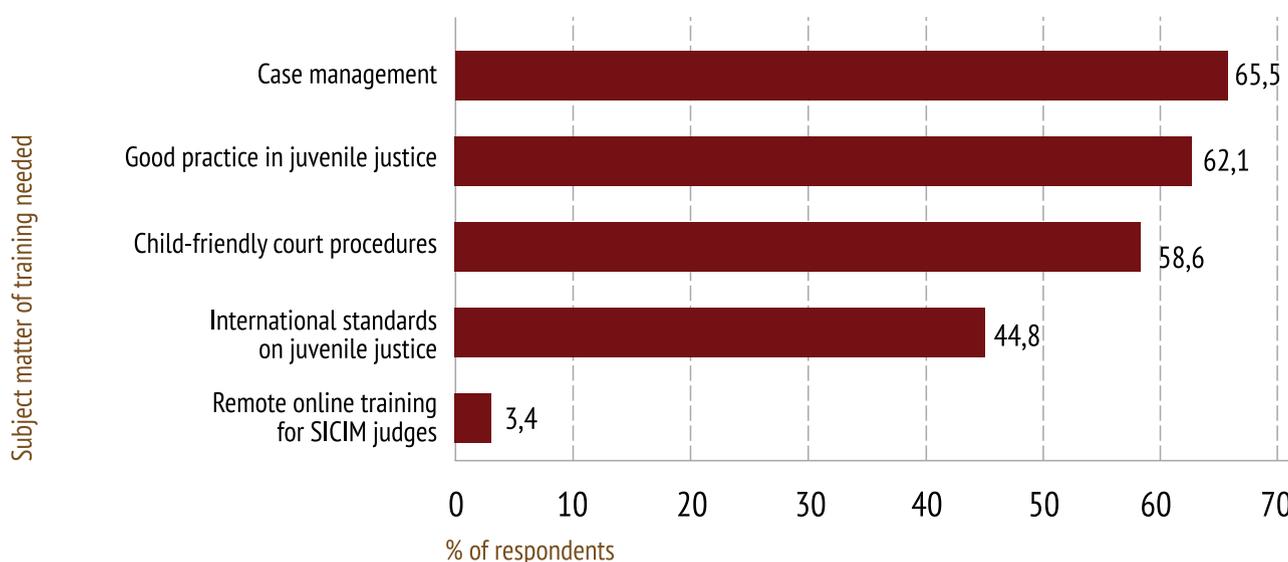
¹¹⁶ Alimbekova G., National Expert, Report on the Results of Survey Among Judges in Specialized Inter-district Juvenile Courts, pp. 4-5.

¹¹⁷ Alimbekova G., National Expert, Report on the Results of Survey Among Judges in Specialized Inter-district Juvenile Courts, p. 5.

¹¹⁸ Alimbekova G., National Expert, Report on the Results of Survey

Chart 10.

Responses of SICIM judges on the training they need
(source: online survey)



RECOMMENDATIONS ON SICIM JUDGES:

- Support the Academy of Public Administration, to enable it to develop a compulsory training course for all SICIM judges on handling children’s cases, to be completed before they sit on such cases.
- Support the Academy of Public Administration, to develop short, specialist continuing professional development training courses on children’s cases, to be attended by all SICIM judges at least once a year.

The Academy of Public Administration (‘Academy’) states that the main reason for the absence of specialist in-service training is that SICIM judges are small in number compared to other categories of judge, and that juveniles are not solely dealt within the SICIMs. Hence, other court judges are interested in gaining training in this area.¹¹⁹

The Academy provides compulsory in-service capacity-building training to all judges at least once every five years.¹²⁰ Training, reportedly, lasts for two weeks, with 50 percent of judges completing this training at least once every three years.¹²¹ Fifteen training events were held in 2009-2011, four in 2012 and three in 2013. However, only a small amount of time, around 2-4 hours, is dedicated to child rights, covering the following topics: crimes against families and minors; crimes committed with the participation of minors; criminal responsibility of minors; the implementation of marriage and family legislation; and international adoption cases.¹²²

¹¹⁹ Among Judges in Specialized Inter-district Juvenile Courts, p. 6.

¹²⁰ The Academy, Note provided to CCLC, 9 July 2014.

¹²¹ Group Interview with the Academy, Astana, 9 July 2014.

¹²² Group Interview with the Academy, Astana, 9 July 2014.

¹²³ Group Interview with the Academy, Astana, 9 July 2014; Information provided by the Academy to UNICEF, provided to CCLC on 26 August 2014; The Academy, Note provided to CCLC, 9 July 2014.

The training plan that regulates the in-service training schedule and programme does not make reference to this child rights component. As the numbers of judges serving the SICIMs is increasing, the Academy reports that specialist training may be provided in 2015.¹²³

The overwhelming majority (93.5 percent) of SICIM judges responding to the online survey considered that they would benefit from further specialist training. Most also noted their desire for capacity-building and training on international best practice in handling children’s cases. Outlined in Chart 10, are detailed responses on types of training SICIM judges believe would help them better perform their duties.

The Academy also responded favourably to the idea of introducing compulsory specialist training in collaboration with the Supreme Court for SICIM judges on issues such as how to reach verdicts in cases, make decisions on whether to impose penalties and how to decide on which penalties to use.¹²⁴

¹²³ Group Interview with the Academy, Astana, 9 July 2014.

¹²⁴ Group Interview with the Academy, Astana, 9 July 2014.



5.2. PROSECUTORS AND LAWYERS

The functioning of the SICIMs depends, of course, not just on judges but upon prosecutors and lawyers. Specialized legal consultation units (Juvenile Consultation Unit) have been established in some cities/regions, such as Astana, Almaty and Karaganda, but not in all (for example, Mangystau).¹²⁵ However, despite the establishment of Specialist Consultation Units, under Kazakhstan's law, lawyers taking on cases in the SICIMs are not required to have received any pre-service or regular in-service specialist training or qualifications specifically in handling children's cases.¹²⁶ Indeed, the vast majority of defence lawyers interviewed stated that they had not received any pre-service specialist training and/or any specialist training over the previous 12 months.¹²⁷

¹²⁵ The NGO, Sana Sezim, in Shymkent, also offers legal services although it is unclear from research whether it does so on a pro bono basis.

¹²⁶ Individual Interview, Representative of Juvenile Consultation Unit, Almaty City Collegium of Lawyers, Almaty, 10 July 2014; Individual Interview, Representative of the Juvenile Consultation Unit, Karaganda Collegium of Lawyers, 22 September 2014.

¹²⁷ Individual Interview, Defence Lawyer 1, Aktau, 25 September 2014; Individual Interview, Defence Lawyer 2, Aktau, 26 September 2014; Individual Interview, Defence Lawyer 3, Aktau, 26 September 2014; Individual Interview, Defence Lawyer 1, Almaty, 1 October 2014; Individual Interview, Defence Lawyer 3, Almaty, 1 October 2014; Individual Interview, Defence Lawyer 4, Almaty, 1 October 2014;

It would also appear that Juvenile Consultation Units are heavily reliant on newly qualified and relatively inexperienced lawyers.¹²⁸ This may be partly due to the fact that child defendants appearing before the SICIM are entitled to legal aid, the rate of pay for which is far lower than that paid by a private client,¹²⁹ and hence

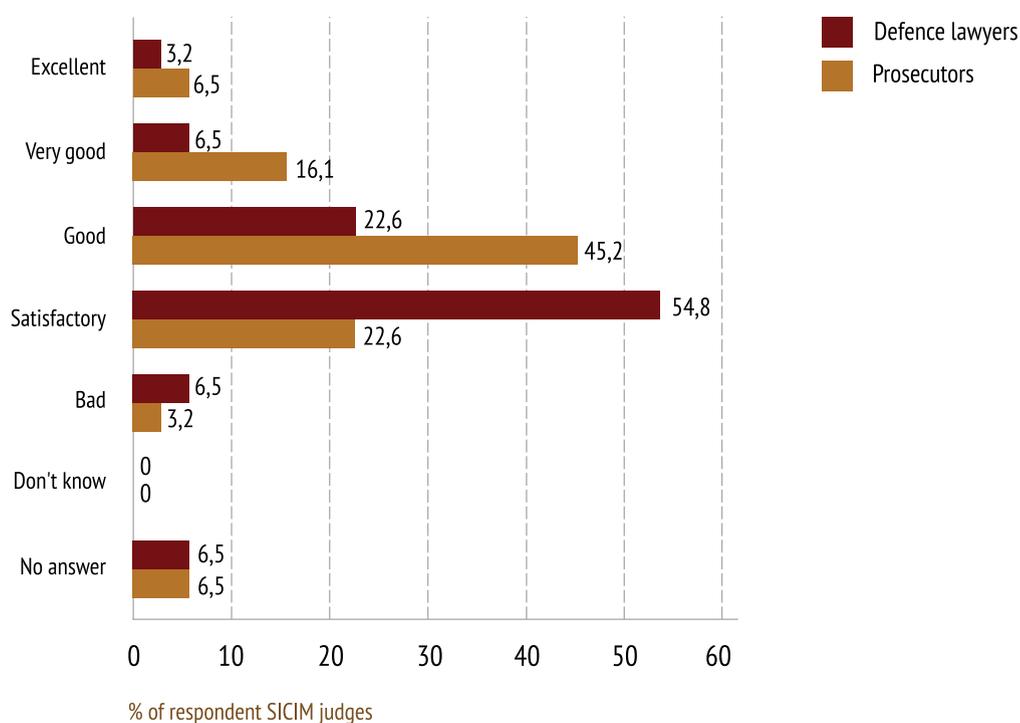
Individual Interview, Defence Lawyer 1, Astana, 18 September 2014; Individual Interview, Defence Lawyer 2, Astana, 18 September 2014; Individual Interview, Defence Lawyer 3, Astana, 18 September 2014; Individual Interview, Defence Lawyer 1, Karaganda, 19 September 2014; Individual Interview, Defence Lawyer 2, Karaganda, 19 September 2014; Individual Interview, Defence Lawyer 3, Karaganda, 22 September 2014; Individual Interview, Representative of the Juvenile Consultation Unit, Karaganda, 22 September 2014; Individual Interview, Defence Lawyer 1, Kyzylorda, [undated]; Individual Interview, Defence Lawyer 2, Kyzylorda, [undated]; Individual Interview, Defence Lawyer 3, Kyzylorda, [undated]; Individual Interview, Defence Lawyer 1, Shymkent, 18 September 2014; Individual Interview, Defence Lawyer 2, Shymkent, 18 September 2014; Individual Interview, Defence Lawyer 1, Ust-Kamenogorsk, 17 September 2014; Individual Interview, Defence Lawyer 3, Ust-Kamenogorsk, 17 September 2014.

¹²⁸ Individual Interview, Head of Juvenile Consultation Unit, Almaty City Collegium of Lawyers, Almaty, 10 July 2014; Group Interview, 2 Defence Lawyers from the Juvenile Consultation Unit, Astana City Collegium of Lawyers, Astana, 9 July 2014; Individual Interview, Representative of the Juvenile Consultation Unit, Karaganda Collegium of Lawyers, 22 September 2014; Representative of the Juvenile Consultation Unit, Astana, 18 September 2014.

¹²⁹ Individual Interview, Representative of Juvenile Consultation Unit, Almaty City Collegium of Lawyers, Almaty, 10 July 2014; Group Interview, 2 Defence Lawyers from the Juvenile Consultation Unit,

Chart 11.

Views of respondent SICIM judges on the standard of representation provided by prosecutors and criminal defence lawyers in the SICIMs (source: online survey)



may not attract the more experienced criminal defence lawyers.

As explained in more detail in the JJ Concept Report, there is no requirement under Kazakhstan's law for prosecutors to have received any pre-service specialist training in handling children's cases before working on such matters. Based on feedback from the prosecutors' online survey, very few Prosecutors' Offices appear to have established specialist juvenile justice units or divisions that handle criminal cases before the SICIMs.¹³⁰ Of respondents who stated that there were no specialized juvenile divisions or units in their local Prosecutor's Office, only around one-third stated that there were specialized prosecutors who took on juvenile cases.¹³¹ It is unclear whether juvenile prosecutors receive specialized in-service training in handling SICIM cases.¹³²

In the online surveys, SICIM judges were asked for views on the preparedness of both prosecutors and defence lawyers, the quality of their advocacy and the extent to which they were able to assist their clients and the court. Their responses are set out in Chart 11.

Astana City Collegium of Lawyers, Astana, 9 July 2014; Individual Interview, Representative of the Juvenile Consultation Unit, Karaganda Collegium of Lawyers, 22 September 2014.

¹³⁰ Only 5 respondents out of 74 responding to the online survey distributed to representatives of the local Prosecutor's Offices stated that a specialized unit of juvenile affairs had been established in their area.

¹³¹ Refer to the JJ Concept Report for more details.

¹³² Refer to the JJ Concept Report for more details.

As demonstrated in Chart 11, respondent SICIM judges generally rated the standard of representation provided by prosecutors higher than that provided by criminal defence lawyers. The majority of respondent SICIM judges (54.8 percent) considered that the standards of representation provided by defence lawyers were satisfactory, while the majority (61.3 percent) considered that the standard of representation provided by prosecutors was good or very good.

Feedback from court observations and individual interviews generally supports the results of the online survey. Defence lawyers are often inactive during trials and assume a passive role. In one case observed, the defence lawyer did not speak to the child offender after the criminal sentence had been pronounced; as a result, the child was given no explanation of the sentence, nor was he informed as to whether there was any further action to be taken.¹³³ Around 58 percent of child defendants and parents of child defendants interviewed said that their defence lawyer had not informed them of their rights, had not explained what would happen during the process, did not ask for the child's version of events, and/or had not explained the consequences of pleading guilty.¹³⁴

¹³³ Group Interview, Child Defendant and Parent, [location of SICIM withheld], 2014.

¹³⁴ Interviews did not aim to constitute a representative sample. Therefore, these figures are not necessarily representative of the sampled SICIMs or all the SICIMs across Kazakhstan more generally.

In Almaty,¹³⁵ one child defendant commented:

“Did the lawyer explain to you your rights?”

Yes, but I didn’t understand.

Did the lawyer explain to you what would happen during the process?

No.

Did the lawyer ask you for your side of the story?

No.

Do you think your lawyer was a good lawyer?

Not so good.

Do you feel that your lawyer was/is committed to your case?

No.

Do/did you feel as if you could trust your lawyer?

No.”

Twenty percent of child defendants and parents of child defendants stated that their lawyer made them feel anxious about their case,¹³⁶ while another 20 percent responded that their lawyer appeared to be indifferent towards their case.¹³⁷

Legal aid is rarely available to parties involved in civil and administrative cases before the SICIMs.¹³⁸ In practice, this means that parties unable to afford a lawyer, as was usually the case in the administrative and civil cases observed, are left without legal advice and/or representation in court.¹³⁹ Not only does this undermine their access to justice and ability to receive a fair hearing, but can also have a detrimental impact on their performance in court:

“Do you think you were able to defend yourself adequately without a lawyer?”

Of course not. I was very excited all the time in court, and I couldn’t defend myself properly in court because of my lack of legal knowledge.”

“Were you able to say all the things you wanted to say?”

Of course, I didn’t say everything I wanted to.

Why not?

I didn’t speak much in the court because I wanted to leave the courtroom as quickly as possible and get away.”

“Did the judge listen to what you said and give it serious consideration?”

The judge was bound to listen to me, but I’m not sure that he considered my words too seriously.”

“Do you think you understood fully what was going on in court?”

I don’t think so because I couldn’t hear the judge properly, and I didn’t understand everything he said and read out.”

Lack of legal advice and representation in administrative hearings is particularly important following the adoption of the 2014 Administrative Offences Code. This gives the SICIMs increased sentencing powers – namely, to place parents/adult defendants under administrative arrest for certain categories of offence.¹⁴⁰

Lawyers involved in civil cases normally do not receive any pre-service or regular in-service specialist training on handling civil cases in the SICIMs.¹⁴¹

Results of the SICIM judges’ online survey highlight that pre-service and regular in-service specialist training of lawyers and prosecutors handling SICIM cases would be extremely beneficial. Almost two-thirds (58.6 percent) of SICIM judges who responded to the online survey responded that the introduction of specialist professional training for lawyers and prosecutors was necessary to improve the handling of SICIM cases. Moreover, 17.2 percent considered that prosecutors and lawyers lacked professional experience or requisite specialist knowledge and that this was a significant barrier to the effective handling of SICIM cases. As this is the view of almost one fifth of respondent SICIM judges, this is a matter of concern.

¹³⁵ Individual Interview, Child Defendant, Almaty SICIM, 2014.

¹³⁶ Individual Interview, Child Defendant, Almaty SICIM, 25 August 2014; Individual Interview, Parent of a Child Defendant, Almaty SICIM, 25 August 2014; Parent of a Child Defendant, Karaganda SICIM, 5 August 2014; Individual Interview, Parent of a Child Defendant, Karaganda SICIM, 26 August 2014; Individual Interview, Child Defendant, Ust-Kamenogorsk SICIM, 4 September 2014. Interviews did not aim to constitute a representative sample.

¹³⁷ Individual Interview, Child Defendant, Almaty SICIM, 19 August 2014; Individual Interview, Child Defendant, Almaty SICIM, 28 August 2014; Parent of a Child Defendant, Almaty SICIM, 26 August 2014; Individual Interview, Parent of a Child Defendant, Almaty SICIM, 28 August 2014; Individual Interview, Parent of a Child Defendant, Kyzylorda SICIM, 20 August 2014; Interviews did not aim to constitute a representative sample.

¹³⁸ Article 18 of the Civil Procedure Code provides that ‘everyone is entitled to receive qualified legal assistance in the course of civil proceedings in accordance with the provisions of this Code.’ Such legal assistance is only free in the cases stipulated by the law. For evidence of practice, see Representative of the Juvenile Consultation Unit, Almaty, 10 July 2014; Representative of the Juvenile Consultation Unit, Mangystau, 15 July 2014; Civil Lawyer, Aktau SICIM, 26 September 2014; Civil Lawyer 2, Almaty, 1 October 2014; Civil Lawyer 2, Astana, 18 September 2014; Parent 1, Administrative Case, Almaty SICIM, 14 August 2014.

¹³⁹ Civil Lawyer 1, Karaganda, 12 September 2014; Parent 7, Civil Case, Almaty, 3 September 2014; Parent 5, Civil Case, Almaty, 25 August 2014; Parent 1, Civil Case, Karaganda SICIM, 7 August 2014; Parent 3, Civil Case, Karaganda SICIM, 27 August 2014; Parent 3, Civil Case, Shymkent SICIM, 16 September 2014; Parent 2, Administrative Case, Almaty SICIM, 14 August 2014; Parent 1, Administrative Hearing, Semey, 25 August 2014; Parent 1, Administrative Hearing, Shymkent SICIM, 21 August 2014.

¹⁴⁰ See Section 4.2 for more details.

¹⁴¹ Civil Lawyer 1, Aktau, 25 September 2014; Civil Lawyer 2, Aktau SICIM, 26 September 2014; Civil Lawyer 1, Almaty, 1 October 2014; Civil Lawyer 2, Almaty, 1 October 2014; Civil Lawyer 1, Astana, 18 September 2014; Civil Lawyer 2, Astana, 18 September 2014; Civil Lawyer, Kyzylorda, 16 September 2014; Civil Lawyer 1, Ust-Kamenogorsk, 12 September 2014; Civil Lawyer 1, Karaganda, 12 September 2014; Civil Lawyer 2, Ust-Kamenogorsk, 17 September 2014.

RECOMMENDATIONS ON PROSECUTORS AND LAWYERS

- The General Prosecutor's Office and the Bar Association should develop specialized training programmes for their members working in the SICIMs.
- Prosecutor's Offices who have not as yet established specialized divisions for children or who do not have designated child prosecutors should be encouraged to do so.
- Defence lawyers representing children in the SICIMs could be restricted to those who have undergone specialist training on representing children.
- Extra legal aid payment could be made to criminal defence lawyers who have completed a specialist training course on representing children, to encourage a cadre of experienced and skilled defence lawyers to take on criminal cases involving child defendants in the SICIMs.
- Children who are the subject of an application under Chapter 33-1 of the Civil Procedure Code (regarding placement in a 'special school for children with offending behaviour' or 'institution with a special regime of detention') should have access to legal advice and legal representation from a lawyer trained in handling children's cases, without payment required.
- Access to legal aid could be extended to other categories of administrative and civil cases in the SICIMs, particularly to administrative cases in which the SICIM may impose the sanction of administrative arrest on the parent/adult defendant.

5.3. PSYCHOLOGISTS, PEDAGOGUES AND SOCIAL WORKERS

Psychologists, social workers and pedagogues play an integral role in ensuring that the best interests of the child remain the primary consideration throughout court proceedings, regardless of the child's age. They can do this by providing the child and their family with the necessary psychological and social support during court proceedings if the child is present, as well as by acting as an intermediary to facilitate child participation during court hearings (if the child is required and capable of providing testimony), by providing expert reports to the court on the circumstances and background of the child and/or their psychological state, and by providing expert opinions on the impact court measures may have on the child. For example, Rule 16 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)¹⁴² requires that in all criminal cases involving child defendants, adequate social services should be available to deliver social inquiry reports on the circumstances of the child and the offence, in order to assist the court in its decision on an appropriate sentence.

¹⁴²United Nations Standard Minimum Rules for the Administration of Juvenile Justice, Adopted by General Assembly resolution 40/33 of 29 November 1985.

5.3.1. PSYCHOLOGISTS AND PEDAGOGUES

SICIM judges were asked in the online surveys to indicate the frequency with which psychologists attend hearings in their SICIMs. Their responses are presented in Chart 12, below.

While the results indicate that the attendance of psychologists varies across the SICIMs, their attendance is noticeably low at administrative hearings.¹⁴³ This result is supported by data gathered during court observations; in 95.5 percent of administrative hearings observed, no psychologists were present.¹⁴⁴ However, respondent SICIM judges generally consider that, when psychologists are present during SICIM hearings, they play a valuable role.

As Chart 13 demonstrates, over half of respondent judges considered that psychologists were either very useful or extremely useful to their hearings. Responses by judges to individual interviews generally echoed this response. As one judge remarked, they are "very much needed – they are very important to the judge in helping him make a decision."¹⁴⁵ However, some judges

¹⁴³58.1 percent of respondents (18 of 31 respondents) stated that psychologists are rarely or never present.

¹⁴⁴Court observations did not aim to constitute a representative sample. Therefore, these figures are not necessarily representative of the sampled SICIMs or all the SICIMs across Kazakhstan more generally.

¹⁴⁵Individual Interview, Judge, Almaty SICIM, 10 July 2014. See also



considered that psychologists only play a 'passive' role and should be more active.¹⁴⁶ There are also varying accounts from SICIM judges of the quality of services provided by psychologists and the extent to which psychologists are prepared for court hearings.¹⁴⁷

The limited presence of psychologists at SICIM hearings may be explained by the fact that, under domestic law, their presence is not compulsory in all SICIM cases. There is no requirement under Kazakhstan's law for a psychologist to assist in all administrative cases in the SICIMs.¹⁴⁸ Rather, the participation of a 'psychologist' or 'pedagogue' is only required for the questioning of a child witness under 14 years of age.¹⁴⁹

Regarding criminal hearings, the presence of a

Individual Interview, Judge 1, Aktau SICIM, 23 September 2014; Individual Interview, Judge 2, Aktau SICIM, 23 September 2014.

¹⁴⁶ See for example, Individual Interview, Judge 2, [location of SICIM withheld], [undated].

¹⁴⁷ Some SICIM judges stated that psychologists were well prepared for court hearings and provided good quality services (see for example Individual Interview, Judge 1, Aktau SICIM, 23 September 2014). Some stated that psychologists provided services of satisfactory quality and were satisfactorily prepared for court hearings (see for example Individual Interview, Judge 1, [location of SICIM withheld], 17 September 2014) and some stated that psychologists' services were of poor quality and that they were not well prepared for court hearings (Individual Interview, Judge 1, [location of SICIM withheld], [undated]).

¹⁴⁸ A psychologist may, however, be appointed to an administrative case under general provisions relating to the appointment of specialists; Administrative Offences Code, Article 756.

¹⁴⁹ Administrative Offences Code, Article 754(6).

psychologist or teacher is only compulsory 'when performing procedural acts with the participation of a juvenile suspect/accused/defendant' who is under the age of 16 years, or a juvenile suspect/accused/defendant who has reached 16 years of age but who 'has the symptoms of delay in his/her psychic development'.¹⁵⁰ However, even where a child defendant is under 16 years of age, a minority of judges stated that a psychologist is not always present at all hearings, as they considered that it is not required by law.¹⁵¹

Similarly, the law does not require that a social inquiry report be provided to assist the judge in making sentencing decisions in criminal cases. The Criminal Procedure Code only requires a comprehensive psychological and psychiatric expert evaluation to decide whether a juvenile suspect/accused has the capacity to realise the meaning of and control their actions and whether they have a psychiatric illness.¹⁵² This requirement appears to be due to the fact that

¹⁵⁰ Criminal Procedure Code 2014, Articles 538(1) and 542(4) (or Article 488 of the former Criminal Procedure Code). For cases concerning a child defendant over the age of 16 years, the teacher or psychologist may be admitted at the discretion of the investigator or court (as relevant) or pursuant to a petition by the defence counsel or legitimate representative (Criminal Procedure Code 2014, Article 538(2)).

¹⁵¹ Individual Interview, Judge 1, [location of SICIM withheld], 19 September 2014; Judge 2, [location of SICIM withheld], 19 September 2014, Judge 1, [location of SICIM withheld], 22 September 2014.

¹⁵² Criminal Procedure Code, Article 539(1).

Chart 12.

SICIM judges' responses on the frequency with which psychologists attend SICIM hearings

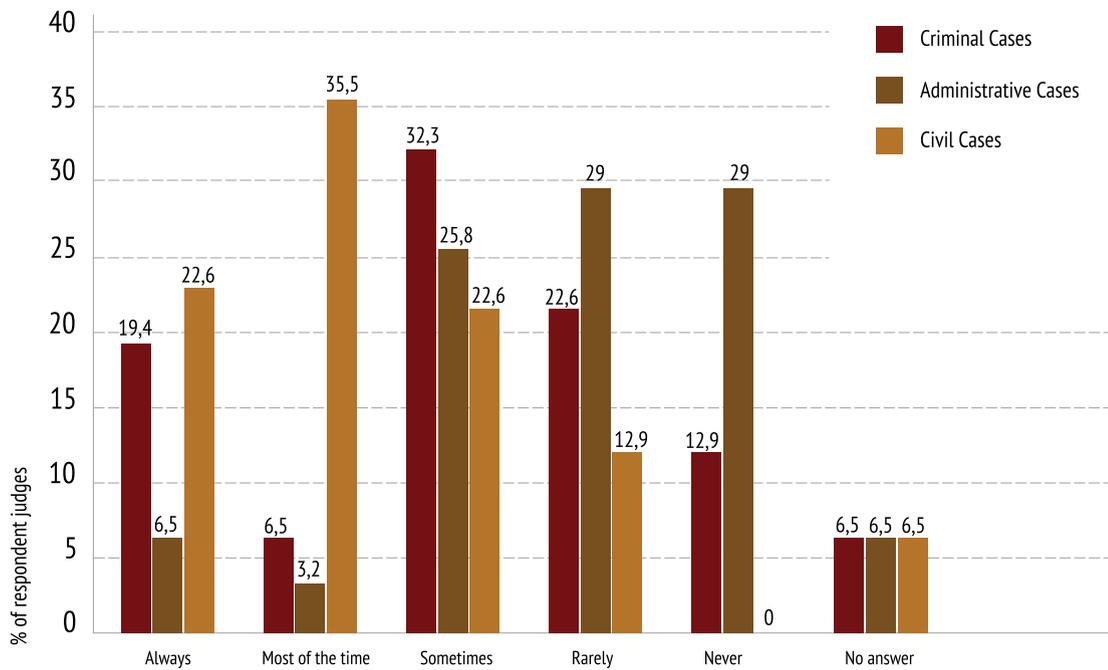
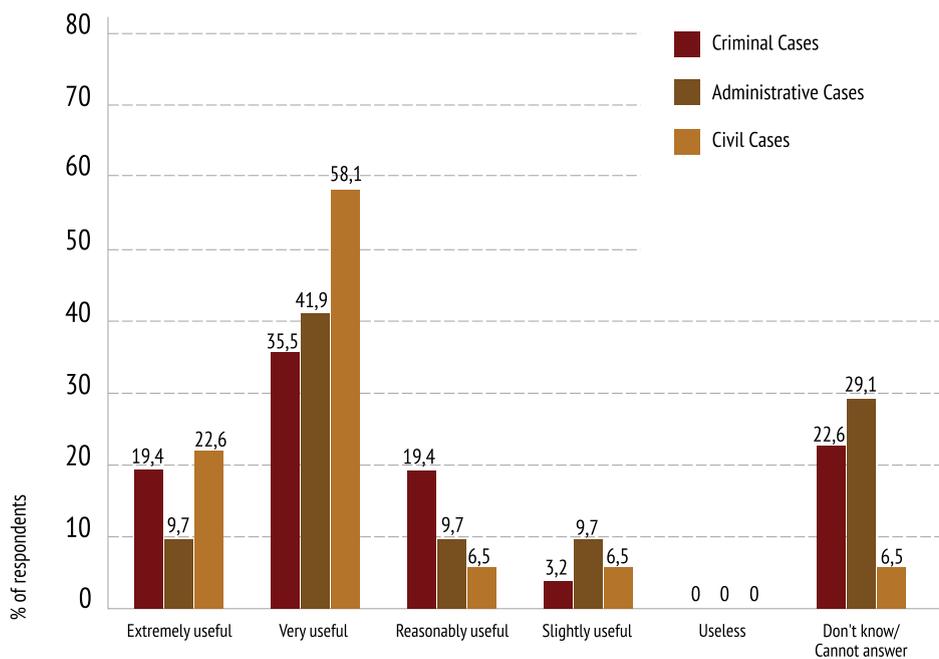


Chart 13.

Views of respondent SICIM judges on usefulness of psychologist support during court hearings (source: online surveys)



Article 15(3) of the 2014 Criminal Code provides an exemption from criminal liability for children who have reached the minimum age of criminal responsibility but, due to delay in mental development not associated with a mental disorder, are believed (at the time of committing the criminal act) to lack full awareness of the nature and social danger of his/her actions or inaction, or are believed to be unable to control actions. Otherwise, it is within the court's discretion to order a psychological expert evaluation of a child.¹⁵³ However, the law is unclear on how such psychological reports

should factor into the court's decision-making and how much weight the court is required to give to views and/or recommendations expressed within such reports (see 'Decision-making' in Section 6.12.2 for more details).

In civil cases, Kazakhstan's law requires that a 'teacher' must attend the questioning of a witness under the age of 14 years and, at the court's discretion, the questioning of a witness aged between 14 and 16 years.¹⁵⁴ The teacher may ask the witness questions.¹⁵⁵ In practice, based on the civil cases observed for this

¹⁵³ Criminal Procedure Code, Article 539(2).

¹⁵⁴ Civil Procedure Code, Article 199(1).

¹⁵⁵ Civil Procedure Code, Article 199(1).

study, when a child under the age of 14 years provides testimony in court, a teacher (or psychologist) is not always present.¹⁵⁶

Respondent judges reported that they are guided by varying principles when deciding whether or not to appoint a teacher or psychologist to a court hearing.¹⁵⁷ This may contribute to varying practices among respondent judges in this area. Furthermore, not all of the sampled SICIMs have a psychologist attached to the court.¹⁵⁸ Over half of the SICIM judges who responded to the online survey considered that a lack of psychologists and social workers is a significant barrier to the effective handling of cases in their court.¹⁵⁹

However, the Supreme Court has also, reportedly, been taking steps since June 2014 to ensure that each SICIM has an attending psychologist or a psychologist from an external organization that can assist the SICIM on a part-time basis.¹⁶⁰ Certain NGOs state that they provide psychological services to the SICIMs. These include the «Institute of Equal Rights & Equal Opportunities in Kazakhstan» in Almaty, the «Positive Development» Private Institution in Karaganda, and «Sana Sezim» in Shymkent.

There is a need and general desire among participants for clarity on the role and procedures relating to psychologists.¹⁶¹ Even when psychologists are present at SICIM hearings, their role appears to vary. In some courts they are asked to provide the court with general information on the child's background

and living situation but the court does not draw on their professional psychological expertise. In some courts, psychologists are asked for their opinion on the appropriate outcome of the case for the child or family.¹⁶² Not all psychologists provide help to a child in the absence of a defence lawyer or other appropriate person, and interviews indicate that they do not all see it as their role to assist a child to participate in the hearing.¹⁶³

Under Kazakhstan's law, psychologists are not required to have received pre-service or regular in-service specialist training on handling children's cases in order to work on cases before the SICIMs. The vast majority of psychologists interviewed had not received any specialist pre-service training or any in-service training over the previous 12 months. There is a clear need and general desire for such training, including on the role of the psychologist in the court and best practices.¹⁶⁴

A representative of the local education authority may also attend SICIM hearings as a psychologist.¹⁶⁵ Few representatives of the Ministry of Education (MoE) or of local education authorities participated in this study but, based on their feedback, they have not received any specialist pre-service or in-service training in handling children's cases.¹⁶⁶

5.3.2. SOCIAL WORKERS

SICIM judges were asked in the online surveys to indicate the frequency with which social workers attend hearings in their SICIMs. Their responses are presented in Chart 14, below.

As is the case with psychologists, the attendance of social workers varies across the SICIMs, although it is particularly low in administrative cases.¹⁶⁷ Similar results were obtained from court observations; no social worker was present at any observed administrative hearing. However, in administrative cases, juvenile inspectors sometimes play a role similar to that of a social worker, including informing the court about the child's background and living situation.¹⁶⁸

¹⁵⁶ See for example Civil Hearing, [location of SICIM withheld], August 2014 (concerning deprivation of parental rights); Civil Hearing, [location of SICIM withheld], August 2014 (concerning custody of the child).

¹⁵⁷ For example, regarding criminal hearings involving a child defendant, one judge stated that it depended on the presence of the legal representative (Individual Interview, SICIM Judge, [location of SICIM withheld], 22 September 2014), another stated that it depended on the child's interests and behavior (Individual Interview, SICIM Judge, [location of SICIM withheld], 23 September 2014); another stated it depended on the child's age (Individual Interview, SICIM Judge, [location of SICIM withheld], 23 September 2014); another stated that he appoints the teacher/psychologist when it is required by law and 'when needed' (Individual Interview, SICIM Judge, [location of SICIM withheld], 16 September 2014); another stated that he appoints a psychologist 'in cases of lack of evidence' (Judge 1, [location of SICIM withheld], 21 August 2014).

¹⁵⁸ Based on feedback from individual interviews, the following sampled SICIMs have at least one psychologist or social worker attached to the court: Aktau SICIM, Astana SICIM and Karaganda SICIM (see Individual Interview, SICIM Judge 1, Aktau SICIM, 23 September 2014; Individual Interview, SICIM Judge, Astana SICIM, 21 August 2014; and Individual Interview, Judge 1, Karaganda SICIM, 19 September 2014). The following sampled SICIMs do not have a psychologist or social worker attached to the court: Almaty SICIM, Kyzylorda SICIM, Shymkent SICIM and Ust-Kamenogorsk SICIM (see Individual Interview, SICIM Judge, Almaty SICIM, 22 September 2014; Individual Interview, SICIM Judge, Kyzylorda SICIM, [undated]; Individual Interview, Judge 1, Shymkent SICIM, 17 September 2014; Individual Interview, Judge 1, Ust-Kamenogorsk SICIM, 16 September 2014).

¹⁵⁹ See Chart 16, below.

¹⁶⁰ Comments of the Supreme Court, Analysing and Planning Department, 12 January 2014.

¹⁶¹ Individual Interview, Kyzylorda Regional Society for the Protection of Consumer Rights, 23 September 2014.

¹⁶² See for example: Individual Interview, Psychologist, Almaty SICIM, 29 September 2014; Individual Interview, Psychologist, Astana SICIM, 18 September 2014; Individual Interview, Judge 2, Karaganda SICIM, 19 September 2014; Civil Hearing, Astana SICIM, 21 August 2014; Civil Hearing, Semey SICIM, 5 September 2014.

¹⁶³ See for example, Individual Interview, Psychologist, Aktau SICIM, 23 September 2014; Individual Interview, Psychologist, Almaty SICIM, 29 September 2014; Individual Interview, Judge, Almaty SICIM, 10 July 2010; Individual Interview, President of the «Institute of Equal Rights & Equal Opportunities in Kazakhstan», Almaty, 29 September 2014; Individual Interview, Director of the «Positive Development» Private Institution, Karaganda, 19 September 2014.

¹⁶⁴ See for example, Psychologist 1, Ust-Kamenogorsk SICIM, 17 September 2014; Prosecutor 2, Kyzylorda SICIM, [undated]; Defence Lawyer 3, Kyzylorda SICIM, [undated].

¹⁶⁵ Representative 1, Education authorities, Kyzylorda, 11 September 2014; Representative 2, Education authorities, Kyzylorda, 9 September 2014.

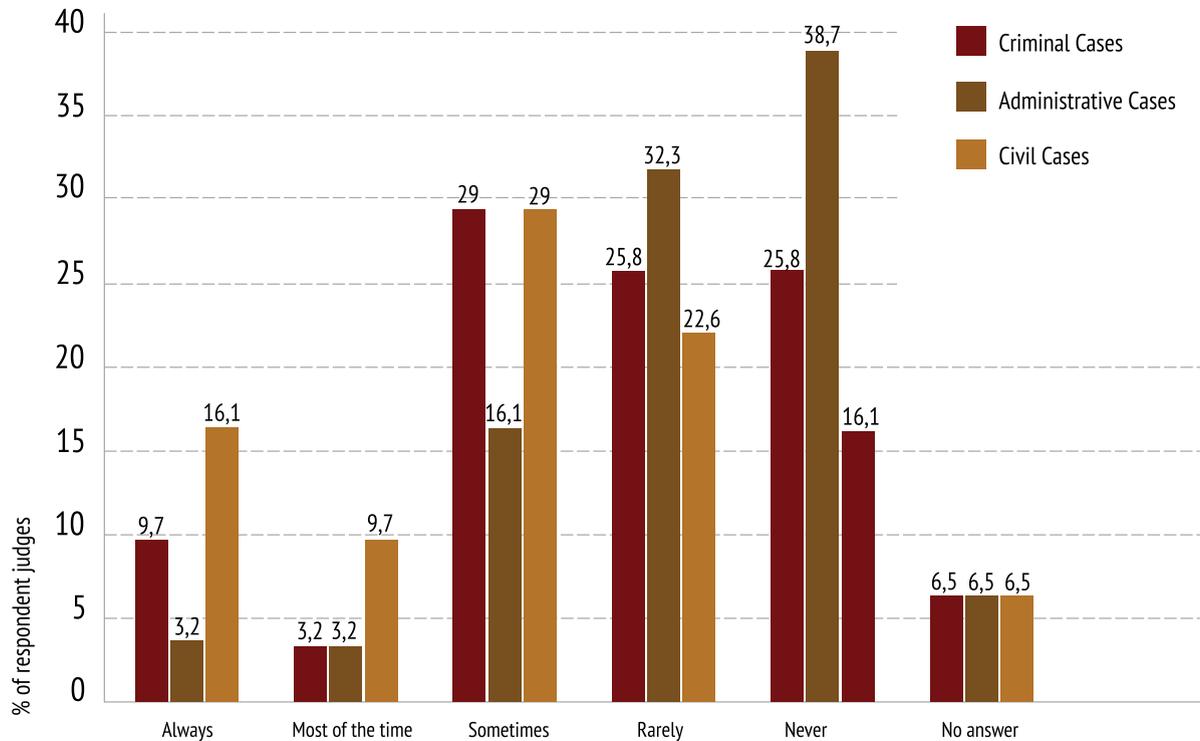
¹⁶⁶ Representative of Education authorities, Aktau, 23 September 2014.

¹⁶⁷ 71.0 percent of respondents stated that social workers are rarely or never present.

¹⁶⁸ Parent 2, Administrative Case, Almaty SICIM, 14 August 2014.

Chart 14.

SICIM judges' responses on the frequency with which social workers attend SICIM hearings



The low rate of attendance of social workers in administrative cases is regrettable; as highlighted in Section 4.2 many of these cases concern parents who have problems with managing the behaviour of their child or who are neglecting their child. A social worker report and feedback could be very helpful to the judge in such cases. This is reflected in feedback obtained from parents involved in such cases. In the following example, a parent describes how a lawyer could have helped her case, although the role she describes would naturally fall within the expertise of a social worker:

“Do you think the result would have been different if you had had a lawyer?”

Certainly, I think that the lawyer could have informed the court in more detail about my social and financial position. He could have informed the court that I’m a single-parent family, and that I’ve been bringing up my son alone without a husband since his birthday, and that I have certain hardships. Now, I’m supposed to pay a large fine.”¹⁶⁹

Kazakhstan’s law does not require that a qualified social worker should be involved in cases before the SICIMs, which may account for their low presence at SICIM hearings. Kazakhstan’s law *does* require that the opinion of a child aged 10 years or more is considered in the resolution of any family matter, or judicial or administrative trial affecting his/her interests, except for cases where this is in conflict with these interests: an opinion which must be registered by the Guardianship Authority.¹⁷⁰ However, the law does not stipulate that

¹⁶⁹ Individual Interview, Parent in Administrative Hearing, [location of SICIM withheld], August 2014.

¹⁷⁰ The law requires that the opinion is accepted in the presence

the representative of the Guardianship Authority must be a qualified social worker specially trained in handling children’s cases.

In practice, based on observations of civil cases in sampled SICIMs, although there is usually a representative of the Guardianship Authority or of a child protection authority present during civil hearings,¹⁷¹ it is unclear whether such persons are qualified social workers. They appear to perform similar functions to psychologists, but there is little clarity over their respective roles in SICIM cases. Feedback also indicates that they are not always experienced in handling children’s cases or always well prepared for hearings.¹⁷² It appears that this is partly due to a shortage in numbers.¹⁷³ Several participants stated that they did not feel that the Guardianship Authority was useful to their case or instilled them with confidence.¹⁷⁴

Social workers were generally rated as slightly less useful than psychologists in the SICIM online survey. This may be because they require further training and are not sufficiently experienced to perform their role effectively. Nevertheless, it is clear that this form of support is regarded as useful to the court, as indicated by the results in Chart 15, below.

of parents or of another legitimate representative at the child’s location.

¹⁷¹ Based on court observations of civil hearings in sampled SICIMs. The presence of a representative from the Guardianship Authority is compulsory by law in certain categories of cases, such as civil cases concerning the deprivation of parental rights (Family Code, Article 79(4)).

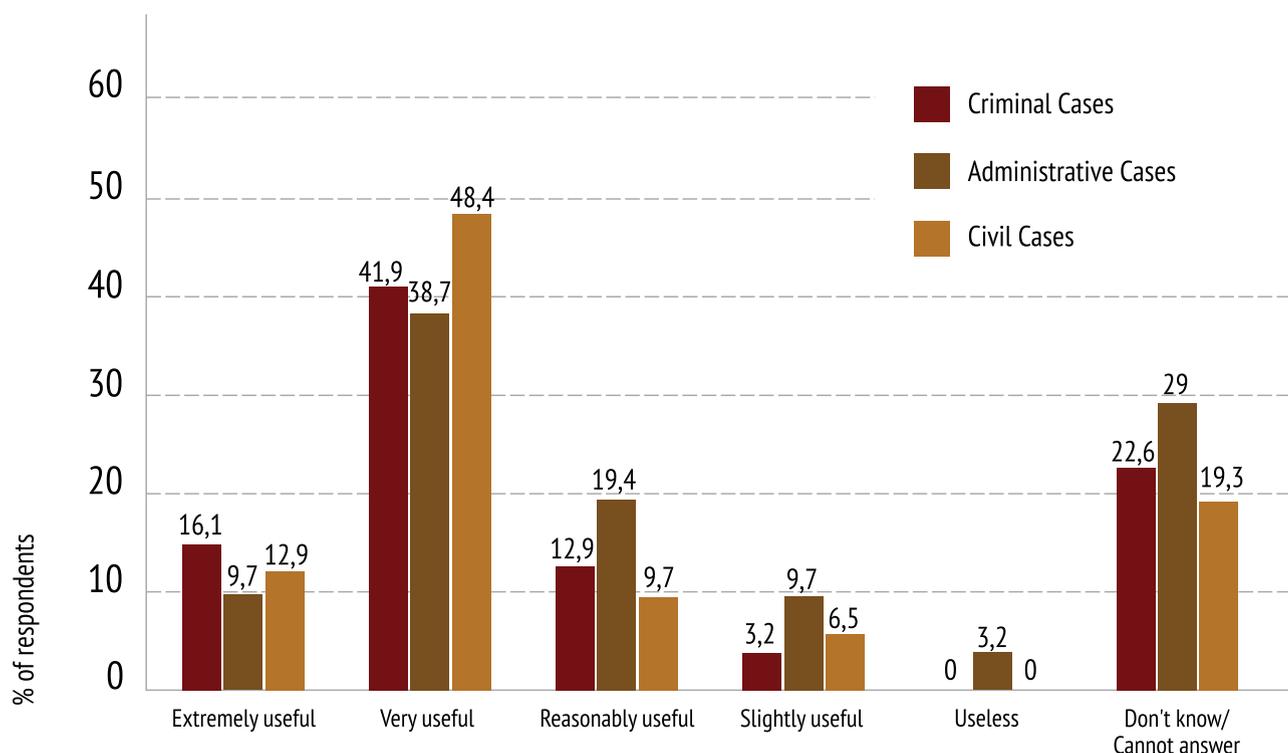
¹⁷² Civil Lawyer 1, Almaty SICIM, 1 October 2014; Parent 3, Civil Case, Almaty SICIM, 18 August 2014.

¹⁷³ Civil Lawyer 1, Almaty SICIM, 1 October 2014.

¹⁷⁴ Parent 6, Civil Case, Almaty SICIM, 27 August 2014.

Chart 15.

Views of respondent SICIM judges on usefulness of social worker support during court hearings



RECOMMENDATIONS ON PSYCHOLOGISTS, PEDAGOGUES AND SOCIAL WORKERS

- Provide detailed guidance on the separate functions of social workers, psychologists and pedagogues in SICIM cases.
- Consider appointing at least one full-time social worker to each SICIM, to be available in any case handled by the court, including administrative cases.
- Consider progressively increasing the number of clinical child psychologists appointed to work in the SICIMs, so that a clinical child psychologist is available free of charge to provide psychological expertise and support where required by the SICIM.
- Require that a social inquiry report on the child is provided by a social worker/psychologist in juvenile justice and administrative cases in the SICIMs, particularly before deciding upon the sentence (for more details, see 'Sentencing', below).
- Ensure that social workers, psychologists, pedagogues and representatives of the Guardianship Authority receive compulsory specialist training on handling children's cases before they are able to take on cases in the SICIMs, and receive compulsory regular in-service training to ensure that their skills and knowledge remain up to date.



6. PROCEDURES AND PRACTICES OF THE SICIMS

6.1. PHYSICAL ACCESS TO THE SICIMS

The SICIMs represent a significant move towards implementing the CRC. However, the fact that there is only one SICIM in most regions¹⁷⁵ poses a logistical problem of access. In several cases observed for this study, children and families whose cases went before the SICIMs had to travel a considerable geographical distance to reach their city or region's SICIM. For example, one juvenile defendant interviewed in Aktau city had travelled 270km to attend his court hearing.¹⁷⁶ The journey to and from the SICIM took approximately six hours and the travel expenses fell upon his family.¹⁷⁷ Similarly, in Ust-Kamenogorsk, a boy and his mother were required to travel for almost three hours by bus, to and from the SICIM, for a 10-minute administrative hearing.¹⁷⁸ One woman travelled 10 hours by train to attend her administrative hearing.¹⁷⁹ A parent in Shymkent travelled 230-250km to attend an administrative hearing.¹⁸⁰ One judge remarked that

¹⁷⁵ Almaty, East Kazakhstan and Karaganda regions each have two SICIMs.

¹⁷⁶ Group Interview, Child Defendant and Parent, Mangystau SICIM, 15 July 2014.

¹⁷⁷ Group Interview, Child Defendant and Parent, Mangystau SICIM, 15 July 2014.

¹⁷⁸ Group Interview, Child and Parent involved in an Administrative Case, Ust-Kamenogorsk SICIM, 15 July 2014.

¹⁷⁹ Individual Interview, Parent in Administrative Case, Kyzylorda, 11 September 2014.

¹⁸⁰ Individual Interview, Parent 1, Administrative Hearing, Shymkent SICIM, 21 August 2014.

parties to a case may live up to 800km away from the SICIM.¹⁸¹

The geographical difficulties posed by having a limited number of SICIMs pose some challenges to the efficient functioning of the court. The majority of respondent SICIM judges considered that the failure of defendants or witnesses to attend hearings or trials when summoned was a significant barrier to the effective handling of cases in court,¹⁸² while almost a fifth of judges considered that the absence of parents at hearings or trials was a significant barrier to the effective handling of cases.¹⁸³ The long distances travelled by parties appear to be a primary cause for delay.¹⁸⁴

Steps are being taken in Kazakhstan to address these logistical challenges. One SICIM judge stated that, to overcome this issue, for the past two and a half years, it has been routine practice in their court to conduct administrative hearings in the defendant's

¹⁸¹ Individual Interview, Judge, Ust-Kamenogorsk SICIM, 18 July 2014.

¹⁸² 58.6 percent of the SICIM judges replying to online surveys considered that this was the case in respect of defendants, while 51.7 percent believed it to be true in respect of witnesses.

¹⁸³ 17.2 percent; Alimbekova G., National Expert, Report on the Results of Survey among Judges in Specialized Inter-district Juvenile Courts, p. 10.

¹⁸⁴ For example, Individual Interview, Judge 1, Karaganda SICIM, 19 September 2014; Individual Interview, Judge 1, Kyzylorda, [undated]; Individual Interview, Prosecutor 2, Karaganda SICIM, 19 September 2014.

RECOMMENDATIONS RELATING TO ACCESS TO THE SICIMS

- There should be a progressive increase in the number of SICIMs, to offer better public access to this court.
- During this period of progressive increase in the number of SICIMs, other courts could be designated with SICIM status as needed, to hear a case falling under SICIM jurisdiction.
- Judges trained in child rights, juvenile justice and child protection, should be available at every court designated as an SICIM, to ensure that the case is handled by a judge specialized in handling children's cases. This could be achieved by enabling any SICIM judge to travel to any court designated with SICIM status, for the purpose of hearing cases within SICIM jurisdiction.

absence, with the defendant's consent.¹⁸⁵ Consultants do not consider this to be an appropriate solution, as the defendant's presence in court is fundamental to ensuring a fair hearing, particularly as they are not normally represented by a lawyer in administrative cases.¹⁸⁶

Some SICIMs conduct online hearings to address the difficulties of parties attending the court in person. For example, consultants observed an adoption (civil) case in the SICIM in Ust-Kamenogorsk, which was conducted online. Only the judge and the prosecutor were present in the courtroom. The applicant, the applicant's partner (an 'interested party' in the adoption case) and a representative from the Guardianship and Custodianship Authority and from the education authorities participated remotely, using video conferencing.¹⁸⁷ Although no technical challenges were encountered during the online hearing, no children were in attendance; this made it impossible to review the extent to which children are able to effectively participate in online hearings. However, generally speaking, online hearings can be more difficult for the judge to manage, particularly when a child is party to the case and it is necessary to facilitate their participation in a child-friendly environment (see Section 6.5 on 'Child participation' for more details).

In certain circumstances, cases before the SICIMs may be considered by another court. If there is no SICIM in a particular administrative territory, administrative and civil cases which fall within the SICIM's jurisdiction can be considered by the district (city) courts,¹⁸⁸ or 'district or equated' court,¹⁸⁹ respectively. Criminal cases falling within the jurisdiction of the SICIM may be transferred to another court of the same level in 'individual cases, for the most rapid, comprehensive and fair consideration of the case, at the request or with the consent of the parties', or, at the petition of a party to

the case or recommendation of the judge or chairman of the court, 'if the court is unable to consider the case because of circumstances which prevent all the judges of the court from participating in the proceedings, and to ensure comprehensive and fair consideration of the case, or... due to a real threat to the personal safety of participants in the judicial proceedings'.¹⁹⁰

The law does not specify that the court to which an SICIM case is transferred must be an SICIM or that the judge handling the case be a specialist judge in handling children's matters. Indeed, general feedback provided by judges representing each of the 19 SICIMs in Kazakhstan was that such an approach would undermine (or undo) the last decade's efforts to develop specialist children's courts and judges.¹⁹¹ Overwhelming feedback from participants was that the main benefit of the SICIMs was the development of a specialist forum for handling children's cases, where particular expertise is required.¹⁹²

SICIM judges have begun using the above-mentioned mechanism to conduct hearings in courts that are located closer to the parties involved.¹⁹³ Some SICIM judges have noted that this approach may not always be the most cost effective or efficient, where the judge is required to travel long distances for a relatively short hearing.¹⁹⁴ However, SICIM judges responded positively to the prospect of scheduling remote hearings, allowing an SICIM judge to spend, for example, one week in a particular location, handling a list of cases in one trip. Temporarily designating the court in which the remote hearing is held as an SICIM for the duration of the hearing would ensure that the court remains child-friendly and facilitates child participation, in line with international standards (see analysis and recommendations on 'Courtroom environment' in 6.9).

¹⁹⁰ Criminal Procedure Code 2014, Article 317.

¹⁹¹ Judicial Seminar attended by CCLC and a judge from each of the 19 SICIMs in Kazakhstan, Astana, 31 October 2014.

¹⁹² See Section 4.4 on 'Views on the Establishment and Mandate of the SICIMs' for more details.

¹⁹³ Judicial Seminar attended by CCLC and a judge from each of the 19 SICIMs in Kazakhstan, Astana, 31 October 2014.

¹⁹⁴ Judicial Seminar attended by CCLC and a judge from each of the 19 SICIMs in Kazakhstan, Astana, 31 October 2014.

¹⁸⁵ Judge 1, [location of SICIM withheld], [undated].

¹⁸⁶ See 'Child participation' and 'Decisions without delay' for more details.

¹⁸⁷ Civil Hearing Observation, Ust-Kamenogorsk SICIM, 18 July 2014.

¹⁸⁸ Administrative Offences Code, Note to Article 682.

¹⁸⁹ Civil Procedure Code, Note to Article 30(1-3).

6.2. INTERNAL CASE MANAGEMENT AND CO-ORDINATION

Managing courts and caseloads presents a challenge worldwide. Around 94 percent of SICIM judges responding to the online survey considered that there were significant barriers to the effective handling of court cases. They also proposed changes to strengthen the effective handling of such cases.¹⁹⁵ Results are summarised in Charts 16 and 17, below.

As indicated in Chart 16 around a quarter (27.6 percent) of respondent SICIM judges considered that the SICIMs had such a large number of cases that this caused a significant obstacle to effective handling of court cases. This challenge is exacerbated by a perceived shortage of personnel in the SICIMs. Almost half (44.8 percent) of respondent SICIM judges considered that increasing the number of judges was necessary to improve the effective handling of court cases. Furthermore, over a third (34.5 percent) considered that the shortage of court clerks and other administrative staff was also a significant barrier to effective handling of cases. Judges provided similar feedback during individual and group interviews.¹⁹⁶

Effective co-ordination and management between various stakeholders involved in SICIM cases is crucial, to minimize delay and the risk of trauma to a child, from coming into contact with the judicial system. Each child should receive requisite support at all relevant stages of the judicial process. During their individual interview, some judges highlighted the need to strengthen the management and co-ordination of cases in their SICIM.¹⁹⁷ Some, but not all, of the sampled SICIMs have established committees at which judges and other stakeholders can discuss case management issues and other general matters relating to SICIM cases, such as causes of child offending or delinquency (for example, truancy).¹⁹⁸

Generally, such committees, particularly interdisciplinary committees representing various sectors involved in SICIM cases, serve as a forum to discuss and address issues relating to effective case management and other such obstacles to efficiency. They allow discussion of new legislation likely to affect SICIM work, and encourage exchange of best practice in the

handling of SICIM cases. Such committee's remit would not extend to discussion of the merits of individual cases, but rather would be solely concerned with the management of cases more generally.

Feedback from interview participants highlights a desire for strengthened co-ordination mechanisms and collaboration between the SICIMs and juvenile justice, administrative and child protection bodies, including through the introduction of practice guidelines and related multi-disciplinary training.¹⁹⁹ Such guidelines are particularly important, as a child involved in an SICIM case may be required to meet several different representatives from various law enforcement agencies, causing the child stress.²⁰⁰

Guidelines should provide guidance on who needs to be involved in a case and when, to ensure that no unnecessary interactions occur. Feedback from interview participants also indicates differing practices on steps they would take if they thought that a child involved in one of their SICIM cases was at risk of harm, or had been harmed (either within his/her own family or by the authorities). The introduction of practice guidelines and related training would be a step towards developing uniform child protection referral practices, ensuring that the child receives the necessary services to ensure his/her protection.²⁰¹

¹⁹⁵ 29 of 31 respondent SICIM judges to the online survey reported significant barriers to effective handling of cases; the remaining two did not answer this question.

¹⁹⁶ See for example, Individual Interview, Judge, Kyzylorda SICIM, [undated].

¹⁹⁷ Individual Interview, Judge 1, Karaganda SICIM, 19 September 2014; Individual Interview, Judge 2, Karaganda SICIM, 19 September 2014; Individual Interview, Judge 1, Ust-Kamenogorsk SICIM, 16 September 2014.

¹⁹⁸ For example, such a committee is reportedly in place in the Aktau SICIM (Individual Interview, Judge 1, Aktau SICIM, 23 September 2014; Individual Interview, Judge 2, Aktau SICIM, 23 September 2014) but not in the Almaty SICIM (Individual Interview, Judge, Almaty SICIM, 22 September 2014), the Astana SICIM (Individual Interview, Judge, Astana SICIM, 21 August 2014), the Karaganda SICIM (Individual Interview, Judge, Karaganda SICIM, 19 September 2014) or the Ust-Kamenogorsk SICIM (Individual Interview, Judge 1, Ust-Kamenogorsk SICIM, 16 September 2014).

¹⁹⁹ Judge 1, Ust-Kamenogorsk SICIM, 16 September 2014; Judge 2, Ust-Kamenogorsk SICIM, 16 September 2014; Prosecutor 1, Kyzylorda SICIM, 9 September 2014; Judge 1, Kyzylorda SICIM, [undated transcript]; Judge 2, Kyzylorda SICIM, [undated transcript]; Prosecutor in Administrative Cases, Karaganda SICIM, 18 August 2014.

²⁰⁰ NGO Representative, Kyzylorda, 23 September 2014.

²⁰¹ Responses included referring the matter to the prosecutor (Defence Lawyer 2, Aktau SICIM, 26 September 2014), the Guardianship Authority (Judge 1, Almaty SICIM, 22 September 2014), and 'issuing an order for temporary settlement into a specialized institution' (Prosecutor 1, Kyzylorda).

Chart 16.

Views of respondent SICIM judges on significant barriers to effective handling of cases

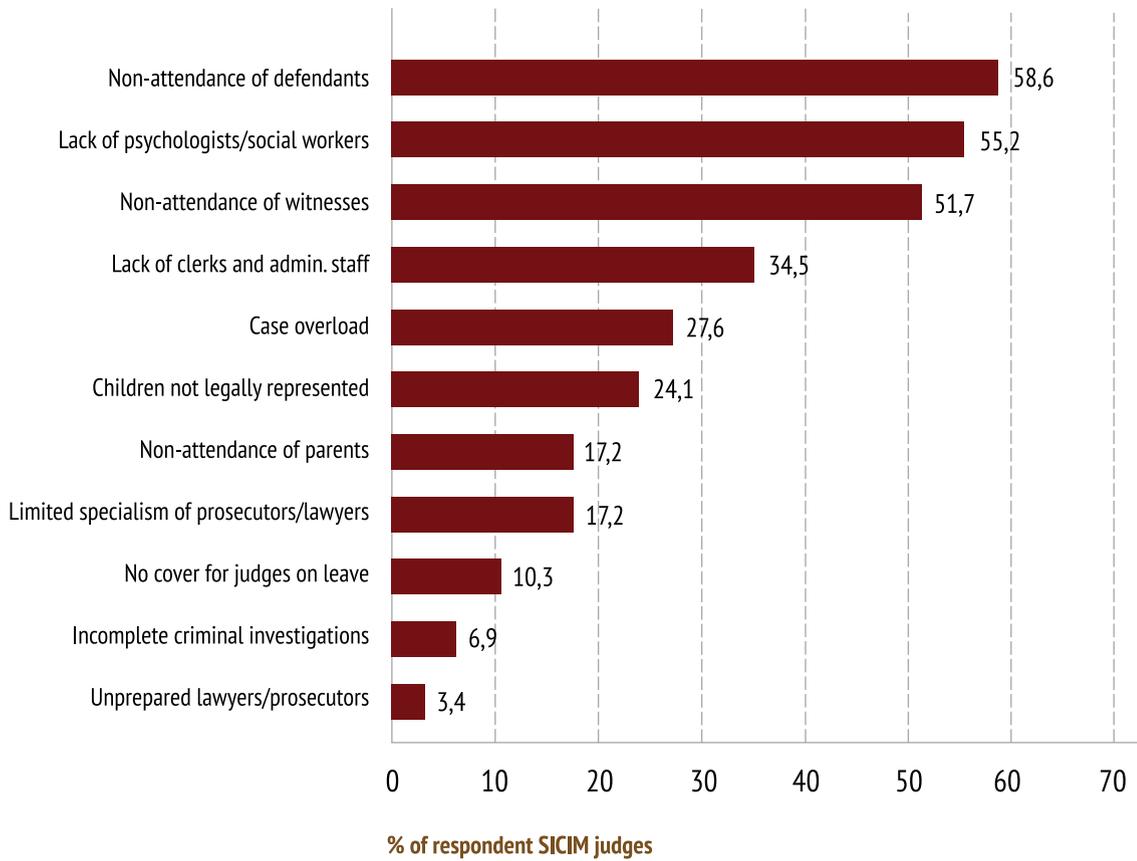
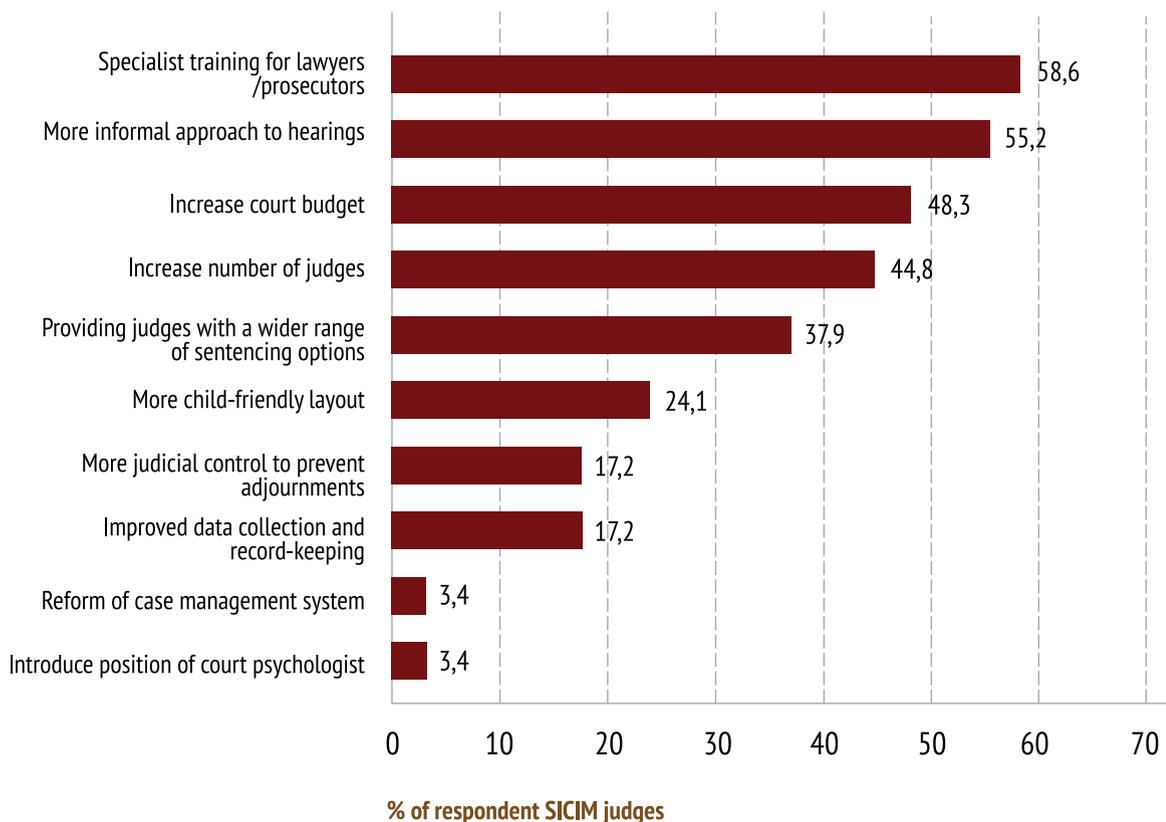


Chart 17.

Views of respondent SICIM judges on changes needed to improve the effective handling of court cases



- The development and implementation of recommendations on diversion and the handling of administrative cases could significantly reduce the number of cases referred to the SICIMs (see above and below for more details), alleviating the backlog of court cases. However, it is also recommended that each SICIM establish an inter-disciplinary court management committee to address issues of case management and obstacles to the effective handling of SICIM cases. It is recommended that each committee include an SICIM judge, and regional representatives from the Prosecutor's Office, Bar Association, police, and education authorities, as well as a psychologist and social worker, and representatives from any NGOs in the area working on diversion.
- It is recommended that SICIM judges should go 'on circuit' – travelling to other geographic areas in the region at regular intervals, to hear cases in a district court designated as an SICIM for this purpose (but not permanently staffed as an SICIM).
- Multi-stakeholder practice guidelines are needed, as is training to strengthen co-ordination between the SICIMs and juvenile justice, administrative and child protection bodies, particularly in cases where child protection referral may be needed.

6.3. ACCESS TO LEGAL ASSISTANCE

International standards enshrine the right of a child to legal assistance from the point of apprehension until completion of criminal proceedings.²⁰² Article 14(3)(d) of ICCPR requires that such legal assistance should be provided to the child free of charge if the child or parents cannot afford a lawyer.²⁰³ This right applies to both children in conflict with the law and adults who are on trial for a crime allegedly committed during their own childhood.

The Code on Criminal Procedure enshrines the right of a child suspect to a defence counsel from the time of his/her first interrogation and, in the case of apprehension, from the moment of apprehension.²⁰⁴ In particular, the participation of defence counsel during court sessions is compulsory.²⁰⁵ If the child does not have a defence counsel, the pre-trial investigator, prosecutor or court must ensure that a defence counsel is appointed.²⁰⁶ However, under Article 530(3)(2) of the Criminal Procedure Code, juvenile justice procedure rules do not apply to suspects/accused/defendants/convicted persons who have reached the age of majority at the time of court proceedings, contrary to international standards.

In practice, in the vast majority of criminal hearings, a lawyer represents the child. Of 26 child defendants involved in criminal hearings observed for this study, 24 (92.3 percent) were represented by a lawyer; in one

of the remaining cases, the child's parent appeared to act as the child's defence counsel; in the other case, it is unclear whether a lawyer was present. However, only 75 percent of the child defendants and their parents reported that their defence lawyer attended *all* court hearings, although they did not specify whether those hearings were adjourned due to the lawyer's absence. Indeed, approximately a quarter of SICIM judges responding to the online survey considered that the absence of a defence counsel for children at a hearing was a significant barrier to the effective handling of court cases (see Chart 16).

Responses indicated that children in conflict with the law do not, however, always receive legal assistance from a lawyer upon being apprehended or before being questioned by the police. While the majority of defence lawyers reported generally meeting the child defendant for the first time before they were questioned by the police,²⁰⁷ some stated that they usually met the child for the first time at a later stage, namely, when the child had been placed in a detention facility, or before the first court hearing.²⁰⁸ Juvenile defendants and their parents provided similar responses, as set out in Chart 18.²⁰⁹

²⁰² CRC, Articles 37 and 40(2)(b)(ii); ICCPR, Article 14(3)(d); See also Para 16, Vienna Guidelines; Para 49, UN Committee on the Rights of the Child, General Comment No. 10 (2007) Children's Rights in Juvenile Justice; Para 4.4, Guidance for Legislative Reform on Juvenile Justice, UNICEF and the Children's Legal Centre, May 2011.

²⁰³ CRC, Articles 37 and 40(2)(b)(ii); ICCPR, Article 14(3)(d); See also Para 16, Vienna Guidelines; Para 49, UN Committee on the Rights of the Child, General Comment No. 10 (2007) Children's Rights in Juvenile Justice; Para 4.4, Guidance for Legislative Reform on Juvenile Justice, UNICEF and the Children's Legal Centre, May 2011.

²⁰⁴ Criminal Procedure Code, Article 536.

²⁰⁵ Criminal Procedure Code, Article 542(2).

²⁰⁶ Criminal Procedure Code, Articles 67(3) and 536(3).

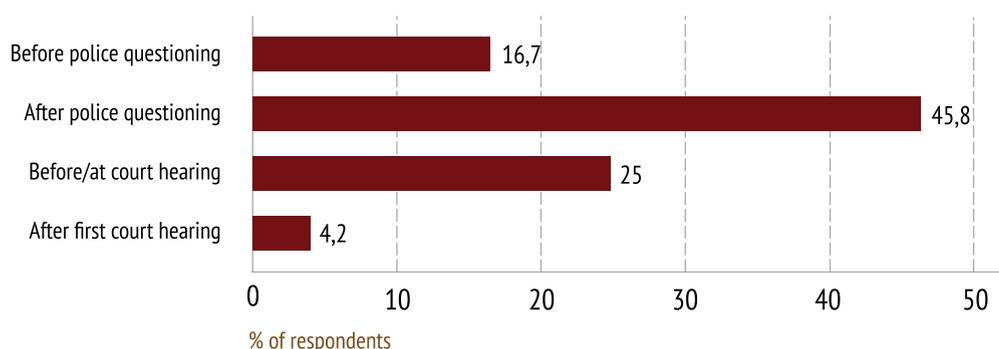
²⁰⁷ Individual Interview, Defence Lawyer 2, Aktau, 26 September 2014; Individual Interview, Defence Lawyer 3, Aktau, 26 September 2014; Individual Interview, Defence Lawyer 1, Almaty, 1 October 2014; Individual Interview, Defence Lawyer 2, Almaty, 1 October 2014; Individual Interview, Defence Lawyer 3, Almaty, 1 October 2014; Individual Interview, Defence Lawyer 1, Astana, 18 September 2014; Individual Interview, Defence Lawyer 1, Karaganda, 19 September 2014; Individual Interview, Defence Lawyer 2, Karaganda, 19 September 2014; Individual Interview, Defence Lawyer 3, Karaganda, 22 September 2014; Individual Interview, Defence Lawyer 1, Shymkent, 18 September 2014; Individual Interview, Defence Lawyer 2, Shymkent, 18 September 2014; Individual Interview, Defence Lawyer 1, Ust-Kamenogorsk, 17 September 2014.

²⁰⁸ Individual Interview, Defence Lawyer 1, Aktau, 25 September 2014; Individual Interview, Defence Lawyer 2, Ust-Kamenogorsk, 17 September 2014.

²⁰⁹ Interviews did not aim to constitute a representative sample.

Chart 18.

Responses from juvenile defendants and parents of juvenile defendants on when they first met their lawyer



RECOMMENDATIONS ON ACCESS TO LEGAL ASSISTANCE

- Ensure that children are provided with prompt legal assistance and representation by a lawyer from the moment that the child first comes into conflict with the law (i.e. on apprehension and before questioning by police) until completion of criminal proceedings. In line with international standards, the lawyer should be specially trained in handling juvenile justice matters before taking on the case (see ‘Prosecutors and lawyers’ under ‘Specialized actors and institutions’ for related recommendations).
- Consider establishing a ‘duty lawyer’ scheme in each district, for the police to call when they apprehend a child.
- Introduce guidance for the police, that questioning of a child should not take place unless a lawyer is present.
- Amend Article 530(3)(2) of the Criminal Procedure Code to state that the rules of juvenile justice continue to apply to persons charged with an offence alleged to have been committed while they were under the age of 18, regardless of their age at the time of court proceedings.

As Chart 18 indicates, only 16.7 percent of juvenile defendants and parents of juvenile defendants stated that the child had first met their lawyer before they were questioned by police, in line with international standards. 45.8 percent of respondents stated that the child first met their lawyer *after* they were questioned by police, while 25 percent first met their lawyer before or at their first court hearing, and 4.2 percent met *after* the first court hearing.²¹⁰ This is a matter of concern; urgent consideration should be given to how children can be provided with legal representation before being questioned by the police.

Child defendants do not always have sufficient time to prepare a defence, even when they are represented by a lawyer. For example, in one criminal case, it was observed as follows:

“Before the trial, the prosecutor gave the minor defendants statements to complete, but did not explain them. The defendants completed the statements at the dictation of lawyers, asking the meaning of some terms, which were unclear. The prosecutor constantly urged them to complete the statements, as the table on which they wrote was the table at which the prosecutor herself was sitting.”²¹¹

²¹⁰In 8.3 percent of cases, it is unclear when the child first met their defence lawyer.

²¹¹Criminal Hearing Observation, [location of SICIM withheld], August

6.4. RIGHT TO PRIVACY

Article 40(2)(b)(vii) of the CRC requires states to respect the privacy of the child fully at all stages of criminal proceedings. This means that criminal cases involving children in conflict with the law should be heard in closed court settings not open to the public. This should also apply to civil and administrative cases involving children, to ensure that the identities of children are protected.

Kazakhstan’s law provides some important protection in this respect: the 2014 Criminal Procedure Code provides that juvenile suspects/accused/defendants have the right to confidentiality at all stages of criminal proceedings. It states that criminal court proceedings involving juveniles must ‘be held under conditions of restriction of transparency.’²¹² However, it does not explicitly state that all criminal hearings involving children in conflict with the law should be *closed to the public*. Although the court has the power to close proceedings in cases involving criminal offences committed by minors, in cases of sexual offences, and in other cases, to prevent the disclosure of information about the private lives of persons involved and in cases where it is necessary for the safety of participants,

2014.

²¹² Criminal Procedure Code 2014, Article 532.

RECOMMENDATIONS ON PRIVACY

- It is recommended that the law clarifies that all hearings and trials in the SICIMs, including civil and administrative hearings, are conducted in closed settings, not open to the public.
- It is recommended that secondary legislation should specify who is permitted to attend such trials/hearings. Normally, court personnel being trained, trainee prosecutors and defence lawyers, and researchers granted access by the Ministry of Justice, the Supreme Court and/or the judge hearing the case are permitted to attend closed hearings and trials, though the consent of parties should be sought.

family members or close relatives, there is no obligation under law to do so.²¹³ In practice, however, all criminal hearings observed for this study were closed, with dispensation made for the presence of consultants/national researchers.

For civil hearings, the general rule is that they be conducted in open proceedings, subject to certain exceptions. These exceptions include cases concerning adoption or cases where the court accepts a request by a participant to preserve the confidentiality of a 'personal, family, commercial or any other secret protected by law or information related to the intimate aspects of citizens' lives, or any other circumstances preventing a public trial'.²¹⁴ The law clarifies that, where a trial is conducted in a closed session, case participants and their representatives should attend, as should witnesses, experts, specialists and interpreters, as necessary.²¹⁵ It is not clear that judges always fully understand the rules on open and closed cases. During observation of a case relating to adoption, the hearing took place in an open court, although the judgment was issued at a closed hearing.²¹⁶

Under Kazakhstan's law, as a general rule, administrative hearings in the SICIMs are public, unless the case involves state secrets or the court grants an application by a party in the case to keep certain information confidential or if information relates to other circumstances affecting the public hearing.²¹⁷ All the administrative hearings observed for this study were open to the public.

6.5. CHILD PARTICIPATION

The right to participation is a fundamental right of all children and is enshrined in Article 12(1) of the UN CRC. This provision means that a child who is capable of forming their own views has the right to express those views freely in all matters affecting them, with due weight being given to those views in accordance with the age and maturity of the child. This international standard also applies to children involved in court

proceedings, such that the child is given the opportunity to be heard either directly or through a representative/appropriate body.²¹⁸

In particular, children in conflict with the law must comprehend the charges against them, and possible consequences and penalties, in order to direct their legal representative, challenge witnesses, provide an account of events, and make appropriate decisions about evidence, testimony and the measure(s) to be imposed.²¹⁹ Proceedings should occur in 'an atmosphere of understanding' in which the child must be able to express himself/herself freely.²²⁰ In addition, the child has the right 'to be tried in his/her presence'. It is considered a matter of good practice for a child to have the right to remain in the court during his/her trial.²²¹

CRIMINAL HEARINGS

A court may order the removal of a juvenile defendant from part of a criminal trial (upon the petition of the defence counsel, legitimate representative or the court itself, and subject to the opinion of the parties in the trial) for some duration of the investigation, if staying may have a negative impact upon the juvenile.²²² If the juvenile is asked to leave the court, his or her legal representative is permitted to remain and can participate in the case.²²³

Upon the juvenile's return, the judge is obliged to communicate to the juvenile the content of what took place in the juvenile's absence, and provide the juvenile with the opportunity to ask questions of those interrogated in his/her absence. However, when deciding whether to order the child to absent himself/herself from the court, the judge is not required to seek the juvenile's view or to be guided by the child's best interests as a primary consideration.

In addition, the 2014 Criminal Procedure Code allows the pre-trial investigator to order that a child defendant

²¹³ Criminal Procedure Code 2014, Article 29(1).

²¹⁴ Civil Procedure Code 1999, Articles 19(1) and (2) and 317-4.

²¹⁵ Civil Procedure Code 1999, Article 19(4).

²¹⁶ Civil Hearing, [location of SICIM withheld], July 2014.

²¹⁷ Namely, adoption information, personal, family, business or other secrets protected by law, information about the private life of individuals or other circumstances affecting the public hearing; Administrative Offences Code, Article 21(1)-(2).

²¹⁸ Convention on the Rights of the Child, Article 12(2).

²¹⁹ UN Committee on the Rights of the Child, General Comment No. 10 (2007) Children's Rights in Juvenile Justice, para. 46.

²²⁰ Beijing Rules, Rule 14.2.

²²¹ UN Human Rights Committee, General Comment No. 32 (2007) Right to equality before courts and tribunals and to a fair trial, para. 36; Guidance for Legislative Reform on Juvenile Justice, UNICEF and the Children's Legal Centre, May 2011, para. 7.9.

²²² Criminal Procedure Code RK 2014, Article 543(1).

²²³ Criminal Procedure Code RK 2014, Articles 75(2) and 543(2).



may not view case materials if these may render a negative impact upon the child. Instead, such materials may be shown to the child's legitimate representative (parent or guardian).²²⁴ The application of such provision is likely to be regarded as curtailing the child's right to participate in court proceedings and potentially violates the right to fair trial, particularly with regard to the preparation of his/her defence.

In practice, in all the criminal cases involving a child defendant observed for this study, the child was present in the courtroom.²²⁵ More substantively, however, while most child defendants considered that they were able to participate effectively in hearings,²²⁶ a minority did not. Some stated that they did not understand their rights, others that they could not follow everything that was being said or that they did not understand what was happening during the hearing.²²⁷ A minority also

considered that the judge spoke too fast, appeared rushed, and sounded as if he/she was lecturing the child.²²⁸ In a minority of cases, defence lawyers appeared to communicate primarily with the parents of the child defendant, with limited participation of the child:

“Did your lawyer explain to you your rights?”
No. He communicated with my relatives.”²²⁹

“Did the lawyer tell you what would happen if you pleaded guilty or were convicted?”
He told my parents.”²³⁰

CIVIL HEARINGS

Under Kazakhstan's law, children have certain rights to participate in civil cases. In certain civil matters, such as the adoption of a child aged 10 years or above, the court must obtain the consent of the child.²³¹ The 2011 Code on Marriage and Family (Family Code) also enshrines the general right of a child to express his/her opinion during the resolution of any family matter that affects his/her interests, as well as to be listened to in the course of any judicial or administrative trial.²³²

Where the child is aged 10 years or above, it is compulsory to consider the child's opinion, 'except for cases where this conflicts with his/her interests'.²³³ Child witnesses

²²⁴ Criminal Procedure Code RK 2014, Article 537(4).

²²⁵ However, the law provides that the court may order the removal of a child defendant from part of a criminal trial (upon the petition of the defence counsel or legitimate representative, or of the court itself and subject to the opinion of the parties involved in the trial) for some duration of the investigation, if staying may have a negative impact on the child. This may be done without seeking the views of the child or reaching a decision with the best interests of the child as a primary consideration. Upon the child's return, the judge is obliged to communicate to the child (in the appropriate form and volume) the content that has taken place in the child's absence, and provide the child with the opportunity to ask questions of those interrogated in his/her absence. To strengthen this provision in line with international standards, the provision should include a requirement for the court to seek the child's views on whether they would like to be present in the courtroom, and for the judge to reach a decision with the best interests of the child as a primary consideration.

²²⁶ The majority of child defendants interviewed considered that the judge had allowed them to give their side of the case, had listened to them and had taken them seriously.

²²⁷ Individual Interview, Juvenile Defendant 1, Almaty SICIM, 2014;

Individual Interview, Juvenile Defendant 3, Almaty SICIM, 2014; Individual Interview, Juvenile Defendant 1, Karaganda SICIM, 2014.

²²⁸ See for example, Individual Interview, Parent of Juvenile Defendant, [location of SICIM withheld], August 2014.

²²⁹ Individual Interview, Juvenile Defendant, Almaty SICIM, 2014.

²³⁰ Individual Interview, Juvenile Defendant, Karaganda SICIM, 2014.

²³¹ Family Code, Articles 62 and 95.

²³² Family Code, Article 62.

²³³ Family Code, Article 62. Under Article 317-4 of the Civil Procedure Code, in adoption cases, the judge may bring the child into proceedings provided that the child is above the age of 10 years.

RECOMMENDATIONS ON CHILD PARTICIPATION

- Include a provision in the law that a child capable of forming their own views has the right to express those views freely in all matters affecting them, with due weight given to those views in accordance with the age and maturity of the child.
- Reconsider the power to exclude an accused child from criminal proceedings, permitting the child to remain in the courtroom at all times during the trial/hearing.
- Remove the power of a pre-trial investigator in criminal proceedings to order the non-presentation to a child defendant of case materials where these may render a negative impact upon the child, and include a general rule of disclosure of evidence to the child defendant and his/her lawyer, to enable them to prepare the child's defence.
- Article 12 of the CRC requires that, 'the child shall, in particular, be provided the opportunity to be heard in judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body'. Where the child is old enough to have a view on the desired outcome of the case but is not able to participate fully and express those views, it is recommended that the court social worker acts as an intermediary and presents the views and wishes of the child to the court.
- Consider putting in place a compulsory training course on facilitating participation and child development for judges, prosecutors, defence lawyers, psychologists and social workers working in the SICIMs.

under the age of 16 years may be asked by the court to remain in the courtroom after providing their testimony, if necessary. These provisions could be strengthened in line with international standards to clarify that, regardless of age, children capable of forming their own views have the right to express those views freely in all matters affecting them, with due weight being given to those views in accordance with the age and maturity of the child, coupled with an overarching requirement for all decisions relating to the child to be made with the child's best interests 'as a primary consideration'.

In practice, child participation in civil proceedings could be significantly strengthened, albeit it mainly concerns young children (i.e. under 12 years).²³⁴ In the online survey, when asked about the importance of certain principles in dealing with civil cases, more SICIM judges gave priority to 'ensuring fairness between parents' than to 'providing a child capable of forming his/her own views on the matter with the opportunity to express those views'.²³⁵ This response is not entirely unexpected, as encouraging and ensuring participation by children can be difficult for a judge, especially if there is no psychologist or social worker present in the court to assist. Indeed, even when a psychologist or social worker is present, some do not see it as their role to help the child participate in the absence of a defence lawyer or other appropriate person, or where there is no social enquiry or similar report recording the child's

views (see Section 5.3 on 'Psychologists, pedagogues and social workers' for more details).

The child's inability to participate in the civil hearing due to his/her age or competence can be a serious disadvantage to the child and raises the issue of whether the hearing or trial can be regarded as fair.

6.6. CHILD VICTIMS AND WITNESSES

CRIMINAL CASES

Promoting participation of child victims and witnesses, while ensuring their protection, is a challenging area for the SICIMs. Chart 19 shows responses from SICIM judges when asked to rank the importance of principles in cases involving a child victim.

As indicated in Chart 19, judges were well aware of the difficulties children face in giving evidence against a person who has committed a criminal offence against them and ranked the protection of a child victim as the most important principle, followed closely by 'acting in the best interests of the child'. However, they regard 'ensuring the child's minimum possible contact with the justice system' as slightly more important than providing the victim with the opportunity to be heard in court, which may undermine the child's right to participation. This is of particular concern in light of Article 217 of the 2014 Criminal Procedure Code, which permits the prosecutor, defendant or his/her defence counsel to take the testimony of a victim or witness before trial if there is reason to believe that their later interrogation during pre-trial investigation or court hearing may not be possible for objective reasons (such as permanent residency of the victim/witness abroad) and in order to limit the psycho-traumatic impact of the interrogation on child victims/witnesses. The child victim or witness would then be excused from providing

Article 46 of the Civil Procedure Code also provides that the court is obliged to involve juveniles aged between 14 to 18 years, although the nature of their involvement is not clear, the general rule being that their 'rights, freedoms and legitimate interests' in court should be protected by their 'parents or other legal representatives'. There is no similar requirement to involve children under the age of 14 years. Rather, their 'rights, freedoms and legitimate interests' should be protected in court by their legal representatives and prosecutor.

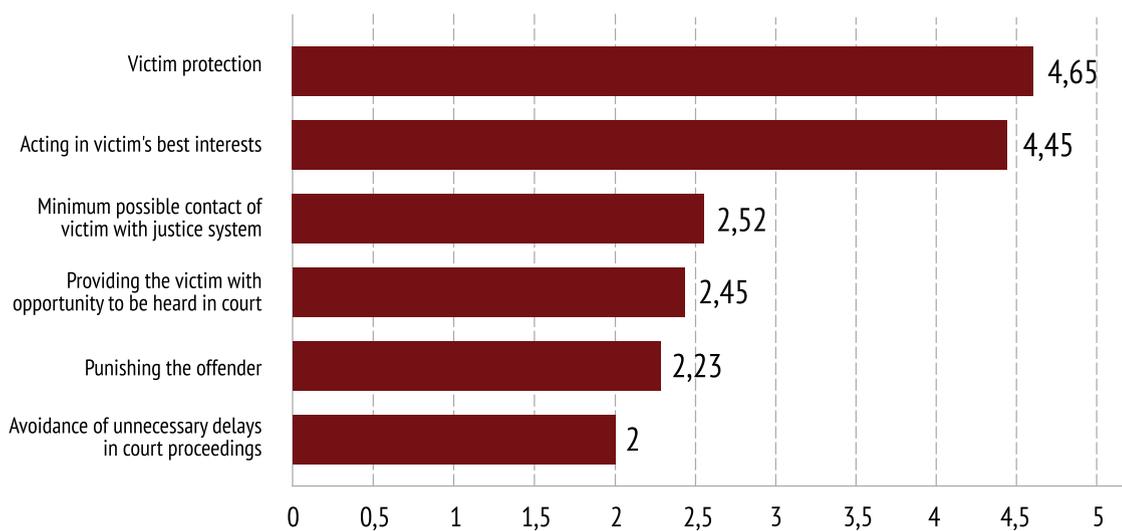
²³⁴ As indicated in Chart 4, above.

²³⁵ 65.5 percent of respondent SICIM judges (compared to 62.1 percent of respondent SICIM judges).



Chart 19.

Importance ranking by respondent SICIM judges of principles in criminal cases involving a child victim



evidence in court.²³⁶ In such cases, the law does not provide the defence lawyer with an opportunity to cross-examine the child's evidence, which raises issues of non-compliance with Article 40 of the CRC, relating to the right of the defendant to a fair trial.

The number of cases failing to proceed because of the reluctance of the child victim/witness or of their parents to come to court is unknown. The survey did not seek to gather data on this issue. Nor did the study investigate whether witness protection programmes are available for children or if these are effective. However, as indicated in Chart 16, above, 52 percent of respondent SICIM judges stated that the non-attendance of summoned witnesses at hearings was a

significant barrier to effective handling of court cases. The responses provided during individual interviews also highlighted this as a significant challenge and a main cause for delay or of the adjournment of hearings.²³⁷

When it is necessary for a child victim/witness to appear in court, the law provides some important protection for the child, although this could be strengthened in line with international standards. There is a requirement

²³⁶Criminal Procedure Code 2014, Article 371.

²³⁷ See for example, Individual Interview, Judge 1, Aktau SICIM, 23 September 2014; Individual Interview, Judge 2, Aktau SICIM, 23 September 2014; Individual Interview, Judge 2, Ust-Kamenogorsk SICIM, 16 September 2014; Individual Interview, Judge 1, Shymkent SICIM, 17 September 2014; Individual Interview, Judge 2, Shymkent SICIM, 17 September 2014; Individual Interview, Judge 1, Kyzylorda SICIM, [undated]; Prosecutor 2, Almaty SICIM, 20 September 2014; Prosecutor 1, Kyzylorda SICIM, 9 September 2014.



for the child's legitimate representative (namely, the parent/guardian) and teacher to be present during their cross-examination, and for the child to be questioned in the absence of the defendant with the permission of the court.²³⁸ However, it is not clear from the law what role the parent/guardian and teacher assume in court, other than they may ask the child questions with the permission of the presiding judge. Furthermore, upon the defendant's return to the courtroom, after the child victim/witness has provided their testimony, the law permits the defendant to question the child without clarifying any protection measures which may need to be put in place to protect the child victim/witness. The law also enables the judge to require the victim/witness to remain in the courtroom after their cross-examination if their further presence is necessary. There is no requirement for the best interests of the child victim/witness to be of primary consideration in such decisions.

In practice, child victims and witnesses are not always prepared for the hearing. Courts lack special measures and facilities to help a child give evidence while protecting them, and to ensure the child's best interests are of primary consideration. Child victims and witnesses often do not meet the prosecutor or judge in advance of the trial.²³⁹ Respondents indicated that, when providing evidence in court, the child victim/witness is not usually concealed from the defendant.²⁴⁰ This may

be particularly distressing in cases concerning sexual assault, where the child victim provides evidence in full view of the defendant.²⁴¹ Some child victims recounted having waited in the same waiting room or courtroom with the defendant and his/her family.²⁴² At one criminal hearing, the defendant and victim were seated next to each other in the courtroom.²⁴³

The study involved interviews with child victims and witnesses, only a minority of whom received the assistance of a social worker or psychologist to explain to them what would happen during the court hearing.²⁴⁴ Several child victims and witnesses related having felt anxious, uncomfortable and/or fearful when giving evidence, for a number of reasons, including that: they had never been in court before and did not understand the procedures or what was going to happen; the trial took place a long time after the offence and so they did not want to come to court and relive the event all over again; they could not understand what they were meant to say; they could not understand the questions being asked of them; and they felt that nobody believed them.²⁴⁵

²³⁸ Criminal Procedure Code 2014, Article 371(3).

²³⁹ See for example, Prosecutor 1, Kyzylorda SICIM, 9 September 2014.

²⁴⁰ Individual Interview, Prosecutor 2, Almaty SICIM, 20 September 2014; Child Victim in Criminal Case, Almaty SICIM, 28 August 2014.

²⁴¹ Individual Interview, Child Victim, Kyzylorda SICIM, [undated].

²⁴² Individual Interview, Child Victim (aged 15 years), Almaty SICIM, 2014; Individual Interview, Child Victim (aged 14 years), Kyzylorda SICIM, [undated].

²⁴³ Criminal Trial, [location of SICIM withheld], 4 August 2014.

²⁴⁴ Individual Interview, Child Victim, Aktau SICIM, 15 July 2014.

²⁴⁵ Individual Interview, Child Victim (aged 10 years), Karaganda SICIM, 2014; Individual Interview, Child Victim (aged 15 years), Almaty SICIM, 2014; Individual Interview, Child Victim (aged 16 years), Karaganda SICIM, 2014. See also Individual Interview, Representative of NGO [name and location withheld], 23 September 2014.

RECOMMENDATIONS ON CHILD VICTIMS AND WITNESSES

- Either the Prosecutor's Office or the SICIM should consider establishing a child victim and witness support programme, to facilitate the giving of evidence by the child, including taking the child into the courtroom where the case will be heard before the hearing or trial, explaining who will be present and the process and procedures of the court, and what they will be asked as a victim/witness. Consideration should be given to allowing the child to meet the judge beforehand, to put the child at ease.
- Clarify in the law the role of the parent/guardian/teacher or other legitimate representative of the child victim/witness in court, to prevent overlap with the expert functions of the social worker, psychologist or victim support personnel.
- Consideration should be given to the introduction of special measures for child victims and witnesses, to facilitate their participation.

THESE COULD INCLUDE:

- The introduction of video recorded testimony, with cross-examination of the child recorded soon after the crime is reported, allowing the child to move on emotionally rather than having to relive the event at a later trial; and
- The use of screens in courts so that the child cannot see the offender and the use of live link rooms, so that the child does not have to enter the courtroom, but can give evidence and be asked questions in another room where he or she would sit with a supporter. Evidence would be relayed by video link, allowing the defendant to see the child but for the child not to see anyone in the court other than the judge and the prosecutor/lawyer.
- If the Prosecutor's Office decides to establish a child victim and witness support unit, each court hearing involving a child victim or witness should have a member of staff with specific responsibility for handling issues relating to child victims and witnesses and liaising with the local Prosecutor's Office. Where the child victim or witness is to give evidence against another child, the liaison and support person must be somebody other than the court social worker or psychologist.
- Children involved in administrative hearings should be treated as victims and witnesses, including through the application of the measures above, where appropriate.

They considered that the following steps would have made the experience less stressful and upsetting:

- Giving evidence without seeing the defendant and/or giving evidence without being in the courtroom;
- Having the hearing sooner, so that they could remember the details better;
- Having someone explain to them before the hearing what would happen in court;
- Not having to repeat the details of what happened; and
- Seeing the court and meeting the judge beforehand so that they had a better idea of what to expect.²⁴⁶

Some respondents looked favourably on the introduction of a witness support unit to undertake such duties.²⁴⁷

ADMINISTRATIVE HEARINGS

The Administrative Offences Code does not contain any specific provision on a child's right to participate in SICIM administrative cases that concern them.

²⁴⁶ Individual Interview, Child Victim (aged 10 years), Karaganda SICIM, 2014; Individual Interview, Child Victim (aged 15 years), Almaty SICIM, 2014; Individual Interview, Child Victim (aged 16 years), Karaganda SICIM, 2014; Individual Interview, Child Witness (17 years old), Shymkent SICIM, 2014.

²⁴⁷ See for example, Individual Interview, Prosecutor 2, Kyzylorda SICIM, [undated]; Individual Interview, Kyzylorda Regional Society for the Protection of Consumer Rights, 23 September 2014.

However, the general right of the child to be heard in any judicial or administrative proceedings affecting them (discussed in Section 6.5 'Child participation') appears to apply, although the scope of such a right regarding SICIM administrative cases is unclear.²⁴⁸ In administrative cases heard before the SICIMs, a child may appear as witness or victim, since the parent or adult is administratively responsible under law for any wrongdoing.

In practice, the child is usually present at some point during the hearing to provide evidence.²⁴⁹ However, the child is often treated as a co-defendant and tends to remain in the courtroom for the duration of the hearing, in order to listen to the 'education' provided by the judge, to apologise to the judge for their behaviour and to promise not to commit the wrongful act again. As mentioned in Section 5.3, in the administrative cases observed for this study, the child almost never received any assistance from a social worker or psychologist in providing evidence to the court.

²⁴⁸ Family Code, Article 62.

²⁴⁹ In 63.6 percent of observed administrative hearings, the child was present at some point during the hearing. In 36.4 percent of cases, the child was not present at any point and, in 75 percent of cases, the child involved was aged between 15 and 17 years.



6.7. PARTICIPATION OF PARENTS AND GUARDIANS

International standards entitle child defendants to have their parents/guardians present during criminal hearings unless it is considered not to be in their best interests, taking into account their age or situation.²⁵⁰ This provision primarily aims to provide the child with psychological and emotional support during court proceedings.²⁵¹ Kazakhstan's law is broadly in line with international standards in this regard.²⁵²

Responses to interviews indicate that, in practice, parents/guardians of child defendants involved in cases before the SICIMs tend to be able to participate in criminal proceedings, in line with international standards. In all but one of the criminal hearings observed (i.e. in around 96 percent of those hearings), the child's parent/guardian was present.²⁵³ Most parents

²⁵⁰ Article 40(2)(b)(iii), CRC; Rule 15.2, Beijing Rules.

²⁵¹ Para. 53, UN Committee on the Rights of the Child, General Comment No. 10 (2007) Children's Rights in Juvenile Justice.

²⁵² Where a child suspect/accused has parents or another legitimate representative, participation of those in the role of guardian is compulsory (Criminal Procedure Code 2014, Article 537(1)). If the child lacks a legitimate representative, a representative from the Guardianship Authority must attend (Criminal Procedure Code 2014, Article 537(1)). Where such legal representatives fail to attend court hearings, they 'may be substituted by another person' (Criminal Procedure Code 2014, Article 542(2)). In particular, the legitimate representative may be removed from the case if there is reason to believe that his/her acts damage the child's interests or impede the impartial investigation of the case, in which case another legitimate representative may be admitted to participate (Criminal Procedure Code 2014, Article 537(5)).

²⁵³ In the remaining case, the defendant had turned 18 years of age and the judge rescheduled the hearing due to the parent's absence

of child defendants interviewed considered that they were able to participate fully during the hearing or trial, that their views and arguments were taken seriously and that these influenced the decision. They also stated that they could understand what was happening during the hearing. However, a minority of parents/guardians of child defendants did not consider that they could actively participate, mainly because they could not understand what was being said or what was happening during the hearing.²⁵⁴ For example:

“Did you feel that your views and arguments, and those of your child, were taken seriously and influenced the decision?”

No, I felt perplexed as I sat there.

Did anyone assist you in understanding what was happening and what was being said?

No”.²⁵⁵

In civil and administrative cases, the issue of parental participation does not tend to arise, as they are normally parties to the case. However, in a minority of civil and administrative cases observed, the parent who was the respondent or defendant in the case was intoxicated, and without legal assistance. This raises the issue of whether it is appropriate for a hearing to proceed under

and non-attendance of victims. However, the hearing lasted 50 minutes, throughout which the defendant was present and was questioned by the judge regarding the case (Criminal Hearing, [location of SICIM withheld], August 2014).

²⁵⁴ Individual Interview, Parent of Juvenile Defendant, Almaty SICIM, 2014; Individual Interview, Parent of Juvenile Defendant, Kyzylorda SICIM, 2014.

²⁵⁵ Individual Interview, Juvenile Defendant, Kyzylorda SICIM, 2014.

RECOMMENDATIONS ON THE PARTICIPATION OF PARENTS AND GUARDIANS

- There should be at least one full-time social worker at each SICIM, who should see all child defendants and their parents before a trial, so that the social worker may give the judge information on the child's family, background and current situation.
- The SICIM social worker should explain the procedures of the court to parents/guardians involved in the case and advise them of the role of the parent/guardian during the hearing.
- The Supreme Court may consider producing a simple leaflet setting out SICIM procedures for parents/guardians involved in court cases. A child-friendly version of the leaflet could be made available.
- Where a child is without parental care, he/she should be provided with alternative support from a person not at risk of having conflict of interest with the child. The person may be a relative, family friend, or, in their absence, a social worker, psychologist or pedagogue allocated to the court.

RECOMMENDATIONS ON INTERPRETATION SERVICES

- Interpreters should be required to demonstrate that they have the required level of fluency before undertaking any interpretation or translation services for cases before the SICIMs. The Supreme Court may wish to consider setting a competency level and system of certification for interpreters and translators.

such circumstances.²⁵⁶ Further, there is more of an issue with parent/guardian participation when the child is without parental care. In one of the observed civil hearing concerning an application by the Guardianship Authority to refer an orphan, aged 12, to a 'special school for children with offending behaviour', the director of the orphanage was one of the applicants in the case,²⁵⁷ and was also the child's legitimate representative. In such circumstances, there is a risk of conflict of interest between the applicant and child, raising the question as to whether it is appropriate for a representative of the applicant to act as the child's legitimate representative.

6.8. INTERPRETATION SERVICES

If a child cannot understand or speak the language used during court proceedings, international standards require that the child is provided with an interpreter free of charge.²⁵⁸ The use of an interpreter during court hearings in Kazakhstan is particularly important, as there are two official languages, Kazakh and Russian. Fluency in both cannot be assumed, particularly in a legal context. Domestic law includes provision for free assistance by an interpreter in SICIM cases where the language of proceedings is not understood.²⁵⁹

In practice, interviews and court observations suggest that, although an interpreter tends to be appointed to assist participants in SICIM hearings, where needed, the general standard of interpretation is inadequate. In one case, during the cross-examination of a Kazakh-

speaking witness, it was the judge who interpreted the testimony 'from time to time' for the Russian-speaking defendant.²⁶⁰ A parent of a child defendant also remarked:

"Did you feel that you could understand what was going on during the hearings?"

No, as the trial was in Russian. It was necessary to twice repeat in Kazakh language for the child, since he doesn't speak Russian.

Did anyone assist you in understanding what was happening and what was being said? If yes, who and how?

The interpreter was poorly qualified and couldn't interpret clearly enough from Russian into Kazakh language.

How well did they help you?

Badly".²⁶¹

In another case, the national researcher observed: "...the judge asked the interpreter to assist in interpreting from Russian to Kazakh for the [juvenile] defendant, despite the parents asking to begin the process in Kazakh language so that the child could understand. The interpreter played a passive role during the process, taking almost no part in the session, and commenting only when the judge spoke to her directly. Interpretation and explanation of the meaning of words to the juvenile defendant was carried out by the judge or by the defendant's parents. The interpreter was not qualified, being unable to accurately interpret all the material, and confused dates and names of months".²⁶²

²⁵⁶ Observation of an Administrative Hearing, [location of SICIM withheld], August 2014.

²⁵⁷ The director of the applicant organization was the child's representative.

²⁵⁸ Article 40(2)(b)(vi), CRC.

²⁵⁹ Civil Procedure Code, Articles 14(3) and 109(2); Criminal Procedure Code, Article 30; Administrative Offences Code, Article 738(3)-(6).

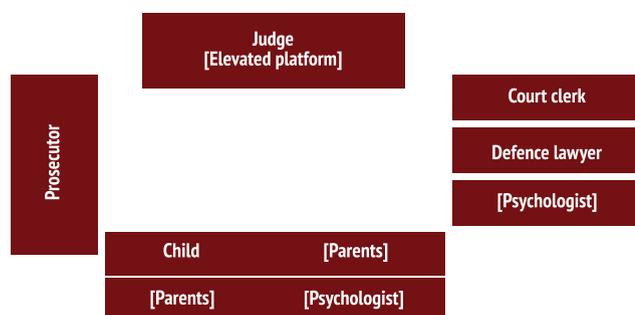
²⁶⁰ Observation of Criminal Hearing, [location of SICIM withheld], August 2014.

²⁶¹ Individual Interview, Parent of a Child Defendant, [location of SICIM withheld], August 2014.

²⁶² Criminal Hearing Observation, [location of SICIM withheld], August 2014.

6.9. COURTROOM ENVIRONMENT

To facilitate a child's participation in court proceedings, it may be necessary to adjust the courtroom environment and trial procedures and practices, according to the child's age and maturity.²⁶³ Based on feedback from court observations, the SICIM courtroom environment is largely the same as that of an 'adult' court. The typical layout of an SICIM is as follows:

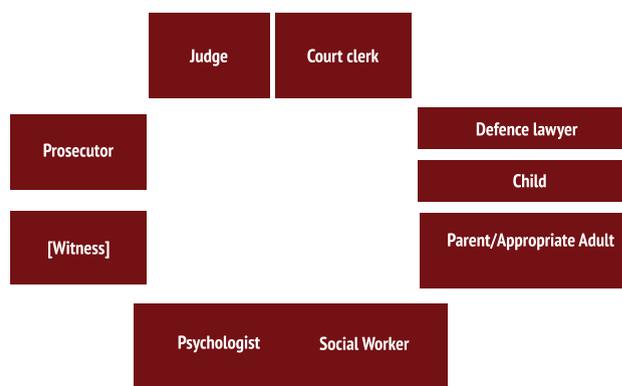


Typically, at a criminal hearing, the judge is robed and sits at the front of the court, on an elevated platform, with the prosecutor on one side, the defence lawyer on the other, and the defendant either sitting in front of the judge, at a table, or in the general seating area inside the courtroom. Sometimes, the child is able to sit with his parent or legal representative but, at other times, the child sits on his/her own, on a bench opposite the judge or, even, in the docks.²⁶⁴ The child is not usually close enough to his/her lawyer to be able to communicate during proceedings. When a child or their parent is called to give evidence, he/she will generally take the stand if there is one available in the courtroom. Prosecutors and police (when present) are in uniform, with the latter sometimes having their gun holsters visible.²⁶⁵ Child defendants may also be handcuffed.²⁶⁶

Most respondent SICIM judges desire a more informal approach to conducting hearings/trials involving

children, which they consider to be a 'necessary change' to improve the handling of court cases.²⁶⁷ Almost a quarter of respondent SICIM judges desire a more child-friendly layout for the courtroom, so that the child sits with their parents and their defence lawyer.²⁶⁸ Feedback from participants also indicates a need to provide further training on the importance of developing child-friendly practices, which was not always recognised by the participants who were interviewed.²⁶⁹

The CRC Committee has not commented on how a juvenile courtroom should be laid out, but there has been some judicial interpretation on a child-friendly court layout in the case of *T and V v. the United Kingdom*, in which the European Court of Human Rights considered that the physical layout of the courtroom at a criminal hearing was one element that breached the right to a fair trial.²⁷⁰ Steps to make the courtroom more child-friendly include requiring judges, prosecutors and defence lawyers not to wear formal robes, everyone sitting at the same level as the child and allowing the child to sit next to his/her parent or other appropriate adult. The preferred layout of the SICIM at a criminal hearing is as follows:



RECOMMENDATIONS ON THE COURTROOM ENVIRONMENT

- In order to engage the child and to enable the child to participate fully in proceedings in the SICIMs, consider changing the layout of the court, whether in a criminal, administrative or civil case, to make the seating arrangements less formal.
- SICIM judges should sit at the same level as the child and other parties, and not be robed.
- Prosecutors should not wear their uniforms during hearings involving a child.
- Parties should sit close enough for the child to participate and to engage in proceedings.
- Children should be permitted to sit next to their parents and to their defence lawyer, so that they can communicate as necessary during the course of the hearing or trial.
- Police officers should not be armed in the SICIM.

²⁶³ Para. 46, UN Committee on the Rights of the Child, General Comment No. 10 (2007) Children's Rights in Juvenile Justice.

²⁶⁴ Defence Lawyer 3, [location of SICIM withheld], 18 September 2014.

²⁶⁵ Criminal Hearing, [location of SICIM withheld], August 2014.

²⁶⁶ Criminal Hearing, [location of SICIM withheld], August 2014.

²⁶⁷ See Chart 17, above.

²⁶⁸ See Chart 17, above.

²⁶⁹ See for example Prosecutor 1, Almaty SICIM, September 2014.

²⁷⁰ *T and V v. the United Kingdom* (Nos. 24724/94 and 24888/94), ECHR (Grand Chamber), 16 December 1999.

6.10. RIGHT TO PROMPT ATTENTION OF A JUDGE IN CRIMINAL CASES

Article 9(3) of the ICCPR requires that anyone arrested or detained on a criminal charge must be brought promptly before a judge or other officer authorised by law to exercise judicial power. This requirement, which is echoed in Article 37(d) of the CRC, is important in bringing the detention of a person charged with a criminal offence under judicial control. Under international standards, this is interpreted to mean that children must be brought before the judicial authority within 24 hours of arrest or detention, to examine the legality of (continued) deprivation of liberty.²⁷¹

Under Kazakhstan's law, a person may be deprived of their liberty without court authorisation for up to 72 hours after apprehension.²⁷² As a general rule, the person would be held in an isolator of temporary detention for the duration of this period.²⁷³ Detention as a preventative measure (pre-trial detention) must thereafter be authorised by an investigating judge.²⁷⁴ Pre-trial detention may only be applied to a child where other 'preventative measures may not be applied due to circumstances in the case'.²⁷⁵

The law does not specify that detention must be used only as a measure of last resort, or for the shortest appropriate period of time, as required under Article 37(b) of the CRC. Indeed, the law imposes a maximum period of six months for detention during 'pre-trial proceedings'.²⁷⁶ It should be noted that, under international standards, pre-trial detention that lasts for 'months' would be considered a 'grave' violation of Article 37(b) of the CRC.²⁷⁷

Under Article 148(1) of the Criminal Procedure Code, the 'investigating judge of the district and equal-status court' is required to authorise pre-trial detention. There is no requirement in the Criminal Procedure Code for an investigating judge to sit in the SICIM or to undergo any training to handle children's cases.

In practice, it is unclear for how long a child is normally held by the police before being brought before a court or investigating judge. From feedback provided by SICIM judges, the SICIMs normally first become involved in a criminal case only once a file is referred by the prosecution, and after completion of an investigation.²⁷⁸

Where judges have provided feedback on pre-trial detention practices, they have reported that they consider factors such as the age of the child to determine whether to grant bail or to place the child in pre-trial detention. They have not referred to the principles of detention as a measure of last resort and for the shortest appropriate period of time.²⁷⁹

RECOMMENDATIONS ON THE RIGHT TO THE PROMPT ATTENTION OF A JUDGE IN CRIMINAL CASES

- At least one investigating judge should be designated in each SICIM specifically to handle applications relating to pre-trial detention. Recommendations on the provision of specialist pre-service and in-service training to SICIM judges (see above) should apply to these investigating judges.
- In line with international standards, the Criminal Procedure Code should be amended, so that children in conflict with the law are required to be brought before the SICIM within 24 hours of first being apprehended, to allow the court to examine the legality of any continued deprivation of liberty. This would also allow the SICIM to set case management directions, including dates for trial and determination of witnesses required, in advance of the trial.

²⁷¹ Committee on the Rights of the Child, General Comment No. 10 (2007) Children's Rights in Juvenile Justice, para. 83.

²⁷² Criminal Procedure Code, Articles 128(5), 131(4) and 133(2).

²⁷³ Criminal Procedure Code, Article 134.

²⁷⁴ Criminal Procedure Code, Articles 128(5), 131(4), 133(2) and 148.

²⁷⁵ Criminal Procedure Code, Article 541(3).

²⁷⁶ Criminal Procedure Code, Article 541(4).

²⁷⁷ Committee on the Rights of the Child, General Comment No. 10 (2007) Children's Rights in Juvenile Justice, para. 80.

²⁷⁸ Judge 2, [location of SICIM withheld], 2014.

²⁷⁹ Judge 2, [location of SICIM withheld], [undated].

6.11. DECISIONS WITHOUT DELAY

Under Article 40(2)(b)(iii) of the CRC, child defendants have the right to have their case determined ‘without delay’ by the court.²⁸⁰ The CRC Committee recommends that the total duration between the committing of an offence and the court’s decision on the matter is ‘as short as possible’, with periods between the offence and point of charge, and between the charge and the court’s final decision, being ‘much shorter’ than those for adults.²⁸¹

Although the duration of proceedings may not breach domestic laws and regulations on criminal procedure, it may still be considered a delay under international standards. The principle of non-delay is a fundamental component of the right to fair trial. Also, the longer the process, the less effective the proceedings are likely to be at preventing recidivism, as children are less likely to connect the consequences of proceedings with the offence.²⁸²

The time periods stipulated in the Kazakhstan’s Criminal Procedure Code for consideration of criminal cases by the courts are the same for both adult and child defendants,²⁸³ although the CRC Committee recommends that such time limits for children’s cases should be “much shorter” than those set for adults.²⁸⁴

There is also no obligation for the child to be brought before the court within 30 days of his/her pre-trial detention (remand) taking effect, as recommended by the CRC Committee.²⁸⁵

In practice, the period of time between commission of an offence and conclusion of a trial can be lengthy. Feedback indicates that the period of time from a court first receiving a case from a prosecutor to issuing its decision can be up to two months.²⁸⁶ The period of time from when the court first receives a case to the first hearing can be up to 15 days (if the case is not sent back to the prosecutor).²⁸⁷

SICIM proceedings may be adjourned for a range of reasons, the main ones being non-attendance of participants when summoned and negotiations regarding reconciliation placing the trial on hold.²⁸⁸ However, based on participants’ responses, non-attendance of participants when summoned to a hearing is the most significant cause of delay and adjournment.²⁸⁹ It can be an extra cause of stress for the parties involved.²⁹⁰ In one criminal case observed for this study, a hearing was postponed due to the non-attendance of a child defendant’s mother and victims in the case, prolonging the child’s pre-trial detention, which had already lasted for over two months.²⁹¹

The majority of respondent SICIM judges consider that non-attendance of defendants and witnesses when summoned is a significant barrier to the effective handling of court cases. Almost a fifth of respondent SICIM judges consider that the absence of parents is also a significant barrier to effective handling of cases.²⁹² In this light, it is unsurprising that several SICIM judges highlighted the need to improve preparation for SICIM hearings and notification of parties involved.²⁹³

In theory, judges have the power to complain to the Prosecutor’s Office or the Bar Association if a prosecutor or defence lawyer fails to attend a scheduled court hearing without a reasonable excuse, under Article 405(4) of the Criminal Procedure Code. However, 17 percent of respondent SICIM judges consider that giving them more control over court proceedings, to prevent adjournments, is necessary to improve the handling of court cases.²⁹⁴

²⁸⁰ Convention on the Rights of the Child, Article 40(2)(b)(iii).

²⁸¹ Paras 51, 52 and 83, Committee on the Rights of the Child, General Comment No. 10 (2007) Children’s Rights in Juvenile Justice; Beijing Rules, Rule 20; Vienna Guidelines, Rule 23.

²⁸² Committee on the Rights of the Child, General Comment No. 10 (2007) Children’s Rights in Juvenile Justice, para. 51.

²⁸³ For example, for both adult and child defendants, after commencing proceedings, the main proceedings must be completed within a ‘reasonable time’ (unless the court adopts the ‘reduced procedure’ in which case the general rule is that the main proceedings should be completed within 10 days); Criminal Procedure Code, Article 322(5).

²⁸⁴ Committee on the Rights of the Child, General Comment No. 10 (2007), ‘Children’s Rights in Juvenile Justice’, CRC/C/GC/10, para. 52.

²⁸⁵ Committee on the Rights of the Child, General Comment No. 10 (2007), ‘Children’s Rights in Juvenile Justice’, CRC/C/GC/10, para. 83.

²⁸⁶ Individual Interview, Judge, [location of SICIM withheld], 10 July 2014.

²⁸⁷ Individual Interview, Judge, [location of SICIM withheld], 10 July 2014.

²⁸⁸ See for example Criminal Hearing 1, Ust-Kamenogorsk SICIM, 4 September 2014.

²⁸⁹ See for example, Criminal Hearing, Almaty SICIM, 10 July 2014; Civil Hearing, Almaty SICIM, 27 August 2014; Civil Hearing, Almaty SICIM, 3 September 2014; Civil Hearing, Astana SICIM, 8 August 2014; Civil Hearing, Karaganda SICIM, 7 August 2014; Civil Hearing, Kyzylorda SICIM, 18 August 2014; Civil Hearing, Semey SICIM, 5 September 2014; Civil Lawyer, Almaty SICIM, 1 October 2014; Civil Lawyer 2, Astana, 18 September 2014; Civil Lawyer, Ust-Kamenogorsk, 17 September 2014; Parent 7, Civil Case, Almaty SICIM, 3 September 2014, Prosecutor 2, Almaty, 20 September 2014.

²⁹⁰ See for example Parent of Juvenile Defendant 1, Criminal Case, Almaty SICIM, 26 August 2014.

²⁹¹ Criminal Hearing, [location of SICIM withheld], August 2014.

²⁹² 17.2 percent; see Chart 16, above.

²⁹³ See for example, Individual Interview, Judge 2, Ust-Kamenogorsk SICIM, 16 September 2014; Individual Interview, Judge 1, Shymkent SICIM, 17 September 2014; Individual Interview, Judge 2, Shymkent SICIM, 17 September 2014; Individual Interview, Judge 1, Kyzylorda SICIM, [undated]; Individual Interview, Judge 1, Aktau SICIM, 23 September 2014; Individual Interview, Judge 2, Aktau SICIM, 23 September 2014.

²⁹⁴ See Chart 17, above.

RECOMMENDATIONS ON DECISIONS WITHOUT DELAY

- Consider whether there should be a pre-trial review before the main hearing or trial, to ensure that all summons have been served and that all witnesses and parties are aware of the need to attend, and have produced and disclosed all necessary documents.
- Consider reminding judges of their power to complain to the Prosecutor's Office or the Bar Association if a prosecutor or defence lawyer fails to attend without a reasonable excuse, even where time limits imposed by law for the overall duration of proceedings have not been exceeded.



6.12. SENTENCING

6.12.1. DEPRIVATION OF LIBERTY AS A MEASURE OF LAST RESORT

Both the CRC and the Beijing Rules require states to develop a range of non-custodial sentencing options as alternatives to deprivation of liberty, which should only be used as a measure of last resort and for the shortest appropriate period of time.²⁹⁵ These alternative measures include care, guidance and supervision orders, counselling, probation, foster care, education and vocational training programmes, community service orders, and financial penalties, compensation and restitution.²⁹⁶ Whilst the Kazakhstan's Criminal Code of 2014 permits the SICIMs to impose a range of 'punishments'²⁹⁷ and 'compulsory education

measures'²⁹⁸, it does not require that the deprivation of liberty should only be used as a measure of last resort or for the shortest appropriate period of time.²⁹⁹ In fact, in order to become eligible for parole, a child sentenced to deprivation or restriction of liberty must have served the minimum tariff as set out in law.³⁰⁰

²⁹⁵ CRC, Articles 37(b) and 40(4); Beijing Rules, Rule 18.1.

²⁹⁶ Article 40(4), UNCRF; Beijing Rules, Rule 18.1.

²⁹⁷ These comprise the deprivation of the right to engage in a certain activity, fines, corrective labour, community service, restriction of liberty and deprivation of liberty (Article 81).

²⁹⁸ These comprise warnings, and supervision by parents (or those in their place) or by a specialized state body, as well as restitution, restriction of leisure, and the imposition of conditions on the child's behaviour, placement in a special education institution, issuing an apology to the victim, and probation; Criminal Code 2014, Article 84.

²⁹⁹ Article 544 of the 2014 Criminal Procedure Code only requires the court to 'discuss and motivate in a sentence an opportunity to apply punishment not involving deprivation of liberty, or the release of a juvenile from criminal punishment in connection with the application of compulsory educational measures'. Similarly, Article 545 of the 2014 Criminal Procedure Code only provides for the 'right', rather than the obligation, of the court to impose compulsory education measures on the juvenile if 'it is recognized that the juvenile... may be corrected without the application of criminal punishment measures'.

³⁰⁰ Criminal Code 2014, Article 86.

It is not clear that judges fully implement the principle of detention as a matter of last resort and for the shortest appropriate period of time. In the online survey, respondent SICIM judges ranked 'detention as a measure of last resort' low in their priorities when handling criminal cases involving a child offender.³⁰¹ Most respondent SICIM judges stated during individual interviews that they most commonly sentence a child offender to 'restriction of liberty' (as opposed to deprivation of liberty) although they did not provide further details on what restrictions usually entail and did not comment on the seriousness of the offences being tried. Accordingly, not a great deal can be inferred. Under international standards, deprivation of liberty means any form of detention or imprisonment or placement of a person in a public or private custodial setting, from which the person is not permitted to leave at will, by the order of any judicial, administrative or public authority.³⁰² Therefore, a court sentence which places a juvenile in an 'institution with a special regime of detention' or a 'special school for children with offending behaviour' would constitute a deprivation of liberty under international standards, regardless of whether the case is categorized as a criminal or civil case under Kazakhstan's law.

The grounds on which a child may be deprived of their liberty (under Chapter 33-1 of the Civil Procedure Code) are not clearly defined in Kazakhstan's legislation, which refers only to 'proving presence of the grounds for placing the underage person in a special education organization' or in an 'institution with a special regime of detention', unless they suffer from an illness which prevents the child from attending such an educational institution.³⁰³ There is no requirement that the placement of the child in such an 'institution with a special regime of detention' or in a 'special school for children with offending behaviour' must be for the shortest appropriate period of time or as a measure of last resort.

6.12.2. DECISION-MAKING

International standards emphasize the importance of the process as well as the outcome of decisions regarding sentences for convicted children. Child offenders should be dealt with in a manner appropriate to their wellbeing, and proportionate to their circumstances and the offence.³⁰⁴ In addition, the child should be treated in a manner consistent with the promotion of his/her dignity and worth, reinforcing the child's respect for human rights and the fundamental freedoms of others, and taking into account the child's age and the desirability of promoting the child's reintegration and constructive contribution to society.³⁰⁵ This means that the response must not be strictly punitive.³⁰⁶ As always,

³⁰¹ See Chart 20.

³⁰² United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Adopted by General Assembly Resolution 45/113 of 14 December 1990 ('Havana Rules'), Rule 11(b).

³⁰³ Civil Procedure Code 1999, Article 308-1(2).

³⁰⁴ CRC, Article 40(4).

³⁰⁵ CRC, Article 40(1).

³⁰⁶ Para. 71, UN Committee on the Rights of the Child, General

the four fundamental principles of child rights should apply when considering any matter that involves a child, whether administrative, civil or criminal. These principles are: the best interests of the child being as a primary consideration; the principle of non-discrimination; respect for the views of the child; and the right to life, survival and development.

There is general provision in the 2014 Criminal Procedure Code requiring the court 'to discuss and motivate in a sentence... the release of a juvenile from criminal punishment in connection with the application of compulsory education measures', and general provision requiring the court to take into account or obtain details on the child's living conditions and upbringing, educational and other special circumstances.³⁰⁷ In addition, the 2014 Criminal Procedure Code requires certain factors to be proved in all criminal cases, including the circumstances that characterise the personality of the suspect/accused, the consequences of a criminal offence committed, and the nature and extent of the damage caused by a criminal offence.³⁰⁸ However, there is no detail in the laws and regulations that were made available for review on how exactly such factors should be factored into the court's decision-making.³⁰⁹

In terms of court practice, via online surveys, SICIM judges ranked the order of importance of a series of principles in criminal cases involving a child offender; the results are outlined in Chart 20. As the chart shows, respondent judges ranked punishment as the least important principle, showing that international standards are taken into account.

Nevertheless, individual responses from respondent judges during face-to-face interviews highlight that they hold a range of views on the underlying purpose of sentencing child offenders, and that the best interests and rehabilitation of the child offender are not always priorities. For instance, when questioned on the rationale for imposing the most commonly-used sanction, judges cited a range of responses, including: the need for compulsory education and correction; restoring social justice; humanity; effectiveness; and practicality for the child.

SICIM judges rightly consider a wide range of factors in deciding on the appropriate sentence for a child. Based on their feedback during individual interviews, these

Comment No. 10 (2007) Children's Rights in Juvenile Justice.

³⁰⁷ Criminal Procedure Code 2014, Article 544 and Criminal Code 2014, Article 82, respectively.

³⁰⁸ Criminal Procedure Code 2014, Article 113(1).

³⁰⁹ For example, Article 82 of the 2014 Criminal Code requires the court to take into account the child's educational and other special circumstances but does not explain how. Similarly, Article 531 of the 2014 Criminal Procedure Code provides that in all criminal cases involving a child defendant, during preliminary or court investigation, the following points should be established: the child's age; details of the child's upbringing and living conditions; the degree of the child's intellectual, volitional and psychic development, details of his/her character and temperament, needs and interests; and the influence of adults and other children on the child. Note, however, that full English translations of all relevant laws were not made available for review.

Chart 20. Importance ranking by respondent SICIM judges of principles in cases involving a child offender

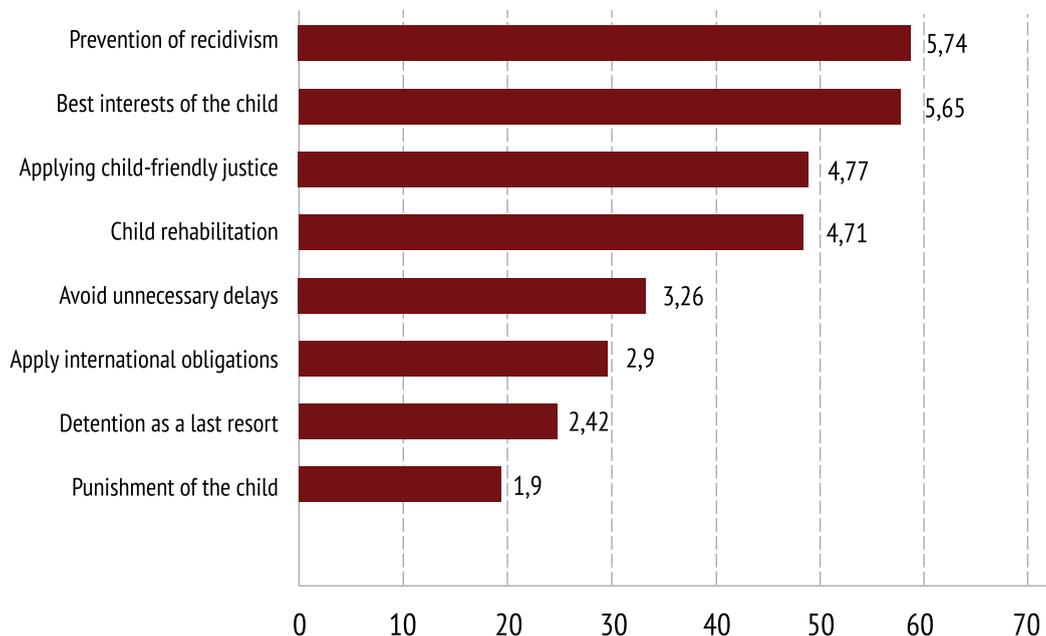
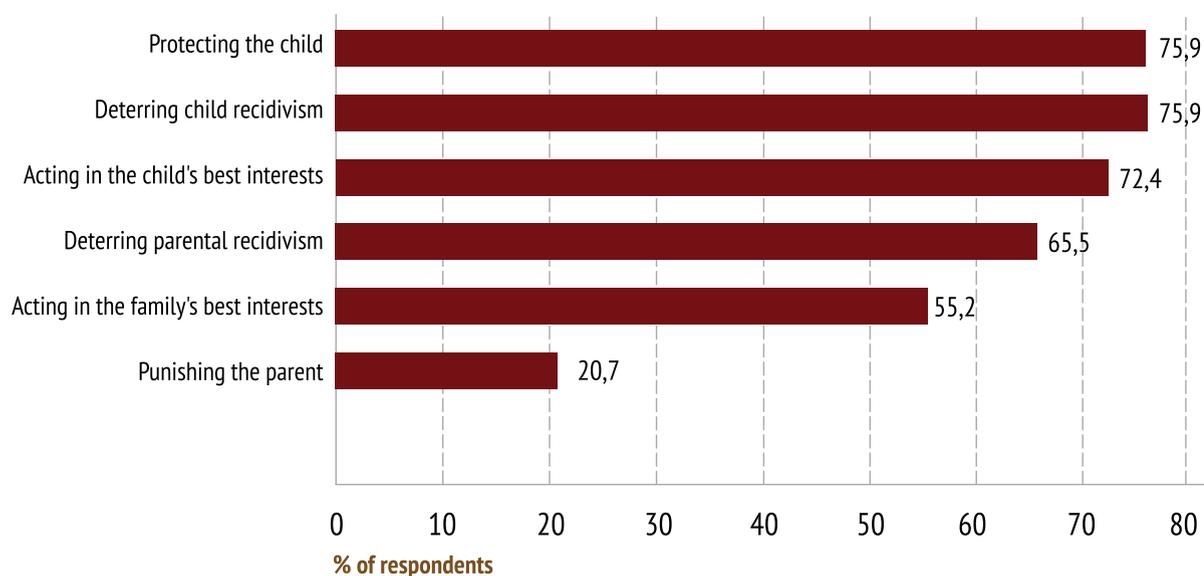


Chart 21. Views of respondent SICIM judges on the most important principles applied in administrative cases (source: online survey)



factors include: justice and proportionality; legislation or the principle of legality; the gravity and nature of the crime; mitigating circumstances; the views of the parties, including the victim; the child's upbringing and living conditions; the child's mental development; the influence of older persons; the personal circumstances of the child; humanity; the risk of danger to the public; and the positive impact on society. However, during interviews, none of the respondent SICIM judges cited the best interests of the child as a factor and only one SICIM judge cited rehabilitation and reintegration as a factor.

Similar results can be identified from SICIM judges' views via online surveys on the most important principles that should be applied in administrative cases. Their responses are summarised in Chart 21.

Around three quarters (75.9 percent) of respondent judges stated that the protection of the child and the prevention of recidivism were important principles when dealing with such cases. A lower percentage of judges (72.4 percent) considered 'the best interests of the child' as an important principle. Notably, however, over half of the judges (55.2 percent) considered the best interests of the family to be an important consideration: a principle in potential conflict with the best interests of the child (which international standards emphasize should be a primary consideration in all actions concerning the child).³¹⁰

In civil cases, almost all respondent SICIM judges (96.6 percent) considered acting in the best interests of the child to be an important principle when dealing with such cases, in line with international standards.³¹¹

³¹⁰ Convention of the Rights of the Child, Article 3(1).

³¹¹ Source: online survey.

- Include in the law the overarching requirement that, in making any decision concerning a child, SICIM judges should act with the best interests of the child as a primary consideration.
- Include in the law the overarching requirement that children in conflict with the law should be dealt with in a manner appropriate to their wellbeing, and proportionate to their circumstances and the offence, and should be treated in a manner consistent with the promotion of his/her dignity and worth, taking into account the desirability of promoting the child's reintegration into society.
- Include in the law the overarching requirement that the deprivation of liberty (including placement in a 'special school for children with offending behaviour' or 'institution with a special regime of detention') should only be used as a measure of last resort and for the shortest appropriate period of time.
- Consider developing judicial guidelines on sentencing and the implementation of the principles above in decision-making, giving sentencing examples for different offences.
- Develop training modules for SICIM judges on the application of sentencing guidelines.

6.13. DIVERSION

'Diversion' happens when a child who has committed a criminal offence has their case dealt with without recourse to judicial proceedings or trial. It is a fundamental feature of juvenile justice³¹² as it avoids stigmatisation of the child, facilitates their rehabilitation and is proven to be more cost-effective.³¹³ Active steps are being taken to implement a diversion system in Kazakhstan, it being a key component of the JJ Development Concept. A detailed assessment of the establishment of a diversion system in Kazakhstan is set out in the JJ Concept Report, with its key findings set out below.

There was generally a lack of knowledge among respondents regarding the meaning and purpose of diversion, with some describing bail as an example of a diversion measure. There is a clear need to strengthen juvenile justice stakeholders' knowledge of the meaning and purpose of diversion.

Kazakhstan's law contains several mechanisms pursuant to which an offender may be released from criminal responsibility. One of the most relevant provisions to this study is that relating to reconciliation. Under Article 68(1) and (2) of the 2014 Criminal Code, a person who has committed a criminal offence of lesser or medium gravity which has not caused death, or a juvenile who has committed a grave offence for the first time not associated with causing death or serious harm to human health, will be exempt from criminal liability if he/she reconciles with the victim and has 'made good for the damage caused.' Where the offender is a juvenile and has been released from criminal responsibility following reconciliation, compulsory educational measures (which include the issuance of a warning, placement in a 'special school for children with offending behaviour'

³¹² Article 40(3) of the CRC requires States parties to promote measures for dealing with children alleged as, accused of, or recognized as having infringed the penal law without resorting to judicial proceedings, whenever appropriate and desirable, providing that human rights and legal safeguards are fully respected. See also Rules 6 and 11 of the Beijing Rules.

³¹³ Committee on the Rights of the Child, General Comment No. 10 (2007) Children's Rights in Juvenile Justice, para 25.

or probation)³¹⁴ will be imposed.³¹⁵

No statistics were made available via the Committee on Legal Statistics and Special Records of the Prosecutor General's Office on the total number of juvenile offenders in cases before the SICIMs that have been released from criminal responsibility via this mechanism. However, based on feedback received during individual interviews, reconciliation and mediation are popular means of resolving criminal cases.³¹⁶ For example, in Ust-Kamenogorsk, in 2013, 104 out of 168 criminal cases tried at SICIM (i.e. 61.9 percent of cases) were settled in this manner.³¹⁷ In Almaty, one judge reported that, in practice, parties resolve most cases through settlement, releasing the child from criminal responsibility.³¹⁸ Two prosecutors in Almaty echoed this, stating that 40 percent and 70 percent of their criminal cases, respectively, are resolved through reconciliation/mediation.³¹⁹ Another SICIM judge, from Aktau, reported that reconciliation was the most common diversion measure used in his criminal cases.³²⁰ A prosecutor in Shymkent reported that 80 percent of criminal cases he deals with in the SICIM are settled through reconciliation.³²¹

Other mechanisms besides reconciliation are available for use in releasing a child from criminal responsibility, including those enshrined in Article 83 of the 2014 Criminal Code. This provision allows the SICIM to release a child from criminal responsibility for misdemeanours, crimes of lesser gravity, or crimes of medium gravity committed for the first time, if it is established that the child's 'correction is possible without criminal

³¹⁴ Criminal Code 2014, Article 84.

³¹⁵ Criminal Code 2014, Article 68(2).

³¹⁶ See for example, Individual Interview, Judge 1, Aktau SICIM, 23 September 2014; Individual Interview, Judge 2, Aktau SICIM, 23 September 2014; Prosecutor 1, Kyzylorda SICIM, 9 September 2014. Reconciliation is available under Article 68 of the 2014 Criminal Code and Article 544(3) of the 2014 Criminal Procedure Code.

³¹⁷ Group Interview, Ust-Kamenogorsk Prosecutor's Office, 17 July 2014.

³¹⁸ Individual Interview, Judge at the Almaty SICIM, 10 July 2014.

³¹⁹ Prosecutor 1, Almaty SICIM, 19 September 2014.

³²⁰ Individual Interview, Judge 1 at the Aktau SICIM, 23 September 2014; Individual Interview, Judge 2 at the Aktau SICIM, 23 September 2014.

³²¹ Prosecutor 1, Shymkent SICIM, 2014.



prosecution'. The child may still 'have to comply with compulsory educational measures', a full list of which is set out in Article 84 of the 2014 Criminal Code. During individual interviews, most respondent SICIM judges stated that supervision of the child's behaviour by his/her parents/guardians or a specialized state body, or restriction of the child's leisure activities or other requirements relating to the child's behaviour, were the most common 'diversion' measures imposed.

The legal safeguards³²² that should be applied under international standards when diverting a child are not normally applied in practice in Kazakhstan. Of particular concern is that nearly half (46.1 percent) of the SICIM judges interviewed considered that a child need not plead guilty to a crime before a case is 'diverted'.³²³

³²²The legal safeguards required by international standards include there being compelling evidence that the child committed the alleged offence; the child freely and voluntarily admitting responsibility; the admission not being used against the child in any subsequent legal proceedings; the child freely and voluntarily giving his/her consent in writing to the diversion; and the consent to the diversion being based on adequate and specific information on the nature, content and duration of the measure, and on the consequences of a failure to complete the measure; Committee on the Rights of the Child, General Comment No. 10 (2007) Children's Rights in Juvenile Justice, para. 27.

³²³38.5 percent of the judges considered that the child must have

Similarly, respondent investigators claiming to have diverted cases (notably, through reconciliation) instead of referring the matter to the prosecutor, have reported not requiring the child's consent for the diversion or an admission of guilt for the alleged offence.³²⁴ Such safeguards are particularly important, as they seek to ensure that children are not sanctioned when they have not committed an offence and that the fact-finding process is not ignored.

Several of the mechanisms that enable the court to release a person from criminal responsibility, including reconciliation, first require the offender to compensate the victim for any damage caused.³²⁵ Over half (61.5 percent) of the SICIM judges interviewed considered that the child or his/her parents/guardian must pay for

pleaded guilty before the case could be diverted; the responses of 15.4 percent of judges in response to this question were unclear.

³²⁴Investigator 1, Aktau, 26 September 2014; Investigator 2, Aktau, 27 September 2014; Investigator 3, Aktau, 27 September 2014.

³²⁵Under Article 68 of the 2014 Criminal Code, a person may only be released from criminal responsibility by reconciling with the victim (for example, through mediation), if the victim is compensated for any damage caused. There is also a specific provision in the Criminal Code that permits a court to release a person from criminal responsibility for certain crimes through the payment of surety (2014 Criminal Code, Article 69).

any damage caused before the case can be diverted.³²⁶ Court observations and individual interviews also suggest that this is common practice.³²⁷ These laws and practices raise particular concerns. The requirement for compensation prior to diversion being ordered by the court has potential to amount to blackmail, under international standards. For example, a child defendant's family may be required to pay a sum of money in return for the 'victim' telling the police that reconciliation has taken place, so that the case will not go to trial or result in a conviction. A further issue is that a requirement to pay financial compensation before a child can be diverted could unfairly discriminate against children from low-income families, or children without parental care, who may not be able to pay the sum required. These are the very children who are at particular risk of coming into conflict with the law.³²⁸ As one defence lawyer remarked:

"If we manage to make amends for harm done it is better. Some parents make a business out of this without the child taking part".³²⁹

There is variation between SICIMs as to when a case may be diverted. The majority of respondent SICIM judges interviewed considered that they could only divert cases *after* commencing a trial, rather than before. A smaller share considered that they could also divert a case before trial. This risks developing non-uniform decision-making practices, as SICIM judges may use different approaches and factors when deciding whether to divert a case.

Despite the different practices adopted, several respondent judges commented on the effectiveness of diversion measures in preventing reoffending, and in rehabilitating and reintegrating the child back into the community. However, the lack of community-based programmes that can be used as diversion measures were highlighted by several judges:

"They [alternative measures] are not effective because there are no social institutions able to establish conditions for future crime prevention. The child returns to the same socially disadvantaged environment. Social services and monitoring are very formal due to a lack of staff and resources".³³⁰

"How effective do you think these [diversion] mechanisms are in preventing reoffending, and in rehabilitating and reintegrating the child back into the community?"

Not effective, as there are no social mechanisms working in this direction".³³¹

In this connection, it is encouraging that the diversion of children into 'Programme of Diversion for Children in East Kazakhstan', provided by the 'Phoenix' Centre in Ust-Kamenogorsk and by the 'Chance' diversion scheme in Astana, is appearing successful in preventing further offending. More details on these pilot schemes are set out in the JJ Concept Report.

RECOMMENDATIONS ON DIVERSION

- Legal safeguards for diversion stipulated under international standards should be incorporated into the law, in particular, the requirement that:
 - There is compelling evidence that the child has committed the alleged offence;
 - The child has freely and voluntarily admitted responsibility for the crime;
 - The child's admission should not be used against the child in any subsequent legal proceedings;
 - The child has freely and voluntarily given his/her consent in writing to the diversion mechanism; and
 - The child's consent to the diversion is based on adequate and specific information on the nature, content and duration of the measure, and on the consequences of a failure to complete the measure.
- The obligation on the child or his/her family to have compensated the victim for any damage caused before the case can be diverted should be removed from the law.
- Consider progressive expansion nationwide of a range of community-based diversion measures to address anti-social and offending behaviour.
- Consider replicating the 'Phoenix' and 'Chance' diversion programmes throughout Kazakhstan (see recommendations in the JJ Concept Report for more details).

³²⁶ 23.1 percent considered that the child or parents/guardians need not have paid for any damage caused before the case can be diverted; the responses of 15.4 percent were unclear.

³²⁷ See for example Defence Lawyer, [location of SICIM withheld], 1 October 2014; Prosecutor 1, Kyzylorda SICIM, 9 September 2014.

³²⁸ Representative of the Juvenile Consultation Unit, Astana, 18 September 2014.

³²⁹ Defence Lawyer 3, [location of SICIM withheld], 18 September 2014.

³³⁰ Individual Interview, SICIM Judge, [city/region withheld], 2014.

³³¹ Judge 2, [location of SICIM withheld], [undated].



7. EQUITY-RELATED ISSUES

7.1. GENDER EQUITY

Girls face particular vulnerabilities when they come into contact with the law, on account of their gender and age. Girls can face particular risks when held in detention or imprisonment, through lack of gender-sensitive healthcare or the risk of gender-based violence or humiliation.³³² Girls may also have experienced discrimination in the community, leading to their coming into contact with the justice system, for example, as a victim of gender-based violence or abuse. All decisions affecting the child need to factor in gender-specific vulnerabilities. Girls may need to be treated differently to boys, in order to address underlying inequalities and improve overall outcomes for the child.

Not all respondents were aware of the importance of adopting a gender equity-based approach to handling

SICIM cases. Several respondents erroneously appeared to equate substantive equality and non-discrimination with equal treatment. For example, in response to the question, “Are boys and girls treated differently in any way during the court process”, an SICIM judge remarked, “No. All are equal.”³³³ Further responses indicate a lack of awareness of the meaning of gender equality and how to ensure this in practice. For example, some respondents remarked that boys and girls are treated differently during the judicial process because girls are more ‘flamboyant’³³⁴ or ‘emotional’³³⁵ than boys and so are treated ‘with more understanding’.³³⁶ Such comments may also reflect underlying discriminatory assumptions about girls’ (and boys’) behaviour and psychological situation, and undermine the importance of taking an individualised response to a child’s particular situation.

³³³ Judge 2, [location of SICIM withheld], 23 September 2014.

³³⁴ Representative of Juvenile Consultation Unit, [location withheld], 18 September 2014.

³³⁵ Psychologist 1, Shymkent, [undated transcript].

³³⁶ Psychologist 1, Shymkent, [undated transcript].

³³² See, for example, the UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the ‘Bangkok Rules’), 6 October 2010.

RECOMMENDATIONS ON GENDER-EQUITY

- Capacity-building training on gender equality and the rights of girls should be integrated into specialist training provided to SICIM judges, prosecutors, lawyers, social workers, pedagogues and psychologists (recommended in Section 5 on 'Specialized actors and institutions').

7.2. OTHER EQUITY-RELATED ISSUES

Several equity-related issues have been highlighted throughout the Report. Notable among these is the law and practice of imposing fines on parents/legal guardians for failing to fulfil their parental responsibilities. It was highlighted earlier in this Report that this response is unlikely to address the underlying and often complex root causes of a child's and/or parent's/legal guardian's behaviour. It can even have an especially detrimental impact on children and families from low-income backgrounds. Our recommendation above, on the handling of such matters by child protection authorities rather than as administrative cases before the SICIMs, would begin to address this issue (see Section 4.2 on 'Administrative cases', above).

Section 6.13 on 'Diversion' highlights the fact that several mechanisms enabling the SICIMs to release a person from criminal responsibility first require the offender to compensate the victim for damage caused, and that this appears to be common practice. Not only does this have the potential to amount to blackmail (as defined under international standards) but could unfairly discriminate against children from low-income families or children without parental care: the very children at particular risk of coming into conflict with the law. To address this issue, we recommend removal from the law of the obligation on a child or his/her family to compensate the victim for any damage caused, before a case can be diverted.

Other equity-related issues concern lack of legal aid, particularly in administrative and civil cases before the SICIMs. Not only does this undermine access to justice and the ability to receive a fair hearing, but it can have a detrimental impact on the parties' performance in court. For this reason, we recommend increasing the rate of legal aid in criminal cases, to encourage the development of a set of experienced and skilled criminal defence lawyers. We also recommend extending legal aid to civil and administrative cases, particularly those which can result in administrative arrest or placement of a child in an institution with a special regime of detention or a 'special school for children with offending behaviour' (see Section 5.2, above, on 'Prosecutors and lawyers' for more details).

Physically accessing an SICIM can be a significant challenge, particularly if the parties live far from the court and/or do not have the means or funds to travel

to the SICIM. Recommendations on incrementally increasing the number of SICIMs seek to address this issue (see Section 6.1, above, on 'Physical access to the SICIMs'). Please note analysis and recommendations on 'Child participation' in Section 6.5 (particularly the issue regarding a child's inability to participate in a hearing based on his/her age or competence), in Section 6.7 ('Participation of parents and guardians') on ensuring that children without parental care are provided with appropriate legitimate representation in court, and in Section 6.8, on 'Interpretation services'.

8. DATA COLLECTION AND MONITORING OF SICIM CASES



The collection of quantitative and qualitative data on SICIM cases can facilitate the evaluation of their efficiency and effectiveness in light of domestic and international standards, and facilitate the development of related policies. The CRC Committee has urged State parties to ‘systematically collect disaggregated data’ relevant to the administration of the juvenile justice system and necessary for the development, implementation and evaluation of policies and programmes aimed to prevent and respond to juvenile delinquency in accordance with the CRC.³³⁷ Around 17 percent of respondent SICIM judges considered that an improved system of data collection and record-keeping is necessary to improve the handling of cases.

Based on statistics obtained from the Committee on Legal Statistics and Special Records of the Prosecutor General’s Office, while certain statistics are available on criminal and administrative cases involving

children,³³⁸ there do not appear to be any indicators in this database relating specifically to administrative or criminal cases dealt with in the SICIMs. Similarly, while statistical data is available via the Committee on Legal Statistics and Special Records of the Prosecutor General’s Office on the total number of civil cases referred to and processed within the SICIMs, such data does not appear to include any indicators specifically relating to the subject-matter dealt with, or providing details of applicants and children involved, or the outcomes of such cases.

³³⁷ Committee on the Rights of the Child, General Comment No. 10 (2007) Children’s Rights in Juvenile Justice, Para. 98.

³³⁸ Such as the number of minors convicted of a crime according to categories of crime, number of minors who are released from criminal responsibility according to gravity of crime, the number of female and male minors convicted of a crime, the number of criminal charges made against minors according to category of crime, the number of convicted minors according to the types of punishment imposed, and the number of cases against parents processed in administrative courts; Aina Shormanbayeva, The analysis of statistics on the cases connected with minors, provided by the Prosecutor General’s Office, 9 January 2015.



RECOMMENDATIONS ON DATA COLLECTION AND MONITORING OF SICIM CASES

- Consider further review of data collection and monitoring systems relating to the SICIMs, with a view to:
 - Developing indicators specifically relating to cases in the SICIMs, in line with international standards; and
 - Integrating these indicators into existing data collection mechanisms or databases to facilitate the collection of data on SICIM cases at local levels, and the exchange of information on the SICIMs between departments, as well as between various levels of government.

9. FINANCING OF THE SICIMS

As indicated in Chart 17, above, almost half (48.3 percent) of respondent SICIM judges considered it necessary to increase the court budget, to improve the handling of court cases. Analysis of the financing system of the

SICIMs falls outside the ambit of this report. However, this is an area in which further mapping and research may be conducted in future.



RECOMMENDATIONS ON FINANCING OF THE SICIMS

- Consider conducting an in-depth mapping and assessment of the financing system of the SICIMs and the cost-effectiveness of these courts.
- Consider financial savings that could be achieved by removing some administrative cases from the jurisdiction of the court and introducing pre-trial diversion measures in criminal cases involving child offenders (see recommendations at the end of Section 4 for more details).

10. CONCLUSIONS AND RECOMMENDATIONS

10.1. CONCLUSIONS

The establishment of the SICIMs is an important and significant step towards securing child rights in Kazakhstan. We were impressed that, within a relatively short period of time, the SICIMs have been established across the country and are fully functioning. There is strong support for the SICIMs generally among stakeholders and participants, who value the SICIMs as a specialist forum for handling children's matters. The judges working in the SICIMs are clearly committed, aware of the difficulties faced by children and families, and take their role in relation to the best interests of children very seriously. Having worked in the SICIM, judges and other stakeholders were able to talk to us about the functioning of the SICIMs, about successes and obstacles and ideas for innovation that they felt would improve their effectiveness and further implementation of international standards.

With regard to the mandate and jurisdiction of the SICIMs, this study highlights that a considerable amount of SICIM time is spent on administrative cases. It is questionable whether this is the most effective use of the SICIMs' time. Data suggests that a significant proportion of administrative cases coming before the SICIMs generally involve issues relating to parenting, child care and behaviour management, which could be better dealt with by child protection agencies than through judicial proceedings. This Report therefore recommends considering whether some administrative offences should cease to be considered as offences, and instead be considered as a matter that requires a referral to the child protection authorities. Removing minor administrative offences from the jurisdiction of the SICIMs could free court time and save court costs in the long-term.

Based on data obtained for this study, most of the criminal cases in the SICIMs involving child defendants concern property-related offences. Although there is possibility of reconciliation between parties, we have concluded that the system would benefit from an expansion of community-based pre-trial diversion programmes, and from schemes addressing offending behaviour, and mediation.

There is a developing expertise in child rights among various stakeholders involved in SICIM cases, particularly amongst judges, although most officials interviewed for this study had received little training in handling children's cases and would benefit from the provision of compulsory pre-service and in-service specialist training. This Report makes recommendations that all stakeholders should have the requisite qualifications before they work on an SICIM case. These recommendations aim to ensure the best interests of each child are appropriately assessed in each case and remain a primary consideration throughout proceedings.

At present there is one SICIM in most regions (in three regions, there are two SICIMs). We consider the SICIMs to be a highly successful innovation and that there should be an increase in their number, so that every member of the population can access an SICIM when necessary. New court buildings are not necessarily required and not every SICIM needs to be a full-time court. Other courts or courtrooms could be designated as an SICIM, and could sit on a part-time basis of perhaps two days a week, or one week every month, or every other month, according to demand. SICIM judges could travel across the region or judges presiding over other courts could be trained to act as SICIM judges on a part-time basis.

As with all courts worldwide, the operational procedures and functioning of the SICIMs could be further developed, not only to ensure cost effectiveness and efficiency, but to ensure that procedure meets international standards and develops best practices. Recommendations in this area focus on improving access to the SICIMs, as well as access to legal assistance, internal case management and co-ordination of cases, child participation, special protective measures for child victims and witnesses, sentencing, prompt decision-making, diversion, and the courtroom environment.

10.2. RECOMMENDATIONS

10.2.1. MANDATE AND USERS OF THE SICIMs

SCOPE OF JURISDICTION:

- Consider further research into whether jurisdiction over cases involving children, particularly cases concerning especially grave crimes (as are currently dealt with by courts other than the SICIMs) should be transferred to the SICIMs.

CRIMINAL JURISDICTION:

- Consider designating specific SICIM judges to specialize in juvenile justice cases. Such judges should receive more intensive training, to allow them to develop a specialism and expertise in this difficult area (see Section 5.1 for more details on the specialist training of judges).
- While a high percentage of property-related offences in the SICIMs is to be expected, consider whether more cases could be resolved through reconciliation, mediation or other alternative pre-trial diversion measures, which would prevent the child from being brought to trial, with all the potential negative consequences that this can cause to the child.

ADMINISTRATIVE JURISDICTION

- Consider whether some administrative acts and offences, especially where neglect and poor parental care are involved, should be treated as child protection

issues and referred to child protection services for investigation and assessment, before or instead of being prosecuted in the SICIMs.

- Consider amending laws relating to administrative offences, to allow prosecutors and judges to divert parents who have committed administrative offences into parenting programmes or other professional services which can provide parenting advice and promote better parenting, instead of putting them 'on trial' and sanctioning them with a fine.
- Increase the range of measures open to the SICIMs when dealing with administrative offences, including child protection measures and parenting orders, which require parents to undergo a parenting course to teach them how to manage their child's behaviour.

10.2.2. SPECIALIZED ACTORS AND INSTITUTIONS

- Support the Academy of Public Administration, to enable it to develop a compulsory training course on handling children's cases for all SICIM judges, for completion before judges start sitting on children's cases.
- Support the Academy of Public Administration, to develop short, specialist continuing professional development training courses on children's cases, to be attended by all SICIM judges at least once a year.
- The General Prosecutor's Office and the Bar Association should develop specialist training programmes for their members working in the SICIMs.
- Prosecutor's Offices that have not as yet established a specialized divisions for children or do not have designated child prosecutors should be encouraged to do so.
- Consider restricting defence lawyers from representing children in the SICIMs to those who have undergone specialist training on representing children.
- Consider paying an extra legal aid payment to criminal defence lawyers who have completed a specialist training course on representing children, to encourage a cadre of experienced and skilled defence lawyers to take on criminal cases involving child defendants in the SICIMs.
- Children who are the subject of an application under Chapter 33-1 of the Civil Procedure Code (regarding placement in a 'special school for children with offending behaviour' or in an 'institution with a special regime of detention') should have access to legal advice and legal representation from a lawyer trained in handling children's cases. Such representation should be free of charge.
- Consider extending access to legal aid to other categories of administrative and civil cases in the SICIMs, particularly to administrative cases in which the SICIM may impose the sanction of administrative arrest on the parent/adult defendant.

- Provide detailed guidance on the separate functions of social workers, psychologists and pedagogues in SICIM cases.

- Consider appointing at least one full-time social worker to each SICIM, to be available in any case handled by the court, including administrative cases.
- Consider progressively increasing the number of clinical child psychologists appointed to work in the SICIMs so that a clinical child psychologist is available free of charge to provide psychological expertise and support where required by the SICIM.
- Require that a social inquiry report on the child is provided by a social worker/psychologist in juvenile justice and administrative cases in the SICIMs, particularly before deciding upon the sentence (for more details on which see 'Sentencing', above).
- Ensure that social workers, psychologists, pedagogues and representatives of the Guardianship Authority receive compulsory specialist training on handling children's cases before they take on cases in the SICIMs, and receive compulsory regular in-service training, to ensure that their skills and knowledge remain up to date.

10.2.3. ACCESS TO THE SICIMs

- There should be a progressive increase in the number of SICIMs, to offer better public access to this court.
- During the period of progressive increase in the number of SICIMs, consider allowing other courts to designate themselves as SICIMs whenever they hear a case falling under the jurisdiction of the SICIMs.
- Judges trained in child rights, juvenile justice and child protection, should be available at every court designated as an SICIM, to ensure that the case is handled by a judge specialized in handling children's cases. This could be achieved by enabling any SICIM judge to travel to any court designated with SICIM status, for the purpose of hearing cases within SICIM jurisdiction.

10.2.4. INTERNAL CASE MANAGEMENT AND CO-ORDINATION

- While the development and implementation of recommendations on diversion and the handling of administrative cases could significantly reduce the number of cases referred to the SICIMs, alleviating the backlog of cases before the court, it is recommended that each SICIM establishes an inter-disciplinary court management committee to address issues of case management and obstacles to the effective handling of cases in the SICIM. Each committee should include an SICIM judge, and regional representatives from the Prosecutor's Office and from the Bar Association, from the police, and the education authorities, as well as a psychologist and social worker, and representatives of any NGOs in the area working on diversion.

- It is recommended that SICIM judges should go ‘on circuit’ – namely, that they should travel to other geographic areas in the region at regular intervals, to hear cases at a district court designated as an SICIM for this purpose (but not permanently staffed as an SICIM).
- Consider developing multi-stakeholder practice guidelines and training to strengthen co-ordination between the SICIMs and juvenile justice, administrative and child protection bodies, particularly in cases where child protection referral may be needed.

10.2.5. ACCESS TO LEGAL ASSISTANCE

- Ensure that children are provided with prompt legal assistance and representation by a lawyer from the moment that the child first comes into conflict with the law (i.e. on apprehension and before questioning by police) until completion of criminal proceedings. In line with international standards, the lawyer should be specially trained in handling juvenile justice matters before taking on the case (see ‘Prosecutors and lawyers’ under ‘Specialized actors and institutions’, above, for related recommendations).
- Consider establishing a ‘duty lawyer’ scheme in each district, for the police to call when they apprehend a child.
- Introduce guidance for the police, to ensure that questioning of a child should only take place when a lawyer is present.
- Amend Article 530(3)(2) of the Criminal Procedure Code to state that the rules of juvenile justice continue to apply to those charged with an offence alleged to have been committed while they were under the age of 18, regardless of their age at the time of court proceedings.

10.2.6. RIGHT TO PRIVACY

- The law needs to clarify that all hearings and trials in the SICIMs, including civil and administrative hearings, are conducted in a closed environment, not open to the public.
- Secondary legislation should specify who is permitted to attend such trials/hearings. Normally, court personnel who are being trained, trainee prosecutors and defence lawyers, and researchers granted access by the Ministry of Justice, the Supreme Court and/or the judge hearing the case are permitted to attend closed hearings and trials, although the consent of the parties should be sought.

10.2.7. CHILD PARTICIPATION

- Include a provision in the law that a child capable of forming their own views has the right to express those views freely in all matters affecting them, with due weight being given to those views in accordance with the age and maturity of the child.
- Reconsider the power to exclude an accused child

from criminal proceedings, to permit the child to remain in the courtroom at all times during the trial/hearing.

- Remove a pre-trial investigator’s power, in criminal proceedings, to order the non-presentation to a child defendant of case materials that may render a negative impact upon the child, and include a general rule of disclosure of evidence to the child defendant and his/her lawyer, to enable them to prepare the child’s defence.
- Article 12 of the CRC requires that ‘the child shall, in particular, be provided with the opportunity to be heard in judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body’. Where the child is old enough to have a view on the desired outcome of the case but is not able to participate fully and express those views, it is recommended that the court social worker acts as an intermediary and presents the views and wishes of the child to the court.
- Consider putting in place a compulsory training course on facilitating participation and child development for judges, prosecutors, defence lawyers, psychologists and social workers working in the SICIMs.

10.2.8. CHILD VICTIMS AND WITNESSES

- Either the Prosecutor’s Office or the SICIMs should consider the establishment of a child victim and witness support programme, to facilitate the giving of evidence by a child, including taking the child into the courtroom where the case will be heard before the hearing or trial, explaining who will be present, and the process and procedures of the court, and what the child will be asked to do as a victim or witness. Consideration should also be given to allowing the child to meet the judge beforehand, to put the child at ease.
- Clarify in the law the role of the parent/guardian/teacher or other legitimate representative of the child victim/witness in court, to prevent overlap with the expert functions of the social worker, psychologist or victim support personnel.
- Consideration should be given to the introduction of special measures for child victims and witnesses to facilitate their participation. These could include:
 - The introduction of video recorded testimony, with cross-examination of the child recorded soon after the crime is reported, to allow the child to move on emotionally rather than having to relive the event at a later trial; and
 - The use of screens in courts so that the child cannot see the offender, and the use of live link rooms, so that the child does not have to enter the courtroom, but can give evidence and be asked questions in another room where he or she would sit with a supporter. The evidence would be relayed by video link, allowing the defendant to see the child but for the child not to see anyone in the court other than the judge and the prosecutor/lawyer.

- If the Prosecutor's Office decides to establish a child victim and witness support unit, each court hearing involving a child victim or witness should have a member of staff with specific responsibility for handling issues relating to child victims and witnesses and liaising with the local Prosecutor's Office. Where the child victim or witness is to give evidence against another child, the liaison and support person must be somebody other than the court social worker or psychologist.
- Children involved in administrative hearings should be treated as victims and witnesses, including through the application of the measures above where appropriate.

10.2.9. PARTICIPATION OF PARENTS AND GUARDIANS

- There should be at least one full-time social worker at each SICIM, to see all child defendants and their parents before trial. The social worker would be able to give the judge information about the child's family, background and current situation.
- The SICIM social worker should explain the procedures of the court to parents/guardians involved in the case and advise on the parent's/guardian's role during the hearing.
- The Supreme Court may consider producing a simple leaflet setting out SICIM procedures for parents/guardians involved in court cases. A child-friendly version of the leaflet could also be made available.
- Where the child is without parental care, he/she should be provided with alternative support from a person not at risk of having a conflict of interest with the child. The person may be a relative, family friend, or, in their absence, a social worker, psychologist or pedagogue allocated to the court.

10.2.10. INTERPRETATION SERVICES

- Interpreters should be required to demonstrate that they have the required level of fluency before undertaking any interpretation or translation services for cases before the SICIMs. The Supreme Court might wish to consider setting a competency level and system of certification for interpreters and translators.

10.2.11. COURTROOM ENVIRONMENT

- In order to engage the child and to enable him/her to participate fully in proceedings in the SICIMs, consider changing the layout of the court, whether in a criminal, administrative or civil case, to make the seating arrangements less formal.
- Judges in the SICIMs should sit at the same level as the child and other parties, and not be robed.
- Prosecutors should not wear uniforms during hearings involving a child.
- Parties should sit close enough for the child to be

able to participate and to be engaged in proceedings.

- Children should be permitted to sit next to their parents and to their defence lawyer, so that they can communicate as necessary during the course of the hearing or trial.
- Police officers should not be armed in the SICIM.

10.2.12. RIGHT TO PROMPT ATTENTION OF A JUDGE IN CRIMINAL CASES

- At least one investigating judge should be designated in each SICIM to handle applications relating to pre-trial detention. Recommendations on the provision of specialist pre-service and in-service training to SICIM judges (see above) should apply to these investigating judges.
- In line with international standards, the Criminal Procedure Code should be amended so that children in conflict with the law must be brought before the SICIM within 24 hours of being first apprehended, to allow the court to examine the legality of any continued deprivation of liberty. This would also allow the SICIM to set case management directions, including dates for trial and determination of witnesses required, in advance of the trial.

10.2.13. DECISIONS WITHOUT DELAY

- Consider whether there should be a pre-trial review before the main hearing or trial, to ensure that all summons have been served and all witnesses and parties are aware of the need to attend, and have produced and disclosed all necessary documents.
- Consider reminding judges of their power to complain to the Prosecutor's Office or the Bar Association if a prosecutor or defence lawyer fails to attend without a reasonable excuse, even where time limits imposed by law for the overall duration of proceedings have not been exceeded.

10.2.14. SENTENCING

- Include in the law the overarching requirement that, in making any decision concerning a child, SICIM judges should act with the best interests of the child as a primary consideration.
- Include in the law the overarching requirement that children in conflict with the law should be dealt with in a manner appropriate to their wellbeing, and proportionate to their circumstances and the offence, and should be treated in a manner consistent with the promotion of his/her dignity and worth, taking into account the desirability of promoting the child's reintegration into society.
- Include in the law the overarching requirement that the deprivation of liberty (including placement in a 'special school for children with offending behaviour' and an 'institution with a special regime of detention')

should only be used as a measure of last resort and for the shortest appropriate period of time.

- Consider developing judicial guidelines on sentencing and the implementation of the principles above in decision-making, giving sentencing examples for various offences.
- Develop training modules for SICIM judges on the application of sentencing guidelines.

10.2.15. DIVERSION

- Legal safeguards for diversion stipulated under international standards should be incorporated into the law, in particular, the requirement that:
 - There is compelling evidence that the child has committed the alleged offence;
 - The child has freely and voluntarily admitted responsibility for the crime;
 - The child's admission should not be used against the child in any subsequent legal proceedings;
 - The child has freely and voluntarily given his/her written consent to the diversion mechanism; and
 - The child's consent to the diversion is based on adequate and specific information on the nature, content and duration of the measure, and on the consequences of a failure to complete the measure.
- The obligation on the child or his/her family to have compensated the victim for any damage caused before the case can be diverted should be removed from the law.
- Consider progressive expansion nationwide of a range of community-based diversion measures, to address anti-social and offending behaviour.
- Consider replicating the 'Phoenix' and 'Chance' diversion programmes throughout Kazakhstan (see recommendations in the JJ Concept Report for more details).

10.2.16. EQUITY-RELATED ISSUES

- Capacity-building training on gender equality and the rights of girls should be integrated into specialist training provided to SICIM judges, prosecutors, lawyers, social workers, pedagogues and psychologists.

10.2.17. DATA COLLECTION AND MONITORING

- Consider conducting a further, in-depth review specifically relating to data collection and monitoring systems relating to the SICIMs, with a view to:
 - Developing indicators specifically relating to cases in the SICIMs, in line with international standards; and
 - Integrating these indicators into existing data collection mechanisms or databases to facilitate the

collection of data on SICIM cases at local levels, and the exchange of information on the SICIMs between departments, as well as between various levels of government.

10.2.18. FINANCING OF THE SICIMs

- Consider conducting in-depth mapping and assessment of the financing system of the SICIMs and the cost-effectiveness of these courts.
- Consider financial savings that could be achieved by removing some administrative cases from the jurisdiction of the court and introducing pre-trial diversion measures in criminal cases involving child offenders (see recommendations at the end of Section 4 for more details).

**Annex A:
PLAN FOR CONDUCTING STAKEHOLDER INTERVIEWS**

Semi-structured interviews	INTERVIEWS TO BE CONDUCTED IN EACH OF THE EIGHT SAMPLED SICIMS	
	Judge	x 2
	Prosecutor	x 4 (1 that prosecutes child defendants; 1 that prosecutes adults in cases involving child victims; 1 that acts in cases concerning administrative offences; 1 that monitors the social and economic wellbeing of children)
	Defence lawyers	x 3
	Director of specialist legal consultation centres	x 1
	Child offender	x 4
	Child victim	x 2
	Child witness	x 2
	Parent of a child offender	x 4
	Parent in a civil case	x 4
	Parent in an administrative offences case	x 4
	Police officer and investigators responsible for early management of the case	x 2 (police) x 2 (investigators)
	Psychologist/pedagogue/social worker/social psychologist from the education authorities	x 2 OR if more than one type of representative is used in the region, interview one of each type

Annex B:
STAKEHOLDER INTERVIEWS CONDUCTED

STAKEHOLDERS	NUMBER OF INTERVIEWS CONDUCTED
SICIM judges	12
Prosecutors	12
Defence lawyers (criminal and administrative cases)	23
Lawyers in civil cases	8
Police officers and investigators in criminal and administrative cases/juvenile inspectors/Head of Department of Internal Affairs	20
Psychologists/representatives of education authorities/social workers	16
Mediators	2
Representatives of specialist legal consultation centres	4
Director of 'Chance'	1
Director of 'Phoenix'	1
Child defendant in a criminal case	12
Child victim or witness in a criminal case	6
Parent of a child defendant	15
Parent/adult party in a civil case	30
Adult defendant in an administrative case	19
TOTAL	181

Annex C:

PLAN FOR OBSERVATION OF SICIM HEARINGS/TRIALS

PLAN FOR OBSERVATION OF SICIM HEARINGS/TRIALS

Trial observation	<p>Eight trial observations to be conducted at each of the eight sampled SICIMs, giving a total of 64 trial observations for this assessment. These should cover:</p> <ul style="list-style-type: none">• 2 x juvenile offender trials (or, if a trial is not possible, an initial procedural hearing)• 1 x child-victim trial (or if a trial is not possible, an initial procedural hearing)• 2 x administrative offences hearings (relating to wrongdoing committed by the child but where the parent is responsible)• 3 x civil hearings (should include at least one case concerning the deprivation or limitation of parental rights)
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Annex D:
OBSERVATION OF SICIM HEARINGS/TRIALS

TYPE OF COURT HEARING/TRIAL	NUMBER OF OBSERVATIONS CONDUCTED
Aktau	
Civil	3
Administrative	2
Criminal	1
Almaty	
Civil	4
Administrative	5
Criminal	3
Astana	
Civil	3
Administrative	2
Criminal	2
Karaganda	
Civil	3
Administrative	2
Criminal	3
Kyzylorda	
Civil	3
Administrative	2
Criminal	3
Semey	
Civil	6
Administrative	3
Shymkent	
Civil	1
Administrative	2
Criminal	3
Ust-Kamenogorsk	
Civil	1
Administrative	2
Criminal	3
TOTAL	62

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