



# ASSESSMENT OF JUVENILE JUSTICE REFORM ACHIEVEMENTS IN TURKMENISTAN

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This report has been prepared by Daniel O'Donnell  
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# ASSESSMENT OF JUVENILE JUSTICE REFORM ACHIEVEMENTS IN TURKMENISTAN

UNICEF Regional Office for Central  
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## Note on the Assessment Mission

The assessment mission took place from 11 to 19 August 2010. The team was composed of Dan O'Donnell, international consultant, and Yolbars Kepbanov, national consultant. Support was provided by Shohrat Orazov of UNICEF Turkmenistan. Erica Hall of the Children's Legal Centre, implementing partner of the UNICEF Country Office in Turkmenistan, also participated in many of the meetings mentioned below. The conclusions and recommendations contained in the report were prepared by Mr. O'Donnell, in consultation with the UNICEF Country Office and the UNICEF Regional Office.

In Mary, the head of the assessment team attended as an observer a two-day training/training needs assessment activity carried out by the Children's Legal Centre.<sup>1</sup> The assessment team conducted two focus group discussions in connection with this activity; participants included juvenile affairs inspectors, a prosecutor, a judge and a judge's clerk, defence attorneys, two medical doctors, representatives of the local government (*Khyakimlik*), the department of education as well as representatives of the Youth Organization and the Women's Union.

In Ashgabat, the head of the assessment team participated in a two-day seminar on prison reform organized by the Ministry of Foreign Affairs and the British Embassy, and conducted by the International Centre for Prison Studies.

The assessment team visited the Family Support Centre in Mary, interviewed the head of the Family Support Centre in Abadan, near the capital, and visited the Centre for the Prevention of Child Labour in Abadan. It also met with a representative of a non-governmental HIV prevention 'initiative group' that provides services to sex workers and drug users.

Representatives of the United Nations Office on Drugs and Crime (UNODC), the Organization for Security and Co-operation in Europe (OSCE), the British Embassy, the German Technical Cooperation (GTZ), the Children's Legal Centre and the International Centre for Prison Studies also were interviewed.

Requests for interviews with the Supreme Court, the Prosecutor General's Office, the Ministry of Interior and the Police Academy were not approved, nor were requests for permission to visit a remand (pretrial detention) facility and the correctional-educational facility for juveniles. The lack of access to such officials and facilities, together with the lack of data, made it impossible to complete the assessment mission. Consequently, the scope of the report is narrower than the assessments of juvenile justice in other countries of the region, and its focus is largely on legislation, because little information on practice was available.

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

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<sup>1</sup> The Children's Legal Centre is an NGO based at Essex University in the United Kingdom.

## Background

Turkmenistan is the second largest country in Central Asia. Its population is 6.2 million, according to official sources.<sup>2</sup> Approximately 37 per cent is under age 18.<sup>3</sup> Nearly 95 per cent of the population is Turkmen, according to official data, 2 per cent is Uzbek and almost 2 per cent is Russian.<sup>4</sup>

The economy is based largely on oil and gas exports.<sup>5</sup> The *per capita* Gross Domestic Product (purchasing power parity) is US\$ 4,953.<sup>6</sup> No recent data on the percentage of the population below the national poverty line are available.<sup>7</sup>

Turkmenistan became independent in October 1991. A new constitution was adopted in 1992 and a revised constitution in 2008. Article 6 of the Constitution provides in part, "If an international treaty (contract) of Turkmenistan establishes rules other than those stipulated by the laws of Turkmenistan, the rules of international treaty will apply."

Turkmenistan is a unitary State, divided for administrative purposes into six regions (including the capital, Ashgabat), 20 cities and 65 districts. The *Mejlis* (parliament) is unicameral. The first president, who was president-for-life, died in 2006. The current president was elected for a term of five years in 2007.

At independence, there was no law on juvenile justice, and the country was lacking specialized juvenile courts and special remand (pretrial detention) centres for accused juveniles. There were police officers specialized in the prevention of offending by juveniles, specialized prosecutors, a separate correctional 'colony' for male juvenile offenders, and residential facilities for children involved in offending and antisocial behaviour (known as 'special schools') as well as administrative bodies known as 'Commissions on Minors'. These bodies had broad competence over matters concerning child protection, including the treatment of children at risk of offending and children involved in illegal activity, especially those under age 14. The institutional structure of juvenile justice has changed little since independence. The main change to date was the closure of the 'special schools' some 10 years ago.

Data on offending by juveniles and juvenile justice are scarce, and out of date. Information provided to UNICEF by the State Committee of Statistics of Turkmenistan indicates that the number of juvenile offenders declined by more than 90 per cent between the last year before independence and 2006 and that the number of juvenile offenders serving prison sentences fell by 45 per cent between 2000 and 2004.<sup>8</sup> A decrease of this magnitude in the number of juvenile offenders would be unprecedented;

<sup>2</sup> Core document forming part of the reports of States parties [to United Nations treaty monitoring bodies], published as United Nations document HRI/CORE/TKM/2009, para. 4.

<sup>3</sup> United Nations Children's Fund, *The State of the World's Children 2010*, UNICEF, New York, November 2009, Tables 1 and 6.

<sup>4</sup> Committee on the Rights of the Child, Consideration of reports submitted by States parties under Article 44 of the Convention, Initial report of Turkmenistan, CRC/C/TKM/1, 2005, para. 10. (It should be recalled that, in 2007, the Committee on the Elimination of Racial Discrimination noted "with concern the lack of consistent data relating to the ethnic composition of the population" and commented that the significant reported decrease in national and ethnic minorities "may have resulted [*inter alia*] from the alleged distortion of statistics by the State party so as to diminish the importance of minorities on its territory." Committee on the Elimination of Racial Discrimination, Consideration of reports submitted by States parties under Article 9 of the Convention, Concluding observations, Turkmenistan, CERD/C/TKM/CO/5, 2007, para. 9.)

<sup>5</sup> Committee on the Rights of the Child, CRC/C/TKM/1, *supra*, para. 14.

<sup>6</sup> United Nations Development Programme, *Human Development Report 2009*, UNDP, New York, 2009, Table H, p. 172.

<sup>7</sup> See, e.g., The World Bank, Turkmenistan at a glance, [devdata.worldbank.org/AAG/tkm\\_aag.pdf](http://devdata.worldbank.org/AAG/tkm_aag.pdf), accessed 31 January 2011.

<sup>8</sup> United Nations Children's Fund, TransMONEE 2010 Database, UNICEF Regional Office for CEE/CIS, May 2010, Tables 9.3 and 9.11. (The number of juvenile prisoners is based on the population of the correctional facility for boys only. This decrease is identical to the reported decrease in the number of juvenile offenders during these four years.)

the possible reasons for this purported decrease are unknown, but methodological factors no doubt figure large.

Turkmenistan became a party to the Convention on the Rights of the Child in 1993. A Law on the Guarantees of the Rights of the Child was adopted in 2002.<sup>9</sup> Article 38 of the Law provides that international standards prevail over national legislation.<sup>10</sup>

Turkmenistan presented its first report on the implementation of the Convention on the Rights of the Child in 2005.<sup>11</sup> The report was examined by the Committee on the Rights of the Child in June 2006. The Committee expressed concern at the lack of information in relation to juvenile justice. Furthermore, it was concerned that persons under age 18 are subject to the same criminal procedure as adults; children may be held in remand pending investigation for as long as six months; there is only one institution for persons under age 18 in conflict with the law, who in practice are not always separated from adults; conditions of detention are inadequate; and deprivation of liberty is not always used as a measure of 'last resort'.<sup>12</sup> It also expressed deep concern "at the information that torture and ill-treatment of detainees, including children, is widespread, especially at the moment of apprehension and during pretrial detention, and used both to extract confessions or information and as an additional punishment after the confession."<sup>13</sup>

The Committee recommended that all necessary measures be taken to ensure that persons under age 18 are only deprived of liberty as a 'last resort' and, when in custody, are in any case separated from adults; specific procedures be established for accused juveniles; urgent steps be taken to substantially improve the conditions of detention of juveniles deprived of their liberty; the law qualify as inadmissible statements made as a result of violence and or coercion; juveniles deprived of their liberty be given a full programme of educational activities; and professionals be trained in the area of recovery and social reintegration of children.<sup>14</sup>

In 2009, in the framework of the Universal Periodic Review of the Human Rights Council, the government agreed to "comply with the conclusions [sic] of the Committee on the Rights of the Child and other treaty bodies."<sup>15</sup>

## Executive Summary

Data on offending by juveniles and juvenile justice are scarce and out of date. Official data on the number of juvenile offenders indicate that there was a decline of more than 90 per cent between the last year before independence and the most recent year for which data are available.<sup>16</sup> Data also indicate that the number of juveniles serving sentences declined by 45 per cent between 2000 and 2004. Unfortunately, the paucity of published data and lack of information about the methodology used preclude objective analysis of reasons for these purported decreases.

<sup>9</sup> Law of Turkmenistan on the Guarantees of the Rights of the Child (adopted by the Parliament Session, on 5 July 2002).

<sup>10</sup> See also Article 6 of the Constitution of Turkmenistan.

<sup>11</sup> Committee on the Rights of the Child, CRC/C/TKM/1, *supra*.

<sup>12</sup> Committee on the Rights of the Child, Consideration of reports submitted by States parties under Article 44 of the Convention, Concluding observations: Turkmenistan, CRC/C/TKM/CO/1, 2006, para. 69.

<sup>13</sup> *Ibid.*, para. 36.

<sup>14</sup> *Ibid.*, para. 70.

<sup>15</sup> Human Rights Council, Report of the Working Group on the Universal Periodic Review, Turkmenistan, A/HRC/10/79, 2009, Conclusions and/or Recommendations, para. 10.

<sup>16</sup> From 1,187 juvenile offenders in 1990 to 108 in 2008. TransMONEE 2010 Database, *supra*, Table 9.3. (The assessment team was informed that these data refer to convicted offenders.)

At independence, there was no law on juvenile justice, and the country was lacking specialized juvenile courts and special remand (pretrial detention) centres for accused juveniles. There were police officers specialized in the prevention of offending by juveniles, specialized prosecutors, a separate correctional 'colony' for male juvenile offenders, and residential facilities for children involved in offending and antisocial behaviour (known generically as 'special schools') as well as administrative bodies known as 'Commissions on Minors' that had broad competence over matters concerning child protection, including the treatment of children at risk of offending and children involved in illegal activity, especially those under age 14.

Turkmenistan's first report on the implementation of the Convention on the Rights of the Child was examined by the Committee on the Rights of the Child in 2006. The Committee made numerous recommendations concerning juvenile justice. Implementation of the recommendations has been limited, to date.

There is no national policy or strategy on juvenile justice. The National Institute for Democracy and Human Rights is the main governmental body responsible for the development of juvenile justice. A review of the national legislation in 2008 led the National Institute to prepare a draft strategy on juvenile justice reform, in 2010. It was submitted to the government but, at this writing (January 2011), it had not been adopted.<sup>17</sup>

A new Code of Criminal Procedure came into force in 2009, and a new Criminal Code was adopted in 2010. The former made some improvements to procedures concerning juveniles, including:

- pretrial detention may be imposed only for grave offences, and may not exceed six months;
- parents must be immediately notified of the detention of a juvenile;
- a lawyer must be present during the interrogation of a juvenile suspect;
- interrogation of a juvenile suspect may not last more than four hours per day;
- the possibility of a non-custodial sentence or probation must be considered at sentencing.

Some training in juvenile justice took place in 2009 and 2010, on an *ad hoc* basis. Most of it was directed to juvenile police, and was of short duration.

A state Commission to review citizens' complaints of abuse by law enforcement agencies was established in 2007, but no information is available about its activities.

The Inspectorate of Juvenile Affairs at the Ministry of Interior plays a role in the prevention of offending through the 'registration' of children considered at risk. No data are available on the number of children registered, and information on the criteria and procedures for registration is limited. In some areas, the Women's Union cooperates with the Family Support Centres that provide basic social assistance, coaching in parenting skills, sports, cultural activities and schoolwork help to children and families in need. The impact of the services provided has not been evaluated.

The minimum age for prosecution – 14 years for certain grave crimes, 16 years for all other crimes – is compatible with international standards. There are, however, neither juvenile courts nor specialized judges for cases involving juveniles.

<sup>17</sup> Because of the lack of information available about practice, the paucity of reliable data and lack of access to institutions and public officials, this report does not assess the draft strategy.

Children under age 14 who participate in 'socially dangerous acts' may be held by the police for a maximum of three hours pending their surrender to their legal representatives or transfer to a 'reception and processing centre'. No information is available about such centres. The Commissions on Minors have competence over children under age 14 involved in criminal activities, children aged 14–15 years who commit crimes for which they cannot be adjudicated, administrative offences committed by minors, and cases diverted by the police, or a prosecutor or court (see below). The measures that may be imposed include warnings or reprimands, compensation or reparations, placement under the supervision of parents or a community organization, and placement in a special correctional-educational institution.

The police have authority to keep suspects in custody for 72 hours, although a prosecutor must be notified within 24 hours. Juvenile suspects may not be interviewed unless a lawyer is present.

There are two ways of disposing of cases that may be considered diversion. First offenders who have committed a minor crime may be exempted from criminal responsibility if they repent and make restitution; first offenders who have committed minor crimes or crimes of 'average gravity' may be exempted from criminal responsibility if the investigating officer, prosecutor or court determines that he/she no longer represents a danger to society. No data are available on the number of juveniles investigated, accused, diverted or prosecuted.

Authority to order detention before trial lies with prosecutors. The new Code of Criminal Procedure provides that the detention of juveniles shall be the exception, but this concept is defined primarily in terms of the gravity of the offence, rather than the absence of effective alternatives to deprivation of liberty. It also provides that detention before trial may not exceed six months when the accused is under age 18 and that juvenile detainees must be confined separately from adults. These norms, which appear to be intended to respond to recommendations made by the Committee on the Rights of the Child, do not entirely satisfy them. No data exist on the number of juveniles detained before trial or on the length of detention in practice.

The new Code of Criminal Procedure recognizes many due process rights that are enshrined in international human rights instruments. Accused juveniles have the right to legal assistance before and during trial, for example, and evidence obtained by coercion or other illicit methods has no legal value. Some provisions are not entirely compatible with international standards, however. The Code establishes no limit to the duration of a trial, for instance, and provisions on the presence of parents during proceedings and the confidentiality of proceedings do not wholly meet international standards. More importantly, the judiciary lacks independence, according to a report of the United Nations Secretary-General.

Non-custodial dispositions or sentences include warnings, supervision, reparation of the victim and fines. Suspended sentences are also recognized. The police are responsible for monitoring the implementation of non-custodial dispositions, including probation. The maximum prison sentence that may be imposed on a juvenile is 10 years, or 15 years for an 'especially grave crime'. There are no international standards on this subject, but the maximum sentences provided by Turkmen law are not unusual, compared to those available in other countries. No information is released on the number of juveniles sentenced or on the kind of sentences imposed in practice.

The new Code of Criminal Procedure contains some provisions on the right of juvenile prisoners to special treatment – for example, prohibiting the use of firearms to prevent escapes. It also contains provisions (e.g., on the use of solitary confinement) that are incompatible with international standards. Nothing is known about actual conditions in closed facilities for juvenile offenders or existing programmes for their education and rehabilitation.

The recommendations made by the assessment team include:

- The capacity of the Family Support Centres should be reinforced; the impact of their interventions with children at risk and their families should be documented and assessed; and the extension of their activities should be supported, if appropriate.
- Data should be published annually on offending by juveniles; the apprehension, prosecution and sentencing of juveniles; non-judicial resolution of juvenile cases; sentencing; and the number of juvenile prisoners.
- International organizations and civil society organizations should be allowed to visit the correctional facility for juveniles, the women's prison, and other facilities where juveniles are detained or deprived of their liberty, in order to provide assistance to detainees/prisoners and to ensure transparency in their treatment.
- Training should be based on information about existing conditions and practices, in order to ensure that it addresses the most relevant issues, and its impact should be evaluated independently.
- The Code of Criminal Procedure should be amended to bring it into greater harmony with international standards, in particular by limiting the length of procedures to six months; requiring that juvenile suspects appear before a prosecutor within 24 hours of custody; expressly incorporating the 'last resort' principle into provisions concerning pretrial detention and sentencing; prohibiting solitary confinement; strengthening the right of juveniles deprived of their liberty to family visits; forbidding contact with adult detainees; providing that trials of juveniles are closed to the public; and recognizing the right of educational experts or psychologists who participate in proceedings to access background information in possession of the police or prosecutor.

More generally, the report observes that new interest in bringing national law into compliance with international human rights treaties became apparent in recent years. This is demonstrated by the creation in 2007 of the Commission on Review of Legislation, the Commission on Penitentiary Reform and the Inter-Ministerial Commission on the Implementation of the International Human Rights Obligations of Turkmenistan. This opening, and a request by the Institute for Democracy and Human Rights for support in responding to the 2006 recommendations made by the Committee on the Rights of the Child, led to UNICEF's decision to provide assistance in the area of juvenile justice.

There appears to be certain commitment to the development of juvenile justice at the highest level. Progress has been slow, however. A strategy has not yet been endorsed, and conditions such as the scarcity of data and lack of access to prisons and detention facilities severely limit the effectiveness of international cooperation. Training activities supported by international organizations are organized largely in a void, and international organizations are rarely invited to comment on draft legislation.

At present, available information about juvenile justice does not allow to define concrete aims and objectives, much less the most appropriate strategies for attaining them, and the lack of baseline data would make it impossible to measure the impact of activities and investments. Consequently, the report recommends that UNICEF follow developments concerning juvenile justice and maintain the existing dialogue with governmental partners and other interested actors, providing information and advice when requested. However, full commitment to support the development or reform of the juvenile justice system should not be made until the conditions necessary for proper planning and programme design exist.

## PART I. The Process of Juvenile Justice Reform

### 1. Policies and strategies

A review of the national legislation regarding juvenile justice was carried out by the Children's Legal Centre and the National Institute for Democracy and Human Rights in 2008. This led to the development of a proposal to reform the juvenile justice system, which was presented to the Working Group on Juvenile Justice of the Inter-Ministerial Commission on the Implementation of the International Human Rights Obligations of Turkmenistan in human rights the same year. A draft strategy prepared by the Institute for Democracy and Human Rights was circulated to the interested ministries in 2010. At the time of the assessment mission it had not yet been approved.

In 2010, the Children's Legal Centre prepared an 'Options Paper'<sup>18</sup> on the implementation of the future strategy. The paper called for the creation of a 'model juvenile justice system' in the city of Mary. The location, in eastern Turkmenistan, was chosen by the National Institute for Democracy and Human Rights. The activities envisaged included:

- building the capacity and knowledge of police, prosecutors, judges and lawyers to deal with cases involving juvenile offenders;
- reviewing diversion procedures with a view to ensuring that proceedings against juveniles are dropped or suspended and the child referred to community support programmes whenever possible;
- establishing a juvenile justice support programme (community rehabilitation programme) for children aged 10–18 years in conflict with the law or at risk of offending;
- developing a service to support juvenile offenders leaving the juvenile or women's correctional facilities; and
- establishing a local coordination body on juvenile justice.

The paper also called for a local monitoring body to supervise the project, in addition to the local coordination body on juvenile justice. The suggested duration of this pilot project was two to three years. It is envisaged that implementation will be based on separate memoranda of understanding with the relevant authorities, such as the Ministry of Interior and the Prosecutor General's Office. The project was not yet operational at the time of the assessment mission. The head of the assessment team attended a two-day workshop in Mary designed to assess training needs and to obtain information that would help refine plans for the pilot project.

In 2008, the President of Turkmenistan announced that the prison system would be reformed, and that this reform would address juvenile justice issues. Although no written plan has been drafted to date, some preparatory activities have taken place.<sup>19</sup>

A five-year National Plan of Action for Children is presently being developed, and it appears likely that it will contain a component on juvenile justice.

<sup>18</sup> The Children's Legal Centre and the United Nations Children's Fund, *Implementing the Five-Year Strategy on Juvenile Justice Reform: Establishing the Model Juvenile Justice System Options Paper*, CLC and UNICEF, 2010.

<sup>19</sup> One seminar in 2009 and another in 2010. Both included presentations on juvenile justice.

## 2. Law reform

An analysis of the compatibility of Turkmenistan's legislation with the Convention on the Rights of the Child was prepared by the Children's Legal Centre in 2007. The following year, the same organization published an evaluation of the legislation on offending by juveniles.<sup>20</sup>

A new Code of Criminal Procedure came into force in June 2009, and a new Criminal Code came into force in May 2010. The treatment of juvenile offenders is covered by Section Ten, Chapter 49 (Articles 507–521) of the Code of Criminal Procedure and by Section V, Chapter 14 (Articles 82–93) of the Criminal Code. Section Ten of the Code of Criminal Procedure applies only to accused persons under age 18 at the time of the trial or other pretrial procedure, whereas Section V of the Criminal Code applies to all persons aged 14–18 years at the time of the offence. Other chapters of the Code of Criminal Procedure also contain provisions concerning juveniles.

UNICEF commented informally on the Code of Criminal Procedure, and some of its recommendations were taken into account. It also advocated, informally, for the adoption of a law specifically on juvenile justice. This suggestion, however, failed to win support.

The new Criminal Code makes no significant changes to the law governing juvenile offenders. The new Code of Criminal Procedure does, however. The most important positive changes are the following:

- preventive or 'pretrial' detention may be imposed only for grave crimes;<sup>21</sup>
- the duration of detention before trial is limited to six months, for juveniles;<sup>22</sup>
- parents must be immediately notified of the detention of a juvenile;<sup>23</sup>
- the lawyer of a juvenile suspect or accused juvenile must be present during any interrogation of the juvenile;<sup>24</sup>
- juvenile suspects and accused juveniles may only be interrogated during day time, for no more than two hours at a time and four hours per day;<sup>25</sup>
- if an accused juvenile is removed from the court room during the hearing of testimony that may be harmful to him/her, when the juvenile returns the judge must summarize the testimony and allow the accused to question the witness who has testified;<sup>26</sup>
- before sentencing a convicted juvenile, the court must consider the possibility of probation or a non-custodial sentence.<sup>27</sup>

<sup>20</sup> Harvey, R., and Hall, E., *System for Under-18s in Conflict with the Law in Turkmenistan: Analysis of law and practice*, The Children's Legal Centre, Essex, 2008.

<sup>21</sup> Code of Criminal Procedure, Article 516.2. (Article 131 of the 1961 Code indicated that detention was to be exceptional and justified by the gravity of the offence, but it did not specifically require that the offence be classified as a grave one.)

<sup>22</sup> Ibid., Article 516.3. (Article 158 of the Code provides that the normal period of detention before trial is two months, but this may be extended, when the accused is an adult, for up to 18 months.)

<sup>23</sup> Ibid., Article 141.2. (Article 100 of the 1961 Code, which is applicable to juveniles and adults alike, required that the family of a detainee should be notified, but it did not specify how soon the notification was to be made.)

<sup>24</sup> Ibid., Article 512.1. (Under Article 50 of the 1961 Code, the defence lawyer was to be allowed to participate in the interrogation of an accused juvenile, but not in the interrogation of a suspect who has not yet been accused.)

<sup>25</sup> Ibid., Article 512.3.

<sup>26</sup> Ibid., Article 517.2.

<sup>27</sup> Ibid., Article 520.2.

A draft 'Criminal Execution Code' was under consideration at the time of the assessment mission. At the request of the government, UNICEF prepared a draft section on juveniles.

### **3. Administrative reform/restructuring**

The closure of the 'special schools' some 10 years ago is the only significant administrative reform related to juvenile justice. There was one school in each region, in addition to one in the capital.

Available data on offending by juveniles, although limited, show a decline in the years following the closure of these facilities.<sup>28</sup> This could be interpreted as suggesting that the schools did not help prevent offending, or even contributed to it. However, too little is known about the reliability of this data and other possible causes of a decline in offending to reach a conclusion.

### **4. Allocation of resources**

The assessment team was not provided with any information regarding the resources allocated to the different institutions and services relevant to juvenile justice.

### **5. Training and capacity-building**

Some training in juvenile justice has taken place in recent years. In 2009, the National Institute for Democracy and Human Rights organized a three-day workshop in Mary and another in Turkmenbashi. Both were intended to improve the skills of juvenile affairs inspectors (police specialized in the prevention of offending) working with children, and were led by a social worker from the Children's Legal Centre. In the event, not all participants belonged to the sector for which the course had been designed.

The workshop held in the city of Mary, attended by the head of the assessment team in August 2010, was designed, in part, to assess training needs and, in part, to obtain information that would be useful in finalizing plans for the anticipated pilot project on juvenile justice. The workshop was led by a lawyer and a social worker from the Children's Legal Centre. In this activity, too, the participants invited did not correspond exactly to the targeted audience.

The British Embassy organized national seminars on penitentiary reform in 2009 and 2010. Both included presentations on international standards of juvenile justice.

A two-day training activity for juvenile affairs inspectors took place shortly after the end of the assessment mission, in August 2010. It was organized by the National Institute for Democracy and Human Rights, with the support of UNICEF, and led by a child rights expert and a former police officer from the Children's Legal Centre.

### **6. Accountability**

The Prosecutor General's Office has a department that monitors the implementation of law concerning children. There are specialized prosecutors in each regional office, and a designated prosecutor in each municipal and district office. The assessment team was unable to obtain any concrete information on the work done by such prosecutors.

In 2006, the Committee on the Rights of the Child recommended the creation of an independent national human rights institution to promote and monitor the implementation of the Convention, of

<sup>28</sup> Data provided to TransMONEE indicate that the number of offenders fell from 263 in 2000 to 106 in 2006. (See TransMONEE 2010 Database, *supra*, Table 9.3.)

the type described in its General Comment No. 2 and in accordance with the 1993 Paris Principles.<sup>29</sup> In 2007, a state Commission to review citizens' complaints of abuse by law enforcement agencies was established by Presidential Decree.<sup>30</sup> It is chaired by the President, and does not publish reports on its activities.

## 7. Coordination

At present, the National Institute for Democracy and Human Rights and the Inter-Ministerial Commission on the Implementation of the International Human Rights Obligations of Turkmenistan both play a role in the development of activities regarding juvenile justice. The Institute, which was established in 1996, is attached to the Presidency and serves as Secretariat for the Inter-Ministerial Commission. The Inter-Ministerial Commission adopted the draft strategy on juvenile justice mentioned above. However, neither has responsibility for the coordination of official activities concerning juvenile justice.

## 8. Data and research

No data concerning any aspect of crime or the administration of justice are published on a regular basis in Turkmenistan.

The State Committee of Statistics of Turkmenistan has provided data on three indicators to the UNICEF TransMONEE project. Data on the number of juvenile offenders and the number of homicides by juveniles cover the years 1989 to 2006; data on the juvenile population of correctional or closed educational facilities cover the years 1989 to 2004. The National Institute for Democracy and Human Rights indicates that its efforts to obtain more recent data, and data on other indicators, have been unsuccessful.

<sup>29</sup> Committee on the Rights of the Child, CRC/C/TKM/CO/1, *supra*, para. 12.

<sup>30</sup> Human Rights Committee, Consideration of reports submitted by States parties under the Covenant on Civil and Political Rights, Initial periodic report: Turkmenistan, CCPR/C/TKM/1, 2010, para. 20.

## PART II. The Juvenile Justice System in Turkmenistan

### 1. Prevention

The assessments of juvenile justice undertaken by the UNICEF Regional Office for CEE/CIS cover secondary prevention, i.e., programmes to assist children who have been identified as having a higher risk of offending and their families. They do not cover primary prevention, i.e., programmes to help reduce the risk of offending, which target broad sections of the child population, namely programmes for children living in poverty or programmes on drug awareness addressed to students.

In Turkmenistan, considerable efforts reportedly have been made, particularly in recent years, to strengthen primary prevention efforts such as sports programmes for children and adolescents. Statistics on the number of offenders could be seen as evidence of the success of these efforts, but there are other possible explanations,<sup>31</sup> and the lack of transparent data management systems makes it impossible to objectively assess the credibility and the implications of these data.

There is neither a national plan/strategy on the prevention of offending nor a national body responsible for the coordination of efforts to prevent offending.

The police, specifically the Inspectorate of Juvenile Affairs, have a role in the prevention of offending, according to the study prepared by the Children's Legal Centre.<sup>32</sup> Children at risk (as well as sentenced offenders) are 'registered' by the police, who then provide some sort of services, e.g., "visit[ing] children at home in the evenings to make sure they are at home and not hanging out on the streets," or encouraging them to attend school.<sup>33</sup> Children at risk include truants and drug users. The kind of services provided reportedly varies from one city to another. Many referrals are made by schools, and the police also register children at their own initiative. There were contradictory reports on whether there is a minimum age for registration. Children at risk who are registered are de-registered when the problem that led to their registration is solved to the satisfaction of the police.

The assessment team had no opportunity to obtain information first-hand about the effectiveness of the preventive work carried out by the police. One observer informed the team that, in the past, many juvenile affairs inspectors were university graduates with degrees in education, but now most are graduates of the Police Academy without sufficient training for working with children. This source also expressed the view that juvenile affairs inspectors are primarily concerned with the child's behaviour, rather than the underlying reasons for it.

While the police have a useful role to play in the prevention of delinquency, in cooperation with other institutions and organizations, they do not have the training and range of skills needed to play a central role. Moreover, the risk of stigmatization inherent in the practice of 'registering' juveniles at risk may outweigh the value of the services provided.

The assessment team visited a Family Support Centre operated by the Women's Union in Mary city. The Centre, which was established in 2007, aims to support children at risk and their families, in particular children living with relatives other than their parents (e.g., children of migrant workers living with grandparents) and children living with single parents.

<sup>31</sup> For example, several informants stated that there is a policy of resolving cases without prosecution, by recognition of responsibility and restitution.

<sup>32</sup> *System for Under-18s in Conflict with the Law in Turkmenistan*, supra, pp. 94–97.

<sup>33</sup> *Ibid.*, pp. 96–97.

The Centre targets children aged 7–17 years. It has only one paid staff member, in addition to the Director, and six volunteers. At the time of the assessment visit, it was working with 80 children and their families. Most children enter the programme because their guardians seek help. The Centre also carries out widely publicized activities, such as competitions open to the public, that help raise awareness of the services offered. All services are free of charge, and participation is voluntary. As the Centre does not have its own locale, it operates within the ‘Children’s Palace’, a school for talented children.

The services for children consist mainly of help with schoolwork and organized activities, such as sports, sewing, dance, computer and internet literacy, and other cultural activities. Certain basic social services are also available, e.g., helping children obtain legal documents or supporting older children who are seeking employment. Services for parents and other caretakers include raising awareness about the rights of children and coaching on parenting skills. Approximately 2,000 children have benefited from the Centre’s activities since it opened in the year 2000. No effort is made, thus far, to monitor or evaluate the impact of the services provided.

The Youth Organization, an officially sanctioned non-governmental organization of university students and young adults, has been active in the prevention of offending, by organizing recreational activities and vocational training for out-of-school adolescents, and carrying out projects designed to prevent drug use. Some activities of this kind were funded by international organizations, and terminated when funding ended. Representatives of the Youth Organization seem to have a good understanding of the problems of adolescents at risk, and they could play a useful role in this area if they were provided with the necessary resources. However, the assessment team considers that in a country like Turkmenistan the main responsibility for financing such activities lies with the government, while the contribution of the international community should be limited to providing technical assistance and training and to supporting the documentation of results, if requested to do so.

## 2. Police

Fifty-three police stations have temporary holding facilities for the custody of suspects.<sup>34</sup> Police have authority to keep suspects in custody for up to 72 hours.<sup>35</sup> The prosecutor must be informed within 24 hours, and once the prosecutor has been notified he/she must decide within 48 hours to either authorize pretrial detention or order the release of the suspect.<sup>36</sup> These provisions of the Code of Criminal Procedure apply to all suspects, regardless of age. However, Article 154.4 provides that where the suspect or accused is a juvenile, the prosecutor must question him/her personally before deciding whether to authorize detention before trial.

While Article 154 requires that juvenile suspects be questioned personally by the prosecutor before detention is authorized, it does not specify that this interview should take place within 24 hours of custody. Thus, the Code does not appear to comply with the recommendation of the Committee on the Rights of the Child to the effect that “Every child arrested and deprived of his/her liberty should be brought before a competent authority to examine the legality of (the continuation of) this deprivation of liberty within 24 hours.”<sup>37</sup> Being brought into the physical presence of a judge or prosecutor is

<sup>34</sup> Turkmenistan’s Penitentiary Facilities, Report prepared by the Turkmenistan’s Independent Lawyers Association and the Turkmen Initiative for Human Rights, February 2010, p. 3.

<sup>35</sup> Code of Criminal Procedure, Article 144.

<sup>36</sup> *Ibid.*, Article 144.1 and 144.2.

<sup>37</sup> Committee on the Rights of the Child, Children’s rights in juvenile justice, General Comment No. 10, CRC/C/GC/10, 2007, para. 83.

important because it provides an independent authority with an opportunity to observe signs of physical abuse or mental distress and, if necessary, ask the juvenile questions concerning his/her treatment. Requiring personal appearance within 24 hours is a valuable deterrent against abuse.

Once a juvenile has been identified as a suspect, he/she may only be questioned in the presence of an attorney and his/her parents or guardian, only during the day, for a maximum of two hours at a time and four hours per day.<sup>38</sup> Suspects must be informed, before interrogation, that they have the right to remain silent.<sup>39</sup> If the juvenile's parents have not found a lawyer to handle the case, the investigator must ensure that a lawyer is present.<sup>40</sup> If the child's parents or guardian are not present, or if the investigator decides there are grounds to bar the parents because they might interfere with the investigation, then the child welfare authorities must be present.<sup>41</sup> An 'educational specialist' must also be present if the suspect is below age 16, or if a suspect aged 16 or 17 years shows signs of mental deficiency.<sup>42</sup>

The assessment team was unable to obtain any information on compliance with the legal provisions described above.

### 3. Diversion

In 2000, commissions designed "to protect individuals against unwarranted or unlawful prosecution" were established at the local and regional levels throughout Turkmenistan.<sup>43</sup> They were described as follows: "This highly effective measure for ensuring the legality of criminal proceedings has special significance for minors in that first-time juvenile offenders guilty of a minor offence or an offence of intermediate gravity may, if the law so provides, be excused punishment."<sup>44</sup> The commissions also could block prosecution of adults. They were abolished in 2009, reportedly because they had become vulnerable to coercion and corruption.

The previous Code of Criminal Procedure authorized an investigator, prosecutor or court to refer cases to the Commission on Minors rather than prosecute or try the case, if the crime committed did not represent a significant threat to society and there was reason to believe that community-based measures would suffice to 're-educate and reform' the offender.<sup>45</sup> This procedure was not retained in the new Code adopted in 2009.

Under the new Code, criminal proceedings may be terminated even though there is sufficient evidence of participation in an offence in two circumstances. Article 71 of the Criminal Code provides,

*A person who has committed a crime of small gravity for the first time may be exempted from criminal responsibility, if after the commission of a crime he has repented, voluntarily given himself up, actively assisted in the exposure of a crime, made amends to the inflicted harm, or in any other way restituted the harm caused as a result of the committed crime.*

<sup>38</sup> Code of Criminal Procedure, Article 512.

<sup>39</sup> Ibid., Article 255.3.

<sup>40</sup> Ibid., Article 512(1).

<sup>41</sup> Ibid., Article 512(2).

<sup>42</sup> Ibid., Articles 512(3) and 514.

<sup>43</sup> Institution of Criminal Proceedings (Procedure) Act of 12 May 2000.

<sup>44</sup> Committee on the Rights of the Child, CRC/C/TKM/1, supra, para. 192.

<sup>45</sup> 1961 Code of Criminal Procedure, Article 6, cited in *System for Under-18s in Conflict with the Law in Turkmenistan*, supra, pp. 24–25.

Article 73 of the Criminal Code provides,

*A person who has committed a crime of small or average gravity for the first time may be exempted from criminal responsibility, if it has been established that due to the change of situation that person or the action committed by him is no more dangerous to society.*

Article 33.2 of the Code of Criminal Procedure provides that these articles may be applied by the investigating officer, prosecutor or court. Cases that may be disposed of this way apply regardless of the age of the offender. If the decision is taken by the investigating officer or prosecutor, it might be considered a form of diversion. The law does not expressly require the consent of the offender, but this would appear to have little or no relevance, since the decision to absolve the offender of criminal responsibility does not entail any obligations for the offender.<sup>46</sup> There also is no express requirement that the offender admit responsibility for the offence, but that would seem to be implicit in the conditions for application of these provisions, especially Article 71 of the Criminal Code.

It would appear that, if this decision is taken by a court, it would be taken at the ‘regulatory session’, which must be held at the very beginning of the trial of an accused juvenile, i.e., after conclusion of the preliminary stage of criminal proceedings.<sup>47</sup> Consequently, it is debatable whether this constitutes true diversion, which is defined as a decision that disposes cases ‘without recourse to formal hearings’ or ‘formal trial’.<sup>48</sup>

This procedure appears to replace that authorized by Article 6 of the previous Code of Criminal Procedure, which gave the prosecutors discretion to refer to the Commission on Minors (or, in cases involving adults, other community-based authorities or organizations) cases in which the offence ‘poses no serious public danger’. Chapter 49 of the Code of Criminal Procedure, on juvenile justice, contains an article that is similar in some respects. However, since it is applied by a court after trial, it cannot be considered diversion.<sup>49</sup>

Several sources informed the assessment team that the authorities spare no effort to encourage reparation of the victim rather than prosecute and that the number of cases against juveniles being tried is small. In the absence of official data, it is difficult to know what importance to attribute to these statements. In any event, whether or not these provisions deserve to be considered diversion, discretion not to prosecute for these reasons is a welcome feature of the law.

#### 4. Pretrial detention or remand<sup>50</sup>

The grounds for pretrial detention recognized by the Code of Criminal Procedure are the usual ones: sufficient grounds to believe that an accused will flee, interfere with justice or commit new offences.<sup>51</sup> The gravity of the crime allegedly committed also is relevant. The alternatives to detention are the usual ones, including bail (payment of a caution) and, where the accused is a juvenile, release in the custody of his/her parents or guardian.<sup>52</sup> An accused normally may not be detained before

<sup>46</sup> The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) requires consent only if diversion involves referral to a rehabilitation programme of some kind. See Rule 11.3.

<sup>47</sup> Code of Criminal Procedure, Article 346.2.

<sup>48</sup> The Beijing Rules, Rule 11.1.

<sup>49</sup> Code of Criminal Procedure, Article 521, described below in the section on alternative sentences.

<sup>50</sup> Also known as ‘remand’, this includes detention that continues during the trial. It does not include the initial period of police custody of suspects, which is covered in an earlier section.

<sup>51</sup> Code of Criminal Procedure, Article 146.

<sup>52</sup> *Ibid.*, Article 147; see also Article 155.

trial if the offence carries a sentence of less than two years.<sup>53</sup> Authority to order detention lies with prosecutors.

Article 154 of the Code recognizes that the detention of a juvenile before trial should be used “only in exceptional cases, when it is caused by the severity of the committed [sic] crime.”<sup>54</sup> Article 516 reformulates this rule, indicating that detention may not be applied to accused juveniles unless the alleged crime is a grave one.

The gravity of the crime should not be the main criterion for determining whether to detain an accused juvenile. The ‘last resort’ principle acknowledged by the Convention on the Rights of the Child focuses on the need for custody in order to ensure that legitimate objectives recognized by the law are met. In other words, the decisive factor should be concrete reasons to believe that other measures would fail. The gravity of the crime may have some bearing on that question, but it is less relevant than factors such as the circumstances of the crime and the prior record, personality and family environment of the accused.

Another provision of this same Article requires that, where the suspect or accused is a juvenile, the prosecutor must question him/her personally before deciding whether to authorize detention before trial.<sup>55</sup> This is consistent with the right to be heard, recognized by Article 12.2 of the Convention on the Rights of the Child. It is also useful, as indicated above, as a safeguard against ill-treatment.

The normal limit to the duration of pretrial detention is two months. When the offender is an adult this can be extended to a year, or even 18 months, in the case of ‘severe’ crimes.<sup>56</sup> Where juveniles are concerned, detention during preliminary investigations may not exceed six months.<sup>57</sup> Juveniles must be detained separately from adults.<sup>58</sup> Turkmenistan’s initial report to the Committee on the Rights of the Child indicates that this is interpreted to mean detention in different cells, an arrangement that usually allows some contact, and sometimes extensive contact, between juvenile and adult detainees.<sup>59</sup>

The Code of Criminal Procedure contains some provisions on the right of juveniles detained before trial to special treatment. Article 178.2, for example, recognizes a right to two hours of daily exercise instead of one, and Article 185.2 prohibits the use of weapons to prevent juveniles from escaping. Other provisions, however, are not compatible with international standards.

Article 180 provides that visits by family members to persons in pretrial detention must be approved by the relevant authority, which is not clearly identified, and indicates that usually one visit per month should be allowed. This rule applies to all detainees regardless of age. It is inappropriate for juveniles, who should be entitled to frequent contact with their families unless there are compelling reasons to bar contact with specific family members.<sup>60</sup>

<sup>53</sup> Ibid., Article 154(1). (The exceptions include unidentified persons, those who have previously violated bail or other alternatives to detention, and evidence of the intent to evade justice.)

<sup>54</sup> Ibid., Article 154(3). Article 140.2 is similar: “The minor can be detained only in exceptional cases, when it is caused by severity of the crime and there are grounds stipulated in this article.”

<sup>55</sup> Ibid., Article 154(4).

<sup>56</sup> Ibid., Article 158.

<sup>57</sup> Ibid., Article 516(3).

<sup>58</sup> Ibid. See also Article 177.2(2).

<sup>59</sup> Committee on the Rights of the Child, CRC/C/TKM/1, *supra*, para. 197.

<sup>60</sup> Rule 60 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) provides, “Every juvenile should have the right to receive regular and frequent visits, *in principle once a week* and not less than once a month...” (Emphasis added.)

Juveniles in preliminary detention may be confined to punishment cells for up to five days, if they violate regulations persistently.<sup>61</sup> Moreover, Article 173 allows suspects to be kept in disciplinary cells for a period that may be extended for up to 20 days, and Article 177 gives the head of a pretrial detention facility broad discretion to place detainees in ‘solitary cells’, with the approval of a prosecutor. These provisions appear to be applicable to any suspects, regardless of age. It is unclear whether, in practice, they are applied to juveniles.

International standards expressly prohibit only the solitary confinement of juveniles as a disciplinary measure. It should be recalled, however, that they describe solitary confinement of juveniles as “cruel, inhuman or degrading treatment.”<sup>62</sup> The placement of juvenile suspects in disciplinary cells because it is the only way to isolate them during an investigation is no less cruel, inhuman or degrading. The main reason why international standards make a distinction as to the reason for placement in solitary confinement is to allow juveniles to be confined alone when necessary for their own protection or the protection of others, not to keep suspects isolated to facilitate an investigation.<sup>63</sup>

Article 37(d) of the Convention on the Rights of the Child provides, “Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.” In accordance with Article 512(1) of the Code of Criminal Procedure, every child detained or taken into custody has an immediate right to legal assistance. Although there is no special procedure to contest the legality of detention, the defence attorney may present arguments to the prosecutor when the decision to authorize or extend detention is taken.

There are six facilities for the detention of accused persons, but there is no separate facility specifically for juveniles. In principle, juveniles are not detained in the same cells as adults. These facilities reportedly are overcrowded, which raised questions as to whether, in practice, juveniles and adults are separated as by international standards.

The assessment team was unable to obtain any information on compliance with the legal provisions described above.

## 5. Adjudication

### *The minimum age for prosecution or age of criminal responsibility*

Juveniles aged 14–15 years may be prosecuted for 13 serious crimes, including intentional homicide, aggravated assault, rape, arson, theft and the sale or purchase of drugs.<sup>64</sup> Persons aged 16–17 years at the time of the offence may be prosecuted, as juveniles, for any offence recognized by the criminal law.<sup>65</sup> Minority of age is considered as a mitigating factor to be taken into account in sentencing.<sup>66</sup>

<sup>61</sup> Code of Criminal Procedure, Article 183.2.

<sup>62</sup> Significantly, the Havana Rules does not describe solitary confinement of juveniles as cruel, inhuman or degrading punishment.

<sup>63</sup> See Council of Europe, Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures, Rules 91.4 and 93.1.

<sup>64</sup> Criminal Code, Article 21.2. The others are specific forms of theft, i.e., robbery (Article 230), ‘mugging’ (Article 231), theft by threat of violence (‘extortion’, Article 232), theft of weapons (Article 291), theft of drugs (Article 294), and illegal use of a vehicle (‘joyriding’, Article 234). The term ‘aggravated assault’ is used here to refer to two offences defined as ‘intentional infliction of grave harm to health’, or causing harm of ‘average’ gravity (Articles 107–108).

<sup>65</sup> Ibid., Article 21.1.

<sup>66</sup> Ibid., Article 57(1)(a).

### *The right to be tried by a competent and independent court*

The Convention on the Rights of the Child acknowledges the right of children accused of violating the law to “have the matter determined ... by a competent, independent and impartial” authority.<sup>67</sup> Although Article 101 of the Constitution provides that judges are independent and Article 102 that all judges are appointed by the President, a 2006 report by the United Nations Secretary-General concluded to “the absence of an independent judiciary.”<sup>68</sup> Since 2006, no United Nations human rights body has had an opportunity to review that conclusion.<sup>69</sup>

There are neither juvenile courts nor specialized juvenile judges; accused persons under age 18 are tried in ordinary courts, under the special chapters of the Criminal Code and the Code of Criminal Procedure referred to above. These chapters are complementary to the other chapters of the Codes, so that the investigation, pretrial procedure and trial are governed, for the most part, by the legal norms applicable to adults. It should be noted that, while the special chapter of the Criminal Code applies in respect of offences committed while under age 18, the special chapter of the Code of Criminal Procedure applies only while the suspect, accused or defendant is under age 18.<sup>70</sup>

### *The right to a fair trial and due process*

The new Code of Criminal Procedure contains many of the guarantees of due process that are enshrined in international human rights instruments. Article 18 acknowledges the presumption of innocence.<sup>71</sup> Article 22 provides that proceedings are adversarial in nature, and includes the principle of the equality of the prosecution and defence. Article 23 prohibits obtaining evidence through “coercion, threats or other illegal measures,” and Article 25 provides that “evidence received as a result of mental influence or coercion, as well as other illicit methods, shall be recognized legally invalid.”<sup>72</sup> In accordance with Article 28, a participant in criminal proceedings has a right to an interpreter and to receive relevant reports and documents in translation, if he/she does not know Turkmen. Article 29 recognizes the right to appeal. Articles 36 to 43 regulate the right of defendants found innocent to damages if they were wrongfully detained or prosecuted. These articles apply to all proceedings, whether the accused or defendant is an adult or not. The following subsections refer to aspects of due process that require further comment.

### *The right to be present at trial*

An accused juvenile may be removed from a judicial hearing on motion of his/her parents or attorney, or at the initiative of the court, when the matters about to be examined might have an adverse effect on the accused.<sup>73</sup> This decision may be taken only after hearing the parties and, when the juvenile returns, the court must inform the accused of what has taken place and give him/her the opportunity to ask questions of any witness who has testified in his/her absence.<sup>74</sup> These provisions are fully compatible with international standards regarding juvenile justice.

<sup>67</sup> Convention on the Rights of the Child, Article 40.2(b)(iii). (The same obligation is recognized with regard to all accused persons, regardless of age, by Article 14.1 of the International Covenant on Civil and Political Rights, which Turkmenistan ratified in 1997.)

<sup>68</sup> United Nations document HRI/Core/TKM/2009, supra, para. 58; United Nations, General Assembly, Situation of Human Rights in Turkmenistan, Report of the Secretary-General, A/61/489, 2006, para. 46.

<sup>69</sup> Office of the High Commissioner for Human Rights, Turkmenistan Home Page, [www.ohchr.org/EN/countries/ENACARegion/Pages/TMIIndex.aspx](http://www.ohchr.org/EN/countries/ENACARegion/Pages/TMIIndex.aspx), accessed 31 January 2011.

<sup>70</sup> Code of Criminal Procedure, Article 507.1.

<sup>71</sup> Ibid., see also Article 23.2.

<sup>72</sup> Ibid., see also Article 125.1(1) and (2).

<sup>73</sup> Ibid., Article 519.1.

<sup>74</sup> Ibid., Article 519.2.

### *The right to privacy*

Article 40 of the Convention on the Rights of the Child recognizes the right of every juvenile suspect, accused juvenile or juvenile defendant “to have his or her privacy fully respected at all stages of the proceedings.” Article 509 of the Code of Criminal Procedure stipulates, “The right of the juvenile suspect [or] defendant to confidentiality on the case shall be observed at all levels of the criminal prosecution.” However, Article 27 of the Code, which includes the principle that criminal proceedings shall be public, indicates that the decision to hold proceedings involving accused juveniles in closed session is discretionary.<sup>75</sup> The reason for this apparent discrepancy is unknown, as is the practice.

### *The right to a legal or other appropriate assistance*

Article 40 of the Convention on the Rights of the Child recognizes the right of a juvenile suspect and juvenile accused of an offence “to have legal or other appropriate assistance in the preparation and presentation of his or her defence,” and further specifies that the juvenile’s attorney (or other advocate) should be present during trial.<sup>76</sup> Article 512 of the Code of Criminal Procedure, as indicated above, provides that a juvenile suspect is entitled to the assistance of a defence attorney from the moment he/she is identified as a suspect, charged with an offence, or taken into custody.<sup>77</sup>

No information is available on the practice regarding legal representation of juveniles.

Article 514 also provides, “the participation of an educational specialist or psychologist shall be compulsory” in any procedure involving a suspect, accused or defendant under age 16, as well as juvenile offenders aged 16 years or older, if they show signs of abnormal mental development. The role of the educational specialist or psychologist is, to some extent, conditioned by the discretion of the investigator. In particular, access to the materials concerning the juvenile’s personality and background is discretionary.<sup>78</sup> Given the significance of this information for the decisions made by the court (see below), recognizing the right of such experts to examine all materials of this kind would be more compatible with the right to a fair trial, in particular, the principle that prosecution and defence shall stand on an equal footing.<sup>79</sup>

### *The role of parents*

Article 40 of the Convention on the Rights of the Child provides that the parents or legal guardians of an accused juvenile should be present during proceedings related to the charges against him/her, unless their presence would be contrary to the best interests of the accused juvenile. In accordance with the Code of Criminal Procedure, the presence of parents or other legal representatives of the child is compulsory in all stages of proceedings, before and during trial. The presence of a parent or guardian may be barred if the investigator finds that there are “sufficient grounds to consider that his actions cause damage to the interests of the juvenile and hamper the investigation of the case.”<sup>80</sup> In this instance, the other parent or guardian should participate. If neither parent nor guardian of the child is able to attend, they are to be replaced by the Commission on Minors.<sup>81</sup>

<sup>75</sup> Holding trials involving juvenile defendants in closed session was discretionary under Article 13 of the 1961 Code of Criminal Procedure.

<sup>76</sup> Convention on the Rights of the Child, Article 40(2)(b)(ii) and (iii).

<sup>77</sup> See also Code of Criminal Procedure, Article 82.1(2).

<sup>78</sup> *Ibid.*, Article 515.2(3) (lit.: materials that characterize the juvenile).

<sup>79</sup> Convention on the Rights of the Child, Article 40(2)(b)(iv); see also Article 40(2)(b)(ii) on the right to assistance in preparing a defence.

<sup>80</sup> Code of Criminal Procedure, Article 512.2.

<sup>81</sup> *Ibid.* (lit.: bodies of guardianship and trusteeship).

The rights of parents or guardians are defined in generous terms by Article 155.1 of the Code of Criminal Procedure. They include being informed of the offence the juvenile is suspected or accused of participating in; being present at the interrogation of the child; being present at the arraignment;<sup>82</sup> making motions and challenging decisions taken; giving evidence; commenting on the records of interrogations; and making copies of documents that form part of the case file.

These provisions are largely in harmony with the requirements of the Convention on the Rights of the Child. However, barring the parents solely because their presence would hamper the investigation, if their presence would not be contrary to the best interests of the accused, would not be compatible with the Convention.

No reliable information is available on the application of the legal provisions described above.

### *The right to have charges determined without delay*

Article 40 of the Convention on the Rights of the Child also recognizes the right of juvenile suspects and accused juveniles “To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law...”

The preliminary or pretrial phase of proceedings is limited, as indicated above, to six months. The Code of Criminal Procedure also stipulates that detention before and during trial normally may not exceed six months, although it may be extended to 12 months if the crime is a grave one.<sup>83</sup> These limits apply regardless of the age of the accused. There is no specific limit to the duration of proceedings if the accused is not detained. No information is available on the actual length of legal proceedings involving juveniles.

The legislation described above is not in harmony with the position of the Committee on the Rights of the Child. The right to have the matter resolved without delay means that the total time between accusation and the final decision on the charges (verdict or sentence) should not exceed six months.<sup>84</sup>

## **6. Sentencing**

### *General principles*

Article 82 of the Criminal Code provides,

*In imposing punishment on a juvenile the court shall take into consideration the conditions of his life and education, the level of his mental development, and other distinctive features of the personality, motives of a crime and the influence of adults and other juveniles on him as well.*

Article 508 of the Code of Criminal Procedure contains a similar, but broader, disposition, which requires that all proceedings concerning suspects, accused persons or defendants under age 18 must take into account their age, living conditions and education, the causes of the offence and the conditions that contributed to it, including the influence of peers or adults, and the individual’s level of intellectual, volitional and mental development, nature, temperament, needs and interests. These provisions are in harmony with internationally recognized principles concerning juvenile justice.

<sup>82</sup> A hearing in which the accusation is formalized and the accused enters a plea of guilty or not guilty.

<sup>83</sup> Code of Criminal Procedure, Article 365.

<sup>84</sup> Committee on the Rights of the Child, CRC/C/GC/10, supra, para. 83.

However, Article 83 of the Criminal Code also provides, “Minority as a mitigating circumstance shall be taken into account in totality with other circumstances that mitigate or aggravate responsibility.”<sup>85</sup> The assessment team believes that two of the aggravating factors recognized by the Code should not be applied to juveniles, namely, the commission of a crime together with other persons and the commission of an offence against another child. Many juveniles commit offences under the pressure of their peers, but their difficulty in resisting such pressure due to immaturity does not indicate that they pose a greater danger to society. Similarly, many of the offences committed by juveniles affect their peers, not adults; this normally should not be interpreted as an indication of greater danger or graver responsibility on the part of the offender.

The assessment team considers it unfortunate that neither of the new Codes expressly acknowledges the important principle set forth in Article 37 of the Convention on the Rights of the Child: “The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time...”

### *Non-custodial sentences*

The Criminal Code differentiates between two types of sentences that may be imposed on convicted juveniles, namely, punishments and ‘coercive measures of correctional treatment’.<sup>86</sup>

Punishments include two non-custodial sentences, fines and ‘correctional works’. Fines may be imposed only on convicted juveniles who have their own income.<sup>87</sup> ‘Correctional works’ means withholding a part of the income of a person who is employed. The Code specifies that they may be imposed only on convicted juveniles over age 16, the minimum age for full-time employment.<sup>88</sup> The Code of Criminal Procedure requires courts to consider the imposition of a non-custodial sentence prior to sentencing a convicted juvenile.<sup>89</sup> The police are responsible for ensuring compliance with such sentences and are notified when they are imposed.<sup>90</sup>

Coercive measures of correctional treatment include warnings, surveillance, reparation of the victim and ‘restriction of leisure’ or requirements regarding behaviour.<sup>91</sup> They may be imposed on a first offender for a minor crime or a crime of ‘medium gravity’, if “it is found that ... correction may be achieved” through the application of such a measure.<sup>92</sup> Minor offences (lit.: crimes of little gravity) are those punishable by a sentence of two years or less, while crimes of medium or average gravity are those punishable by a sentence of eight years or less.<sup>93</sup> The police are responsible for ensuring compliance with such measures and are notified when they are imposed.<sup>94</sup>

No data are available on the number of non-custodial sentences or measures imposed.

<sup>85</sup> Criminal Code, Article 83(2).

<sup>86</sup> Ibid., Articles 83 and 89.

<sup>87</sup> Ibid., Article 85.

<sup>88</sup> Ibid., Article 86(1).

<sup>89</sup> Code of Criminal Procedure, Article 520.1.

<sup>90</sup> Ibid., Article 520.2.

<sup>91</sup> Criminal Code, Article 90.

<sup>92</sup> Ibid., Article 89(1) and Code of Criminal Procedure, Article 521 (this is known as ‘release from punishment’).

<sup>93</sup> Criminal Code, Article 11(2).

<sup>94</sup> Code of Criminal Procedure, Article 520.2.

### *Custodial sentences*

The maximum custodial sentence that may be imposed on a convicted juvenile is 10 years, unless the conviction is for an ‘especially grave crime’, in which case it may be 15 years.<sup>95</sup> Especially grave crimes are those that normally carry a prison sentence of 25 years, such as homicide, kidnapping or rape, with aggravating factors.<sup>96</sup> Custodial sentences are served in the correctional-educational facility for juveniles, which is part of the prison system.

Article 88 of the Criminal Code provides that a first offender convicted of a minor crime or crime of average gravity may be ‘released from punishment’ and placed in a specialized educational institution for minors or an educational and treatment institution for minors. In reality, such facilities do not exist.<sup>97</sup>

No data are available on the number of custodial sentences imposed.

### *Suspended sentences/probation*

The Criminal Code allows the implementation of any custodial sentence to be suspended, unless the sentence is for an extremely grave crime.<sup>98</sup> The criterion for suspending a sentence is the conclusion that it is “possible to correct the convicted person without his serving the punishment.”<sup>99</sup> Article 520.1 of the Code of Criminal Procedure obliges the court to consider the possibility of suspending the sentence when sentencing a juvenile. These provisions of the legislation are in harmony with the ‘last resort’ principle recognized by Article 37(b) of the Convention on the Rights of the Child.

If the sentence is suspended, a period of probation must be imposed. If the sentence is one year or less, the probation period shall not be less than six months. If the sentence is one year or more, the probation period must be at least nine months, and no more than five years.<sup>100</sup> The court may impose conditions to be complied with during the probation period, concerning matters such as work, study, residence, treatment for drug abuse and the like.<sup>101</sup> The police are responsible for ‘control over the behaviour of the probationer’ during the probation period.<sup>102</sup> If the probationer’s conduct indicates that he/she has been ‘reformed’, the court may lift the suspended sentence and strike the record of conviction.<sup>103</sup>

These provisions of the law apply to juveniles and adults alike. No data or other information are available on the practice.

<sup>95</sup> Ibid., Article 87(1).

<sup>96</sup> Ibid., Articles 11(5), 101(2), 125(2) and 134(3). The other especially grave crimes are trafficking in persons (Article 129(2)), genocide (Article 168), murder of an internationally protected person for political motives (Article 170), certain grave political offences, such as treason, espionage, aggravated sabotage, plotting to seize power and attempts against the life or health of the President (Articles 171–173, 176), aggravated terrorism (Article 271(2)), and drug trafficking (Articles 292(3) and 294(3)).

<sup>97</sup> This term also encompasses the replacement of a ‘punishment’ with a fine, surveillance or other non-custodial measure, as indicated above, but non-custodial measures are only available for minor first offences.

<sup>98</sup> Criminal Code, Article 68(1) and (2).

<sup>99</sup> Ibid., Article 68(1). (Paragraph 2 lists a series of factors to be taken into account in determining whether correction without serving the sentence is possible.)

<sup>100</sup> Ibid., Article 68(3).

<sup>101</sup> Ibid., Article 68(4). (These conditions may be modified by the court at the request of the police responsible for supervising the probationer. See Article 68(7).)

<sup>102</sup> Ibid., Article 68(6).

<sup>103</sup> Ibid., Article 69(1).

## 7. The treatment of offenders in closed facilities

There are 12 prisons in Turkmenistan, including the correctional-educational facility for juveniles and the women's prison.<sup>104</sup> The 'educational colony' for juveniles, known as MRK/18, is located in Mary. Permission to visit it was requested but not received. The assessment team was unable to interview anyone having direct personal knowledge of conditions in this colony, or identify any reports by competent international bodies describing conditions in it.

The draft Criminal Execution Code allows offenders convicted of crimes committed as juveniles to remain in the colony for juvenile offenders until reaching age 21, unless they are "negatively characterized."<sup>105</sup> Transfer to an adult prison must be approved by a court. The assessment team believes that, while it is often desirable to allow juvenile prisoners to remain in juvenile facilities after they reach age 18, the criterion for determining whether to allow prisoners who reach age 18 to stay should be the best interests of the prisoners under age 18.<sup>106</sup> Although the standard used in the draft law could be interpreted this way, it would be better to recognize this criterion expressly.

In 2006, the Committee on the Rights of the Child expressed deep concern "at the information that torture and ill-treatment of detainees, including children, is widespread."<sup>107</sup> For the reason mentioned above, the assessment team has no information as to whether such abuses might occur in the juvenile colony.

Data provided to UNICEF by the State Committee of Statistics of Turkmenistan in 2008 indicated that the population of this facility fell from 144 in the year 2000 to 79 in 2004.<sup>108</sup> This decrease mirrors the reduction in offending, which – assuming that the data are accurate – suggests that the decline in the population of the juvenile colony is probably due to a decline in offending rather than any change in policy or practice regarding prosecution or sentencing.

Convicted girls under age 18 serve sentences in the women's prison located in Dashoguz. It reportedly has a capacity of 700.<sup>109</sup> An official of the prison department told a member of the assessment team that only two female prisoners under age 18 are confined in this prison. No information from independent sources is available.

### *Early release (parole)*

Offenders given a prison sentence may be released after serving part of the sentence. The portion of the sentence that must be served varies according to the gravity of the offence: one third for crimes that are not grave; one half for grave crimes; and two thirds for especially grave crimes.<sup>110</sup> The

<sup>104</sup> Turkmenistan's Penitentiary Facilities, *supra*, p. 3. (This source gives the total number of 22, including six pretrial detention facilities, a military prison, one in-patient hospital facility for convicts in custody and two 'occupational therapy rehabilitation centres'.

<sup>105</sup> United Nations Children's Fund, TransMONEE 2009 Database, UNICEF Regional Office for CEE/CIS, April 2009.

<sup>106</sup> Article 37(c) of the Convention on the Rights of the Child identifies the best interests of the child as the only criterion for exceptions to the rule that juveniles should not be detained with adults. Rule 29 of the Havana Rules establishes a stricter standard that is also based on the best interests of juvenile prisoners: "Under controlled conditions, juveniles may be brought together with carefully selected adults as part of a special programme that has been shown to be beneficial for the juveniles concerned."

<sup>107</sup> Committee on the Rights of the Child, CRC/C/TKM/CO/1, *supra*, para. 36. (The Committee indicated that this information referred mainly to police custody and pretrial detention.)

<sup>108</sup> TransMONEE 2009 Database, *supra* (the number of juvenile prisoners is based on the population of the correctional facility for boys only).

<sup>109</sup> *Ibid.*

<sup>110</sup> Criminal Code, Article 91 (especially grave crimes are listed above).

criterion for release is a determination by the court that serving the whole sentence is not needed to achieve the reformation of the prisoner.<sup>111</sup> Parole is not available, however, for prisoners who are dangerous recidivists.<sup>112</sup> Conditions similar to those imposed on probationers may be imposed on parolees.<sup>113</sup>

No data are available on the number of juvenile offenders who benefit from parole.

### *Post-release assistance*

Juvenile offenders released from correctional facilities reportedly are 'registered' with the juvenile police, and receive assistance from the Commissions on Minors and from voluntary organizations.<sup>114</sup> The assessment mission was unable to obtain any information about how these arrangements work in practice.

## **8. Underage offenders**

Children who have committed socially dangerous acts while under age 14 may be held by the police for a maximum of three hours pending their surrender to their legal representatives or transfer to a reception and processing centre.<sup>115</sup> Children found without parental care also may be held by the police until such time as they can be returned to their parents or guardian. If this cannot be done within eight hours they are transferred to a reception and processing centre.<sup>116</sup>

The Commissions on Minors have competence over cases of children under age 14 involved in criminal activities, as well as children aged 14–15 years who commit crimes for which they cannot be adjudicated.<sup>117</sup> Commissions on Minors, as indicated above, are administrative bodies that operate under the local (municipal or district) government, composed of representatives of the local government, the departments of education, health and social welfare, the police, the Women's Union and the Youth Organization. Cases of underage offenders may be referred to the Commissions by the police, schools, organizations such as the Women's Union or the Youth Organization, and concerned individuals.<sup>118</sup>

The Commissions also have competence over administrative offences committed by minors, child protection cases, and cases involving minor offences by juveniles diverted by the police, or a prosecutor or court.<sup>119</sup> The measures that may be imposed by a Commission include warnings or reprimands, compensation or reparations and placement under the supervision of parents or a community organization.<sup>120</sup>

<sup>111</sup> Ibid., Article 75(1).

<sup>112</sup> Ibid., Article 75(8).

<sup>113</sup> Ibid., Article 75(2).

<sup>114</sup> *System for Under-18s in Conflict with the Law in Turkmenistan*, supra, pp. 89–90; Committee on the Rights of the Child, CRC/C/TKM/1, supra, paras. 203 and 204.

<sup>115</sup> Committee on the Rights of the Child, CRC/C/TKM/1, supra, para. 197, citing Police Act, Article 10.2.

<sup>116</sup> Ibid.

<sup>117</sup> As indicated above, children aged 14–15 years can be prosecuted only for certain serious offences.

<sup>118</sup> *System for Under-18s in Conflict with the Law in Turkmenistan*, supra, p. 12, citing Regulations on the Commissions on Minors, approved by the Decree of the Presidium of the Supreme Soviet of the Turkmen SSR, 14 February 1967, *Bulletin of the Supreme Soviet of the Turkmen SSR*, 1967, No. 5, p. 22, Reg. 28.

<sup>119</sup> Ibid., Reg. 17.

<sup>120</sup> Ibid. Commissions were also authorized to place children in the special schools which, as indicated above, no longer exist.

## PART III. UNICEF's Support to Juvenile Justice Reform

UNICEF began working on juvenile justice in 2008, with an assessment of law and practice prepared by the Children's Legal Centre. In 2003, an effort to initiate work on juvenile justice had been unsuccessful.<sup>121</sup>

The combined effect of several developments opened the door to providing assistance in the area of juvenile justice. The comments on juvenile justice made by the Committee on the Rights of the Child were one factor. In addition, the change of government in 2006 led to a new interest in legal reforms designed to bring national law into compliance with the human rights treaties in force for Turkmenistan. This was demonstrated by the creation in 2007 of three commissions: the Commission on Review of Legislation, the Commission on Penitentiary Reform and the Inter-Ministerial Commission on the Implementation of the International Human Rights Obligations of Turkmenistan, whose mandate focuses on human rights treaties. The first two Commissions are chaired by the President of Turkmenistan; the third is chaired by the Vice Premier, who is also Minister of Foreign Affairs.

Another development that took place in 2006 was the establishment of the Family Support Centres, as part of a policy of de-institutionalization and alternative care (see the section on prevention, above).

When the survey of juvenile justice legislation was published in 2008, the National Institute for Democracy and Human Rights requested UNICEF to support the preparation of a juvenile justice reform strategy. The head of the Institute also announced during a meeting of the United Nations Human Rights Council that the government was committed to reforming juvenile justice. A draft strategy has been prepared and was circulated to the interested ministries in 2010. At the time of the assessment mission, it had not yet been approved.

The above seems to indicate that a certain commitment to the development of juvenile justice exists, at the highest level. However, at this writing, the content of this commitment – the sort of changes that are envisaged – is largely unknown.

In addition, the possibilities of cooperating in the development of juvenile justice are quite limited. The very restricted set of data on offending and on the number of juvenile offenders deprived of liberty that was available earlier in the decade is no longer published. No data are released concerning the administration of justice. No international organization has access to prisons or detention facilities. International organizations have been given an opportunity to comment on the draft penitentiary code but neither on the Code of Criminal procedure adopted in 2009, nor on the Criminal Code adopted in 2010. The government welcomes training programmes on international standards and good practices in the areas of law enforcement, the administration of justice and corrections, many of which cover the subject of juvenile justice. However, training activities in which international organizations participate are conducted largely in a void. Training plans and materials may take national legislation into consideration, but it is not possible to take practice into account. This, of course, limits their effectiveness.

In this context, the implementation of a programme aiming to develop a juvenile justice system would be very difficult. The design of a programme presumes that it is possible to define objectives with sufficient clarity to be able to determine, at some point in the future, the extent to which they have been achieved. In the present circumstances, the little that is known about juvenile justice does not allow to define concrete objectives, much less the most appropriate strategies for attaining them.

<sup>121</sup> Current UNICEF staff had no further information on this initiative or the reasons it was unsuccessful.

To give an example, the UNICEF Country Office in Turkmenistan and the Children's Legal Centre have prepared a plan to enhance the capacity of the Family Support Centres to provide assistance to children at risk of offending or reoffending, in particular by training them in specialized social work skills. The Family Support Centres are no doubt committed to helping families in need and to protecting the rights of children, but their staff lacks such skills, which are inherently valuable. However, a question remains to be addressed. What role will more highly developed and specialized preventive services play in the juvenile justice system of Turkmenistan – whether as secondary prevention, and if so for what age group, or for the prevention of reoffending, and if so as part of a diversion programme or as alternative sentences? Although one can assume that these skills would prove useful, there are at this time no data to support the conclusion that, for instance, a significant number of juveniles presently given prison sentences would be appropriate candidates for diversion or for alternative sentences. No information is available on the number of juveniles given custodial sentences, the offences they commit, their age and family background, and other relevant factors. Indeed, no data are available on the number of offences by juveniles in the city selected for this training. In such circumstances, the value of training is limited.

The UNICEF Regional Office for CEE/CIS, on the basis of 15 assessments of juvenile justice carried out during the last four years, has come to the conclusion that the development of juvenile justice systems that are effective and compatible with the rights of the child requires a comprehensive approach. The various components of juvenile justice are interrelated in such a way that changes in one affect the others. Piece-meal reforms have little value, and sometimes even have unintended negative consequences for children. Reforms of limited scope should be supported only in exceptional situations, when there is reason to believe that they will open the door to a comprehensive reform within a relatively short time frame.

There are signs of greater openness in Turkmenistan, and some progress has been made in bringing legislation into compliance with international standards. The UNICEF Office should follow developments concerning juvenile justice and maintain the existing dialogue with governmental partners and other interested international actors, in particular with regard to law reform and strategy. However, full commitment to the development or reform of the juvenile justice system should not be made until the conditions necessary for proper planning and programme design exist, including sufficient access to relevant data and institutions, in particular in the area of law enforcement, the administration of justice and corrections.

## PART IV. Conclusions and Recommendations

### POSITIVE DEVELOPMENTS

1. The new Criminal Code and Code of Criminal Procedure contain sections on juveniles that are largely compliant with international standards.
2. The Inspectorate of Juvenile Affairs is in charge of the investigation of offences committed by juveniles as well as the prevention of offending. Prosecutors who monitor compliance with legal standards concerning children are also responsible for the investigation and prosecution of offences committed by juveniles.
3. The Family Support Centres that operate in five cities provide services to children at risk of offending and their families as well as to other families in need.
4. Some training in juvenile justice has begun, and the authorities are interested in receiving more training. The government is also receptive to training regarding the implementation of international human rights standards and the modernization of sectors such as the correctional system. Some international organizations involved in this area are eager to incorporate components regarding juvenile justice.
5. The number of offences committed by juveniles and the population of the juvenile correctional facility both declined significantly during the early half of the present decade, according to official data.
6. The Parliament has been receptive to technical support from international organizations in the development of new legislation relevant to juvenile justice.

### CHALLENGES

1. The impact of the efforts made by the Family Support Centres to assist children at risk and their families has not been documented or evaluated. The nature and quality of the services provided appear to depend, to a significant degree, on the personal qualities and professional background of volunteers.
2. Responsibility for the prevention of offending is shared by the police, schools, local governments and civil society, but national, local or regional strategies for the prevention of offending are lacking and there are no mechanisms to coordinate efforts on any level.
3. There are no judges or attorneys specialized in juvenile justice, or in legal matters concerning children and adolescents.
4. Little is known about the knowledge of child rights and the skills in dealing with children possessed by police officers and prosecutors responsible for handling offences involving juveniles. In both cases, this is not their primary activity, and training in juvenile justice has not been organized specifically for prosecutors and police officers sharing these responsibilities.
5. The new Code of Criminal Procedure contains many provisions that reflect international standards on child rights and human rights, but it also contains some provisions that are not fully compatible with international standards. The Code includes articles that allow solitary confinement of juveniles in pretrial detention and the detention of juvenile suspects for more than 24 hours without a personal appearance before a judge or prosecutor. The lack of any

time limit for the proceedings, including the trial, is a gap that does not comply with the recommendations of the Committee on the Rights of the Child.

6. The publicly released data on juvenile justice concern only two indicators and are not up to date. Information that would allow to assess the reliability of the data published is not available either.
7. Training activities take place in a vacuum. They focus on the national law and international standards and on best practices in the absence of data on offending and information on the actual functioning of juvenile justice, law enforcement and corrections.

## RECOMMENDATIONS

1. Efforts should be made to strengthen the capacity of the Family Support Centres, to document and assess the impact of their interventions on behalf of children at risk and their families and, if appropriate, to support the extension of their activities to other cities.
2. In a democratic society, the public should have access to information about crime and the administration of justice, including offending by juveniles and the operation of juvenile justice. Key data on offending by juveniles, the apprehension, prosecution and sentencing of juveniles, the non-judicial resolution of cases involving juveniles and the treatment of juvenile prisoners should be published annually. The international community should provide assistance in identifying indicators and developing data management systems for this purpose, if requested to do so.
3. Competent international and civil society organizations should be allowed to visit the correctional-educational facility for juvenile offenders, the women's prison, and other facilities where persons under age 18 are detained or deprived of their liberty, to provide assistance as well as to ensure the transparency that helps ensure good treatment of prisoners and detainees.
4. The Code of Criminal Procedure should be revised to bring it into greater harmony with international standards concerning the rights of juvenile suspects, accused persons, detainees and defendants. In particular,
  - juvenile suspects in police custody should appear personally before a prosecutor within 24 hours of their apprehension;
  - provisions on pretrial detention should expressly indicate that no juvenile may be detained unless there are specific reasons to believe that detention is the only effective way to ensure that he/she will not evade justice, influence witnesses or commit new crimes;
  - the possibility of extending detention before trial for more than six months should be eliminated, in order to bring the law into compliance with the recommendation of the Committee on the Rights of the Child;<sup>122</sup>
  - a six-month limit should also be established for the termination of proceedings in cases involving juvenile defenders, even if the accused is not detained;<sup>123</sup>
  - the 'last resort' principle should be expressly incorporated into provisions concerning sentencing in all cases involving juveniles, regardless of the gravity of the offence and prior record of the juvenile;<sup>124</sup>

<sup>122</sup> Committee on the Rights of the Child, CRC/C/GC/10, supra, para. 83.

<sup>123</sup> Ibid. This also is a recommendation of the Committee.

<sup>124</sup> See Convention on the Rights of the Child, Article 37(b) and Code of Criminal Procedure, Article 521.

- the right of juvenile prisoners to receive weekly family visits should be acknowledged;<sup>125</sup>
  - solitary confinement of juveniles should be prohibited, except in circumstances recognized by international standards;
  - the privacy of accused and convicted juveniles should be protected by a requirement that proceedings and records of proceedings be closed to the public;
  - when the law requires the participation of a psychologist or educational specialist, he/she should have a right to access all relevant information in the possession of the police, prosecutor or other public authorities;
  - the exclusion of parents from the trial of their child should only be allowed if their presence would be incompatible with the interests of the child.
5. Consideration should be given to amending the Criminal Code to preclude the application of child victimization and commission of a crime jointly with other persons as aggravating factors, when the offender is a juvenile.
  6. International organizations and donors should continue to provide training, if requested, in particular training that aims to support the implementation of the new legislation, on condition that trainers are provided with data and other information necessary to ensure that training addresses the most relevant issues and is designed and delivered so as to bear in mind objective circumstances and current practice. The impact of training should be evaluated independently, when enough training has been done to justify the investment in an evaluation. Furthermore, training should be part of a holistic approach to juvenile justice.
  7. Similarly, international organizations and donors should, if requested, provide technical assistance and support in developing programmes, services and/or strategies concerning juvenile justice designed to help implement the new legislation, provided there is a commitment to releasing the data and other information necessary to guarantee that such assistance takes into account the real needs of children in Turkmenistan.

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<sup>125</sup> See Havana Rules, Rule No. 61, cited above.

## Annex 1. Data collection and analysis

This Annex has two parts: the first compares the data available with 13 international and regional indicators, and the second identifies data on a small number of other particularly significant indicators or criteria for disaggregation. The international indicators used are those developed by UNICEF and UNODC,<sup>126</sup> and the regional indicators are those developed by the transMONEE<sup>127</sup> project.

In Turkmenistan, no data on offending by juveniles or the operation of the juvenile justice system are published regularly, as far as the assessment team was able to ascertain. Data on three indicators – offending by juveniles, homicides by juveniles and the population of the juvenile prison – have been provided to the TransMONEE project. Data on offending and homicides cover the years 1989 to 2006, and data on the prison population cover the years 1989 to 2004. The scarcity of data makes it difficult to understand how juvenile justice functions in practice, and prevents assessment of the reliability of the data provided.

### 1. National data collection system and international and regional indicators

#### *(a) Crimes committed by juvenile offenders*

The TransMONEE matrix defines this indicator as the “the number of crimes committed by or with the participation of persons aged 14–17,” disaggregated by the kind of crime, i.e., violent, property or other.<sup>128</sup>

The data provided to TransMONEE by the State Committee of Statistics of Turkmenistan concern the number of juvenile offenders, not the number of offences by juveniles. They indicate a fairly steady decline from independence to 2006, the last year for which data have been provided. The number of offences reportedly fell from 1,187 in 1990 to 108 in 2008 – a decrease of more than 90 per cent.<sup>129</sup>

The number of homicides committed by juveniles during this same period has varied from a high of 22 in 1997 to a low of 7 in 2002 and in 2003.

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

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

No data on this indicator are published in Turkmenistan.

<sup>126</sup> United Nations, *Manual for the measurement of juvenile justice indicators*, Office on Drugs and Crime (UNODC) and UNICEF, New York, 2006, available at [www.unodc.org/pdf/criminal\\_justice/06-55616\\_ebook.pdf](http://www.unodc.org/pdf/criminal_justice/06-55616_ebook.pdf), accessed 31 January 2011.

<sup>127</sup> TransMONEE is a database established by the UNICEF Innocenti Research Centre that contains social data provided by the national statistical offices of Central and Eastern Europe and the Commonwealth of Independent States (CEE/CIS). It is presently maintained by the UNICEF Regional Office for CEE/CIS. Available at [www.transmonee.org/](http://www.transmonee.org/) accessed 31 January 2011.

<sup>128</sup> The UNODC-UNICEF Manual does not include this indicator.

<sup>129</sup> TransMONEE 2010 Database, *supra*, Table 9.3.

*(c) Children in detention*

The UNODC-UNICEF Manual describes this indicator as “children detained in pretrial, pre-sentence and post-sentencing [sic] in any type of facility (including police custody)” at any specific date.<sup>130</sup>

The TransMONEE database contains a table entitled “Number of juveniles placed in correctional/educational/punitive institutions at the end of the year.” The TransMONEE glossary does not refer to this terminology, but instead provides a definition of ‘deprivation of liberty’, i.e., “A child is deprived of liberty where he or she is placed in any form of detention or imprisonment in a public or private setting, from which the child is not permitted, by order of any competent authority, to leave at will.” It is not known whether these two concepts are intended to be interchangeable. This is of particular relevance to detention before trial, which meets the definition of deprivation of liberty but would normally not be considered placement in a correctional, punitive or educational institution.

Data provided to TransMONEE by the State Committee of Statistics of Turkmenistan indicate that the number of juveniles placed in correctional/educational/punitive institutions increased sharply during the three years following independence, from 115 in 1990 to 325 in 1992, 601 in 1993 and 498 in 1994.<sup>131</sup> During the most recent years for which these data were shared, the number of juveniles in such institutions reportedly fell from 144 in 2000 to 79 in 2004.

*(d) Children in pretrial or pre-sentence detention*

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

No data on this indicator are published in Turkmenistan.

*(e) Duration of pretrial detention*

No data on this indicator are published in Turkmenistan.

*(f) Child deaths in detention*

No data on this indicator are published in Turkmenistan.

*(g) Separation from adults*

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

No data on this indicator are published in Turkmenistan.

*(h) Contact with parents and family*

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

No data on this indicator are published in Turkmenistan.

<sup>130</sup> Manual for the measurement of juvenile justice indicators, supra, p. 11.

<sup>131</sup> TransMONEE 2010 Database, supra, Table 9.11.

*(i) Convictions*

The TransMONEE matrix describes this indicator as “the number of juveniles convicted during the year,” disaggregated by sex, age and type of crime, i.e., violent, property, or other.<sup>132</sup>

No data on this indicator are published in Turkmenistan.

*(j) Custodial sentences*

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

No data on this indicator are published in Turkmenistan.

*(k) Alternative sentences*

The TransMONEE matrix requests information on the kind of sentences imposed on convicted juveniles. The 12 categories used are: committal to a penal institution; committal to an educational/correctional institution; pre-sentence diversion; formal warning/conditional discharge; apology; fine/financial compensation; community service or corrective labour; supervision order; probation order; postponement of sentencing; release from sentencing; and other.

The language used in this definition is misleading, because some of these dispositions (e.g., pre-sentence diversion, postponement of sentencing) obviously are not sentences.

No data on this indicator are published in Turkmenistan.

*(l) Pre-sentence diversion*

The UNODC-UNICEF Manual defines this indicator as “the percentage of children diverted or sentenced who enter a pre-sentence diversion scheme,” adding that it is intended to measure “the number of children diverted before reaching a formal hearing.” This is somewhat contradictory,<sup>133</sup> and the Manual recognizes that what constitutes diversion “will need to be identified in the local context.”

No data on this indicator are published in Turkmenistan.

*(m) Aftercare*

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

No data on this indicator are published in Turkmenistan.

<sup>132</sup> The UNODC-UNICEF Manual does not include this indicator.

<sup>133</sup> Hearings often occur before trial begins, which means that diversion before any hearing takes place would be only part of ‘pre-sentence diversion’. And it is unclear why the percentage of offenders diverted should be calculated with reference to the number diverted or sentenced, rather than the number accused or prosecuted. In addition, diversion can consist of a mere warning, without entry into a programme.

## **2. Other relevant data and information**

### *Recidivism*

No data on this indicator are published in Turkmenistan.

### *Ethnicity*

No data on this indicator are published in Turkmenistan.

### *Juveniles prosecuted*

No data on this indicator are published in Turkmenistan.

### *Begging and vagrancy*

No data on this indicator are published in Turkmenistan.

## Annex 2. List of persons interviewed

### Government officials

S. Atajanova, Head, Human Rights Advocacy Department, National Institute for Democracy and Human Rights

### UNICEF

A. Alim, Deputy Representative

S. Orazov, Social Policy Officer

### Other international organizations/agencies

G. Scott, Deputy Head of Mission, British Embassy

S. Mukhammetkulieva, Project Officer, British Embassy

A. Mamedova, United Nations Office on Drugs and Crime (UNODC)

H-U. Ihm, German Technical Cooperation (GTZ)

A. Shelupanov, Programme Officer, International Centre for Prison Studies

### Civil society

A. Enebai, Head, Family Support Centre, Mary

R. Nurberdiyev, Head, Family Support Centre/Centre for the Prevention of Child Labour, Abadan

O. Bayramovat, representative of a non-governmental HIV prevention 'initiative group'

### Other

E. Hall, Assistant Head, International Policy and Programmes, The Children's Legal Centre

G. Wright, Social Work Consultant and Trainer, The Children's Legal Centre

## Annex 3. List of documents consulted

### Legislation

Constitution of Turkmenistan, 2008

Code of Criminal Procedure of Turkmenistan, 2009

Criminal Code of Turkmenistan, 2010

Criminal Code of Turkmenistan, 1997 (provisions concerning minors)

### Government documents

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