

Assessment 2000

Juvenile Justice in Kazakhstan

Assessment: Juvenile Justice in Kazakhstan

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Preface

Juvenile delinquency and juvenile justice have come to the fore in connection with increased problems of transition, some of them common to large parts of the world, others particularly related to the transition from authoritarian regimes in developing countries to more democratic and modern societies. Human rights, in general, and the rights of the child, in particular, are only observed to a limited extent in this connection. In recent years, however, the focus on the situation of children and juveniles, as important elements in the future build-up of vulnerable countries, has increasingly involved their exposure to and participation in criminal offences as victims and perpetrators, respectively.

The administration of juvenile justice is particularly relevant as juveniles occupy an ambiguous position between children and adults, which place them in the grey area between the welfare system and the criminal justice system. There is increased recognition of the fact that not alone “the best interest of the child”, but also the need for due process and legal safeguards is relevant for a human rights-oriented stance towards juvenile delinquents. The protection of children as victims and the respect for procedural rights of juveniles require reform of many systems, some of which have until now proceeded on an authoritarian, punitive approach towards young offenders. Other systems have – in the name of welfare and protection of children – tended to underplay the need for legal safeguards, e.g. access to counsel and protection also against well-meant intrusion into their integrity, e.g. by the establishment of certain forms of juvenile deviant behaviour as (status-) “offences”. The current debate on the advantages and disadvantages of juvenile

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courts is an illustration of the need to overhaul traditional legal and institutional structures. It is the intention of the Danish Centre for Human Rights to further develop tools addressing issues of juvenile justice: Approaching crime from a juvenile justice point of view provides a unique opportunity of assessing and involving a broad variety of institutions. In order to exert a sustainable effort in diverting juveniles from the criminal justice system it is necessary to include a broad variety of actors – from the top echelons of government down to the local government level. It is important also to involve civil society in relation to service delivery and as a watchdog function, e.g. through legal aid and via professional groups (teachers, judges, lawyers and police) and to inform youths about their rights in relation to the judicial system.

The team would like to express its appreciation of the cooperation with the UNICEF country offices. Due to their long-time involvement in the region and their approach to cooperation with government as well as with civil society, the offices provided important insights into these complex societies and greatly facilitated the team's efforts to assess the situation of juveniles and of juvenile justice in Kazakhstan and Uzbekistan.

*Jørgen Vammen Jepsen and Charlotte Flindt Pedersen
December 2001*

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List of Abbreviations

List of Abbreviations	CRC	Convention on the Rights of the Child
MPO		Master Plan of Operations
OSCE		Organization for Security and Cooperation in Europe
UNDP		United Nations Development Program
UNICEF-CARK		United Nations Children’s Fund-Central Asia Region and Kazakhstan

1. Introduction

This report presents the findings and recommendations of the first part of an appraisal and formulation mission on the juvenile justice system in Kazakhstan and Uzbekistan. The main goal of the first part of the mission was an assessment of the situation in Kazakhstan. Kyrgystan was also visited, mainly with the purpose of getting acquainted with UNICEF projects on Juvenile Justice there. The second part of the mission took place in June 2000, where an assessment of the juvenile justice system of Uzbekistan was carried out and follow-up consultations in Kazakhstan were conducted.

The objectives of the appraisal/formulation mission were

- C to identify and appraise relevant partners, stakeholders, institutions and organisations involved with the regulation, monitoring and research into the system of juvenile justice in Kazakhstan and Uzbekistan;
- C to identify and assess the existing crime prevention measures and initiatives directed at children and young people currently being carried out in Kazakhstan and Uzbekistan;
- C on the basis of the findings of the mission, to elaborate a terms of reference for a study on the juvenile justice system and juvenile delinquency to be carried out by national consultants in the two respective countries;

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- C to prepare on a project proposal for a study program in Denmark to be carried out in the year 2000 for key persons in the system of juvenile justice in Uzbekistan and Kazakhstan;
- C to prepare a fact finding/program formulation report describing the main findings of the mission with regard to the system of juvenile justice in Kazakhstan and Uzbekistan;
- C to get acquainted with UNICEF's work on juvenile justice in Kyrgystan and give recommendations to the UNICEF Kyrgystan team for their future work.

The team visited Kazakhstan in the period from 23rd March to 3rd April 2000 and met with a number of relevant actors and stakeholders in the sector dealing with the area of juvenile justice.

The team was composed of:

Charlotte Flindt Pedersen, MA in East European Studies, the Danish Centre for Human Rights; Jørgen Vammen Jepsen, Associate Professor of Criminology, then Chairman of the Centre for Alcohol and Drug Abuse, University of Århus.

The team was assisted by Nataliya Archassova, Programme Assistant at the UNICEF CARK office in Kazakhstan and had ongoing consultations mainly with Veselmoy Narland, long-term consultant to the UNICEF CARK office on the Young People's Well-being Program and Program Director, Thomas Thomsen, UNICEF CARK area office.

The team wishes to express its gratitude to all persons met for their kind support and valuable information, which the team received during its stay

in Kazakhstan and which greatly facilitated its work. Special thanks are extended to the UNICEF CARK office for providing useful information and support. However, the team needs to point out the discrepancies between the terms of reference and what was actually possible to achieve under the circumstances. Therefore the first visit to Kazakhstan was more of a preparatory character, and the second visit should be used for follow-up consultations and concluding on the findings made during visit 1.

The team has been able to obtain valuable information from relevant people and stakeholders in Kazakhstan from missions carried out in August 1999 by Emmanuelle Tremblay, and in November 1999 by Nigel Cantwell.

This report is divided into two parts. Part one presents the main findings and assessment of the system for juvenile justice in Kazakhstan and description of the main stakeholders. Part two consists of the following draft project documents: I) terms of reference for a study of the juvenile justice system in Kazakhstan; II) a proposal for a study-tour on the juvenile justice system in Denmark and country X; III) proposal for a project on establishing community based prevention structures; IV) recommendations for the Kyrgystan team on their future work.

The views expressed in this report are solely those of the team.

2. Summary of Findings

The present report contains findings of an appraisal and program formulation mission which took place March 24th to April 2nd, 2000 in Kazakhstan and a one-day visit to Kyrgystan.

2.1. Introduction

A criminal career normally starts when a person is young. Criminal offences carried out by youth around the age of criminal responsibility seldom have a very serious impact on society. However, the effect hereof and the consideration for the child itself are decisive for the importance of taking an interest in juvenile justice. Crimes committed by juveniles are often symptoms of other more serious problems in their everyday life. In the case of Kazakhstan the phenomenon of juvenile delinquency is attributed to the transition to market economy and the dissolution of prior social structures developed in Soviet times and subsequently increased economic pressure and strain on the families. Therefore an increased number of children is at risk, such as children coming out of orphanages, children from broken families with violence and substance abuse, and children who must support themselves and their families. Delinquent behaviour can have a decisive impact on the child for the rest of his/her life. It is therefore necessary to involve government in developing social policies and strategies aimed at early intervention and in developing a juvenile justice system, which ensures a fair and humane treatment of the child.

The penal system of Kazakhstan is still not aimed at rehabilitation of juveniles. In most countries the penal system is not a system of inclusion

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but a system, which works to exclude the concerned person from society. Thus the aim of any work dealing with juvenile justice and juvenile delinquency must be to avoid the penal system to the furthest possible extent, to engage in diversion measures as well as alternatives to incarceration. If the penal system cannot be avoided, the types of sentences imposed should be aimed at rehabilitation rather than at punishment. Unfortunately the former soviet penal system was mainly aimed at punishment and not at rehabilitation, and many of the features of the former system still prevail in the present justice system of Kazakhstan.

It is generally recognized that more criminal offences are committed than the authorities register. This is especially true for children and youth, and especially for children below the age of criminal responsibility, which in the case of Kazakhstan is 14. The total number of registered criminal offences among juveniles in Kazakhstan is low in comparison even to Denmark. However, from the data available it is difficult to come to definite conclusions as to whether child offenders are currently increasing as a proportion of all offenders. From data provided by the General Prosecutor's Office (GPO) registered juvenile crimes constituted only five percent of all registered crimes in 1999 (4,58 percent), a small rise in the number of convictions since 1997 which indicates that juveniles are not over represented in the crime statistics. However, in parallel there has been a general rise in the total number of crimes committed by juveniles. From a low of 6079 convictions in 1997, there has been a 15 percent increase in 1998 (to 7039) and again 10 percent increase in the total number of convictions in 1999 (to 7759) (GPO, Nigel Cantwell).

The general consensus of people, with whom the mission had the opportunity to meet, tended to estimate the real crime rate among

juveniles to be a great deal higher than registered. This discrepancy was mainly ascribed to reasons of under-reporting linked to a lack of faith in the justice system. A tendency to avoid the police, corruption in the police circles, fear of retaliation, and different degrees in the efficiency of the police at a given time were suggested to distort the picture of the trends in offences. However, the high estimate of juvenile crime might also be attributed to the fact that the occurrence of crime among juveniles as a problem is relatively new to the Kazakh society.

The uncertainty surrounding the data on registered crime among juveniles underlines the necessity to engage in thorough research on juvenile delinquency in Kazakhstan. The purpose of the research should be to get a clear understanding of the situation, scope and type of delinquency, comparing statistical data with qualitative interviews and possibly self-report surveys upon which policy-makers can build policies and strategies for improving the situation.

So far the government of Kazakhstan has not engaged in a coordinated effort to address the questions pertaining to juvenile justice. There are, however, in government circles an increased awareness of the area and, in general, a will and openness towards finding solutions to the problems pertaining to juvenile delinquency and juvenile justice.

2.2. Summary of Findings

The present mission report is to be seen as an initial step in trying to map out the different stakeholders and actors and their relevance for improving the juvenile justice system in Kazakhstan. Due to the limited time for setting up the meetings not all relevant persons and institutions were visited. A follow-up on the findings was planned to be one of the aims of the second intended mission to Kazakhstan. The legal texts

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presented to the mission were mostly in Russian and therefore the present assessment will not attempt to undertake a comprehensive legal analysis.

In summary the preliminary conclusions of the mission are that the problems pertaining to juvenile justice and juvenile delinquency in Kazakhstan are related to:

- C Lack of a co-ordinating agency or body at government level, responsible for the articulation of a comprehensive social policy aiming at addressing the well-being of juveniles, developing the juvenile justice system and preventing juvenile delinquency under the framework provided by the Convention on the Rights of the Child and other juvenile justice instruments;
- C Dissolution of former social structures resulting in a one-dimensional juvenile justice system with emphasis mainly on custodial measures of punishment. Therefore there is a need for establishing a community based social services infrastructure to support the justice system in providing alternatives to incarceration as well as reducing the need for intervention by the law through measures of crime prevention, diversion, rehabilitation and reintegration of children in conflict with the law into society.
- C The inclination of the justice system in general to think in terms of punishment instead of rehabilitation resulting in a discrepancy between the severity of the sentence and the actual crime committed;
- C No systematized research into the area of juvenile justice. This impedes the possibility of assessing the scope and type of juvenile delinquency, of creating meaningful preventive and reactive responses with regard to efforts on crime prevention, of

rehabilitation and of improving the administration of juvenile justice in general. A systematized approach to understanding the system, the scope, types and reasons for delinquency will provide the government and other stakeholders with the basis for developing appropriate strategies, social policies, and legislation;

- C Insufficient legal guarantees with regard to due process and fair trial, and superficial legal representation in the different stages of the judicial process, having the effect that it is the most vulnerable and unprotected youth, such as street children and young drug users who end up in prison;
- C Insufficient institutional structures as well as lack of professional capacity in state structures with regard to the reintegration and rehabilitation of child offenders;
- C Lack of awareness in the different stages of the judicial process (prosecutors, police investigators, judges, lawyers) of the special circumstances pertaining to child offenders, and big gaps between legislation and practice;
- C A weak NGO environment in the area of children's rights and juvenile justice.

The main recommendations for UNICEF activities in Kazakhstan are to provide:

- 1) Support to the creation and collection of systematic data on juvenile delinquency and juvenile justice;

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- 2) Advocacy for facilitation of and support to the establishment of a separate juvenile justice system as a subdivision under the normal system of courts and creation of a community based social services infrastructure on prevention and rehabilitation;
- 2) Support to institution-building and capacity-building of NGOs, professional groups and institutions working with child offenders such as children at risk, including:
 - Training of professionals groups (judges, police, lawyers, social-workers) in CRC and juvenile justice instruments;
 - Support to building up the institutional and professional capacity of NGOs:
 - Support to building up capacity for providing community-based services with regard to crime prevention, rehabilitation and reintegration of offenders and children at risk. Among other, establishment of the “social worker profession”.

3. Background for UNICEF Activities in Kazakhstan

UNICEF has for the past five years in close cooperation with the Kazakhstan government assisted in improving the health situation, especially for newborn children and their mothers, and has among other achievements succeeded in reducing child mortality. Vaccination programmes have been carried out, which are now taken over by the government. Kazakhstan is currently on the track to achieve certification of polio eradication by the year 2000.

UNICEF activities in Kazakhstan are based on an agreement with the Kazakhstan government on continued assistance for the improvement of the well-being of the child in Kazakhstan, called the Master Plan of Operations (MPO). It was signed by UNICEF and the Kazakhstan government in January 2000. The MPO consists of eleven articles wherein the general policies, priorities, objectives, strategies, management responsibilities and commitment of the government and UNICEF are described. The implementation of the Convention on the Rights of the Child (CRC) should be the basis of the cooperation during the programme cycle 2000-2004. This implies that the determination of priorities is no longer restricted to a limited range of spheres essentially linked to health and education sectors, but should cover all aspects of child development.

The programme cooperation for 2000-2004 will continue to focus on Mother and Child Survival and Protection in Programme 1; it will also seek a more integrated and rights based approach to the survival and development of children and adolescents through program 2; the Child Enrichment Program, and Program 3; Young People's Well-being

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Program. The recommendations and findings of this report should be considered under Programme 3 in relation to the area of juvenile justice.

4. Socioeconomic Context and the Rights of the Child

The main problems concerning the rights of the child in Kazakhstan are related to the rapid economic decline in connection with the disintegration of the former Soviet Union and the transition from a centrally planned economy into an economy based on free market principles. During the Soviet period Central Asia received large transfers of funds from the Central Government in Moscow. It is estimated that the transfers amounted to around 10 percent of regional gross domestic products. The withdrawal of these subsidies following independence combined with interruption of inter-republican trade within the Soviet Union and at the same time the impact of tight government economic stabilization policies have resulted in a rapid decline in the living standards of people all across the Central Asian region (Falkingham). This is true for Kazakhstan too. The standard of living continued to deteriorate in Kazakhstan, estimating that between 20 and 60 percent (depending on the estimate) of the country's population of 15 million people are living below the poverty line (UNDP). The level of unemployment is high – even though the official unemployment rate was only 3,7 % in 1998 (93.000 of the total population), the unofficial estimate was at least 500.000 and in some areas and regions it was estimated to be as high as between 30-40% of the economically active population (UNDP).

At the same time government expenditure on social services has dropped leading to a disintegration of the Soviet built social services infrastructure and safety net aimed at securing and giving support to children as well as to families at risk.

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The former structures organizing the free time of the youth; the pioneer movement, summer camps, and the Komsomol organisation – have dissolved. The mission was informed that in some schools, teachers have tried to organise new clubs, such as the Motherland Club as a substitute for the former party affiliated organization of children's spare time. However, at present, there is no systematised effort in this regard.

In general the whole education system is under pressure. Many children are dropping out of school in order to work at the markets and in the field to help families survive. The teachers themselves are struggling to survive and many have two or more jobs, such as private tutoring, teaching in several schools or selling things at the market in order to supplement the extremely low salaries of teachers. Officially, primary and secondary school education is free, but parents are, through school parents unions, asked to make donations for books, chalk, maintenance, security, etc. In this way, pressure is put on those families and children who have nothing to spare and pushing children to eventually leave school. A process of creating a private education sector has taken place since independence, creating a number of private colleges and primary and secondary schools. However, this process has not preserved the overall level of educational opportunities that were available to the general population. The financing of the educational sector has been reduced from year to year, which has resulted in a deterioration of the educational infrastructure of society. Government expenditure on education and training of cadres fell from 6,5 percent of the gross domestic product in 1991 to 3,9 percent in 1998 (UNDP). The supply of pre-school, secondary education and primary training has especially declined in numbers (UNDP).

The government of Kazakhstan, however, is beginning to realize a need for addressing the problems pertaining to the life-situation and well-

being of the country's children. It is taking the first steps to improve the situation of children's welfare. It has ratified the Convention on the Rights of the Child and will in the year 2000 fulfil its mandatory obligations of reporting to the Committee on the Rights of the Child. In a separate chapter in the Law on Marriage and Family eight articles concern the rights of the child in Kazakhstan. The law among other things stipulates, that a child in detention should be able to meet with the family and the questioning as well as any other form of interviews can only be carried out in the presence of an advocate. The Ministry of Education and the Ministry of Health have joined forces in addressing cross-cutting problems of juvenile affairs.

5. The Administration of Juvenile Justice in Kazakhstan

Since independence several laws have been adopted relevant to the administration of juvenile justice. The Criminal Code, the Criminal Procedural Code and the Act on the Enforcement of the Criminal Code have all been progressively adopted since 1997. In all three codes there are separate chapters and articles referring to criminal responsibility of young people, the proceedings in a case in relation to juvenile crime, and the enforcement of sentences of incarceration imposed on juvenile offenders. It was reported that the law on courts provides for the establishment of a division within the system of lower courts addressing special areas of activity such as questions pertaining to juveniles. However, the team did not have the opportunity to review this law. The new codes in general represent an improvement of the prior codes in a less repressive direction such as providing alternatives to incarceration, exemption from punishment, giving instructions on taking the circumstances of arrest, the psychological development, conditions of life and the upbringing of the child offender into consideration when fixing the sentence. It also allows for a pedagogue or psychologist to be present and pose questions during the court proceeding to the defendant. The Act on the Enforcement of the Criminal Code, Chapter 17 on educational colonies provides better possibilities for participation in events outside the colony and for contacts with the outside world, including parents. It also establishes halfway houses and the possibility of drawing on voluntary services in the community for the reintegration on the offender.

However, there is still a long way to go from the adopted legislation to its actual implementation. Thus there are principal aspects of concern which need to be addressed such as: i) judges being insensitive to the aspects of

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juvenile delinquency; ii) the range of sentencing options being limited in practice; iii) judges being inclined to severe sentencing, iv) reports on police brutality in order to obtain confession; v) accused juveniles being deprived of their liberty not as a last resort in pre-trial facilities, sometimes together with adults; vi) poor legal representation in the course of the judicial process; vii) poor conditions in correctional institutions and detention centers, not providing the necessary educational and vocational training to prepare for a life outside the institution with regard to the professional and psychological development of the juvenile; viii) few or next to none provisions for allowing the juvenile to influence his or her own fate and lack of preventive activities directed at the youths in general.

In the laws adopted there are no overt reference or formulation of the general goals or guiding principles of the juvenile justice system, which reflects the lack of overall policy coordination within this field in Kazakhstan. According to UN Standard Minimum Rules for the Administration of Juvenile Justice, the system should emphasize the well being of the juvenile and ensure that any reaction to child offenders shall always be in proportion to the circumstances of both the offender and the offence. The lack of formulated goals allows for subjectivity in the adjudication of the accused juvenile and room for applying purely punitive measures.

In general there is also a lack of transparency with regard to the underlying procedures and regulations governing the different areas of juvenile justice. Regulations and procedures on the work of the detention centers, police and Youth Police procedures are still restricted information.

The chapters concerned with the administration of juvenile justice in the criminal laws; are chapter 6, articles 78 to 87 of the Criminal Code, chapter 52, articles 480 to 495 in the Criminal Procedural Code and chapter 17, articles 128 to 138 in the Act on Enforcement of the Criminal Code. It is beyond the scope of this assessment to make a comprehensive analysis of the above legislation. The main point here is to state that there is a set of laws specifically applicable to child offenders according to the recommendations made in the UN Standard Minimum Procedures for the main approach of the system remains a punitive and correctional approach, aimed at control of the child, rather than establishing a better environment, and listening to and taking the point of view of the child in the course of the judicial process. Below is a preliminary attempt at a description of the main areas and stakeholders of the administration of juvenile justice.

5.1. The Ministry of the Interior

The task of the Ministry of the Interior is divided into the following areas:

- 1) Prevention of crime and the execution of punishment, paperwork: e.g. passports, road safety, traffic police etc.; district police, juvenile police, police for combating violence against women;
- 2) Combating crime and investigation of crime, preparation of criminal cases etc.: organized crime cases, control of other agencies in other departments (but no political investigations);

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3) Confinement of criminal offenders and the administration of correctional establishments.

The main area of concern for the Ministry of Interior in the area of juvenile justice is said to be the prevention of juvenile crime. This task was assessed as being extremely difficult by the Ministry due to circumstances outside their jurisdiction: a rise in unemployment, especially among young people, a reduction in staff responsible for juvenile crime, and disintegration of prior structures engaged in preventive activities on the community level. Apparently, before independence each police-district had a section in charge of juvenile crime. There were community-based programs for the youth, such as quotas for each enterprise on how many adolescents they should employ, parents' councils etc. Every activity was planned ahead, such as summer camps, youth activities – and various councils for organizing the leisure time of the youth and addressing the problems of particular groups of young people.

The Ministry of Interior is now in the midst of developing a state program directed at stabilizing the situation of juvenile delinquency. A special inspector (Youth Police) within the police is appointed to work on crime prevention, and a Commission for Juvenile Affairs in each province is established (their composition and jurisdiction should be looked into).

Another goal of the Ministry of Interior is to secure the placement of child offenders sentenced to deprivation of liberty closer to their parents or guardians. In cooperation with the Ministry of Education, the Ministry of Interior is aiming at introducing legal education as part of the secondary school curriculum. The Ministry is engaged in a cooperation with the Ministry of Education and the Ministry of Health in a joint effort

to improve the welfare of juveniles and children under especially difficult circumstances.

The Ministry of Interior is recommended as an extremely important partner of cooperation, being in charge of the penitentiary system, responsible for activities related to prevention, in charge of the street police, in charge of the new police division investigating violence against women, a sort of vice squad, and in charge of the Youth Police.

Mr. Evgenij Posmakov, head of the department dealing with the criminal executive system (prisons) in the Ministry of Interior, and Deputy Minister of Interior, Mr. Nikolaj Vlasov, were referred to as people within the Ministry open to reform and at present working on reform of the penitentiary system.

In the conversation with the Ministry there was no opportunity to talk specifically about the possibility of cooperation.

5.2. The System of Courts and Adjudication

Kazakhstan is observing the international norms in the area of juvenile justice in a number of areas such as: i) a minimum age of criminal responsibility of 14; ii) prohibition of capital punishment for offenders, who are younger than 18 at the time of the crime; iii) and a maximum sentence of up to 10 years, except for 12 years for murder under aggravating circumstances; iv) the possibility of passing sentences of a non-custodial character; v) the existence of non-judicial bodies dealing with minor offenses, thereby diverting juveniles away from the judicial system.

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The Criminal Code, article 78, states that the chapter covers juveniles from the age of 14 who have not yet attained the age of 18, and that a juvenile can receive a penal sentence or be sentenced to submit to educational measures.

The types of sentences in the Criminal Code are

- a) fines;
- b) forfeiture of the right to undertake certain types of activities;
- c) to be directed to participate in community service;
- d) correctional work;
- e) arrest;
- f) deprivation of liberty.

It is also stated that a person between the age of 14 and 16, who has committed a first time minor offense may not be sentenced to deprivation of liberty. The possibility of exemption from punishment is granted by the court to those who have committed a minor or intermediate offense for the first time, if it is acknowledged that the accused juvenile can be corrected through the application of compulsory educational measures.

A juvenile may be sentenced to the following educational measures:

- 1) a warning
- 2) placement of the juvenile under the supervision of parents or guardians, or a specialized state body;
- 3) the imposition of responsibility for the damage caused;
- 4) restriction of leisure time and the imposition of special demands upon the behaviour of the juvenile;
- 5) placement in a special correctional or clinical-educational institution.

According to Mr. Tasmagambetov, Deputy Chairman of the Supreme Court, 4542 child offenders were convicted in 1999. Out of these convicted offenders 1382 were sentenced to deprivation of their liberty in the form of a sentence to youth colony, eight were given a fine, nine were sentenced to community service, and 2754 were given conditional sentences. Nineteen juveniles were given delayed sentences, and 22 parents were ordered to give special supervision to their children.

It was explained to the mission that only in the commission of severe crimes are juveniles sentenced to unconditional deprivation of liberty in connection with committing a first time offence. The above figures show that the possibilities of applying non-custodial sentences are only being exercised to a very limited degree by the judges, e.g. this option provided by the penal code of sentencing to community service or to other alternative, diversionary measures.

One of the problems defined by persons met during the mission in relation to the sentencing of juveniles was that judges apparently are inclined to hand down punitive judgments, even for petty crimes. Petty crimes are defined as disruption of public order to carrying a single dose of narcotics (Cantwell). Theft is considered in the category of serious crimes. It was reported that children, who had stolen a bike or some cookies were given up to two and three years of imprisonment.

A second problem presented to the mission was the fact that judges are inclined to punish rather than thinking in terms of rehabilitation of the child offender. This can be explained by the fact that judges are not aware and have not been trained in taking into consideration the special circumstances surrounding the child in conflict with the law, even though they are obliged to do so by law. However, the lack of an adequate social service infrastructure upon which to rely on with regard to supervision

and rehabilitation of juveniles, can explain the tendency to apply custodial measures instead of wavering of the sentence. To study closer the trends in adjudication of child offenders through comparing statistical and qualitative data will be an important part of any research, to be carried out on juvenile justice.

At present the authority of the courts is very limited in the eyes of the population of Kazakhstan. It was reported to the mission that individuals will turn to international organizations, the US Embassy, OSCE, the European Court on Human Rights, even though Kazakhstan is not a party to the European Convention, or to the mass media, rather than turn to the court for restoration of justice. The bad reputation of judges and the court system was explained by the judges' poor knowledge of the law as well as by a tendency among judges to perceive the judge as a defender of the interest of the state rather than subordinated to the law as stated in the Constitution of Kazakhstan.

The Deputy Chairman of the Supreme Court and member of the Human Rights Commission under the President, Mr Tasmagambetov, confirmed this impression. The situation was especially bad in regions far away from the Supreme Court. The salary and conditions of work make it difficult to attract qualified judges. He was therefore convinced of the necessity to establish a special division of juvenile judges. Professional judges were seldom trained in distinguishing between a criminal case against a juvenile and a criminal case against an adult. The Deputy Chairman of the Supreme Court was very open to engage in a dialogue on promoting a better juvenile justice system and interested in cooperation on this issue. He stressed that lack of reliable information on juvenile delinquency and juvenile justice is a key hindrance in defining a proper approach to the questions pertaining to juvenile justice.

5.3. The Prosecutors

Prosecutors play a crucial role in the supervision of the administration of justice and juvenile justice in Kazakhstan. Both with regard to 1) the supervision and control of the police; 2) overall supervision and control of orphanages, detention centers and educational correctional establishments (youth colonies), and 3) in terms of formulating charges and instituting proceedings against child defendants, making demands for penalties before the court, as well as in relation to accepting or objecting alternatives to remand in an institution. The prosecutor is the first to control the legality of the apprehension. Within 12 hours of arrest a prosecutor must be contacted and informed about the arrest of any citizen. The prosecutor will then look into the legal grounds for the arrest, decide on whether the concerned person shall be kept in a pre-trial facility for more than 12 hours. Within three days the prosecutor shall in person go to the detention facility and check on the condition of the arrested citizens. According to the Deputy Prosecutor General it is during these three days that most of the violence against a detained person takes place (85 cases were opened in 1998 against law enforcement officials on accusation of use of violence with the purpose of obtaining information (OSCE/Buro conference papers). Hereafter the prosecutor shall at least check on the circumstances of the arrest once a month.

However, the system of supervision apparently does not function optimally. It was reported that children often, and not as the last resort, are deprived of their liberty during the pre-trial period. They are detained in remote areas together with adults, and there were also reports on beatings while in the hands of the police. A case was presented to the mission of 11 children being apprehended in connection with street fights in the city of Taras. They were beaten to confession in pre-trial facilities, apparently to such a degree that their parents were concerned

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about their mental health. They were still kept in pre-trial facilities nine months after the apprehension. The law states that a juvenile can only be kept in remand facilities up to six months and only in exceptional cases. Otherwise if the prosecutor finds detention of the accused to be necessary, the child should be kept in a special children's institution. The parents of the 11 juveniles have addressed the OSCE office in Almaty to press for the release of their children. The General Prosecutors' Office was looking into the case.

The General Prosecutor's Office is in charge of defending the rights of individual citizens in relation to accusations of abuse on the part of government officials. Consequently according to figures from the General Prosecutor's Office, in 1999, 887 law enforcement officials were given disciplinary punishments for violating the rights of individual citizens, and 19 government officials were found guilty of power.

The General Prosecutor's Office supervises the management of state orphanages, boarding schools and detention centres. Its main duty in this area is to protect the rights of children. At present two cases have been carried through regarding violation of the rights of orphans.

In-service training of prosecutors in relation to new legislation is constantly being carried out at the Institute for In-service Training of Prosecutors (Institut Povysjenie Kvalifikatsii).

With regard to the role of the prosecutor in general within the juvenile justice system, it must be assumed that the practices and attitudes towards child offenders may vary from the central to the local level and among local prosecutors. On the central level, at the General Prosecutor's Office, the team was met with attitudes and statements well in accordance with international standards, both in relation to control of

police practices and in relation to the prosecutors' handling of juvenile cases. The question is to what extent the enlightened attitude of the central office is paralleled on the local levels and what the actual practices are?

At the General Prosecutor's Office (GPO), the mission was met with openness and interest towards improving the system of juvenile justice. There seems to be great concern about abuse of powers, especially in relation to the preliminary investigations and inquiries of the police, and a will to protect especially juveniles from this abuse of powers. The establishment of special juvenile courts was considered an important step in securing fair treatment of child offenders in Kazakhstan. Their main concern was to determine the training requirements of such a special system of juvenile justice. They were very interested in participating in a study-tour on the establishment of a system of juvenile justice. The GPO is also an important partner with regard to collecting data on the scope and types of delinquency and juvenile crime in Kazakhstan, to investigate the attitude of prosecutors towards using diversion measures, to what extent such measures are used, and if the use of these can be extended.

5.4. The Police

The mission did not succeed in meeting any official representatives from the division of the police dealing with ordinary crime prevention, apprehension and crime investigation. The reputation of the police in Kazakhstan is extremely poor. Both in newspaper articles and from sources inside the police itself very substantive allegations were made of the existence of a system of corruption and nepotism internalized in the police structures. Police brutality towards street children and prostitutes at the precincts, infringement of the rights of normal citizens through

illegal searches without warrants, prolonged and illegal detention in pre-trial facilities and beating of suspects to confess were just some of the incidents reported to be common in some police divisions. The abuse of power by law enforcement officials was explained to the team as being connected to extremely poor salaries, about 11.000 tengis or 50 US\$ a month, employment of personnel directly from the army (militia) without police training, poor training of the police in general, nepotism, and a general feeling of low morale within the ranks of the police.

The problems within the ranks of the police were openly discussed at a conference arranged by the OSCE and the Kazakhstan International Bureau for Human Rights in July 1999 on "Penitentiary Reform and Illegal Methods of Inquiry and Investigation in Kazakhstan". At the conference the Deputy General Prosecutor attributed among others the abuse of power by law enforcement officials in the inquiry and investigation phase, to the desire to reach a high detection rate at any cost, even if it means breaking the law (OSCE).

However, the police have an important role to play in the juvenile justice system. They are the first contact in apprehending a child suspect and therefore they can play an important role in the question of diversion. This relates to the very first decision on whether to take the suspect to the police station or "solve the issue on the spot". This does to some extent depend upon the attitude and integrity of the policeman in the street. Apart from the issue of corruption, it is a question of 1) how the policeman evaluates the seriousness of the alleged offence, and 2) his assessment of evidence against the apprehended suspect. The Kazakhstan International Bureau for Human Rights and Rule of Law has developed a set of advice for youth in the streets (which they call "street law"), based upon the analysis of police - juvenile interaction. Such information is

crucial as it encompasses both basic rights of suspects and socio-psychological aspects of the interaction between juveniles and the police.

5.5. The Youth Police Inspectors

.5. The Youth Police Inspectors.5. The Youth Police Inspectors

Within the police system the department of Youth Police is responsible for child affairs and for child offenders. The priority areas of the Youth Police are: 1) protection of the rights of adolescents; 2) crime prevention; and 3) legal advocacy. They have in general a better reputation than their colleagues in the ordinary police force and are well respected. The Youth Police inspectors have, on top of their police education as inspectors, an education in pedagogy and psychology. It was reported that one of the major tasks of the Youth Police is to prevent the first time offender from committing a second offence, the consequence of which will most probably be a sentence to incarceration. The main target group of the Youth Police is therefore difficult and marginalized children, children at social risk.

Some of the tasks of the Youth Police are: i) on request to give evidence for the accused juvenile in court; ii) to carry out legal education of pupils, lecturing on the Criminal Code and the rights and obligations of the pupils, and to carry out preventive discussions and to debate relevant articles of the Criminal Code; iii) to carry out family visits and individual meetings with adolescents at risk to discuss their problems. Further, the Youth Police cooperate with teachers and with owners of bars and cafés on spotting vulnerable youth.

According to a newspaper article on street children in Almaty, the Almaty Youth Police carry out raids on attics, basements and the central train station twice a month and bring the street children to the detention center. Upon arrival at the detention centre a report is written on the basis

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of an interview with the child. The report is used by the Youth Police in their further work with the family of the child. It is often upon a recommendation from the Youth Police that individual members of the family undergo treatment for substance abuse. If the conditions in the family do not improve, the parents' rights are terminated as a last resort, and guardianship of the child is taken over by the guardianship committee of the respective school district, which is responsible for appointing a guardian for the child. In case the child is returned to the family, the school is asked to keep the child and the family under surveillance. If problems persist, the Youth Police can immediately decide to remove the child from the parental home and take him/her back to the detention center in pursuance of chapter 2 of the Criminal Code, the provisions on crime and abuse of family and children. In 1999 (in Almaty), 26 charges were made against parents for child abuse. It should be investigated on which legal grounds the police pick up children in the streets and whether "being in the street" is considered a status offence for children.

The Youth Police inspectors have the responsibility for supervising child offenders coming out of penal-colonies, maintaining the contact to the family, but also for apprehending young offenders and carrying out investigations. Codes of practice do exist, but were reported to be confidential.

The mission met with the head of the Almaty Youth Police inspectors, Ms. Shopshekbayeva. She was genuinely interested in cooperation on the establishment of a special administration of juvenile justice (juvenile courts) and on the establishment of social services, which could support long-term efforts with regard to children at risk, protecting them from abuse, and preventing first time offenders from becoming second time offenders.

The Youth Police expressed a need for partners of cooperation with regard to developing community programmes for prevention of child crime and for a core of social workers, who could address the tasks, which are connected to the implementation of social provisions in relation to the child. The Youth Police are now filling both functions. Ms Shopshekbayeva didn't find it appropriate for the Youth Police to have a double role in relation to the children, both as police and social workers. She found, that it is not always in the best interest of the child, and the Youth Police are not in a position to provide sufficient support to families at risk in terms of preventing abandonment or providing support to finding alternatives to correctional responses for young offenders.

The Youth Police, however, try to work in close collaboration with different parts of society: schools, Non Governmental Organizations, the Youth Commissions and the City Council, that is, all the organizations working with juvenile affairs, in order to improve the long term effects of their work.

5.6. The Local Commissions on Juvenile Affairs

It was reported that local commissions on juvenile affairs have been established at oblast (province) and city levels, comprising people from the departments of health, social affairs, education, Youth Police, school inspectors, guardianship committees with responsibility for making decisions on children in special circumstances, children at risk, children under the age of criminal responsibility accused of an otherwise serious offense, children who are accused of non-serious offenses, administrative offenses such as truancy, vagrancy, alcohol consumption, breaking traffic regulations and finally children assessed to be in need of protection from abuse or neglect (Cantwell). The commissions report to the local city

council administration, which has nominated a secretary to prepare the cases and summon participants to the meetings. The team did not have the opportunity to meet with a member of a local youth commission or the secretary of such a commission. However, these commissions should be important partners in any cooperation and coordination. They keep a significant number of children out of the formal justice system; but on the other hand, as Nigel Cantwell pointed out, decisions are made in these commissions, which in reality imply deprivation of liberty, such as institutional placement in special closed boarding schools of which there are two in Kazakhstan. The decisions of the commissions do not undergo judicial review. As part of a study of the juvenile justice system and the well-being of children and youth in Kazakhstan data on cases and decision from the Youth Commission should be collected.

5.7. The Penitentiary System

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There are three youth colonies for male offenders sentenced to deprivation of liberty, i.e. one in Almaty, one in Aktjubinsk and one in Petrapavlosk. It was reported that at present approximately 1500 young juvenile offenders aged 14 to 20 years are serving their sentence in these facilities. Female juvenile offenders are kept in a colony together with adult women, however, in separate facilities. Information on conditions for female juvenile offenders is very scarce. At present 23 female juvenile offenders were reported to be serving sentences at the female colony. It is not clear whether there is any special attention paid to their special needs and problems. In the various codes only a few special references are made to gender aspects, except for the fact that women cannot be given a sentence of capital punishment.

Chapter 17 of the Act on the Enforcement of the Criminal Code describes the different types of regime inside the youth penal colonies. In short,

there are four types of regimen: 1) ordinary, 2) mitigated, 3) privileged and 4) severe circumstances for serving a sentence. The principle behind this division is to give an incentive for good behaviour. It is the prison management, who decides on the transfer between the different regimens. Most convicts start serving their sentence under ordinary circumstances. After a period of three months the juvenile offender can be transferred to serve under mitigated circumstances, if the behavior is satisfactory and if the inmate shows a conscientious approach to work and studies. Under ordinary circumstances the inmate is allowed two long visits (eight hours) and six short visits in the course of one year; the convicts sleep in a dormitory inside the colony. Under mitigated circumstances the convicts are allowed four long visits and 12 short visits. If the prison management gives the permission, the long visits can take place outside the colony. The convicts sleep in a dormitory. As part of the preparation for release on parole, convicts are transferred from mitigating circumstances to privileged circumstances. The convicts in privileged circumstances sleep as a rule in premises outside the colony. The convict is under supervision, however, not guarded. The convict is under these circumstances allowed an indefinite number of short visits and six long visits. Good behaviour, conscientious approach to labour and studies, active participation in voluntary organizations and educational events can grant the possibility of attending sports and cultural events or excursions with parents outside the colony in the daytime. Under severe circumstances of serving a sentence the convict is only allowed four short visits in the course of one year and the convict is confined in isolated premises at the colony when not working or studying. This type of regimen is for those, who have been convicted of committing an intentional crime under aggravating circumstances. Under severe circumstances the convict can be granted transfer to ordinary circumstances only after six months.

With regard to obligations of authorities in relation to rehabilitation and reintegration of the juvenile convict there are very few provisions in the Code. In article 138 it is suggested that an honorary board or a council should be established with representatives from state enterprises, state institutions, organisations and individual citizens with the purpose of supporting the educational correctional colony economically, as well as with a view to supporting the reintegration of juveniles into the labour market. It is also suggested that a parent's council should be established in order to strengthen the educational influence on the convicts. Juvenile offenders less than 16 years of age are sent to their parents upon release, if they have no parents they are sent to their guardian or a state orphanage with or without their consent after served sentence.

5.8. The Detention Centers

Detention centers exist in all major cities and districts of Kazakhstan. They are under the direct supervision of the Youth Police. However, it is the General Prosecutor's Office, which has the overall control. Children in or of the street are brought to the detention centers as well as children accused of an offense, without parents or guardians, who can secure their presence in court. This, as pointed out by the head of the Almaty Youth Police, is a direct breach of convention of the Rights of the Child as children who are without shelter should not be detained in penal institutions, due to lack of just social welfare homes. An appropriate Crisis center such as the one proposed by the Meyrim Foundation would present an alternative to the detention center in the sense that here the children could come voluntarily, receive the necessary medical and psychological treatment, and also have the opportunity to receive some education or other stimulation while they are there.

5.9. Rendering of Legal Assistance in all Stages of the Judicial Process

9. Rendering of legal assistance in all stages of the judicial process.9. Rendering of legal assistance in all stages of the judicial process According to the Criminal Code and the Criminal Procedural Code of Kazakhstan, legal assistance to juveniles is required from the moment of the first questioning of the juvenile as a suspect under criminal investigation, and in case of detention from the moment of detention. If the juvenile or his or her legal representatives have not made an agreement with a lawyer, the investigator, procurator or judge should arrange for a defense lawyer to take the case free of charge. All questioning should be carried out in the presence of a legal representative, a lawyer, and in case of a juvenile under the age of 16 by a psychologist or pedagogue. The above is all in accordance with the UN Minimum Standards on the Administration of Juvenile Justice. However, unfortunately the provisions of the legislation are not always applied in practice. It was reported that the Bar Association in assigning the lawyers are not inclined to appoint their members to juvenile cases, because the government has not paid its debts for previous services. It was also reported that appointed defense lawyers were involved only at a very late stage of the process and did not have otherwise required consultations before the case was prosecuted, nor were they given access to all available information relating to the case. There are no provisions to ensure that the same lawyer is in charge of the case in all stages of the judicial process. However, the mission didn't have the opportunity to meet with the Bar Association to investigate more thoroughly the

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question of legal representation of child defendants.

According to the recommendations of the UN-Minimum Standards it is important that the counsel is able to discuss the matters with the child in a manner appropriate to the child's age and maturity. It is also important to ensure that the same advocate participates throughout the whole judicial process and that they meet on their own before a court hearing at every stage of the process. After consulting with the child, the defense counsel should take appropriate steps to consult with the family and with key professionals, so that the defense counsel is fully briefed on the child's current situation. A child's advocate should not only be familiar with the domestic legislation, but also with international human rights law, in particular, with the Convention on the Rights of the Child and other child justice instruments.

In order to ensure a fair trial and due process for a child, it is important to engage in consultations and cooperation with stakeholders and actors within the area of legal defense, such as the Bar Association and human rights organizations providing legal aid and legal clinics. The mission met with the Kazakhstan International Bureau for Human Rights, which is starting up an advocacy clinic with support from Swiss Aid and has set up six clinics all over Kazakhstan as subdivisions of the "Buro". They give advice and represent people in court. It was reported that the students of the Academy of Law in Almaty and at the University of Astana have also established student-run legal clinics. However, the team didn't have the opportunity to meet with representatives from these clinics. Promotion of the possibility of the Bar Association to organize a special division of lawyers with specific knowledge on how to approach questions pertaining to juvenile delinquency is also recommended.

5.10. Concluding Remarks

.10 Concluding remarks.10 Concluding remarks

The rule of law can be defined as a system in which the laws are public knowledge, are clear in meaning, and apply equally to everyone. In particular, anyone accused of a crime has the right to a fair, prompt hearing and is presumed innocent until proven guilty. The central institutions of the legal system, including courts, prosecutors, and police, shall be reasonably fair, competent, and efficient. Judges are impartial and independent; not subject to political influence or manipulation. Most importantly, the government operates on the basis of a comprehensive legislative framework and its officials accept that the law will be applied to their own conduct. Therefore members of the government and its officials seek to be law-abiding.

Kazakhstan has made extensive efforts in the area of legal reform and to a high degree applied international standards when drafting the new chapters on juvenile justice in the criminal legislation. It has introduced separate chapters in criminal legislation that only apply to juveniles, established age 14 as the minimum age for criminal liability, and has introduced specific requirements for legal procedures involving juveniles, and enhanced the possibility for juveniles sentenced to deprivation of liberty to maintain contact with the outside world. However, there are still areas that need to be improved before and some ways to go until the true rule of the law can be said to prevail within the area of juvenile justice.

If we are to believe the repeated accusations from individual citizens, neither the police nor the judges can be described as reasonable and fair, competent and efficient.

The question is therefore whether the ordinary system of administration

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of justice in Kazakhstan can protect juveniles and children in conflict with the law and ensure that they are given a fair treatment.

The general impression from the interviews carried out, even with people in charge of implementing the rule of law and the administration of justice, is that the ordinary system of justice cannot protect the child offender, let alone consider the best interest of the child in accordance with the minimum standards described in international juvenile justice instruments. The legislation has to some degree been brought in line with international standards. At the same time it is acknowledged that there is a large gap between legislation and application. There are problems in the justice system from Soviet time, which cannot be eradicated overnight.

Diversion should be a central principle of any juvenile justice system. In the criminal code of Kazakhstan there is the possibility of applying measures of diversion. From the figures, presented to the team, it is impossible to say, how many child offenders are actually being diverted away from formal criminal proceedings. However, it is possible to conclude from the figures of children convicted of a crime in 1999, given by Supreme Court Judge Tasmagambetov, that diversion measures in 1999 were used only to a limited degree in the judicial process itself, i.e. in the form of parental supervision, reparation, warning, or community service. However, diversion from custody in the form of conditional sentences was used quite frequently.

6. Key Institutions Outside the Justice System

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6.1. Government and Administration

6.1.1. Ministry of Education

.1.1.Ministry of Education.1.1.Ministry of EducationThe Ministry of Education is an important stakeholder in relation to its efforts on crime prevention. The UNDCCP in Kazakhstan is engaged in a fruitful collaboration with the Ministry on a cooperative project of training teachers on the subject of prevention and on informing children on the dangers of drug and substance abuse. School material in Kazakhstan and Russian have been elaborated. The UNDCCP said that there is a strong will in the Ministry to participate in projects related to crime prevention. The Ministry is also directly responsible for the orphanages and boarding schools for children from age four.

It was reported that the Ministry of Education, the Ministry of Health and the Ministry of Interior have entered into cooperation on crime prevention among juveniles. The specific reason was the increase in juvenile crime and the fact that children have started to drop out of school. The Ministry of Education has apparently initiated an investigation in order to determine: 1) how many children have dropped out of primary school; 2) the reasons for this tendency; and 3) how to figure out new ways to pull the dropouts back into the education system.

The team did not have the opportunity to meet with the Ministry of Education. However, it is assessed that the Ministry might play a crucial role in organizing the teachers in an effort to identify and help children at risk as well as to participate in a program directed at implementing a community-based social service infrastructure. The Ministry could possibly be instrumental in introducing tutoring in subjects related to children in special circumstances and to the Convention on the Rights of the Child as part of the curriculum at the pedagogical university.

6.1.2. The Ministry of Labour and Social Protection

6.1.2. The Ministry of Labour and Social Protection 6.1.2. The Ministry of Labour and Social Protection 6.1.2. The Ministry of Labour and Social Protection The Ministry of Labour and Social Protection is also a prime stakeholder in relation to Juvenile Justice. The official unemployment rate for Kazakhstan is 3.7 per cent, however, it is estimated by other sources to be about five times that size (UNDP) as people do not have an incentive to register as unemployed, or are on involuntary leave from their place of work. Youth with only a primary education have severe difficulties in finding a job. It was explained to the team that especially children coming out of orphanages, or child offenders with a so-called “wolves–ticket”, that is a delinquency record, had severe problems finding employment due to their segregation from society. The Ministry of Labour and Social Protection is therefore important for making a concerted effort to find a solution to the reintegration of offenders coming out of prison and for children coming out of other institutional settings.

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6.1.3. The Commission on Women and Family Affairs

1.3. The Commission on Women and Family Affairs.1.3. The Commission on Women and Family AffairsOne of the areas of competence of this Commission is to participate in the work with regard to the state’s reporting to the Committee on the Rights of the Child and to coordinate this work. The Commission on Women and Family Affairs is

also concerned with the issue of violence in the family, which in Kazakhstan has proven to be closely related to the growing number of children at risk and to juvenile delinquency. This Commission is one year old and its work is based on the main aspects of the UN Beijing Conference on Women's Rights. The Commission also has the responsibility for looking into labor rights, unemployment and health, and all areas connected to juvenile delinquency. The Commission on Women and Family Affairs is soon going to be involved in the revision of a law on the protection of children's rights in Kazakhstan.

The Commission on Women and Family Affairs seems to be a very important partner within the governmental structure. The Commission is well informed on both concrete problems pertaining to juvenile justice and the work being carried out in different ministries. The members of the Commission seem extremely competent and knowledgeable on the social problems of society. The Commission is especially relevant to the State's reporting on the CRC and in connection with the work of drafting a law on the rights of the child.

6.1.4. The Commission on Juvenile Affairs in Parliament

1.4. The Commission on Juvenile Affairs in Parliament. 1.4. The Commission on Juvenile Affairs in Parliament. Several references were made to a Commission on Juvenile Affairs in Parliament. The team was not able to identify any members of the Commission. Investigations into the existence, mandate, authority and work of the Commission should be carried out.

6.1.5. The Presidential Commission on Human Rights

1.5. The Presidential Commission on Human Rights. The Commission on Human Rights under the President was established in 1994. The Commission is a national human rights institution; and its' overall objectives are:

- to assist the President of Kazakhstan in the realization of his constitutional mandate as a guarantor of rights and freedoms of individuals and citizens;
- to implement mechanisms for ensuring the protection of rights and freedoms of individuals and citizens.

Pursuant to the decree of April 2nd, 1997 the Commission has the following competencies:

- to review appeals addressed to the head of state and directly to the Commission on issues of human rights;
- to prepare annual and special reports on human rights;
- to develop proposals on mechanisms of enforcement and protection of freedoms and human rights;
- to prepare analytical material, expertise and recommendations on international legal instruments;
- to participate in the work of international organisations on human rights.

The Commission consists of 17 members, who are approved by the President. It is presided over by the State Secretary. The team met with several Commission members, who were in general progressive minded people from the Supreme Court, the General Prosecutor's Office and the Institute of International Law and Private Business. All interested in promoting the introduction of a special system of juvenile justice.

The team also met several times with the head of the secretariat of the Commission, Mr Bolat Baikadamov, both in Almaty and in the Astana, the State capital. The role of the Secretariat is to assist in the work of the Commission, and it organized as a sub-department of the President's Office. Due to the position of the Commission being so close to the President, it cannot be defined as an independent human rights institution. Therefore, there is little confidence in the Commission with regard to overtly safeguarding human rights and the rights and freedoms of the people. At the same time its closeness to the President gives the Commission access and influence, which it seems ready to use for promoting human rights issues in Kazakhstan. The authority of the Commission has improved, due to the reappointment of Commission members, who are taking a more active part and interest in the work of the Commission. The team's general impression of the three members, which the team had the opportunity to meet, was that they were people of high esteem who take their tasks seriously, often in direct continuation of their ordinary work. The Commission is now instrumental in promoting the establishment of an Ombudsman institution in Kazakhstan in cooperation with UNDP.

The Human Rights Commission under the President is very much interested in cooperating with UNICEF on juvenile justice. The Secretary of the Commission, Mr Bolat Baikadamov, suggested that the Commission could host a conference on this issue in cooperation with UNICEF.

6.1.6. Concluding Remarks

The most difficult task in engaging in an effort to improve the situation of juvenile justice in Kazakhstan is to address the problems, which arise from the socio-economic situation of the country, such as unemployment, inadequate education, broken homes etc. All factors, which are said to

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contribute to a rise in the crime rate among juveniles. However, it is envisioned that cooperation with ministries and commissions, which have the socio-economic area as their domain, such as the Ministry of Education, Ministry of Labour and Social Protection, the Commission on Women and Family Affairs, and the Ministry of Health, should be the core in any effort with regard to the provision of early protection and early intervention. One of the goals of such cooperation would be to work in the direction of restoring the prior social network or establishing new social structures, which in an appropriate way could address the root causes of juvenile delinquency and protect the increasing number of children at social risk. There was, in Soviet times, a community-based system of prevention, where several groups at city level were involved with prevention activities and addressed the problems of individual child offenders and children at risk. The problem of the Soviet based system was, however, that the child was often seen as an object of reeducation, and not as a voluntary participant, with the ability to make his/her own choices. Notwithstanding this fact, it would be beneficial to revitalize these structures, however, adjusted to a more child-centered approach aimed at minimal intervention and maximum participation of the child. A second goal should be to secure commitment among the above mentioned government agencies with regard to designing and developing policies aimed at implementing and promoting children's rights and well-being in Kazakhstan, such as providing a safety net, guaranteeing the opportunities to education, securing children's participation in society, and providing alternatives to idleness and life on the streets.

In concrete terms, the Ministry of Education should endeavor to establish a program for in-service training of teachers on the topic of the Convention on the Rights of the Child and on Juvenile Justice instruments as well as training them in identifying, assisting and counseling children at risk. These topics could possibly become part of

the curriculum at the pedagogical universities.

The Ministry of Labour could develop a strategy to counter the rise in unemployment among young people.

6.2. Education and Research

.2.Education and Research.2.Education and Research

In general the area of juvenile delinquency has not been a priority in the years of transition and funds have thus not been allocated for this purpose. In connection with the restructuring of the education system the department at the Academy of Sciences in charge of doing research within the field of juvenile justice and juvenile delinquency has been merged with the University of Law, now the Academy of Law of Kazakhstan. As a result, juvenile justice as a topic of research has disappeared. The Academy of Law has not seen this area of research as a priority and thus, at present, there is no systematic data collection or research, which can form the basis for dialogue, and policy formulation on political and administrative decisions.

The following institutions and persons were identified as relevant to engage in a study on juvenile delinquency in Kazakhstan:

6.2.1. The Kazakh Institute for Human Rights

2.1. The Kazakh Institute for Human Rights. 2.1. The Kazakh Institute for Human Rights. The Institute for Human Rights was established on 19th January 2000 as a non-governmental organization specializing in analytical and instructive research activity in the area of human rights. The establishment of the Human Rights Institute, placed at the Kazakhstan International Buro for Human Rights, was supported both by the Commission for Human Rights under the President of Kazakhstan and by the Kazakhstan International Buro for Human Rights. The Human Rights Institute is an organization established with the purpose of filling gaps and needs in Kazakhstan society for independent research on human rights issues. The individual members, except for the Director, are still affiliated with their respective institutes. However they are on an ad hoc basis committed to form interdisciplinary research teams, based on local experts and scientists.

At present the Human Rights Institute has submitted various research proposals: to the Soros organization, to UNHCR on the rights of refugees surrounding the borders of Kazakhstan, and a teachers' training project on human rights under the EU Tacis program.

The basic goals of the Institute are:

- collection, preparation and distribution of information on human rights and international documents, including information on the ratification and the reservations of the Republic of Kazakhstan regarding international human rights instruments;
- information on the mechanisms for the protection of human rights in Kazakhstan
- creation of an informational fund on human rights matters (libraries, computer databases);

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- organization of training, seminars, scientific research conferences on human rights issues;
- organization of expert analytic interdisciplinary research in cooperation with other organizations.

The Director of the Institute is Aliya Abdulina, who is a lawyer by profession. The board of the Institute is composed of prominent academicians. - Mainly lawyers, but also sociologists and philosophers. Aliya Abdulina was not in Almaty, during the team's mission. However, the mission met with the Chairman of the board, professor Marat Sarsembayev, President of the University of International Law, and International Business "Daneker". He said, that the Human Rights Institute has both the will, the capacity and an interest in taking on the responsibility for carrying out a study on the problems pertaining to juvenile justice in Kazakhstan.

6.2.2. Individual Resources and Specialists on Juvenile Justice

.2.2. Individual resources and specialists on juvenile justice.2.2. Individual resources and specialists on juvenile justice Bator Sjetpisbaev finished his PhD in the organization of juvenile justice in 1998. He is affiliated with the private University Institute of International Business and Law. He summarized his thesis in the book: "Problemi v organisatsii juvenalnoj justitsii i sotsialnij sluzb po delam nesovershennykh letnykh" ("Problems Related to the Organization of Juvenile Justice and the Social Services taking Care of Child offenders"). It was published in 1998. The book also contains a draft proposal for the establishment of juvenile courts.

Shapinova Saule Abdrakhmanovna - scientist member of the Academy of

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Sciences and the Institute for State and Law. Before becoming a scientist, she worked for the Prosecutor's Office as an investigator dealing especially with the offences of minors. Her field of study is juvenile justice. Due to reforms in the educational system, her institute has merged with the University of Law, which has now become the Academy of Law. Juvenile justice as an area for research has not been a priority in the new structures and she is therefore very interested in all types of cooperation. Her more than 30 years of experience, both from the practical work with juveniles as well as from her theoretical studies, are extremely valuable in assessing the juvenile justice system.

Ajdarhan Skakov

PhD and head of the Department for the Organization of the Penitentiary System and Criminology at the Police Academy. His special area of interest is the reform of the juvenile penitentiary system. He is appointed adviser to the Soros Foundation on their project of reform of the Almaty youth colony and other questions relating to the reform of the penitentiary system. He carries out training of prison service staff. He uses, among other things, a video documentary from 1994 "Opyt Kresta" "The Experience of the Cross" about the conditions at the Almaty youth colony from 1994 for carrying out training of prison service staff. He has written and edited a commentary on the Criminal Procedural Code. One of his main areas of concern is the right to security of the individual inmate.

A.A Taranov The mission was informed that Doctor A.A: Taranov, lecturer and researcher at the Academy of Law, is also a specialist on juvenile justice. The mission was supposed to have met with doctor Taranov, but the meeting was cancelled, apparently due to the sudden death of the Dean at the Academy of Law and funeral celebrations in relation here to.

Rinat Musafarev Young lawyer (app. 23) working as a lawyer for the Kazakhstan International Buro of Human Rights. (His English is not very good, but a little practice would improve his speaking considerably.) He has also worked for a private law firm, with the media and is familiar with different youth activities going on in Almaty.

6.2.3. The Academy of Law

.2.3. The Academy of Law.2.3. The Academy of LawThe Academy of Law was opened in 1994 by a decree of the President. The mandate of the Academy is to carry out legal reform, carry out legal research and produce law graduates. It has approximately 4000 students and has a broad network of international collaboration. It is not clear what kind of research is being carried out at the Academy. At the Academy of Law the students have organized a legal clinic, giving free legal counseling, to those who cannot afford the assistance of a lawyer. The legal clinic is also in charge of a summer university for in-service training for teachers within the legal field. A students' organization called Youth and Law is based at the Academy, the goal of which is to improve the level of knowledge of the law among the youth in Kazakhstan through students' associations/fora. The Academy students are also active in the NGO – “Street Law” - Kazakhstan - which is supported by Soros Kazakhstan. When the team visited Kazakhstan the head and founder of the Academy of Law had just passed away, and no successor had been elected yet.

Information about the activities can also be obtained from Kulzhabaeva Zhannat Orumbekovna, Dean of the International Law Department of Kazak State Law Academy.

6.2.4. Concluding Remarks

In order to substantiate and target an effort in the direction of improving the juvenile justice system and prevent delinquency among children, it is important to systematize and collect data on the scope, types, and reasons for child delinquency, as well as carry out systematized research on how the child is in fact treated in the criminal justice system. Apparently there are no systematized efforts at present in this direction due to reductions in the educational system. It is therefore recommended to engage national specialists on juvenile justice to carry out the data collection and systematic organization of data.

6.3. Non Governmental Organizations

Based on interviews, background literature, and mission reports, it is the mission's impression that there are only a very few NGOs in Kazakhstan in the area of juvenile justice. However the team did not exhaust all possibilities and there is a need for further research into this area.

The team met with the following NGOs:

6.3.1. Meyrim Foundation for Assistance to Homeless Children

.3.1. Meyrim Foundation for Assistance to Homeless Children.3.1.

Meyrim Foundation for Assistance to Homeless Children
The Meyrim Foundation was founded in 1998 on the initiative of a small

group of small entrepreneurs, who in connection with their work had become aware of the growing number of street children. The businessmen still constitute the backbone of the organization, but due to a general decline in the economy and conditions for small entrepreneurs,

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they can no longer afford to set aside funds for the Foundation. At the moment the Meyrim Foundation mainly receives funding for seminars through Soros. Otherwise the work of the Foundation is based on voluntary resources. One of the main goals of the Meyrim Foundation is to secure a proper legal framework for young people and street children.

For this purpose the Meyrim Foundation held a workshop with representatives from relevant government departments and ministries on the issue of juvenile justice at the end of May 2000. The workshop was carried out with support from the Soros Foundation of Kazakhstan. Three items were discussed:

- 1) Organization of legal defense of children in conflict with the law.
- 2) The establishment of a special juvenile justice system in Kazakhstan through cooperation with the justice system and different public organizations/nongovernmental organizations.
- 3) What can be learned from foreign experience?

A draft law on a special juvenile justice system was to be presented at the workshop. In connection with the organization of the workshop and in order to assess the support for introducing a special system of administration of juvenile justice the Foundation met with several departments of Parliament. The Foundation had the impression that, in government circles in general, there is an understanding of the need for addressing problems related to juvenile justice and juvenile delinquency. However, at the same time it was made clear to the Foundation that changes in legislation, which would demand an increase in financial expenditures, would not be accepted. Nevertheless, some support was gathered from several deputies of Parliament for the draft proposal on a special system for the administration of juvenile justice. The Meyrim Foundation, together with professors from the Danaker Private

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University of International Law, developed a proposal for a law on the administration of juvenile justice. They suggest, among other things, that special youth judges and youth prosecutors, youth investigators, youth social workers and lawyers should be involved each time a child is apprehended. The opinion of social workers should also be taken into consideration in the defense of a young person. (The team asked the Meyrim Foundation if it would be possible to see the law, but the request was not honored.)

The Foundation pointed to the fact that a major problem for a young offender released from the penal colony is that he has a so-called “wolves ticket” - a delinquency record - which restricts his/her possibilities for finding a job. The employment situation in Kazakhstan is very bad, especially for young people without an education. The Meyrim Foundation has therefore tried to promote in discussions with the Ministry of the Interior the possibilities of granting young offenders, having done their time, a clean record, i.e. deletion of the record from the official crime register.

The Meyrim Foundation is presently working on establishing a Crisis Center for street children, thereby providing a place where they can sleep - “a safe space”. The plan is that upon the child’s arrival at the Crisis Center, he/she will get a medical check - the street children often suffer from different skin diseases, lung infections and venereal diseases. The Crisis Centre should also be able to offer the assistance of a psychologist, as children of the street are very vulnerable to abuse. Other services offered to the children should be a hotline, legal aid, psychological aid, as well as the establishment of vocational training, like a small bakery and so forth. A proposal has been sent to the Ministry of Labour introducing special incentives for employers on conditions for employing adolescents. This proposal recommends that enterprises should be given

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special economic privileges for employing juveniles such as the abolition of the 26 percent social security tax, which the employer has to pay, and which prevents small entrepreneurs from taking on any staff.

The Center is also seen as possibly having a preventive effect in relation to juvenile crime: Children of the street are more vulnerable to joining gangs and thereby becoming involved in criminal activities. The Crisis Center intends to work in close collaboration with the Youth Police. The Meyrim Foundation has already a good working relationship with the Youth Police of Almaty. At the Crisis Center the Meyrim Foundation envisions establishing a data base, i.e. using the findings of the consultancy on street children, regarding the type of children and the problems they formulate in this consultancy. According to the assessment of the Meyrim Foundation, approximately 200 children are on the street every night in Almaty. Two thousand children go through the Almaty children's detention center annually.

At present the Meyrim Foundation is looking for the right premises, which will be offered to the Foundation at a reduced rate from the City government. In the end the Foundation hopes that financing of the Crisis Center will become part of the City budget.

The Meyrim Foundation called attention to the fact that it had no prior experience in this field of activity and that there are no other voluntary organizations in Almaty directly addressing the problems of street children. Therefore the Meyrim Foundation identified a need for transfer of experience and capacity building of the organisation and expert consultations to reinforce the work of the organisation. They realized that they are one of the first institutions to build capacity within this field and therefore they are seeking all the advice they can get from the outside.

The Meyrim Foundation's initiative is an important alternative to the Detention Center for street children and for other children at risk. However, if UNICEF is to support the Crisis Center, it is important to supervise the management of the Center very closely and to transfer knowledge from similar institutions to the staff and to the management. There should be professionals engaged in the work of the Center, a transparent structure, and a board of directors. UNICEF should facilitate the development of guiding principles and ethics regulating the work of the Center and ensure that work plans and clear objectives are established.

6.3.2. Kazakhstan International Buro For Human Rights and Rule of Law (the Buro)

.3.2. Kazakhstan International Buro For Human Rights and Rule of Law (the Buro).3.2. Kazakhstan International Buro For Human Rights and Rule of Law (the Buro)The Buro was founded in 1993 by Kazakh human rights activists and an American organization. In 1997 it was re-registered according to the Kazakhstan law on registration of nongovernmental organizations. The board of the "Buro" has seven members; six nationals and one American, who is a dissident from the former USSR.

The Buro has six members in Almaty, twelve in the regions, three lawyers in Almaty, four of whom are women. There are six advocacy and legal aid clinics in the region. The Buro depends 100 percent on foreign support. The donors supporting the Buro are the National Endowment Foundation for Democracy, UNHCR, OSCE, Soros, Mc Arthur Foundation, USAID and Swiss Aid.

The Buro has four main goals:

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1. To monitor the human rights situation in Kazakhstan with a focus on civic and political freedoms, but they also include social and economic rights.
2. To influence the law-making process.
3. To carry out education, seminars, roundtables and conferences, publication of material, to produce TV-programs on elementary human rights and street law, and to lecture students on human rights, that is the dissemination of information on human rights.
4. Human rights advocacy – free legal aid twice a week, also if deemed necessary representation in court and information on how to deal with authorities. At present there are six branches of the Buro all over Kazakhstan responsible for providing legal aid. From the beginning of May 2000 the Buro will establish an advocacy clinic sponsored by Swiss Aid.

The director of the Buro, Mr Zhovtis, described the following problems within the Juvenile Justice system:

- i) Severity of sentences;
- ii) the judiciary is not aimed at rehabilitation, but at punishing;
- iii) the situation in the children's colonies, lack of objective reasoning/ the traditional style of the Soviet system.

The leadership of the penitentiary system is well intentioned. However, lack of funds impedes the process of improving the system. In 1998/1999 the Buro carried out seven seminars for prison officials supported by the European Union on the reform of the penitentiary system.

- iv) Post colony rehabilitation - the system of rehabilitation is destroyed - therefore the recidivism is extremely high;
- v) The problem of democracy and lack of public awareness and participation in the area of juvenile justice.
- vi) Bribes give access to prison, and drug and alcohol is part of the

penitentiary system.

The Buro is involved in teaching graduating pupils. They teach the pupils, among other things, how to address the police in order to avoid being apprehended. Mr Zhovtis pointed at the fact that at the present it is considered a status offense, if more than 5 children are gathered on the street.

The Buro gives the graduating pupils the following advice:

They should ask the police officers in the following order:

- 1) to tell their full name and show ID;
- 2) next, ask the police under what article of the penal code they are being stopped, what is the problem;
- 3) if the police officers still wants to charge the young person with an offense – he should say, “no, I will not allow that, please take me to the station”;
- 4) last he should ask the police to show the specific law under which he is being charged;
- 5) if all this does not work and the young person is taken to the station, then he should call “the Buro”.

The Buro recommended the establishment of a youth human rights organization to make up for the unprotected status and lack of rights which young people are exposed to in Kazakhstan society. This would provide the youth with a channel through which to express their interest and protect their rights and give them an opportunity to participate in securing these rights. As part of the service the youth human rights organization should provide a hotline for children in conflict with parents, police and others.

The Kazakhstan International Bureau for Human Rights is held in esteem on both national and international levels. It has based its existence and activities on cooperation with international organizations for more than six years and is therefore a highly experienced NGO. It has clinics in six different places all over Kazakhstan and in this sense has a thorough knowledge of what is going on, not only in Almaty. The legal counseling gives the Bureau a unique insight into the weak spots within the legal establishment. The Deputy Director, Zhemis Turmagambetov, is very interested in pursuing the area of juvenile justice and has been involved in work on creating a booklet, which informs young people of their rights in the justice system. The activities, the knowledge which the organization possesses together with the high integrity of its Director, makes the Bureau a very valuable partner within the area of human rights.

6.3.3. Other NGOs with relevance for Juvenile Justice

A list of other NGOs, the names of which the team came across, but did not have the possibility of further researching, which might be relevant for an effort of improving the juvenile justice system in Kazakhstan:

The Legal Clinic, the Street Law Project, Law and Youth - all at the Academy of Law in Almaty

The Legal Clinic at the University of Astana

The Association of Young Leaders,

The Center for Conflict Management in Almaty.

6.3.4. Concluding Remarks

.3.4. Concluding remarks.3.4. Concluding remarksIt appears that civil society and its organizations are not very strong in Kazakhstan. Except for the Kazakhstan International Buro for Human Rights and on Rule of Law, the team was not introduced to or familiarized with other well-functioning and strong NGOs. The Meyrim Foundation has some very valuable ideas and there is certainly a need for setting up the Crisis Center, providing a qualitative alternative to the present system of detention centers. Children of the street can avoid becoming part of the formal justice system and subsequent avoid stigmatization. However, as the Meyrim Foundation stated, they do not have any prior experience to build on, and they would need close supervision in order to become a worthy alternative to a life in the street and the detention centers.

It is important to raise public awareness of the juvenile justice system and the rights of the child, so that public demand is created in the direction of minimum requirements for securing the welfare of the child as well as a fair and humane response to children in the justice system. NGOs are in this sense of fundamental importance for both creating awareness on specific issues and for ensuring that a commitment to change is based on local perceptions and approaches to the problem in question. An NGO can articulate and identify problems, which need to be addressed and thereby be transformed into political demands and in turn become part of the political discourse.

As a legacy of the Soviet system, people in general have limited knowledge about their rights and how to protect these rights. This is even more true for children and young people and their status in society makes them even more vulnerable. There is an important task to be done in relation to informing young people of their rights, e.g. the right to be

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informed on the reason of arrest, to remain silent, to have legal representation from the moment of arrest/detention, to be presented before a judge, that the parents or legal guardians should be informed also from the moment of detention. These are activities, which are to a limited degree being carried out by NGOs, but they could be done on a much larger scale, where, among others, the Buro could be a valuable and reliable partner.

NGOs also play an important role in extending service provision, mobilizing public participation within given areas. Therefore, strengthening the professional and institutional capacity of local NGOs and assisting local volunteer resources in general, will be an important task for UNICEF within the Young People's Well-Being Program. It is therefore recommended that UNICEF engages in activities of capacity building through training as well as in terms of financial support to individual NGOs in the area of juvenile justice. This will secure a sustainable development in the sense that knowledge is founded on local efforts.

7. Prior and Ongoing Assistance

. Prior and Ongoing Assistance 7. PRIOR AND ONGOING ASSISTANCE . Prior and Ongoing Assistance 7. PRIOR AND ONGOING ASSISTANCE Several international and national organizations have recently become involved in supporting activities related to the juvenile justice system in Kazakhstan.

The Soros Foundation-Kazakhstan (SFKZ) is currently in cooperation with Penal Reform International (PRI) and the Organisation on Security and Cooperation in Europe (OSCE) working on improving the conditions of the penitentiary system. Soros is implementing a project aimed at improving the socialization and rehabilitation of juvenile defendants from inside the penitentiary system. A center for social adaptation of the juvenile defenders at the Almaty youth Colony LA155 is currently being established. OSCE has started a project of developing and improving the training of prison service employees and eventually developing a new curriculum for a newly established training center for prison service employees.

The Soros Foundation has, in addition to the above support, an important function within juvenile justice and rule of law by being a donor to many of the activities on juvenile justice. Some of these are support to seminars, training activities and so on. In the above project they have moved away from their normal role as a donor and have become an active partner in the project.

Due to the current involvement of the above organisations in improving the penitentiary system in Kazakhstan it is therefore recommended by the

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team that UNICEF should emphasize projects related to the judicial process and projects aimed at prevention, diversion and rehabilitation. The UNDCCP is at present supporting a project of training teachers in teaching issues related to drug abuse. They have developed training material both in Russian and Kazakh languages. The head of the UNDCCP Office in Kazakhstan, Ms Yeserkegenova, seemed very interested in cooperation with UNICEF on other child crime prevention issues.

8. Main Findings and Recommendations

. Main Findings and Recommendations MAIN FINDINGS AND RECOMMENDATIONS. Main Findings and Recommendations MAIN FINDINGS AND RECOMMENDATIONS

The team has, on the basis of the background material and interviews conducted in Kazakhstan, made an assessment of the main stakeholders and problems related to juvenile justice in Kazakhstan. There are limits to the findings in the sense that not all relevant stakeholders or institutions were visited. The limits are mainly due to the fact that we had to arrange the interviews during the visit, which was both time-consuming and inefficient, as valuable time was lost as well as difficulties encountered in making appointments especially with the officials of Kazakhstan on such a short notice. However, these are the team's findings:

- There seems to be, in general, both a will at the government level and to some degree a legal framework to build on to improve the juvenile justice system. Some important steps have been taken toward improving criminal legislation and introducing special chapters concerning child offenders. However, the general problems with the rule of law in Kazakhstan cannot help but have an impact on the juvenile justice system. The team was of the impression that there is in governmental justice structures an interest in setting up a system of special juvenile courts. The question is, who should carry such a proposal forward and whether it would demand a change in the Constitution. Apparently, it was reported, that there are provisions in the law on courts, which provide for the option of introducing special subdivisions of the

lower courts. However, at the same time it is stated in the constitution that “ the establishment of special and extraordinary courts under any name shall not be allowed”;

- There are several initiatives at the government level aimed at least at mending some of the harm imposed on the welfare and well-being of children and juveniles in the course of the transition to a market economy. Nevertheless, there seems to be a need for a co-coordinating body within government, which has the responsibility and the authority to carry out the development of a comprehensive social policy aiming at addressing the well-being of juveniles, developing the juvenile justice system and preventing juvenile delinquency under the framework provided by the Convention on the Rights of the Child and other juvenile justice instruments. This co-ordinating body should monitor and coordinate activities in this area. However, the main challenge will be to secure, that funds and resources are allocated for prevention, protection, and rehabilitation activities at city government or district level;
- The dissolution of the former social structures is resulting in a one dimensional juvenile justice system with emphasis mainly on custodial measures of punishment. A need has been identified for establishing a community-based social service infrastructure to support the justice system in providing alternatives to incarceration. This would also reduce the need for intervention by the judicial system through establishing alternative measures of diversion, crime prevention, rehabilitation and reintegration of children who have been in conflict with the law;
- There is an inclination of the justice system to think

Main Findings and Recommendations

in terms of punishment instead of rehabilitation, resulting in a discrepancy between the severity of the sentences and the actual crimes committed;

- There was a lack of systematic research in the area of juvenile justice, which impedes the possibility for assessing the scope and types of juvenile delinquency, as well as for creating targeted preventive and reactive responses to efforts, which would improve the administration of juvenile justice. A systematic approach to understanding the system, the scope, types and reasons for delinquency will provide the government and other stakeholders with the basis for developing strategies, social policies, and legislation;
- There are insufficient legal guarantees for due process and fair trial and adequate legal representation during the different stages of the judicial process. This has the result that it is the most vulnerable and unprotected youth, who end up in prison, e.g. the street children and drug abusers;
- There are insufficient institutional structures and a lack of professional capacity in state structures for the reintegration and rehabilitation of child offenders;
- There is a lack of awareness at the different stages of the judicial process (police investigators, prosecutors, judges, lawyers) of the special circumstances pertaining to child offenders, and there are big gaps between legislation and practice;
- The area of children's rights and juvenile justice is characterized by a weak NGO environment.

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Based on the information obtained through the interviews and background literature, the team proposes that efforts towards reforming juvenile justice system should target:

- 1) Support for the creation and systematic collection of data on juvenile delinquency; (see Proposed terms of reference for study programme);
- 2) Advocacy for, facilitation of, and support to the establishment of a separate juvenile justice system as a subdivision under the regular system of courts, and for a revitalization or establishment of a community-based approach to protection, prevention and reintegration of child offenders;
- 3) Support to institution-building and capacity-building of NGOs, of professional groups and of institutions that work with child offenders/children at risk, including:
 - training of professional groups (judges, police, lawyers, social-workers), in CRC and juvenile justice instruments;
 - support to building the institutional and professional capacity of NGOs;
 - support to building capacity for providing community based services for protection, crime prevention, rehabilitation and reintegration of offenders and children at risk, including the establishment of the “social worker” profession .

DCHR recommends that the UNICEF-CARK office renders the following types of support:

Main Findings and Recommendations

1. Study tour for relevant stakeholders and key professionals to Denmark and Country x (this will be carried out in cooperation with DCHR).
2. Support to systematic research in the area of juvenile justice and juvenile delinquency.
3. Support to civil society and to local municipal structures for the development of alternatives to incarceration.

Future contribution of DCHR:

DCHR will apply for support for the study tour to Denmark and design the program.

If DCHR is to participate in points two and three, it will require additional funding. DCHR has at present invited a Kazakhstani research partner to Denmark for 6 months from September 1999 for a study of best practices in the penitentiary system.

Annexes

Annex 1

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Annex 2

Terms of Reference for a Research Proposal on Juvenile Justice and Juvenile Delinquency

Terms of Reference for a research cooperation between UNICEF Regional Office, Almaty, and the following Kazakhstan parties:

1. The Institute of Human Rights, Almaty, Kazakhstan, Director General Ms. Aliya Abdullina, and professor M.Sarsembayev, Board chairman
2. Ph.D Bator Zhetbisbayev, Institute of International Law, University of Almaty, and Adrakhan Skakov, head of department at Ministry of Interiors Police Academy
3. The staff appointed by the said parties to take part in the project of cooperation.

Background

As part of the terms of reference for the program formulation mission of DCHR commissioned by UNICEF, Kazakhstan, the prospects for a study of juvenile delinquency and the Juvenile Justice system of Kazakhstan (and Kyrgyzstan) should be examined, potential partners, stakeholders and institutions and organizations within the field should be identified, and terms of reference for a study of juvenile delinquency and juvenile justice in Kazakhstan (and Kyrgystan) to be carried out by national consultants should be elaborated.

The present proposal for terms of reference for such a study program is to be seen as a proposal to implement these agreements.

Objectives

The overall purpose of the research cooperation program is to provide information as a basis for improvement of prevention of juvenile delinquency and for a rational and humane handling of the juvenile delinquency that does occur, all with respect of Human Rights and the international conventions and instruments which Kazakhstan/Kyrgyzstan have ratified, including the Convention on the Right of the Child.

The information should elucidate the extent, forms and background of juvenile delinquency as well as the way in which juvenile delinquency is handled by the justice system and through societal measures outside the justice sector.

The objectives of the research cooperation are therefore the following:

- 1) to establish a system of cooperation between UNICEF, its consultants and national Kazakh research partners located during the fact finding mission,
- 2) to outline and operationalize a program of research within a two-years horizon,
- 3) to implement the research program to the greatest possible extent within the two year period and to outline plans for further research after the expiry of the two year period.

Scope of work

As the research task needs initial clarification and delineation, the project should proceed in three phases:

Phase 1 - of approximately 3-4 months' duration after the initiation of the project - should consist of establishing an inventory of already existing research and data, from research institutes in Kazakhstan as well as from official and semi- official sources. The inquiry should search for data on the extent and forms of juvenile delinquency and its background in different regions of Kazakhstan. To the extent such information does not already exist, this phase should include the planning of representative surveys of self-reported victim status and self-reported (anonymous) commission of offenses by juveniles. The data searched for should further include data on official reactions to juvenile delinquency. This phase should include an evaluation of the validity and reliability of existing data and studies. Limitations in the data thus located should lead to proposals for corrective studies to provide alternative or adjusted data.

Phase 2 - of approximately 2-3 months' duration - should involve a process of consultation between the national consultants mentioned initially and UNICEF staff and international consultants concerning the priorities for research and the methods and resources needed to carry it through within the following one year's period. This phase should involve a process of consultation on relevant literature either directly applicable or potentially applicable after translation to be carried out within a relatively short period. A concurrent examination and decision on methods, based upon exchange between the national and international consultants should take place, e.g. in relation to questionnaires, revision of official data and the carrying out of qualitative interviews with key

persons. This phase should end with a realistic plan for a research program of one year.

Phase 3 shall involve the implementation of the research plan(s) agreed upon at the end of phase 2. This is the responsibility of the national partners/consultants. This phase shall further end up in a program for potential realization over the following years of a solid research effort to produce materials which can form the basis for dialogue and for political, administrative and judicial decisions.

Outputs

The results of the work in phase 1 should have the form of a review of existing information with an evaluation of its strengths and weaknesses and an outline of the areas in which supplement or correction is most needed. It should also entail a proposal for a set of priorities for a research programme and outline the steps necessary to implement it.

Phase 2 should start with a Memorandum of Understanding between the parties on the primary goals of the project and a plan for realising them, including an inventory of the materials and resources necessary to achieve them. It should end up in an agreed upon research program for the following year.

Phase 3 should end up in reports on the various parts of the research agreed upon in phase 2. In addition a separate paper should point to the implications of the information gathered and to the gaps in it. It should further outline the possibility for filling in these gaps through a program of research for a new two years period and map the financial, methodological and personal resources needed to carry such a program through, as well as the extent to which these are available or can be

procured within the national context of Kazakhstan.

On the basis of the outputs of the three phases, consultations should take place between UNICEF representatives and staff with the national research partners on further procedure. Agreements should be reached at each intersection on how to proceed. The potential benefits of utilizing research partnerships between the Kazakh partners and DCHR as well as study visits to relevant countries should be mapped and the necessary measures be carried out to the extent possible. The problems of language should be specifically dealt with.

Throughout the process the relevance of the research for practical prevention of juvenile delinquency and for minimization of the harm connected thereto and to the official control measures should be kept in mind. The issue of diversion and of finding alternatives to institutionalization should be specifically examined. In this connection studies of attitudes among the personnel in the administration of justice and of public attitudes and perceptions should be carried out.

Reporting

Reporting from each of the three phases outlined above shall have the form of documents relevant to these phases. Reports from phase 1 and phase 2 thus will have the form mainly of discussion papers accompanied by relevant data presentations. At the end of each of these phases memoranda should be worked out outlining the findings of the work and the decisions made or to be taken. At the end of phase 2 a Memorandum of Understanding, covering phase 3 should be worked out to be agreed upon by the parties. Reporting at the end of phase 3 should include papers on the findings within the areas of research covered. In addition, a proposal for further research and for cooperation within a possible

continued scheme - if deemed desirable - should be presented.

Time schedule

The project is intended to start as soon as an agreement has been signed by the parties. This might be attainable around September 1, 2000. After this, phase one should start immediately and continue for some 3-4 months, i.e. up until the end of the year. Phase 1 may to some extent overlap with phase 2, so that the total duration of these two phases will be six months, allowing for phase 3 to start around March 1st 2001 and to continue until March 1st 2002. Hereafter a decision on whether to continue the project for an extended period, e.g. 2 years, shall be made, if possible at the expiry of phase 3.

Remuneration

UNICEF will consider covering a budget from the national researchers within a framework of USD 20.000 for the first two years' period dependent upon agreement on budget principles and details and on the research program as outlines above. In addition, UNICEF and its international consultants will cover the cost of consultation and provisions of material from outside Kazakhstan as well as other expenses outside the framework of the national consultants/partners.

Annex 3

Programme of Visit

*Programme of appraisal /formulation mission
to Kazakhstan from the 23rd of March to the 3rd of April, 2000*

23rd of March

Thursday 24.00 Arrival in Almaty airport – welcome by Natalia Archassova, UNICEF - CARK programme assistant for programme 3.

24th of March

Friday 14.00 - 15.00 Information on UNICEF-CARK activities by CARK office representatives deputy head of UNICEF CARK regional office "Simon Strachan", communication officer "Patricia Light", Consultant for UNICEF on programme 3 "Veselmoy Narland", programme assistant "Natalia Archassova".

15.00 – 16.30 Meeting with the Social Foundation for Assistance to Homeless Children Meyrim Foundation – deputy director Gaynat Saiparov

17.00 – 18.00 Meeting with OSCE human rights officer Birgit Kainz, legal project assistant Natalya Seitmuratova, and administrative assistant to the OSCE ambassador in Kazakhstan - Vera Tkatjenko

25th of March

Saturday

Annex 3

12.00	Whole day meeting with UNICEF – CARK programme director Thomas Thomsen
26th of March	
<i>Sunday</i>	
11.00 – 16.00	Analysing the Kazakhstan Penal Code Section on Juvenile Crime
27th of March	
<i>Monday</i>	
9.00 – 10.00	Meeting with Soros Foundation Legal reform Coordinator Nurzjan Shaikenov
10.00 – 11.00	United Nations Office for Drug Control and Crime Prevention Programme Officer, Ph.D. Alma Yesirkegenova
11.00 – 13.00	Head of the Secretariat of the Human Rights Commission under the President of the National Human Rights Commission – Secretary General Bolat Baikadamov and Chairman of board of the Human Rights Institute professor Marat Sarsembayev
16.00 – 17.00	Aigul Shopshekbaeva, head of Almaty Juvenile Police
28th of March	
<i>Tuesday</i>	
9.00 – 11.00	Evgenij Zhovtis head of the Kazakhstan International Buro for Human Rights and the Rule of Law
15.00 – 16.00	Ms. Bakhytzhan Khasenovna Deputy Chief of MIA Academy of Police
17.00	Towards Bishkek
21.00	Introduction to UNICEF activities in Kyrgyzstan

by programme director Ken Marskal

29th of March

Wednesday

10.00 –11.00

Visit to Bishkek Adaptation and Rehabilitation Centre for Homeless Children

12.00-13.30

Official ceremony on signing the Master Plan of Operations for Kyrgyzstan

14.00 –17.00

Roundtable meeting at the UNICEF Bishkek office on the relevance and need for introducing a special system on juvenile justice with the following organisations Carmel, Young lawyers association, Centre for homeless children, Local representative from UK Save the Children Terri Giles;

30th of March

Thursday

7.05

Departure from Almaty to capitol Astana

9.30 –10.30

Meeting with Onalsyn Zhumabekov first deputy of the General Prosecutor

12.00 –13.00

Meeting with Sagitjan Tasmagambetov, deputy head of the Supreme Court

13.00 –14.00

Lunch with Bolat Baikadamov head of the Secretariat of the Human Rights Commission under the president of Kazakhstan

14.00 –14.30

Meeting with member of the senate ms Fedotova assistant to the Minister Samakova in the Commission on Family and Women Affairs

15.00 -16.00

Ministry of the Interior, mr Ivan Otto, deputy minister of the Interior

22.00

Departure for Almaty

31st of March

Annex 3

Friday Last minutes cancellation of the planned visits to the detention centre and youth colony.

15.00 Meeting with Bator Shetpisbaev, PhD in administration of Juvenile justice, and Adarhan Skakov, professor in criminal law specialised in the penitentiary system, from the academy of the Police, on the possibility of setting up a study on the juvenile justice system.

16.00 –17.00 A meeting with the Faculty of law international relation department

20.00 –22.00 Meeting with law enforcement officer

1st-2nd of April

Saturday and Sunday

Analysing collected Data, interview with Rinat Musafarev possible legal advisor for UNICEF, debriefing Veslemoy Narland, Thomas Thomsen, continued discussions on a study of the juvenile justice system with Mr Shetpisbaev and Skakov

3rd of April

Monday

2.00 Departure

Annex 4

Developing capacity for community based crime prevention

Background

The former community based service structures for protecting children and young people and for prevention of child offences have disappeared. The Youth Police have been authorized to carry out some of the work in this regard, but have recognised the need for partners of cooperation in order to develop alternatives to custodial sentences, support to families at risk and thereby preventing abandonment of children to institutions, protecting the child from abuse and providing assistance and opportunities for those children who are likely to commit a crime or be exposed to a crime.

Objective

To establish a model for cooperation on service provision and protection of child welfare, on preventing child related crime, and at facilitating reintegration of former child offenders into society in two selected pilot areas.

Activity

- To carry out a working seminar comprising different people in regular/daily contact with children and responsible for their well being in the selected pilot area as well as representatives

from the city government, NGOs and local authorities in the administration of justice.

- In connection with the seminar a special task force will be identified and formed. The main aim of this task force is to establish and implement a model for community based cooperation on developing alternatives to incarceration, prevent child related crime and reintegrate former child offenders into society.
- The task force should then participate in a combined study tour and training on community based crime prevention in country x.
- Training in working with children and families at risk

Potential participants

- Headmasters, teachers,
- Youth police,
- Local youth committee,
- Representatives from Ministry of education,
- Representative from commission on women and family affairs,
- Municipal authorities
- Representatives from governmental working group
- Representatives from local youth clubs
- Local NGO's

Output

- The formation of two task forces in charge of developing a platform for community based crime prevention in the selected pilot area;
- Accept and commitment at governmental and municipal level;
- A mode for cross sectoral cooperation on protection and crime prevention in the selected pilot area;
- Enhanced professional capacity to work with children at risk;

Renumeration

The implementation of the above activity will require additional funding.

Annex 5

Proposal for a Study Tour Denmark and Country x

Study tour to Denmark and West European Country x (England, Holland or Scotland) on different approaches to juvenile justice and provisions on preventing crime among juveniles

Background

So far the government of Kazakhstan has not engaged in a co-ordinated effort to address the questions pertaining to juvenile justice. There are, however, in government circles an increased awareness of the area, and in general a will and openness towards finding solutions to the problems pertaining to juvenile justice and juvenile delinquency. The law on courts provide for the possibility to establish a subdivision of special courts such as juvenile courts. However, in order to establish the background knowledge for taking decisions on the implementation of an improved system of juvenile justice, there is a need to investigate the conditions and requirements related to improving the system of juvenile justice, such as identifying the training needs and at the same time look into different methods of prevention diversion and rehabilitation of juvenile offenders. The aim of the study tour is therefore to facilitate the process of developing government policies and strategies with regard to securing a fair and human response to children in conflict with the law.

Objective

To provide high ranking government officials, policy makers and legislators with knowledge of community based crime prevention programmes as well as insight on special juvenile justice systems.

Content and scope

The proposed items for a study tour on juvenile justice for some 20 key persons from CARK countries to Denmark and another Western European country:

Destination

The study tour is proposed to visit Denmark and country x. The suggested second country could be Scotland. The latter on the proposal from assoc. prof. (criminology and penal law) Beth Grothe Nielsen, University of Aarhus, based upon the existence in Scotland of the institution of Youth Boards, which make decisions in cases of juvenile deviance, both for adolescents above the minimum age of criminal responsibility and for children below that age, who commit acts which would have been labelled criminal, had they been above that age. Beth Grothe Nielsen has promised to assist in locating contact persons in Scotland.

Preliminary agenda

As for the study tour in Denmark, the following main items are proposed:

Institutions to be visited:

- Sölager, North Sjælland: Institution for temporary detention of very problematic juvenile delinquents - as an alternative to adult remand institutions;
- Sönderbro optagelsesinstitution: Facility for temporary detention of juveniles from the Copenhagen municipality (located at Sundholm, Copenhagen);
- A local detention facility ("arrest"), e.g. in Odense;
- Ringe Statsfængsel (State prison) which has a separate, closed ward for juveniles;
- Søbysøgaard, former youth prison. Has a semi-open section for juveniles;
- Institution at Hvalpsund for the treatment of severely disturbed juveniles. Talk with institutional staff and with psychologist Benny Lihme who has written a book on the institution and its pedagogical principles.

Police:

- The Council on Crime Prevention. Information on the SSP-system, - cooperation between school, social work and police in prevention of juvenile crime. Also information on other prevention activities, including environmental projects.
- Visit to local police circuits with particular youth problems, including Odense, with its special problems on aggressive ethnic youth groups and with a long tradition for SSP-work. Talk with the Chief of Police, the primary ideologist behind the SSP system.
- Visit to Randers where the police works specifically with juvenile gangs and alcohol and drug abuse.

Courts:

- Visit to courts with a broad caseload on juvenile related crime - e.g. Københavns Byret. Talks with judges and the court president.

- Talk to judge(s) on their presence and work in cases of removal of children from their home.

Prosecution:

- Talks with the Attorney General's office on directives for the handling of juvenile cases, including the use of detention and alternatives thereto, the use of waivers of prosecution, the formulation of the charges and penalty demands of prosecutors.
- Talk with Lisbeth Hansen, Kriminalforsorgen, who has written a thesis on recent developments (tightening up) in sanctions against juvenile offenders.

The social sector:

- The Ministry of Social Affairs, talks on the development of legislation and institutionalization of juvenile offenders;
- Municipal measures for the prevention and sanctioning of j.d. - including e.g. in Copenhagen the utilization of street teams ("Sjakket") etc. and the use of "street walkers".
- Visit(s) at offices of the department on probation and parole ("Den fri kriminalforsorg")
- Talk with "fathers groups" dealing with ethnic youth in Gellerupparken, Aarhus

Universities and experts in juvenile delinquency and criminology

- Voldssekretariatet (the secretariat on violence), Ministry of Justice and research consultant Britta Kyvsgaard, the Ministry of Justice
- University of Copenhagen, criminologist prof. Flemming Balvig on studies of self-reported delinquency among adolescents in various parts of the country. The differences between conventional (slightly delinquent) youth and "juveniles at risk" (cfr. FB's Report "Risikoungdom" - Cph, 2000). Is crime rising or falling - and why?

- University of Aarhus, Faculty of Law:
Talks with Beth Grothe Nielsen, specialist on child abuse and incest and on victimization studies and with Anette Storgaard, assoc.prof. of criminal law. Author of a book on alternatives to imprisonment in Denmark and Russia and of reports of treatment of drug offenders in prison or instead of prison.
- Univ. of Aarhus, Centre for Alcohol & Drug Research: Presentation of studies of youth, alcohol and drugs, including new party drugs (XTC etc) - by Karen Ellen Spannow, of studies on the effectiveness of treatment - by Mads Uffe Pedersen, of the history and development of Danish drug policy. By Lau Laursen

Visits will include presentations of institutions, organizations and material and discussions with persons responsible on all levels, as well as with juveniles.

Potential participants

The general prosecutor and a number of key officials,
Supreme court Chairman and vice Chairman Tasmagambetov,
Minister of Interior Vlasov, Posmakov, Nellja Moiseeva head of the
police on violence against women,
Igor Rogov special legal advisor to the president, president of the
Highest Judicial Council
Zhemis Turmagambetov, International Buro for Human Rights, deputy
director and in charge of programmes and projects related to juvenile
delinquency
Ministry of Justice,
Ministry of Education,
Aigul Shopshekbayeva head of youth police in Almati,
Head of youth police section of the Ministry of Interior

Experts on juvenile justice in Kazakstan

The Commission on Social and Women Affairs

5 key participants from Uzbekistan / 5 key government officials from Kyrgyzstan.

Methodology

The aim of the visit is to give inspiration to the key actors involved in the work on administration of juvenile justice in Kazakhstan / Kyrgyzstan / Uzbekistan. The visit is therefore planned as a mixture of lecturing and discussion on a high level involving the key figures and experts on juvenile justice in Denmark and country X as well as visits to institutions of relevance to the area of administration of justice in Denmark and country x. The participants will gain insight into the foundation of and the principles behind the administration of juvenile justice and the community based work in the area of crime prevention in Denmark and country x. In course of the visit participants will meet with different experts and actors within the field of juvenile justice and visit a number of relevant institutions. A compendium of relevant material will be developed. In order to secure the best possible outcome for the participants the visit will be concluded by a ½ day seminar, where participants together with a number of the Danish resource persons in community will analyse some of the central questions pertaining to juvenile justice in Kazakhstan/Kyrgyzstan/Uzbekistan seen on the background of the experiences gained in Denmark. The seminar will at the same time provide the possibility of establishing more long term contacts between key persons in the area of juvenile justice in the different countries, which can be of support in the future work on the development and improvement of the administration of juvenile justice in Kazakhstan/Kyrgyzstan/Uzbekistan.

Output

- Travel reports with specific recommendations for an improved system for administration of Juvenile Justice in Kazakhstan/Kyrgyzstan and Uzbekistan aimed at both protecting and reintegrating child offenders into society.
- A consulting group comprising all relevant ministries, who will be responsible for the further work on elaborating the framework for a special juvenile justice system and UNICEF counter partner in the future in each respective country.

Time schedule and duration

The study visit is intended to be carried out in October 2000. The planning of the study tour will take place immediately after the second visit to Kazakhstan. The total program is estimated at a duration of two weeks. Whereof 3 days for visits in country x and 10 days in Denmark, including study visits to Copenhagen, Fünen and Jylland.

Impact

Participants will be able to play an important role in advocating for and defining the best system for juvenile justice in each of the three countries. They will be involved in UNICEF's support to establishing a special system for Juvenile Justice in Kazakhstan/Kyrgyzstan/Uzbekistan.

Remuneration

Annex 5

The DCHR will seek funding for the part of the study-tour taking place in Denmark. In addition UNICEF will cover the cost of visit to country X as well as salary compensation of one month in relation to the planning of the seminar in Denmark and country x.