

ASSESSMENT OF JUVENILE JUSTICE REFORM ACHIEVEMENTS IN ALBANIA

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Note on the Assessment Mission

The assessment mission took place from 16 to 27 June 2008. The team was composed of Dan O'Donnell, international consultant, and Prof. Migena Leskoviku, national consultant. Support was provided by Leon Shestani, Social Services Officer, UNICEF Albania.

The assessment team interviewed representatives of the Ministry of Justice, the High Council of Justice, the Prison Department, the State Police, the National Institute of Statistics and a Member of Parliament. Visits were made to the juvenile court of Tirana, to two pretrial detention centres, to the juvenile section of a prison, to a specialized legal clinic, to a vocational school and youth employment scheme that participate in a pilot project on alternative sentences and to an NGO providing mediation services. Several other NGOs involved in child rights or prisoners' rights were visited as well, as were the Organization for Security and Co-operation in Europe (OSCE), the European Commission (EC), the European Assistance Mission to the Albanian Justice System and the Embassy of Sweden (see Annex 2). Six juvenile detainees were interviewed. The lists of persons interviewed and documents consulted are attached (see Annexes 2 and 3).

Background

The population of Albania is 3.1 million.¹ More than 30 per cent of the population are under age 18.² In 2007, the Gross National Income (GNI) per capita was US\$ 3,290.³ Eighteen per cent of the total population and nearly one quarter of the child population live in poverty.⁴

Albania became independent from the Ottoman Empire in 1912. It was occupied during the Second World War (1939–1944) and ruled by a communist regime until 1990. During this period the criminal justice system and the correctional system were in flagrant violation of international standards. The right of an accused person to a defence lawyer, for example, was abolished in 1967.

Emigration was prohibited until 1990. More than one fifth of the population have emigrated since then, according to official estimates.⁵ There also has been considerable rural-urban migration since 1990. The discovery of widespread fraud that deprived many Albanians of their savings led to a popular uprising and a period of anarchy in 1997.

A law containing some constitutional provisions was passed in 1991 and a bill of rights in 1993; the Constitution was adopted in 1998. Most of the legislation in force, including the 1995 Criminal Code and the 1995 Code of Criminal Procedure, were adopted during the 1990s. There is no law on juvenile justice.

Albania ratified the Convention on the Rights of the Child in 1992. Like other treaties it forms part of the national law, according to Constitution.⁶ Albania submitted its initial and first reports on the implementation of the Convention in 2004. They were examined in 2005.

¹ National Institute of Statistics (INSTAT), *Basic indicators* (data for 2006).

² Ibid.

³ United Nations Children's Fund, *The State of the World's Children 2009*, UNICEF, New York, 2009, Table 7.

⁴ *Basic indicators*, 2006.

⁵ United Nations, International Human Rights Instruments, Core document forming part of the reports of States parties: Albania, HRI/CORE/1/Add.124, 18 July 2003, para. 44. (The evaluations of the Ministry of Labour and Social Affairs estimate this figure to a total of 700,000 in the period 1990–1997.)

⁶ Constitution of the Republic of Albania, Article 122.

Albania joined the Council of Europe in 1995. A Stabilization and Association Agreement between the European Union and Albania was signed in 2006. Interest in reforming the treatment of juvenile detainees and offenders was motivated in large part by the desire to meet European human rights standards, as part of the process of integration into European institutions.

Data on offending by juveniles and juvenile prisoners were not available until the beginning of the present decade. Between 2000 and 2006, the number of juveniles convicted of offences fluctuated between 274 and 320.⁷ Juveniles serving sentences in the juvenile section of the prison during these years have been fewer than 20.⁸ Data on offending as such are scarce; one source indicates that 967 offences were committed by juveniles in 2006, but it is unclear whether this figure applies to the whole territory or the capital.⁹

Executive Summary

A comprehensive system of juvenile justice does not exist in Albania. There is no juvenile justice law, and accused juveniles are prosecuted under special chapters of the Criminal Code and the Code of Criminal Procedure. Although there is no specialized juvenile court, specialized judges and prosecutors have been appointed recently, in six courts. There are no detention nor correctional facilities exclusively for juveniles. Male juvenile offenders are confined in special sections of pretrial detention facilities and the special section of a prison; adolescent girls are detained and serve sentences in facilities for women.

Juveniles under age 14 may not be prosecuted for any crime or offence, and those over age 16 may be prosecuted for any offence; those aged 14 or 15 may be prosecuted only for crimes. The maximum sentence that may be imposed on convicted juveniles is twelve years and six months. There are no closed educational facilities – and indeed, no rehabilitation programmes of any kind – for children under age 14 involved in criminal activity.

The number of offences committed by children and juveniles in the most recent year for which data are available is 949, of which 253 were committed by children under age 14.¹⁰ The number of juveniles sentenced in that year, 2006, was 268. The number of juveniles deprived of liberty is small: at the time of the assessment mission, there were 13 serving sentences and 59 in detention awaiting trial or the outcome of an appeal.

In 2001, UNICEF supported the establishment of an interministerial working group on juvenile justice and in 2004 it supported the preparation of a situation analysis by an international consultant. A programme called 'On the Rights Track: Preventive and Restorative Juvenile Justice Reform' was prepared in 2005. Implemented in January 2006, the programme will end in December 2009.¹¹ The programme has focused mainly on advocacy training and law reform, pilot projects on legal and psychological assistance, mediation and alternative sentences and, to some extent, prevention. The budget is € 2,257,000.¹²

⁷ Data for 2000–2005 from Korini, E. and Sado, L., *Children in Conflict with the Law in Albania*, Analytical Report, Ministry of Justice and Social Research Centre (INSTAT), Tirana, mimeo, 2006, p. 10; data for 2006 from Mandro, A., *Juvenile Justice in Albania*, Children's Human Rights Centre of Albania, Tirana, 2007, Appendix 2.

⁸ *Children in Conflict with the Law in Albania*, p. 10. (All convicted male juveniles given custodial sentences serve them in this facility, once the conviction has been confirmed on appeal.)

⁹ *Juvenile Justice in Albania*, pp. 92–97.

¹⁰ Ibid.

¹¹ Originally for three years, the programme was extended for a fourth year, without additional funding.

¹² At the time of the assessment mission, 71 per cent of the budget had been received; the remainder is pledged by the Swedish International Development Authority (Sida), the European Commission (EC) and UNICEF.

No other international donors play a significant role in juvenile justice reform as such, but they do support programmes that will have important impact on juvenile justice. A major programme of replacing old prisons and detention facilities is underway, with the support of the European Union. The OSCE is supporting the development of a probation system which, when established, could have a significant impact on juvenile justice, in particular in the areas of diversion, alternative sentences and post-release support.

Important progress has been made in bringing Albanian law and practice into conformity with international standards and best practices. This is a dynamic process, which is continuing. Much remains to be done.

Positive developments include the creation of specialized sections of district courts, specialized prosecutors and a specialized police unit; the renovation and elimination of overcrowding in some detention facilities; greater access of both juvenile prisoners and detainees to education, social workers, psychologists and religious counsellors; and the positive attitudes of senior correctional staff regarding the rights of children. These developments are due to a large extent to the advocacy and training supported by UNICEF's programme, to the interest of governmental partners and to the active participation of civil society. The pilot projects on legal and psychosocial assistance, on alternative sentences and on mediation are working effectively, and it seems possible that they will be sustainable.

Important challenges remain. Although its application has been humanized, the law remains essentially punitive. Further efforts are needed to reduce the use of pretrial detention. Work on law reform has proceeded slowly, and there is no clear and comprehensive plan on juvenile justice. Compiling and publishing data on juvenile justice would help support the reform process and monitor the results of reforms undertaken. Coordination between the actors involved in juvenile justice focuses on implementation of the programme; no permanent coordination mechanism exists. Diversion should be put on a sound legal basis and expanded. Secondary prevention requires more attention, and programmes for children under age 14 involved in criminal activity are needed. A recent report on the use of violence in one pretrial detention centre indicates that accountability mechanisms are not functioning effectively.

The assessment team recommends that a policy on juvenile justice should be developed jointly by all concerned sectors; a comprehensive law on juvenile justice or a Children's Code containing a section on juvenile justice should be adopted; a permanent interministerial, intersectoral coordinating body should be established; a draft legislation on the establishment of a probation service and legal assistance centres for children should be adopted and implemented; the feasibility of establishing one or more specialized juvenile courts should be evaluated; priority should be given to eliminating delays in the investigation and adjudication of cases involving juveniles, reducing the use of pretrial detention and increasing the use of diversion; research on offending by children without criminal responsibility should be undertaken in order to identify most appropriate forms of prevention and assistance; one or more community-based secondary prevention programmes should be designed and piloted; training of all personnel in contact with juvenile offenders should be institutionalized; and qualifications and codes of professional conduct should be established and enforced.

Finally, the assessment team recommends that UNICEF continue to encourage the development of a juvenile justice system, in particular, by facilitating access to information on the relevant laws and experiences of other countries; by documenting the results of pilot projects on diversion and alternative sentences; by supporting the institutionalization of diversion and alternative sentences; by promoting the development of indicators, better management and the use of data on offending and offenders; by favouring the debate; and by providing information on secondary prevention programmes and on programmes for underage offenders.

PART I. The Process of Juvenile Justice Reform

1) Policy and advocacy

Civil society, in particular a small but very vocal and competent group of NGOs, took an active interest in the treatment of juvenile offenders and detainees beginning in the 1990s.¹³

International support for improving the situation of juvenile offenders began after 2000, with assistance from the Dutch Embassy for legal services and the renovation of the main facility for pretrial detention in the capitol. In 2001, UNICEF facilitated the establishment of an interministerial, intersectoral working group that prepared a 'gap analysis' of the treatment of juvenile offenders.

Civil society continued to document the need for improvements in the treatment of juvenile offenders. A study on conditions in correctional facilities published by the Albanian Helsinki Committee in 2002 contains a chapter on juveniles.¹⁴ In 2005, the same NGO published *Observance of the Rights of Juvenile Offenders in Criminal Proceedings and Juvenile Justice System in Albania*, which are cited frequently throughout this assessment. In 2007, with the support of UNICEF, the Children's Human Rights Centre of Albania published two studies: *Juvenile Delinquency in Albania* and *Juvenile Justice in Albania*.¹⁵

In 2004, a UNICEF consultant prepared a paper that pointed to the need for an overall juvenile justice strategy based on principles agreed upon by the relevant sectors.¹⁶ She also suggested the "development, if possible, of a specific law on juvenile justice;" the development of community-based prevention programmes, diversion programmes and alternative sentences; the strengthening of vocational training and legal and psychosocial assistance to children in correctional facilities; and the development of "a body or agency with overall responsibility for the implementation of juvenile justice policy..." having coordination and monitoring functions.

The interest of the international community continued to grow and, in 2004, the European Union indicated that the establishment of an adequate juvenile justice system should be a priority for Albania.¹⁷

In 2005, the Committee on the Rights of the Child, commenting on Albania's long overdue initial report on the implementation of the Convention on the Rights of the Child, expressed concern about the "lack of an effective juvenile justice system" and recommended that the government "seek technical assistance from, among others, the Office of the High Commissioner for Human Rights (OHCHR) and UNICEF."¹⁸

With the advent of the European Union Stabilization and Association Agreement, the European Commission and the Swedish International Development Authority (Sida) decided to establish

¹³ The Albanian Helsinki Committee was the first NGO to investigate the situation of juvenile offenders and the Children's Human Rights Centre (later to become the Albanian section of Defence for Children International) became very interested in the situation of juveniles in prison and in detention during the late 1990s. A third NGO, the Legal Clinic for Minors, was established in 2002.

¹⁴ Arbi, M., 'The treatment of vulnerable groups in pre-detention sites and prisons', in *Pre-detention and Prison Conditions in Albania*, Albanian Helsinki Committee, Tirana, 2002, chapter 5.

¹⁵ Research was headed by Dr. Arta Mandro and Prof. Dr. Edlira Haxhiymeri.

¹⁶ Meunier, G., *Concept and Strategy Paper for Juvenile Justice Activities in Albania*, UNICEF, unpublished, 2004, p. 13; see also p. 18.

¹⁷ Council Decision of 14 June 2004 on the Principles, Priorities and Conditions contained in the European Partnership with Albania (2004/519/EC), section 3.2.

¹⁸ Committee on the Rights of the Child, Consideration of reports submitted by States parties under Article 44 of the Convention, Concluding Observations: Albania, CRC/C/15/Add.249, 31 March 2005, paras. 76 and 77(d).

a jointly funded juvenile justice programme. UNICEF, with the support of the Minister of Justice, was selected to implement the programme.

The 2004 juvenile justice situation analysis stated, "Any policy should address the need for a clear philosophy on which juvenile justice is to be based..." agreed on by all the relevant sectors.¹⁹ Despite the relatively strong interest in juvenile justice reform, the many legal and administrative changes, which have already been made, and the drafting of a number of laws that, while they concern both adults and juveniles, would make important changes in the juvenile justice system, the government has adopted a clear and comprehensive policy on juvenile justice.

The National Strategy for Children, adopted on 31 May 2005,²⁰ contains some elements of a policy on juvenile justice, including the setting up of specialized sections of courts "until such time as a Minor's court is established," the nomination of specialized prosecutors and the introduction of "modern psychosocial counselling programmes throughout the system." However, many of the provisions of the National Strategy for Children concerning juvenile justice are vague or ambiguous.²¹ No comprehensive policy on juvenile justice is in the process of preparation.

In 2006, a course on juvenile justice was organized by the Institut universitaire Kurt Bösch, in Sion (Switzerland) for 13 high-ranking Albanian officials. Participants included the Albanian Ombudsman, the Directors of the Police Academy and the School of Magistrates, the Director General of Prisons, the Deputy Chairman of the High Council of Justice, a Member of Parliament, a legal advisor to the President, representatives of the Ministry of Justice, the Ministry of Interior and the Albanian Bar Association, as well as two representatives of UNICEF Albania, which financed the course. The week-long course concluded with the adoption of recommendations covering most areas of juvenile justice: the police, the role of social workers in juvenile justice, the courts, law reform, correctional facilities and alternative sentences. These recommendations have had a substantial influence on the reforms carried out during the last two years, and can be seen as an effort to prepare the ground for the development of a national policy on juvenile justice.

2) Law reform

Much Albanian legislation has been replaced since the fall of communism in 1992. A new Criminal Code and a new Code of Criminal Procedure were adopted in 1995.²² Laws on the Rights and Treatment of the Prisoners, on the Enforcement of Criminal Decisions and for the Organization of the Judiciary of Albania were adopted in 1998,²³ as well as a new Constitution.

These new laws helped to bring the Albanian legal system into greater compliance with international standards concerning juvenile justice. Prior to 1998, there was no law requiring that juvenile prisoners should be separated from adults, and in practice adults and juveniles were sometimes detained in the same cell. Prior to the adoption of the new Criminal Code, juvenile offenders could be sentenced to terms of 25 years of imprisonment. The right of accused juveniles to an attorney was not recognized prior to the adoption of the 1995 Code of Criminal Procedure.

¹⁹ *Concept and Strategy Paper for Juvenile Justice Activities in Albania*, p. 13; see also pp. 18 and 19.

²⁰ Decision no. 368 of the Council of Ministers, dated 31 May 2005.

²¹ For example: "Development of comprehensive, legal material and procedural measures for treatment of minors, especially in the penal, civil and family codes," or "Adequate punitive justice and recovery treatment for delinquents to reintegrate them into society;..."

²² Law No. 7895 of 27 January 1995, Criminal Code of the Republic of Albania; Law No. 7905/1995 of 21 March 1995, Code of Criminal Procedure of the Republic of Albania.

²³ Law No. 8328 of 14 April 1998, Law No. 8331 of 21 April 1998 and Law No. 8436 of 28 December 1998, respectively.

The new legislation, however, has gaps and contains some provisions that do not appear in harmony with international standards and the best practices of other European countries. One example concerns the age at which juveniles may be prosecuted, i.e., the 'age of criminal responsibility'. No international standard clearly indicates a specific age that should be recognized for this purpose, and national standards diverge greatly.²⁴ The Committee on the Rights of the Child has recently adopted a General Comment on 'Children's rights in juvenile justice', which addresses this issue but falls short of providing a clear and unambiguous standard. Albanian legislation, which does not allow children under age 14 to be prosecuted for any offence, meets the Committee's criteria.

Albanian legislation in effect does not provide for any measures to be taken when a crime has been committed by a child under age 14, nor when children aged 14 or 15 years commit minor offences. The law, as indicated above, provides only for the imposition of 'educational measures', which are defined as the placement in a class of facilities that no longer exist. Several sources interviewed expressed concern that the impossibility of requiring the participation of such children in any form of programme designed to prevent continued involvement in criminal activity contributes to offending, and perhaps even to the exploitation of underage children by older criminals.²⁵ One study indicates that the number of children under age 14 involved in criminal offences during 2000–2005 ranged from 63 to 184.²⁶

Of course, the appropriate response to offending by such children may not be the placement in a residential facility, like the schools for rehabilitation abolished during the 1990s. The needs of many might be met by mediation or non-residential programmes, such as supervision or participation in counselling. Some response is clearly needed, however. The appropriate responses and criteria for selecting the most adequate answer in specific cases should be determined by law.

There are, at present, no laws specifically concerning juvenile offenders, and some norms, which apply to juveniles and adults alike, are inappropriate for juvenile offenders. One example is the identification of joint commission of an offence ('collaboration') as a factor that increases the sentence.²⁷ Many offences perpetrated by adolescents are committed in groups, and the commission of an offence under the influence of peers often should be viewed as a factor that diminishes the degree of responsibility of an adolescent, rather than increasing it.

Article 263 of the Code of Criminal Procedure on the length of detention does not contain any specific provision concerning accused juveniles. Article 230 of the Code establishes special criteria restricting the detention of pregnant and nursing women, the elderly and persons in substance abuse programmes who are accused of crimes, but no similar provisions apply to juveniles accused of crimes. Although the prosecutor has discretion to order supervision in the home, there is neither presumption against detention nor any provision establishing specific criteria for the detention of accused juveniles.²⁸

²⁴ The diversity of national standards no doubt explains the lack of clear and precise international standards. The diversity of national standards is due in part to legal traditions and social circumstances and in part to the inextricable relationship between this standard and other laws and practices regarding the treatment of children below and above the age limit.

²⁵ The Albanian Helsinki Committee takes this position in Hysi, V. and Saliu, E., *Juvenile Justice System in Albania*, Tirana, 2005, p. 29. The Children's Human Rights Committee reports that many crimes by children are committed under the influence of adults. See Haxhiymeri, E., *Juvenile Delinquency in Albania*, Tirana, 2007, p. 20. One source mentioned the case of a child who, at age 11, had already committed more than 200 thefts, and who said that he would stop stealing when he reached age 14.

²⁶ *Children in Conflict with the Law in Albania*, p. 12.

²⁷ Criminal Code, Article 50 gj.

²⁸ Code of Criminal Procedure, Article 255.3.

Prison regulations that allow the use of 'isolation' or solitary confinement as a disciplinary sanction for juveniles and adult prisoners are incompatible with Rule 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, which describes this practice, as applied to juveniles, as a form of "cruel and inhuman treatment." Although this punishment is no longer applied to juvenile prisoners, in practice, the fact that it is allowed illustrates the need to develop regulations specifically for juveniles.

According to Article 339/1 of the Code of Criminal Procedure, trials must be held in public. No exception is made for the trial of persons under age 18.

An Interministerial Working Group was formed in 2001, composed of representatives of the Ministry of Interior, the Ministry of Justice, the Office of the Prosecutor General and the judiciary. In 2002–2003, this group developed a package of legislative reforms concerning juvenile justice.²⁹ The package would have raised the age of criminal responsibility to 16 – a proposal criticized by at least one Albanian NGO and by the author of the UNICEF situation analysis³⁰ – and incorporated into the Code of Criminal Procedure some of the basic principles recognized by the Convention on the Rights of the Child, including the 'last resort' principle.³¹

The package was not adopted, and responsibility for leading the reform process was entrusted to the Legal and Institutional Reform Commission under the responsibility of the Ministry of Justice.

[In November and December 2008, after the assessment mission, legislation on probation, on legal assistance and on alternative sentences was adopted. One of the laws expands eligibility for sentences of semi-freedom and probation.³² Another establishes a probation service and defines its functions.³³ The third establishes a public legal assistance programme.³⁴ Although these new laws do not focus specifically on juvenile offenders, they will benefit them. Indeed, these laws satisfy some of the recommendations made by the assessment team.³⁵]

²⁹ The package contained amendments to the Criminal Code, the Code of Criminal Procedure, the Law on Enforcement of Criminal Decisions and the Law on the Rights and Treatment of the Prisoners. Although some documents indicate that it was prepared in 2002–2003, it is often referred to as the 2005 package. The amendments, in addition to those referred to in the text above, would have authorized the placement of persons under the age of criminal responsibility in medical facilities; authorized the imposition of educational sanctions rather than prison on offenders having criminal responsibility when appropriate; limited the term of placement in specialized educational facilities [which do not exist] to two years; expanded the range of educational measures to include probation for up to two years; required the annual review of placement in medical facilities and educational measures; enlarged the role of psychologists and social workers in the trial of accused juveniles; required that parents be immediately informed of the arrest of a juvenile; and reduced the time limits for completion of various stages of criminal proceedings.

³⁰ *Juvenile Justice System in Albania*, pp. 28 and 29; *Concept and Strategy Paper for Juvenile Justice Activities in Albania*, p. 14.

³¹ A draft amendment to Article 2 of the Code of Criminal Procedure stated, "Juveniles shall be placed in an institution only when there is no other appropriate response. In this case, they shall receive educative and psychological and medical assistance as necessary, with a view to facilitating their reintegration into society."

³² Law No. 10023 of 27 November 2008. Sentences to 'semi-freedom', in which the convict spends some time in prison and some at home, are now available when the convict has certain obligations, including education, without the previous requirement that such obligation be 'serious'. Probation will now be available for suspended sentences of up to five years in prison, instead of two years. Age is one of the factors to be taken into account in determining what conditions to impose as part of probation (Articles 2, 3 and 5, respectively).

³³ Law No.10024 of 27 November 2008 not only establishes a probation service under the Ministry of Justice, it also makes some positive changes in the law concerning probation. For example, pre-sentencing reports (which will be prepared by the probation service) are now obligatory rather than discretionary, and provisions concerning revocation of probation are more flexible (Article 10).

³⁴ Law No.10039 of 22 December 2008.

³⁵ See, especially, Recommendations Nos.3 and 8, below.

3) Administrative reform/restructuring and allocation of resources

Several important administrative reforms have had a beneficial impact on the treatment of juvenile offenders. One was the transfer of responsibility for all correctional and pretrial detention facilities from the Ministry of Interior to the Ministry of Justice. Management of prisons was transferred in 1993 and 1994, and that of detention facilities between 2005 and 2007. A study on conditions in pretrial detention centres carried out in 2006 concluded that adolescents in facilities operated by the Ministry of Interior were treated the same as adult detainees, and confirmed that conditions of detention, in particular physical conditions, were inhumane.³⁶

Another beneficial impact was the creation, in trial courts, of special sections dedicated exclusively to the cases of juvenile offenders. The creation of such special sections was called for by the 1995 Code of Criminal Procedure.³⁷ A Presidential Decree authorized their establishment in six district courts (i.e., trial level) in 2007. Although many of the officials and participants interviewed see this as a temporary measure and a step towards the establishment of specialized courts, there is broad consensus that the appointment of judges who specialize in cases of this kind has improved the quality of justice. The unprecedented adoption of a small number of alternative sentences by the Tirana court is the most visible consequence of this measure.

4) Training and capacity-building

The School of Magistrates provides entry-level and continuing education to judges and prosecutors, as well as to support staff of the courts. Participation in continuing education courses is mandatory. The courses offered are determined in part by needs assessments, in which international agencies sometimes participate, and in part by the interests expressed by judges and prosecutors. A needs assessment done with UNICEF assistance led to the development of continuing education courses focused on alternatives to detention, restorative justice and the role of social workers and psychologists in juvenile justice.

In addition to formal training, the Communication for Behavioural Impact (COMBI) programme provides informal outreach on juvenile justice issues to judges and prosecutors. The approach used emphasizes personal contact aimed at changing behaviour (not merely attitudes) through activities, such as luncheons and dinners. A focus group discussion with selected judges and prosecutors conducted by the NGO responsible for the programme demonstrates that some of the participants have a good understanding of the need for juvenile justice reform and commitment to participating in the reform process.

In 2007, the State Police organized two training courses on 'child protection and treatment of children in conflict with the law'. The agenda included international standards, procedures for interviewing children, the treatment of children in custody and the protection of child victims of crime. Several NGOs participated in the training. A two-day course was held for senior police staff. The course for staff in direct contact with children (25 to 30 persons) took place in three stages, a first two-day stage and a second and third one-day stage.

The Albanian Helsinki Committee has made an impressive effort to provide training to the Prison Department staff. It has developed a basic entry-level curriculum on child rights and a manual for in-service training and has trained 23 trainers. A recent report by this NGO praised the "training and professionalism" of the staff who are "guided by the principle of respect for the rule of law

³⁶ Hysi, V., *Observance of Human Rights in Pretrial Detention Facilities*, Albanian Helsinki Committee, Tirana, pp. 36 and 13–16.

³⁷ Code of Criminal Procedure, Article 13.

and a more humane treatment of detainees.”³⁸ The Committee nevertheless believes that additional training is required, in particular training aimed at the development of a more professional approach to working with juvenile offenders.³⁹

A number of important *ad hoc* training activities have been directed to professionals from different institutions and sectors. These began with a week-long seminar organized by the Institut universitaire Kurt Bösch and the Institut international des droits de l'enfant, in Sion (Switzerland). Twelve high-ranking officials from the High Council of Justice, the Office of the President, the Ministry of Justice, the Ministry of Interior, the Police Academy and the School of Magistrates participated, as did the Ombudsman, a Member of Parliament and a representative of the Albanian Bar Association. The same year, two 2-day courses took place in Albania. One, on 'restorative justice and mediation for juveniles', involved some 60 participants from the Ministry of Justice, the Ministry of Interior, the courts, the Prison Department, professional training academies, legal aid programmes, mediators, and others. Another, on 'alternative measures for juveniles in conflict with the law', involved some 30 participants from the courts, the Prison Department, the Ministry of Justice, the Office of the Prosecutor General, the Albanian Bar Association, the School of Magistrates, NGOs, and others. A second two-day conference, on 'restorative justice', took place in 2007. This conference included presentations on the experiences of 11 European countries.

Several training manuals have been developed, including:

- Manual on Mediation in Schools, Albanian Foundation for Conflict Resolution, 2006
- Manual on Restorative Justice and Mediation in Penal Cases Resolution, Albanian Foundation for Conflict Resolution, 2007
- Training Manual on Juveniles and Women's Issues in Penitentiary Institutions, Albanian Helsinki Committee
- Defending the Minor: A handbook for attorneys, Centre of Integrated Legal Services and Practices, 2007
- The Psychologist and the Social Worker in the Juvenile Justice System, Centre of Integrated Legal Services and Practices, 2007.

These efforts have contributed to the development of a network of judges, prosecutors, lawyers, police and correctional officials who have a good knowledge of international standards concerning juvenile justice.

5) Accountability mechanisms

The High Council of Justice has an Inspection Office, which is responsible for monitoring the performance of judges. In Albania, there is concern with corruption in the judiciary, as in other areas.

A number of sources indicated that some judges seek to avoid suspicion of corruption by compiling a strong record of convictions and imposing strict sentences and that cases involving juveniles with little influence offer an easy way to bolster such a record. A practice of this kind would be difficult to document and control directly. However, it may well be possible to curb it indirectly by monitoring obvious discrepancies between the decisions taken by courts and basic principles and norms, such as orders imposing pretrial detention on first offenders accused of non-violent offences, or prosecution of first offenders for very minor property offences.

³⁸ *Observance of Human Rights in Pretrial Detention Facilities*, pp. 33–34.

³⁹ A training centre for correctional staff has ceased to operate, but the possibility of reopening it is under discussion.

Some NGOs do monitor the way cases involving juveniles are handled by the courts, although the studies published do not document correlations between the offence, the circumstances and the outcome. It might be that documentation of cases revealing clear discrepancies between decisions and fundamental international standards would contribute to the realization that something needs to be done to monitor the performance of the judiciary from a different angle, i.e., detecting disproportionate or arbitrary handling of cases involving juveniles.

There is no specific mechanism for prisoners – whether juveniles or adults – to make complaints. However, national human rights NGOs have good access to prisons, detention facilities and police stations, and have played a valuable role in monitoring compliance with law and regulations and in drawing problems of non-compliance to the attention of the relevant authorities.⁴⁰ The Deputy Director of Prisons also visits prisons and detention centres. He had recently been in one of the detention centres visited by the assessment team and had interviewed the juveniles detained there.

The People's Advocate (Ombudsman) receives complaints from children and has taken position on issues concerning juvenile offenders.⁴¹ For example, the Advocate supported amendments to the draft law on the State Police designed to improve the treatment of juvenile offenders.⁴²

6) Coordination

Three coordination mechanisms deal with juvenile justice.

The first is the Advisory Committee appointed by the Minister of Justice. Its members are eminent Albanian jurists, and its remit is limited to legislative matters, i.e., proposed new laws and amendments to existing laws.

The second is the Juvenile Justice Subcommittee of the Committee on Law Reform of the International Consortium of donors. The Subcommittee meets quarterly and brings together donors, government counterparts and relevant civil society organizations. An annual year-end review also takes place. Members include UNICEF, EC, the Council of Europe, the World Bank, OSCE, Sida, the Ministry of Labour and Social Affairs, the Ministry of Interior, the Ministry of Justice, the Office of the General Prosecutor, the General Directorate of Prisons, the School of Magistrates and the Police Academy, as well as the Albanian Helsinki Committee, the Citizen's Advocacy Office, Save the Children, the Child Rights Committee of Albania, the Foundation for Conflict Resolution and the Legal Clinic for Minors. The Subcommittee has been a valuable forum for advocacy. In addition, it has facilitated sharing of expertise and coordination amongst donors.

The third is the Steering Committee of the EC-Sida Juvenile Justice Reform programme being implemented by UNICEF. The programme, as indicated above, began in 2005 and will end in 2009. The Steering Committee includes, in addition to EC, Sida and UNICEF, the Ministry of Justice, the State Social Service, the Ministry of European Integration, the School of Magistrates, the Prison Department and all participating NGOs.⁴³ It meets annually, in principle: the first annual meeting was held in November 2007, and the second in May 2008.

⁴⁰ See *Observance of Human Rights in Pretrial Detention Facilities*.

⁴¹ Annual Report of the People's Advocate, 2007, pp. 46–47.

⁴² Ibid.

⁴³ Albanian Foundation for Conflict Resolution, Albanian Helsinki Committee, Centre of Integrated Legal Services and Practices, Children's Human Rights Centre of Albania, and Citizen's Advocacy Office.

Several sources expressed the view that coordination, on the local or national level, is insufficient. A focus group of judges and prosecutors organized by the Citizen's Advocacy Office in 2008, for example, indicated that communication between courts and prosecutors is poor. The Prison Department does not participate directly in coordination mechanisms.

7) Data and research

Statistics concerning offending by juveniles and the treatment of juvenile suspects and offenders are not published regularly in Albania, except for the number of juveniles convicted of an offence. Data on this subject are not confidential, however, and the authorities regularly provide it to interested NGOs, who have published several valuable studies on juvenile offending. Data on some indicators covering the period beginning in 2000 have been contributed to the TransMONEE regional database.⁴⁴

The UNICEF Country Office is presently supporting efforts by the National Institute of Statistics' Social Research Centre to improve the reliability of data on these questions and coordinates the pooling of information from different sources, in particular, the State Police, the Supreme Court and the Ministry of Justice's Prison Department.

The experiences of juveniles in detention centres and in prison, as well as during legal proceedings, have been documented by Albanian NGOs. One publication, *Juvenile Delinquency in Albania*, contains 19 case studies of juveniles aged 13 to 17 years in detention facilities, focusing mainly on their family and social background. Information obtained from juvenile detainees or offenders is generally not quantified, however. Information from them on their treatment by the police, courts and prison service, in particular, is valuable but anecdotal.

⁴⁴ Moestue, H., *Lost in the Justice System: Children in conflict with the law in Eastern Europe and Central Asia*, UNICEF Regional Office for CEE/CIS, Geneva, May 2008, Appendix 2: Table B – Crimes committed by or with the participation of juveniles; Table D – Homicides committed by or with the participation of juveniles; Table E – Number of juveniles in closed correctional facilities and prisons at the end of the year. (Data on the registered crime rate in Table C seem to be absolute numbers and not the rate per 100,000 population aged 14–17 years, although they are lower than the number given in Table A.)

PART II. The Juvenile Justice System in Albania

1) Prevention

There are two programmes designed to provide assistance to children at risk of offending. One, the 'ABSC programme' (Albanian Basic Commercial Studies), provides vocational training and life skills to adolescent boys and girls involved in risky behaviour referred by NGOs, police or local government. Participation is voluntary and lasts four months. Most participants live at home while attending the programme, although there are dormitories for those who are unable to remain at home. The programme began receiving children at risk in 2006. It is financed by UNICEF and contributions from the private sector, and executed by a not-for-profit vocational school operated by a religious order. Some 70–80 per cent of the participants find employment after completing the programme.

Within the school system, an NGO is implementing a pilot project, which uses peer mediation to solve conflicts. The project, launched in seven primary and secondary schools by the Foundation for Conflict Resolution and Reconciliation of Disputes, prevents conflicts from turning violent and teaches students the 'life skill' of peaceful conflict resolution.

Neither programme has been evaluated. The ABSC programme, based on the services provided by a school that is unique in Albania, does not have the potential to be expanded nationally. It would be useful to assess the need for community-based programmes for children at risk of offending to complement these school-based programmes as well as the feasibility of combining them with programmes for underaged offenders.

2) Police, investigation of offences and pretrial detention

Police detention

A person can be detained by the police for a maximum of 48 hours when there are reasonable grounds to suspect that he/she has committed an offence. This applies to juveniles and adults alike. The prosecutor and a defence attorney, and in the case of a juvenile, his family, must be informed immediately. Detention for other purposes, such as verifying identity, may not exceed 12 hours.

Detention for more than 48 hours must be authorized by a court and must take place in a detention facility operated under the authority of the Ministry of Justice.⁴⁵ Legal services agencies report that compliance with the 48-hour limit is weak.⁴⁶ The Committee on the Rights of the Child has indicated that no child should be detained by the police for more than 24 hours without a judicial order.⁴⁷

The investigation of offences

Responsibility for investigating crimes and misdemeanours lies with prosecutors and the police. The judicial police operate under the direction of prosecutors.

The new Law on State Police adopted in 2007 established special units of the criminal police with responsibility for cases involving juvenile offenders and for cases of domestic violence in

⁴⁵ Code of Criminal Procedure, Article 258.1. The request for judicial order authorizing continued detention must be made within 48 hours and the court must schedule a hearing "as quickly as possible" (Article 258.2).

⁴⁶ See, for example, Centre of Integrated Legal Services and Practices, Information on Free Legal Service Offered by the Legal Clinic, undated memo, p. 2.

⁴⁷ Committee on the Rights of the Child, Children's rights in juvenile justice, General Comment No. 10, CRC/C/GC/10, 25 April 2007, para. 83.

12 prefectures.⁴⁸ Nationally, 17 officers are assigned to these specialized units. The staff also includes psychologists. The head of these units said that since their establishment only one complaint had been received on violations of the rights of accused juveniles or juvenile suspects, and it concerned due process issues and not the use of violence.⁴⁹ Other sources informed the assessment mission that police violence against juvenile offenders has not been eliminated, but it is too early to evaluate objectively the extent to which the creation of the special police has reduced this form of violence.

A judge indicated that the procedures and protocols followed by judicial police do not reflect the changes in the law that give special protection to juvenile suspects. For example, the interrogation of juvenile suspects is routinely preceded by a statement informing them of their right to a lawyer and asking them whether they wish to have a lawyer present, when juvenile offenders should not be interrogated without the presence of a lawyer and should not be asked whether they wish to waive that right.

*Pretrial detention and other security measures*⁵⁰

Pretrial detention, as indicated above, must be authorized by a court. The Code of Criminal Procedure provides that detention may be imposed only when any other measure would be inappropriate due to the special dangerousness of the offence and the accused.⁵¹ A 2002 amendment provides that juvenile offenders accused of a misdemeanour may not be detained prior to trial.⁵² Alternative 'security measures' include house arrest, deposit of a caution and release subject to a duty to report periodically to the police or subject to a duty to remain within a certain geographic area.⁵³

The maximum duration of 'pretrial' detention is up to three years, depending on the gravity of the crime.⁵⁴ This limit applies equally to juveniles and adults. When a juvenile is detained while awaiting trial, the prosecutor must inform the judge on the progress in preparing the case every two months. If the judge finds evidence insufficient, he/she may dismiss the case.

A study of the trials of juvenile offenders, covering seven districts, carried out in 2005 and 2006 found that 40 per cent were detained before trial.⁵⁵ The others were placed under house arrest (17 per cent), released subject to police supervision (27 per cent), released with restrictions on freedom of movement (6 per cent) or released upon payment of a caution (10 per cent).⁵⁶

The Prison Department informed the assessment team that 63 boys (and no girls) under age 18 were in pretrial detention at the time of the mission: 21 in the centre located in Tirana, 19 in a

⁴⁸ There are presently 21 prefectures.

⁴⁹ As recently as 2006, according to an NGO study, "Nearly all the children and juveniles interviewed during our observation declared that they were subject to violence or inhuman treatment in one way or another in the time of their apprehension by the police." *Juvenile Justice in Albania*, Children's Human Rights Centre of Albania, Tirana, 2007, p. 66.

⁵⁰ It should be noted that, in Albania, as in some other countries of the region, the term 'pretrial' detention applies not only to detention before and during trial, but also to detention after sentencing, while the conviction or sentence is being appealed. Although data were not provided, a judge estimated that 90 per cent of all convictions of juveniles are appealed by the prosecution because the sentence is considered too light.

⁵¹ Code of Criminal Procedure, Article 230.

⁵² *Ibid.*, Article 230.4.

⁵³ *Ibid.*, Article 232.1. Juveniles under house arrest live at home and may attend school. They are required to report to the prosecutor once a fortnight.

⁵⁴ *Ibid.*, Article 263.6. (The normal limits for serious offences are 12 months at the pretrial stage, 12 months at the trial stage and 9 months for a decision on appeal, but extensions can be granted in special circumstances (Articles 263.1–263.3 and 264.2).)

⁵⁵ Hysi, V. and Saliu, E., *Observance of the Rights of Juvenile Offenders in Criminal Proceedings*, Albanian Helsinki Committee, 2007, p. 19.

⁵⁶ *Ibid.*

newly constructed multipurpose facility in Vlora, 12 in Durrës, and smaller numbers in three other centres. The assessment team visited the Tirana and Durrës facilities, but interviewed detainees only in Durrës.

The interviews revealed that the principle of deprivation of liberty as a last resort and for the shortest appropriate period of time is not applied consistently throughout Albania. The accused juveniles in Durrës had been in detention for periods ranging from 6 weeks to 13 months. Three were accused of robbery or theft, three of sale of cannabis, and six of crimes against the person. However, at least one half of the crimes against the person were such that it would be difficult to conclude that the accused represented a grave danger to society: one was a 17-year-old accused of negligent homicide (a car accident) and two were accused of being accessories after the fact to a homicide. One of these was a 14-year-old accused of hiding a friend of the same age who was accused of the fatal stabbing of an 18-year-old. None of the 12 detainees had a prior record. The average length of detention was more than five months, in very poor conditions (see below).

Sources indicated that, in Tirana, it is unlikely that pretrial detention would be ordered in such cases, but the pattern of detention found in Durrës suggests that, although the training done to date has had a positive impact, it has not sufficed to eliminate excessive reliance on pretrial detention. This is confirmed by a recent report, which shows that, in Shkodra, accused juveniles had been detained prior to trial in 64 of 65 cases prosecuted during the previous six months.⁵⁷

The main reason for delays is the failure of the prosecutor or defence attorney to appear in court when a hearing is scheduled. Judges tend to accept this and simply reschedule hearings, sometimes repeatedly.

'Pretrial' detention facilities

There is no detention centre specifically for the juveniles accused of an offence. Two pretrial detention facilities were visited by the assessment team, one located in Tirana and another in Durrës, a short distance from the capitol.

The pre-detention centre in Durrës is one of the worst still in use. It was built in the 1960s, and has a capacity of 90. The population was 145 at the time of the visit, of which 12 were boys aged 14–18 years. Women are not detained in this facility.

The 12 adolescent detainees were housed in two cells, six to a cell. Each cell is located in a corridor with cells for adult detainees. The cells had no toilet or washing facilities, so the juvenile detainees are obliged to use the same sanitary facilities as the adults. The cells were small – some 3x2m – and the juveniles slept on the floor on improvised bedding. Meals are served in the cell. Because the cells are so crowded, the staff leaves the door partially open during the day. The phone and visiting areas are also shared by adults and juveniles.

Each cell had a small television and fans, and detainees keep personal belongings in plastic bags hung on the walls. Juveniles are allowed to spend a total of 3–4 hours a day in an open paved 'yard', in the morning and the afternoon. They do not mix with adults in the yard. No recreational equipment was in evidence.

The staff includes a medical doctor and three assistants, a lawyer and an 'educator' who provides social assistance but is not a trained social worker. Volunteer teachers visit the detainees, although

⁵⁷ Report of a focus group of judges and prosecutors participating in the COMBI programme, Citizen's Advocacy Office, unpublished, 2008, p. 5 (Shkodra District).

there are no classrooms. Priests also visit several times a week. Family visits are allowed once a week, and more often on request; phone calls are allowed twice a week. One juvenile detainee was receiving a visit from friends when the team arrived.

The staff reported that fights occur, but are not serious. Disciplinary sanctions permitted by the regulations of the Prison Department are not applied. The detainees were interviewed in focus groups, with no staff present, and none had any complaint to make about treatment in the facility.

Despite the good intentions of the staff, conditions are seriously deficient in this facility, which is scheduled to be replaced by a new one.

The capacity of the Tirana facility (built in 1943) is 395, and the population is 460. Male juvenile offenders are housed in a separate wing with a capacity of 21. At the time the facility was visited, there were 21 detainees aged 14–17 years housed in seven cells with a capacity of three persons each.

Each cell is reasonably large, and has a television and three small wardrobes. They have been recently painted and refurbished. There is a shower room with toilets on the same hall. At the end of the hall, there is a roomy library with new furniture and several computers, as well as a classroom. These, too, have been recently painted and refurbished.

Meals are prepared in a clean kitchen for the whole facility and served in the cells of the juvenile unit. The juvenile unit has its own outdoor area, adjacent to it and surrounded by a high wall. There appears to be no opportunity for contact between juvenile and adult detainees, with the possible exception of visits to the infirmary. Cell doors are open from early morning till evening, and juvenile detainees are able to spend seven hours a day in the yard, if they wish.

Detainees have the right to receive weekly visits from their families, although poverty and distance prevent some families from visiting. Two psychologists from an NGO visit the detainees four days a week and make an effort to meet parents, when possible. Legal services are provided by the Legal Clinic for Minors.⁵⁸

The unit has a staff of 14: one social worker, one psychologist and 12 guards. Disciplinary problems, including fights, occur periodically. The sanctions imposed are the same as those applied to adult detainees and established in the relevant law and regulations, reduced by one half. Even though they consist essentially in suspension of privileges, solitary confinement can be imposed in extreme cases.

Adolescent girls detained while awaiting trial are housed in the women's section of the same pretrial detention facility. A recent report by the Albanian Helsinki Committee concluded that conditions in the women's section of this facility are good.⁵⁹ They are assigned to a separate cell, but have considerable contact with adult prisoners. None were in detention at the time of the mission.

A female psychologist interviewed during the visit to this pretrial detention facility, who has been providing services to inmates for four years on behalf of an NGO, stated that the contact between adolescent and adult female prisoners poses little or no risk to the former. Most female prisoners are charged with murder of husbands or other men, and do not have a criminal lifestyle. According to the psychologist, they treat younger detainees as if they were their daughters.

⁵⁸ UNICEF supports the legal and psychosocial services provided by NGOs.

⁵⁹ *Observance of Human Rights in Pretrial Detention Facilities*, p. 38.

Staff of both detention facilities seemed concerned with the well-being of their juvenile detainees. The Director of the Durrës centre – and the Deputy Director of the Prison Department – recognizes that the centre's conditions are deplorable, which is why it is soon to be replaced. The Deputy Director of the Tirana facility, who has 16 years of experience in the prison system, commented that, despite significant improvements in the facility's conditions, NGOs should increase pressure to reduce the use of pretrial detention.

The European Committee for the Prevention of Torture undertook a mission to Albania, which overlapped with the assessment mission and included visits to three pretrial detention centres, including the two visited by the assessment team. In the centre located in Tirana, it heard complaints of deliberate physical ill-treatment of juveniles by one member of the staff.⁶⁰ The Committee encouraged the authorities to undertake a thorough investigation of the allegations but, as far as the assessment team has been able to determine, no action has been taken.

3) Diversion

Diversion is not recognized by the legislation applicable to juvenile offenders.⁶¹ However, data for the period 2002–2005 indicate that fewer than 10 per cent of all juveniles are convicted of misdemeanours.⁶² This almost certainly suggests that the police exercise broad discretion in deciding which minor offences to refer for prosecution that can be considered an informal diversion mechanism.

A law on mediation exists, however, and for more than a decade the Foundation for Conflict Resolution and Reconciliation of Disputes has offered mediation in other areas, including victim-offender mediation for adults.⁶³

Despite the lack of legislation specifically authorizing diversion, a pilot project offering mediation for juvenile offenders began in 2006, with training activities for police officers, judges and prosecutors and the adoption of an agreement concerning the modalities of the programme. In cases of minor offences, in which the offenders are aged 14–21 years, specialized juvenile police units may decide to ask both parties and the family of the offender whether they agree to mediation. If they do, the matter is referred to mediators, and if agreement is reached within 40 days, no further action is taken. When the offender is under age 18, agreements usually involve the payment of compensation by his/her family.

During a recent six-month period, 135 cases were referred to mediation in four districts.⁶⁴ Most cases (117) involved assault causing minor injuries, and all the others involved insults.⁶⁵ Agreement was reached in all cases. In Tirana, an average of 11 cases per month was referred to mediation, and in the other districts the average was a total of 7–8 cases per month. Interviews with a sample of

⁶⁰ Report to the Albanian Government on the visit to Albania by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment carried out from 16 to 20 June 2008, CPT(2009)6, January 2009, paras. 7(c) and 17.

⁶¹ One informant indicated that the legal basis for diversion is Article 284 of the Code of Criminal Procedure, which requires a complaint by the victim for the prosecution of certain crimes and allows the victim to withdraw the complaint at any time, but this article applies only to a very limited number of offences (e.g., insulting or defaming public officials and certain sexual offences) that do not include any property crimes or crimes of violence (except assaulting the family of a public official).

⁶² *Children in Conflict with the Law in Albania*, p. 13.

⁶³ Law No. 8465 of 11 March 1999 amended by Law No.9090 on Dispute Resolution through Mediation of 26 June 2003.

⁶⁴ November 2007 to April 2008, Tirana, Durrës, Elbasani and Shkodra.

⁶⁵ Misdemeanours are defined in Articles 89, 90 and 119 of the Criminal Code.

persons who had participated in mediation of juvenile cases found that, in most instances, relations with the other party since mediation had been good, and none reported new conflicts.⁶⁶

A judge interviewed by the assessment team complained that minor cases of theft are prosecuted. He mentioned the case of a 14-year-old referred to the prosecutor for taking a length of pipe worth about five euros that he found in a schoolyard. Even the cost of investigating the case, he observed, exceeded many times the value of the property stolen. This example illustrates the usefulness of extending diversion to a broader range of minor offences, especially when the offender has no prior record.

4) Criminal responsibility, adjudication and sentencing

Courts and procedures

There are no juvenile courts in Albania. In 2007, 'special sections' for juvenile offenders were established in the six district courts having the largest number of cases.⁶⁷ Each section consists of a judge responsible for pretrial matters, in particular to determine whether to order pretrial detention, and another judge responsible for the trial. These functions have been assigned to judges already attached to the court in question, who work exclusively for the special section and do not handle other cases.

If a juvenile and an adult are involved in the same case, the special section has jurisdiction over the accused juvenile.⁶⁸ The special section also retains jurisdiction if the accused reaches his 18th birthday while awaiting trial.

There are two exceptions to the exclusive competence of the special sections. Crimes punishable by a sentence of more than 10 years must be tried by a panel of three judges. It is the juvenile judge who chairs the panel if the accused is a minor, but the other two judges are criminal judges. In addition, any person, juvenile or adult, accused of terrorism, organized crime or trafficking will be tried by the Serious Crimes Court established in 2004.⁶⁹

There are no special sections in the courts of appeal.

There is a consensus that the creation of the special sections has improved the quality of justice in trials of accused juveniles. Focusing exclusively on such cases enhances the judges' understanding of the special characteristics of these cases, and concentrating responsibility for trying such cases allows training to be directed to those who most need it.

This system has one disadvantage, however. Although special sections are located in the districts having the largest number of cases involving juvenile offenders, concentrating responsibility for all cases involving juveniles in the special sections of six courts involves the transfer of some cases from other districts. This complicates the investigation of cases and causes difficulties in ensuring the presence of witness and other concerned parties in proceedings. In the view of some sources, it aggravates the problem of delays in adjudicating cases.

⁶⁶ Interviews were conducted with a sample of 16 offenders and victims in October 2007. Two had had no further contact and the remainder reported that no further conflicts had arisen in their relations with the other party.

⁶⁷ There are 21 district courts.

⁶⁸ Criminal Code, Article 81.1.

⁶⁹ *Ibid.*, Articles 75.a, 140 and 284.a.

Due process

Apart from questions concerning pretrial detention and sentencing, procedures applicable to the trial of juvenile offenders comply with international standards of due process in most respects.

Some aspects of the procedure are not compatible with international standards, however. For example, juveniles are tried in public, although the Convention on the Rights of the Child provides that the privacy of an accused child shall be “fully respected at all stages of the proceedings.”⁷⁰

The Convention on the Rights of the Child recognizes the right to be tried without delay, but there is no time limit in Albanian legislation for completing the investigation and trial, unless the accused is detained. In practice, a study carried out before the creation of the special sections found that almost one third of all trials are completed in less than one month.⁷¹ Almost 90 per cent are completed in less than five months.

Minimum age for prosecution or 'age of criminal responsibility'

The Criminal Code distinguishes between two kinds of offences, which may be translated as crimes and misdemeanours.⁷² The latter consist of offences punishable by sentences of less than two years of imprisonment.⁷³ Children over age 16 have criminal responsibility for both, while those aged 14 or 15 years have legal responsibility for crimes but not for misdemeanours. Examples of crimes for which children aged 14 or 15 years may be prosecuted include murder, rape, inflicting bodily harm, violation of domicile, theft, destruction of property, sale of drugs, possession of a weapon and disobedience of a police order.⁷⁴ A study carried out in 2005–2006 found that 42 per cent of offenders prosecuted were aged 14 or 15 years.⁷⁵

The number of juveniles prosecuted for misdemeanours is much smaller than the number prosecuted for crimes. A report covering the period 2000–2005 indicates that the average number of juveniles convicted of offences during those years was 298 per year.⁷⁶ More than 90 per cent of the convictions were for crimes.

Children who commit acts defined as offences but who lack criminal responsibility – those under age 14 who commit any offence, and those aged 14 or 15 who commit contraventions – are in principle subject to ‘educational sanctions’, i.e., “placement ... in an institution for education.”⁷⁷ However, all three ‘rehabilitation schools’ were closed in 1993 or 1994, making it effectively impossible to impose any measures on children involved in offending who do not have legal responsibility. Some sources thought that they were closed simply due to the desire to eradicate institutions associated with the communist past, while others indicate that they were closed because they were little more than prisons for children.

⁷⁰ Convention on the Rights of the Child, Article 40.2 (b) (vii). The Committee on the Rights of the Child considers that hearings in cases involving juvenile offenders should not be open to the public, except in unusual circumstances. See Children’s rights in juvenile justice, General Comment No. 10, CRC/C/GC/10, para. 65.

⁷¹ *Observance of the Rights of Juvenile Offenders in Criminal Proceedings*, p. 18.

⁷² Some publications in English use the term ‘contravention’ to refer to this class of offence.

⁷³ Criminal Code, Article 32.

⁷⁴ *Children in Conflict with the Law in Albania*, p. 7.

⁷⁵ *Observance of the Rights of Juvenile Offenders in Criminal Proceedings*, p. 13.

⁷⁶ *Children in Conflict with the Law in Albania*, p. 13.

⁷⁷ Criminal Code, Article 46.

Custodial sentences

Sentences imposed on juvenile offenders having legal responsibility may not exceed one half of the sentence that would be imposed on an adult convicted of the same offence. The maximum sentence, which may be imposed for offences committed while under age 18, is twelve years and six months.⁷⁸

In addition to provisions allowing sentences to be suspended, described below, various provisions of the law allow for the reduction of sentences. The Criminal Code provides that sentences imposed on juveniles may be less than one half of the sentences applicable to adults when the offence and the offender present little danger to society and there are mitigating circumstances.⁷⁹

The Criminal Code also provides that any juvenile convicted of an offence may be placed in an educational institution rather than sentenced to a correctional facility, if the court considers this appropriate given the previous behaviour of the offender and the circumstances and 'dangerousness' of the offence.⁸⁰ However, as no such facilities exist, as indicated above, this provision is not applied.

The Criminal Code also allows orders of compulsory medical treatment to be adopted with regard to persons who are not criminally responsible because of mental illness.⁸¹ In practice, such orders are not imposed on juveniles because institutions for the mentally ill do not have special units for children and adolescents.

The Code of Criminal Procedure contains a broad provision allowing sentences to be reduced by one third at the request of the offender.⁸² No requirements restrict the applicability of this provision.

Sentencing policy

A study completed shortly before the establishment of 'special sections' in some district courts found that, although more than two thirds of convicted juvenile offenders are sentenced for offences against property and only 12 per cent were repeat offenders, sentences of imprisonment were requested in 64 per cent of the cases in which there was a conviction.⁸³ And, in almost all cases, 157 out of 159, prosecutors' requests for a sentence of imprisonment were granted.⁸⁴

Offenders were fined in 14 per cent of the cases, and one third of them were given suspended sentences ('probation').⁸⁵

Even though the provision of the Criminal Code allowing sentences of less than the maximum sentence to be imposed is rarely, if ever, applied,⁸⁶ the more flexible provision of the Code of Criminal Procedure allowing sentences to be reduced by one third is applied frequently, and is almost always granted when requested.⁸⁷

⁷⁸ The maximum for adults is 25 years.

⁷⁹ Criminal Code, Articles 51 and 56.

⁸⁰ Criminal Code, Article 52.

⁸¹ Criminal Code, Article 46.1–46.2.

⁸² Code of Criminal Procedure, Article 406.

⁸³ Of 292 offenders covered by the 2005–2006 study, 120 were charged with petty thefts and 98 with more serious offences against property; 34 were repeat offenders. See *Observance of the Rights of Juvenile Offenders in Criminal Proceedings*, pp. 11 and 15. (Only two accused juveniles were found not guilty, see p. 23.)

⁸⁴ *Ibid.*, p. 23.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*, pp. 25 and 26.

⁸⁷ *Ibid.*, p. 20. In 159 cases in which a sentence of imprisonment was ordered, 134 requests for a reduced sentence were made and 133 granted.

Most sentences to imprisonment for crimes against property – nearly one third of all imprisonment sentences covered by this study – were for a 6- to 12-month duration. Nearly one quarter of the 38 sentences imposed was for periods of one to five years.⁸⁸

From 2000 to 2005 the number of male offenders under age 18 serving prison sentences has never exceeded 21 persons.⁸⁹ This figure is somewhat deceptive, however, as it does not include those convicted and awaiting the outcome of their appeal, nor persons convicted for offences committed while under age 18 who are serving sentences in adult facilities because they have reached their 18th birthday.

Data are not yet available on the impact of sentencing on the creation of special sections for juvenile offenders.

5) Legal and psychosocial assistance in legal proceedings

The Code of Criminal Procedure recognizes the right of accused juveniles to legal and psychological assistance “during the entire process.”⁹⁰ The presence of a lawyer may not be waived.⁹¹

In each district, the Bar Association maintains a list of attorneys who may be appointed to represent accused persons who have not retained a defence lawyer. During the pretrial stage of proceedings, appointment is made by the prosecutor.⁹² This has been criticized as a conflict of interest.⁹³ If a defendant is not represented when the trial is scheduled to begin, the court must appoint a defence lawyer.⁹⁴

The level of remuneration is low. An agreement by the Ministry of Justice and the Bar Association specifies that the fees for representing a juvenile charged with an offence shall be half that for representing an accused adult.⁹⁵ There appears to be broad consensus that appointed attorneys, who have no training in representation of children, provide poor quality defence to juvenile offenders.⁹⁶ Research undertaken by the Albanian Helsinki Committee in 2005–2006 tends to substantiate this view.⁹⁷ Most accused adults pay for the services of a defence lawyer, but in Tirana most accused juveniles use the services of an assigned lawyer.⁹⁸

⁸⁸ Ibid., p. 24.

⁸⁹ *Children in Conflict with the Law in Albania*, p. 10. This figure does not include juveniles sentenced but awaiting the outcome of an appeal, nor those sentenced for crimes committed while under age 18 who reached age 18 before being sentenced or while serving their sentence.

⁹⁰ Code of Criminal Procedure, Article 35.1.

⁹¹ Ibid., Article 35.2.

⁹² Ibid., Article 49.

⁹³ *Study Analysis on Free Legal Assistance in Albania (July 2006–March 2007)*, Centre of Integrated Legal Services and Practices, Tirana, undated mimeo, p. 13.

⁹⁴ Ibid., p. 16.

⁹⁵ Joint order Nos.1284/3 and 212 of 16 May 2005, cited in *Study Analysis*, p. 11.

⁹⁶ See *Study Analysis*, pp. 3–4, 14, 19–20; Hysi, V. and Shoshi, K., *Juvenile Justice System in Albania*, Albanian Helsinki Committee, Tirana, 2005, p.13; *Observance of Human Rights in Pretrial Detention Facilities*, p. 28 (referring to accused persons in general).

⁹⁷ A review of court records in 218 cases found that “in many cases” the defence attorney “left the type and measure of sentence” to the discretion of the court, a conduct that the authors considered “far from professional.” See *Observance of the Rights of Juvenile Offenders in Criminal Proceedings*, p. 19.

⁹⁸ *Observance of Human Rights in Pretrial Detention Facilities*, pp. 28 and 35; *Juvenile Justice System in Albania*, p. 13.

Several NGOs provide free legal services.⁹⁹ The Centre of Integrated Legal Services and Practices, established in 2000, specializes in providing legal and psychological services to accused juveniles.¹⁰⁰ Services are provided to an average of 120 juveniles per year, in the capitol and two other cities, at all stages of proceedings: during trial, before trial and during appeals.¹⁰¹ Protocols have been with the police and prosecutors to ensure that they are notified promptly when a juvenile is arrested.

Psychosocial services are fully integrated into the legal services provided to accused juveniles. The Centre claims that, until it began operating, no psychologist had ever presented evidence in any Albanian court. Its psychologists have several roles: they provide support to juvenile suspects and defendants during questioning and psychological assistance to those who are detained; inform juveniles about legal procedures; assist in maintaining contact with families; convey juveniles' concerns and requests to the authorities; and furnish defence attorneys with information on the child's legal responsibility for the offences charged and, if the child is convicted, information relevant to sentencing.¹⁰²

The services provided to accused juveniles by this Centre are, at present, financed entirely by UNICEF.¹⁰³ A Law on Free Legal Assistance has been drafted to ensure the sustainability of the project and its expansion to the whole country through public funding.

6) The treatment of convicted juveniles

The Law on the Rights and Treatment of the Prisoners provides that children (and women) shall serve sentences in specially designed institutions or in separate units of other correctional facilities. At present, no special facility for juvenile offenders exists.

All boys under age 18 serving sentences (except those whose appeal is pending, who remain in pretrial detention facilities) do so in the juvenile section of Vaqarr prison, located in the outskirts of Tirana. It is a medium-security facility, built in 1999.

There is no prison specifically for women. Women and adolescent girls convicted of crimes serve their sentences in a special section of a low-security prison.¹⁰⁴ At the time of the assessment mission, two adolescents were detained there. The facility was not visited.

When the assessment team visited Vaqarr prison, 14 juvenile offenders were confined in six cells located at one extremity of a corridor housing adult prisoners. At the end of the corridor there is a classroom and a library.

Only three of the juvenile prisoners detained at the time of the visit were from Tirana. Staff encourages them to remain in contact with their families, but the distance to their communities and the poverty of families are an obstacle.

⁹⁹ Services provided by the Tirana Legal Aid Society focus on non-criminal matters, and the Centre for Civic Legal Initiatives provides legal services to women. See *Study Analysis on Free Legal Assistance in Albania*, pp. 27 and 29.

¹⁰⁰ The Centre also provides legal services to children in other kinds of cases and has a programme of services for refugees. Its work with accused juveniles is supported by UNICEF.

¹⁰¹ Information on Free Legal Service Offered by the Legal Clinic, undated mimeo, p. 2. The other locations are Korça and Shkodra.

¹⁰² Information on Psychological Service offered by the Legal Clinic, undated mimeo.

¹⁰³ UNICEF's support to the Centre is financed by EC and Sida.

¹⁰⁴ A study carried out in 2005–2006 found that some 5 per cent of all prosecuted juvenile offenders are female. See *Observance of the Rights of Juvenile Offenders*, p. 14.

Two of the fourteen juveniles were serving sentences (of seven and eight years) for murder – one for negligent homicide, one for assault and the others for crimes against property. They were all aged 16–17 years.

The cells or dormitories were relatively large and appeared reasonably clean, and all had large windows with bars. Prisoners do not wear uniforms and have space for personal property under their beds. Each cell has a toilet and shower, a television and a refrigerator. Meals are prepared in the prison kitchen and served to juveniles in their cells. Cells are unlocked from 7 a.m. to 10 p.m. Juvenile prisoners have access to the same courtyard as adult prisoners, at a different time of day.

The staff includes a full-time social worker, who sees the juvenile prisoners on a daily basis. The staff tries to resolve conflicts and poor behaviour by reasoning with those involved. It has been two years since disciplinary measures were imposed on a juvenile prisoner.

A new facility specifically for juveniles was under construction at the time of the assessment mission, and all the prisoners under age 18 in Vaqarr prison are expected to be transferred there in 2009.

7) Alternative sentences and early release

Probation and community service sentences

Chapter VII of the Criminal Code concerns 'alternatives to imprisonment'. All provisions of this chapter apply equally to adult and adolescent offenders having criminal responsibility. Alternative sentences include probation and community service.

Sentences of less than five years may be suspended and replaced by probation, if the court considers that neither the offence nor the offender represents a serious danger.¹⁰⁵ Conditions, such as the participation in vocational training, employment and programmes for the treatment of substance abuse, or avoiding certain places or the company of certain persons, may be imposed.¹⁰⁶ Sentences of less than one year also may be suspended and replaced by the obligation to perform 'work in the public interest' (community service).¹⁰⁷

Sentences of probation generally are not imposed in practice, because no probation service exists. Although a law establishing such a service was drafted in 2007, at the time of the assessment mission it had not yet been presented to the Parliament.

Alternative sentence pilot

A pilot project on community service began in 2007. UNICEF hired a part-time social worker to identify NGOs, public agencies and social foundations in Tirana willing to provide opportunities for offenders to fulfil community service sentences and to develop tools for supervision. Eleven 'reception centres' with a total capacity of 40 offenders were identified.¹⁰⁸ The courts and prosecutors were informed and protocols regarding referral, supervision and evaluation were developed. During the first year (August 2007–September 2008) 26 juvenile offenders have been sentenced to community service. This represents 44 per cent of the sentences imposed by the juvenile court of Tirana. Only one suspended sentence was revoked because of poor behaviour.

¹⁰⁵ Criminal Code, Article 59.

¹⁰⁶ Ibid., Article 60.

¹⁰⁷ Ibid., Article 63. (Community service is unpaid labour that may be from 40 to 240 hours.)

¹⁰⁸ They include seven public/semi-public enterprises (e.g., maintenance of public gardens, schools and water supply), a vocational school and a foundation that provides employment to adolescents (part-time) and young adults (full-time) who are disabled, orphaned or at risk.

One of the cooperating institutions is a vocational school that provides training rather than an opportunity to perform unpaid labour. The pilot is, in effect, intended to demonstrate the value of probation as well as community service as such. Plans for a future probation department anticipate that the service would supervise the implementation of sentences to community service, as well as probation accompanied by conditions such as participation in training or employment.

The assessment team visited two of the cooperating institutions, the vocational school and a foundation.¹⁰⁹ Both provide very high quality services to their primary beneficiaries, and are highly committed to offering a 'second chance' to offenders referred to them. The vocational school does not charge a fee for the courses provided to offenders referred there as an alternative sentence and otherwise treats them like any other student, keeping their status confidential.

Parole

Parole is recognized by chapter VII of the Criminal Code. Prisoners are eligible for parole after a portion of their sentence, if their conduct indicates that the "educational aim of the sentence has been achieved."¹¹⁰ The portion that must be served is one half of the sentences for a misdemeanour, two thirds of the sentences of less than five years for a crime, and three quarters of the sentences of more than five years. Recidivists are not eligible for parole.¹¹¹ The Criminal Code makes no provision for the supervision of prisoners on parole. This article applies equally to adults and adolescents. Information on the number of juvenile prisoners who benefit from parole is not available.

Parole is granted in practice, although there is no service having responsibility for supervising and assisting paroled prisoners.

¹⁰⁹ Don Bosco Vocational Training Centre and Youth Albania Professional Services, respectively.

¹¹⁰ Criminal Code, Article 64.

¹¹¹ Unless they are convicted of a crime of negligence.

PART III. UNICEF's Support to Juvenile Justice Reform

1) Strategy

The programme document contains a frank and objective assessment of the situation of juvenile suspects, detainees and offenders, which is all the more impressive because it was drafted prior to the situation analysis prepared by the UNICEF consultant in 2004. This is no doubt due to the interest, knowledge and capacity of civil society.

The programme design reflects a comprehensive approach: the proposal submitted by UNICEF to the Economic Commission in 2003 states, "All components of a child-centred juvenile justice system need to be developed in coordination."¹¹² The importance of establishing a national strategy also was recognized: "The absence of a strategy makes it difficult to plan and coordinate programmes and to support the legislative review process."¹¹³

The four components and eight 'expected impacts' of the programme are identified as follows:

Area 1: Advocacy for legislation and policy development

- By 2006, comprehensive juvenile justice policy[,] legislation and bylaws are adopted by the Government of Albania and reflect international standards and Albania's aspirations to join the European Union
- By 2008, a juvenile justice act/children's code is drafted

Area 2: Institutional capacity-building and Alternative Measures Programme

- By 2007, a juvenile justice system reflecting international standards and an Alternative Measures Programme are in place and functioning
- By 2008, juvenile justice professionals know how to handle cases of juveniles in conflict with the law using AMP [alternative measures] diversion and restorative justice

Area 3: Protection and reintegration of children deprived of their liberty

- Prison and pre-detention [sic] staff are knowledgeable on case management of children detained and sentenced
- Children in conflict with the law are legally protected, realize their right to education and learn life and vocational skills to aid their full reintegration into society

Area 4: Prevention of juvenile delinquency

- Community models to prevent juvenile delinquency are established
- Schools teach peaceful conflict resolution, and peer counselling and mediation programmes are established to protect children at risk.¹¹⁴

The activities listed are too numerous to describe here.

The programme is balanced and addresses most significant aspects of juvenile justice: prevention; contact between juveniles and the police; pretrial detention; diversion; prosecution and trial;

¹¹² 'On the Rights Track', Grant Application Form [sic], 2003, p. 5.

¹¹³ Ibid.

¹¹⁴ Ibid., p. 18.

sentencing and rehabilitation.¹¹⁵ One omission is the recognition of the need to strengthen accountability mechanisms. Although the programme document recognizes the existence of problems, such as physical and psychological abuse by police and delays in legal proceedings, there seems to have been a presumption that they would be resolved by training and the transfer of responsibility for detention facilities from one Ministry to another. These measures have had a positive impact, but experience shows that they need to be backed up by stronger mechanisms to hold accountable individuals who violate rights, whether by deed or neglect.

Another omission concerns secondary prevention. The programme envisages prevention activities in schools and communities but, although it admits that social pressures on families and weakened social protection are factors contributing to the increase of offending, it did not specifically recognize the need for secondary prevention programmes that target children whose behaviour and circumstances indicate a high risk of involvement in criminal activities.

A third weakness is that, although the programme mentions the abolition of closed schools for underage offenders, it did not acknowledge the need for assistance to these children to overcome the problems that have led them into criminal behaviour.

A fourth weakness is that data collection and analysis – although it has now become part of the programme – was not identified as an integral part of the reform process.

Since the recent EC Monitoring Report does not specifically assess progress towards the eight goals, it may be appropriate to comment briefly on the progress made thus far.

Insofar as law reform is concerned, the ‘package of legislative reforms’, which the programme documentation refers to as already prepared in 2003, was not adopted as a package, although some laws concerning juvenile offenders have been amended, as indicated above. There is no national policy document on juvenile justice and no consensus amongst governmental counterparts on the need for a comprehensive law on juvenile justice. While there does appear to be general recognition of the value of a comprehensive law on children, which could include a section or chapter on juvenile justice, the process of drafting such a law has not begun.

Although much progress has been made, the goal of having a juvenile justice system compatible with international standards has not yet been fully met. District courts have specialized sections and a specialized police unit. Juveniles in pretrial detention or serving sentences in the two facilities having the largest number of juvenile detainees and offenders benefit from programmes and treatment that take into account their age, their needs as well as their rights.¹¹⁶ Judges, prosecutors and the police have received training in diversion, mediation and alternative sentences, but the availability of diversion, mediation and community service remains limited at the present time, and some professionals are more committed to their use than others.

The senior and middle-level staff of the Prison Department responsible for units where juveniles are detained or imprisoned are committed to protecting the rights of children. The juveniles detained or imprisoned in such facilities have access to education and psychosocial assistance, although convicted juveniles (who are few in number) do not benefit from a rehabilitation programme as such.

¹¹⁵ This is clearer when the “expected output[s],” some of which are broad and somewhat vague, are read together with the more detailed list of planned activities.

¹¹⁶ Almost half of all juvenile detainees and prisoners are confined in these two facilities.

Insofar as delinquency prevention, the fourth area, is concerned, mediation and peaceful conflict resolution have been introduced in public schools on a pilot basis. Community-based primary prevention projects have also been piloted, although not as part of this programme.

In conclusion, despite substantial progress towards meeting these goals, much remains to be done. For example:

- acceptable time limits for the adjudication of accused juveniles and for detention prior to and during adjudication have not been set;
- the population of the main detention facility for juveniles is within capacity, but this is not the case of all such facilities;
- acceptable limits of contact between juvenile and adult detainees and prisoners have not been defined; while in some facilities contact has been eliminated, in others an unacceptable degree of contact still exists;
- only specialized judges and prosecutors handle cases of accused juveniles at the trial level, but there is no specialization at the appellate level;
- although physical abuse appears to have been eliminated in detention facilities and in the juvenile section of the prison, effective mechanisms for receiving complaints from juvenile detainees and prisoners have not been established.

Some of the key presumptions on which the programme was based were accurate: responsibility for detention facilities and prisons was transferred from the Ministry of Interior to the Ministry of Justice, and special sections of trial courts for the trial of juveniles were established. The main presumption that turned out to be unfounded was that a legislative package concerning juvenile offenders would be adopted.

Progress during the first half of the programme period was slow because the justice sector in general has been and continues to be turbulent and dynamic. The scenario accompanying its development has been full of unforeseen events, crises and surprises.¹¹⁷

UNICEF's response to this situation, in particular to the replacement of two Ministers of Justice, was appropriate. The responsible staff member has shown patience, persistence and sensitivity to the political environment, investing the time necessary to follow developments continuously, bring new counterparts up to speed and maintain momentum without trying to force the pace.

The duration of the programme has been extended by six months. The prospects for achieving most of the unfulfilled goals during the remaining 15 months are good.

2) Planning

A Logical Framework (logframe) was developed. In addition to the objectives, results and activities set forth in the basic programme document, it identifies 'indicators' to be used in determining whether the objectives and results have been attained and 'sources of verification' to be used in obtaining the information required by the indicators. This is positive, although some of the indicators are not as relevant or appropriate as they might be.

It may be useful to mention some of the problems concerning the indicators used in the logframe, not only to identify lessons that may help improve future juvenile justice projects, but also to interpret some of the existing programme indicators in ways that make them more concrete and relevant.

¹¹⁷ European Commission, Monitoring Report, Establishment of Preventive and Restorative Juvenile Justice System in Albania, MR-40954.02-22/04/08, 2008, Annex, Part 4.2.

In the second area, 'Institutional capacity-building and Alternative Measures Programme', indicators corresponding to the objective are defined as 'number/percentage change in juvenile cases' and 'number/percentage change in juveniles incarcerated'. There are three additional indicators for the results: 'number of cases with penal sentencing', 'percentage of cases completed within time limits' and 'number/percentage of juveniles sanctioned without being deprived of liberty'. The first problem is that both indicators that refer to deprivation of liberty are worded so as to apply to sentenced offenders, not those awaiting trial. An indicator specifically referring to reduction of pretrial detention should have been incorporated into the logframe, especially considering that the vast majority of juveniles deprived of liberty (more than 80 per cent at present) are in pretrial detention facilities and there is ample evidence that such detention is used without sufficient justification. Diversion – tacitly alluded to by the indicator on change in the number of cases, i.e., cases of juveniles prosecuted – should, in principle, reduce the number of accused juveniles deprived of liberty while awaiting trial, but this is not the main aim of diversion nor the most direct way of addressing the practice of inappropriate detention of accused persons.

The inclusion of an indicator on delays in investigating and prosecuting cases involving juveniles is a good idea because delays in adjudication have been a major problem. Albanian legislation does not, however, establish any limit to the duration of trials unless the accused is detained.¹¹⁸

The indicator 'number/percentage of children in detention' is used again for the objective of area three of the programme, 'Protection and reintegration of children deprived of their liberty'. While the indicator is important for some other purposes, it is not relevant to the objective of ensuring that "children deprived of liberty enjoy protection that aids their reintegration into society."

In this area, too, there are three indicators for the results: 'prison conditions', 'number of children receiving vocational training' and 'number of children fully integrated'. Some reference to the compatibility of prison conditions with international standards might be an appropriate indicator for the objective mentioned above (i.e., ensuring the protection of children confined in correctional facilities), although here, too, the question arises of whether the reference to prison is deliberate or whether the aim includes the improvement of conditions in the pretrial detention facilities that hold most juveniles deprived of liberty.

The indicator on vocational training seems unnecessarily narrow: basic and remedial education and psychosocial services are no less important and could easily have been mentioned. And the indicator could and should have referred expressly to access by *all* juvenile prisoners to such services, or at least basic/remedial education and psychosocial services.¹¹⁹

One of the results in this area concerns the provision of legal protection, education, life skills and vocational skills in order to help juvenile offenders to reintegrate fully into society. Yet adopting full integration into society as the indicator for this result seems both ambitious – even the best programmes for offenders are only partially successful – and difficult to measure.

There are five indicators for the fourth area (prevention): 'number/percentage of juveniles/children in conflict with the law'; 'number/percentage of cases involving children'; 'percentage of population reached through national awareness campaigns'; 'number of teachers, parents and students knowledgeable about and involved in prevention programmes'; and 'number/percentage of children

¹¹⁸ Furthermore, the limit applicable to detained defendants does not distinguish between adults and juveniles, and is much longer than the six-month limit considered appropriate by the Committee on the Rights of the Child. (See Children's rights in juvenile justice, General Comment No. 10, CRC/C/GC/10, para. 83.)

¹¹⁹ It may be appropriate to provide vocational training only to sentenced juveniles.

in conflict with the law in the three selected municipalities involved in the [alternative measures] community project’.

The ambiguity as to whether indicators should refer to children or juveniles is significant, assuming that the term ‘children’ refers to those under age 14, who are too young to be prosecuted. A significant number of offences, especially property offences, are committed by children under age 14, and the logframe should have clearly indicated whether the prevention component is intended to reach this sector.

There are some terminological and conceptual problems concerning this area. The alternative measures referred to in one indicator consist of victim-offender mediation offered as a diversion. Although the term ‘alternative’ can be used to refer to alternatives to deprivation of liberty, including pretrial detention, it refers mainly to alternative sentences. Diversion to a mediation service is not strictly speaking an alternative to pretrial detention; the term ‘alternative’ to detention implies that detention is a possibility (i.e., that a case is pending). Similarly, the term ‘prevention’ does encompass tertiary prevention (i.e., the prevention of repeat offending by those who have already become involved in offending). Yet it seems odd to incorporate a diversion-through-mediation project in the prevention component because, although there is some evidence of the preventive effect of victim-offender mediation, prevention is neither the main aim of diversion nor of mediation.

One final comment on these indicators is that the percentage of population reached through national awareness campaigns has little value as an indicator of any of the results mentioned.

The sources of verification identified in the logframe are appropriate. The various studies prepared by NGOs, with UNICEF’s support, provide valuable information, which is useful as a baseline for measuring progress made in many important areas. What is missing, in the sources identified, is reference to the comprehensive interministerial database being developed by the National Institute of Statistics with the support of UNICEF, which should be the authoritative source of data on indicators such as the number of cases of juveniles prosecuted, the number of juveniles given custodial and non-custodial sentences, the percentage of cases handled within applicable time limits, and many other indicators.

Another main planning tool used consists of annual meetings designed to review progress achieved during the preceding year and to make review plans for the year to come. Each counterpart (governmental and NGO) is expected to present a brief written report on their activities and plans for the coming year.

3) Management

UNICEF’s support to the juvenile justice reform is managed by the Social Services Officer, who estimates that 60 to 70 per cent of his time is spent on this project.

The programme budget, as indicated above, is US\$ 2,767,000. Approximately US\$ 479,000 was spent during the first year, US\$ 593,000 during the second year and US\$ 850,000 is allocated to the third year. This leaves some US\$ 845,000 for the one-year extension that has been agreed to. The resources available have been invested wisely, given existing opportunities in the various project components.

Counterparts, both governmental and non-governmental, have a positive opinion of the way the programme has been managed. This view is shared by the two donors.

The main difficulty, which has prevented some of the programme targets from being met on schedule, has been changes in key personnel in the Ministry of Justice. As indicated above, UNICEF's reaction to this problem – patient advocacy with new personnel – has been sound. Whether or not it will suffice to meet all the key goals before the end of the programme – especially the adoption of a coherent policy and new legislation – is difficult to predict. Support for a more dynamic interministerial, intersectoral coordination mechanism might have helped surmount this difficulty.

4) Evaluation

As the European Commission finances part of the programme, it sponsors an independent annual evaluation. The second Monitoring Report, prepared in April 2008, concluded that the implementation of the programme was 'good'.

At the suggestion of UNICEF, some of its NGO counterparts have evaluated the impact of their activities through surveys of the beneficiaries.¹²⁰

The present assessment is also, of course, another form of evaluation of the programme as a whole.

In general, programme evaluation has been adequate, although it would be useful to obtain the results of the training and school-based prevention activities.

¹²⁰ The Centre of Integrated Legal Services and Practices interviewed pretrial detainees in prison 313 about the legal and psychological services provided, and the Citizen's Advocacy Office interviewed a group of judges and prosecutors who had participated in awareness activities. (The latter is not limited to the activities of the Citizen's Advocacy Office, but focuses mainly on the reform process.)

PART IV. Conclusions and Recommendations

POSITIVE DEVELOPMENTS

1. In several areas, important progress has been made in bringing Albanian law and practice into conformity with international standards and best practices. This is a dynamic process, which is continuing. Much remains to be done.
2. The establishment of specialized sections in district courts is one of the most important developments. Judges assigned to these sections are becoming more attuned to the needs and characteristics of juvenile offenders, and are applying the law in a way that is in greater harmony with international standards on child rights.
3. The creation of a specialized police unit dedicated to crimes involving children and domestic violence is a positive development.
4. The establishment, in six districts, of 'minors' sections' in the office of the Prosecutor, is a welcome development, which is having a positive effect on diversion, pretrial detention and sentencing.
5. Positive developments concerning accused and sentenced juveniles in prison and pretrial detention facilities include the renovation of some facilities and the replacement of others by new facilities; the elimination of overcrowding in some facilities; greater access of both convicted prisoners and detainees to education, social workers, psychologists and religious counsellors; and the positive attitudes of directors of such facilities towards the rights of juveniles in their care and custody.
6. The pilot project on 'work in the public interest' is a positive development, not only because of the positive experiences of the offenders who have participated in such placements but also because the project is demonstrating to juvenile justice professionals, legislators and policy makers the value of this kind of alternative sentence.
7. Insofar as diversion is concerned, the large number of cases involving juveniles (245) resolved through victim-offender mediation adjudication during the last two years is a very positive development, which can be considered as a 'good practice'.
8. The commitment of the Ministry of Justice to the establishment of a probation service – whose functions will include, in addition to supervision of juveniles given alternative sentences, preparation of reports on the background of accused juveniles, supervision of those not in detention, preparation of prisoners for release, supervision of convicted offenders released on parole and assistance to released prisoners – is a promising development.
9. The contribution made by civil society (e.g., the Albanian Helsinki Committee, the Legal Clinic for Minors, the Children's Human Rights Centre, the Citizen's Advocacy Office and the Albanian Foundation for Conflict Resolution and Reconciliation of Disputes) in terms of services provided to juveniles and participation in reform as well as the receptiveness of authorities to their contribution are also very positive aspects of the prevailing situation in Albania.
10. The upgrading of data collection systems of the courts and police, which provide disaggregated data on juveniles, is a positive step towards the development of a database needed in order to provide the evidence that will help make sound decisions in the ongoing process of developing

a comprehensive juvenile justice system, and will be useful in monitoring the functioning of such a system as it becomes operational.

11. UNICEF has played a very positive role engaging in advocacy vis-à-vis public authorities, providing training, facilitating access to information and expertise, supporting civil society, promoting pilot projects and encouraging donors to fund projects having an impact on juvenile justice.
12. The project introducing mediation in schools is a welcome initiative, although the results have not been evaluated.

CHALLENGES

1. No national plan or policy on juvenile justice exists.
2. Coordination on the national level is closely linked to the 'On the Rights Track Programme' and, in general, to the activities of the donor community. There is no permanent national mechanism or forum for coordination, monitoring and making recommendations regarding policy concerning juvenile justice.
3. There is no mechanism to centralize data on juvenile justice collected by different sectors (the police, prosecutors, courts and Prison Department). Inconsistencies in the data collected limit their usefulness for planning and the development of policy and strategies. Data on important indicators, such as the duration of pretrial detention and the number of adult prisoners sentenced as juveniles, are not available.
4. Legal provisions applicable to juvenile offenders are incorporated into various laws applicable mainly to adults, which contain some provisions inconsistent with internationally recognized rights of children and do not take sufficiently into account basic principles concerning juvenile justice contained in international law. (Examples include: under Article 339 of the Code of Criminal Procedure trials of juvenile offenders are held in public; under the Criminal Code collusion in the commission of a crime is an aggravating factor, whereas in the case of juvenile offenders it often should be considered as a mitigating factor; the maximum length of pretrial detention is three years, when the Committee on the Rights of the Child considers that trials of juvenile offenders should not exceed six months;¹²¹ there is no limit to the duration of investigation and trial if the suspect/accused is not deprived of liberty; diversion is practised pursuant to articles of the Code of Criminal Procedure that do not cover offences of the kind being diverted; Articles 230 and 240 of the Code of Criminal Procedure on security measures for accused persons do not address the social circumstances of juvenile offenders; legislation on the treatment of prisoners authorizes the use of 'isolation' as a disciplinary measure, which is prohibited by Rule 67 of the United Nations Rules on the Protection of Juveniles Deprived of their Liberty.)
5. Presently, diversion is used only for crimes against the person and, since mediation is the only form of diversion being used, cases may not be diverted without the victim's agreement. Diversion, by definition, requires the consent of the offender, but not the victim, and there is a public interest in diverting minor cases without prosecution. Diversion reduces the risk of stigmatizing the offender, which can contribute to continued and more serious offending, and prevents unnecessary increases of the courts' and prosecutors' caseload as well as the cost involved in the administration of justice.

¹²¹ Children's rights in juvenile justice, General Comment No. 10, CRC/C/GC/10, para. 83.

6. There are no programmes to assist children under age 14 who commit an offence, or children aged 14–15 years who commit a minor offence. Children who become involved in offending have a right to appropriate assistance, even if they are too young to be prosecuted as juvenile offenders. This is part of the child’s right to harmonious spiritual, moral and social development, recognized by Articles 6, 27, 29 and 32 of the Convention on the Rights of the Child.
7. There are no community-based ‘secondary’ prevention projects to assist children who are at high risk of offending and their families. Such assistance is also part of the child’s right to healthy development, mentioned above.
8. Although the law applicable to juvenile offenders has been humanized, the underlying approach is still essentially punitive. The best interests of the child are taken into account, but are not a primary consideration. The maximum length of sentences, for example, exceeds the length of time required for rehabilitation. Eligibility for suspension of sentences of imprisonment depends on the length of the sentence, rather than the circumstances of the offence. Children who commit serious crimes have criminal responsibility at an earlier age than those who commit minor offences. A justice system that treats children with leniency is better than one that treats them like adults, but is not the same as a juvenile justice system designed primarily to protect the best interests of the child, including his/her right to healthy moral and social development. The primary concern should not be the nature of the crime, but helping the child overcome the factors that led to the illegal conduct. In this sense, there is no contradiction between the interests of the child and those of society.
9. The continued use of pretrial detention for non-violent offenders, first offenders and, in general, for juveniles who pose little risk to society and little risk of evading justice, remains an important challenge. The related problem of long delays in investigation and trial is another challenge that has not yet been faced. Whether these problems are due mainly to disinterest and neglect or to the unspoken presumption that those in detention will eventually be sentenced, is unclear. But, as the Committee on the Rights of the Child has recalled, allowing children to “languish in pretrial detention for months or even years... constitutes a grave violation of article 37 (b) of [the] Convention on the Rights of the Child” and the presumption that children in detention are guilty as well as the tacit acceptance of pretrial detention as a form of punishment that violates the presumption of innocence, one of the most basic rights of the individual.¹²²

RECOMMENDATIONS

1. A policy on juvenile justice should be developed jointly by all concerned sectors, including civil society.
2. A comprehensive law on juvenile justice should be drafted and adopted or, in the alternative, a Children’s Code containing a section on juvenile justice and a package of amendments of other relevant legislation.
3. A permanent interministerial, intersectoral body should be established with a broad mandate to contribute to the development of policy, to coordinate the activities of different sectors dealing with juvenile justice and to monitor trends in offending and the implementation of relevant laws, policies and programmes. Such a body should meet at least twice a year. Efforts to strengthen an interministerial mechanism for the consolidation of data on offending and the treatment of juvenile offenders should continue, in order to provide evidence for policy-making and monitoring.

¹²² Ibid., para. 80.

4. A probation (and *parole*) service should be established.
5. The feasibility of consolidating and expanding the specialized justice system for juvenile offenders should be considered, possibly by combining specialized juvenile courts in districts having the largest number of juvenile offenders with specialized courts in other districts with broader competence over other matters concerning children.
6. Priority should be given to eliminating delays in investigation and adjudication of cases involving juveniles, to reducing pretrial detention (especially for non-violent offenders, first offenders and those who attend school and have good ties with their family) and to increasing the use of diversion in appropriate cases.
7. Research on offending by children without criminal responsibility should be undertaken, in order to identify most appropriate forms of prevention and assistance, taking into account that programmes addressing the needs of the child in the context of his/her family should be the first resort.
8. The need for community-based secondary prevention programmes should be assessed and consideration should be given to the development of a pilot project.
9. Draft legislation on Free Legal Services should be adopted.
10. Services guaranteeing the full and effective participation of psychologists in cases involving juvenile offenders should be established.
11. The training of all personnel (police, prosecutors, judges, correctional officers, mediators) in direct contact with juvenile offenders and those having supervisory responsibilities regarding the treatment of juvenile offenders should be institutionalized; qualifications for exercising these functions and codes of professional conduct where they do not yet exist should be established and mechanisms for enforcing them put into place.
12. UNICEF should continue to support the development of a juvenile justice system that complies with the Convention on the Rights of the Child and with related European and international standards, such as the Beijing Rules on the Administration of Juvenile Justice, the Riyadh Guidelines on the Prevention of Juvenile Delinquency, the Havana Rules on the Protection of Juveniles Deprived of their Liberty, the United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters and the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

In particular, UNICEF should: continue to work on law reform, including on a Children's Code and/or juvenile justice law, facilitating the access of counterparts to information on the relevant legislation and experiences of other countries as appropriate; continue to document the results of pilot projects on diversion and alternative sentences and to support the institutionalization of diversion and the appropriate use of alternative sentences; promote the development of indicators, better management and use of data concerning offending and the treatment of juvenile offenders; provide interested counterparts with information regarding secondary prevention in other countries and support one or more pilot projects; and facilitate and contribute to the debate on underage offenders, providing information on non-residential programmes in other countries.

Annex 1: Data collection and analysis

National data collection system and international and regional indicators

Unfortunately, it was not possible to meet with the National Institute of Statistics' (INSTAT) staff member responsible for this project. The following comments are, therefore, based on a 2006 paper by the Ministry of Justice and INSTAT, TransMONEE data, data published by NGOs and unpublished data provided to the assessment mission by the authorities, in particular the Prison Department. The indicators and corresponding observations of the assessment team are as follows:

(1) Crimes committed by juvenile offenders

This indicator is defined by the TransMONEE matrix¹²³ as “the number of crimes committed by persons aged 14–17,” disaggregated by the kind of crime, i.e., violent, property, or other. According to the 2006 Ministry of Justice-INSTAT paper, the Criminal Code distinguishes between crimes against the person, crimes against property/economy crimes and crimes against the State/public order. Crimes against the person are not necessarily crimes of violence, in the usual sense of the term: they include house-breaking (without theft), prostitution and pornography. Crimes against property include destruction of property, as well as theft. Crimes against the State/public order include drug offences, weapons' possession and traffic offences.

Given the relatively limited number of offences committed by juveniles in Albania, data on offences are often disaggregated in detail in studies on the subject.¹²⁴

Data usually distinguish between crimes and misdemeanours (often misleadingly referred to in English language documents concerning Albania as 'contraventions'). Offences committed by children under age 14, who do not have criminal responsibility, are recorded by the State Police and cited in studies on the subject.¹²⁵ One study indicates that offences committed by children under age 14 accounted for 19 per cent of all offences committed by persons under age 18 registered by the police.¹²⁶ Another study indicates that more than one third of the property crimes committed by persons under age 18 were committed by children under age 14.¹²⁷

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

The indicator is defined by the TransMONEE matrix as “the number of children taken into police custody (following arrest on suspicion of having committed an offence)” during a 12-month period. In Albania, the police may hold any person, child or adult, for 12 hours, or 48 hours, if suspected of an offence.

The Ministry of Justice-INSTAT paper indicates that the Ministry of Interior compiles data from police stations on persons charged with an offence, which are disaggregated by age.¹²⁸ This presumably includes some persons charged without being taken into custody and does not include persons taken into custody without being charged. Data on persons taken into custody as such are not compiled.

¹²³ See *Lost in Juvenile Justice*, Appendix 2.

¹²⁴ See, for example, *Juvenile Delinquency in Albania*, pp. 11–12, 17; *Juvenile Justice in Albania*, pp. 90–97.

¹²⁵ See, for example, *Juvenile Delinquency in Albania*, p. 11.

¹²⁶ *Juvenile Delinquency in Albania*, p. 30, covering the period 2003–2006.

¹²⁷ *Ibid.*, p. 97 (223 of 622, in 2006). In contrast, they committed only 16 per cent of crimes against the person.

¹²⁸ The age cohorts are: under 14, 14–17 and 18 or older.

(3) Children in detention

This indicator is defined by the TransMONEE matrix as “the total number of children/juveniles in conflict with the law in closed correctional/punitive institutions or open/semi-open institutions at the end of the year.”

In Albania, there are no open or semi-open facilities for juvenile offenders or residential facilities of any kind for underage offenders. Juveniles serving sentences are confined in the juvenile section of a prison, and those awaiting trial, sentencing or the outcome of an appeal are detained in one of six pre-detention facilities. These data are not published regularly, but can be obtained on request. The Prison Department provided the assessment team with detailed information on the number of persons aged 14–18 years in prison and pretrial detention facilities. The assessment team did not find any data on juveniles in police custody (which, as indicated above, may not exceed 48 hours).

Some published data indicate that the number of juveniles deprived of liberty in January is generally significantly higher than the number deprived of liberty in December, especially in pretrial detention.¹²⁹ The explanation for this phenomenon is unknown, but it does suggest that the number of juveniles detained or imprisoned at the end of the year may not be a reliable indicator of the number of juveniles deprived of liberty during a given year.

(4) Children in pretrial detention

This indicator is defined by the TransMONEE matrix as “the number of children who are placed in pretrial detention during the year.”

Most studies on juvenile justice in Albania contain some data on this indicator as well as information on the number of juveniles in pretrial detention facilities. There is a difference between the number of children placed in pretrial detention and the number in pretrial detention facilities, because convicted juveniles remain in pretrial detention facilities while their cases are appealed. However, none of the studies reviewed disaggregate data on juveniles confined in such facilities according to the legal status of their case or the stage of proceedings.

One study containing data on two districts for the years 2003 and 2004 indicates that the percentage of accused juveniles confined prior to trial ranged from 70 to 83 per cent.¹³⁰ Another study, covering seven districts and a slightly more recent time period, found that only 40 per cent of accused juveniles were detained prior to trial.¹³¹ The discrepancies between these two figures underline the importance of systematizing the collection of data on this indicator.

(5) Duration of pretrial detention

Data on this important indicator are not compiled by official sources. One study contains some information based on court records, but calculations are approximate because judicial records do not indicate the date of arrest.¹³²

¹²⁹ *Children in Conflict with the Law in Albania*. 27 juveniles deprived of liberty in December 2000; 37 in January 2001; 20 in December 2001; 41 in January 2002; 18 in December 2002; 51 in January 2003; 27 in December 2003, 76 in January 2004; 40 in December 2004; 58 in January 2005. These data refer only to the pretrial detention facility in the capital. Data from the juvenile section of the prison show a similar trend, but less pronounced.

¹³⁰ *Juvenile Delinquency in Albania*, p. 48. (This study examined samples of 50 cases per district per year.)

¹³¹ *Observance of the Rights of Juvenile Offenders in Criminal Proceedings*, p. 19.

¹³² *Ibid.*, p. 17. (The authors concluded, “For about 38 adjudications [of 246 in which the accused was in detention] detention lasted 1–5 months, in fewer trials 6–10 months and in several cases for more than a year.”)

(6) Child deaths in detention

Information on this indicator is not compiled regularly.

(7) Separation from adults

This indicator is defined by the UNODC-UNICEF Manual¹³³ as “the percentage of children in detention not wholly separated” from adult prisoners.

These data are not compiled systematically, although it would be easy to make the calculation based on the number of juvenile boys and girls and their place of detention/imprisonment. At the present time, only two facilities offer adequate separation of adult and juvenile prisoners, and only for male juveniles. Of 72 juveniles in the custody of the Prison Department at the time of the assessment, 31 were confined in facilities meeting this standard of separation.

(8) Contact with parents and family

This indicator is defined by the UNODC-UNICEF Manual as “the percentage of children in detention who have been visited by, or visited, parents or guardian or an adult family member during the last three months.” Data of this kind are not collected systematically.

(9) Convictions

This indicator is defined by the TransMONEE matrix as “the number of juveniles convicted during the year,” disaggregated by sex, age and type of crime, i.e., violent, property, or other.

Data on the number of convictions are found in the 2006 Ministry of Justice-INSTAT study. Data are disaggregated by crime/misdemeanour, but not by any other criteria:

| | Crime | Misdemeanour |
|------|-------|--------------|
| 2005 | 258 | 31 |
| 2004 | 313 | 7 |
| 2003 | 259 | 49 |
| 2002 | 251 | 23 |

Since juveniles aged 14–15 years who commit misdemeanours do not have criminal responsibility, although they can be tried and the court may impose educational measures, data on convictions do not include judicial decisions in cases of juveniles aged 14 or 15 years found to have participated in misdemeanours. Data on convictions disaggregated by crime/misdemeanour indicate that convictions for misdemeanours varied from 7 to 49 per year, or from 2 per cent to 16 per cent of all convictions of juveniles during the years 2002–2005.¹³⁴

Some studies include data from certain courts disaggregated by offence and sex.¹³⁵

¹³³ United Nations, *Manual for the Measurement of Juvenile Justice Indicators*, Office on Drugs and Crime (UNODC) and UNICEF, New York, 2007.

¹³⁴ *Children in Conflict with the Law in Albania*, p. 13 (covering 2002–2005).

¹³⁵ *Juvenile Delinquency in Albania*, pp. 47–48 (Tirana, 2002, 2004 and 2006).

Data cited in some studies also mention the number of cases prosecuted that did not result in a conviction. One study concerning the Tirana District indicates that only 3 per cent of all cases disposed of over a period of three years resulted in dismissal or acquittal.¹³⁶

(10) Custodial sentences

This indicator is defined by the UNODC-UNICEF Manual as “the percentage of sentenced children who receive a custodial sentence,” i.e., a sentence of confinement to an open, semi-open or closed facility. The TransMONEE matrix limits this to children aged 14–18 years.

The TransMONEE matrix requests that the data be disaggregated by the ‘duration of imprisonment’ and specifies six categories for this purpose: up to 1 year; 1–2 years; 2–3 years; 3–4 years; 4–5 years; and more than 5 years.¹³⁷ The UNODC-UNICEF Manual uses criteria for disaggregation that are somewhat different and includes four categories for sentences of less than one year. Neither the UNODC-UNICEF nor the TransMONEE indicators reveal the number of juveniles given the maximum sentence allowed by law: 10 years.¹³⁸

Published studies contain some data on this indicator, although none include comprehensive data covering all districts. They also incorporate data on the duration of sentences which, in some cases, are disaggregated by the crime and prior record of the offender. One study indicates that, of 59 sentences of imprisonment imposed on juveniles by the Tirana court over a three-year period, 58 were sentences of less than two years. One sentence was in the category 2–5 years, and none for the maximum sentence. Interestingly, the two juveniles convicted of murder by this court during these years both received sentences of less than two years.

Another study contains interesting data on the sentences requested by prosecutors as well as those imposed by judges. The importance of these data is underlined by the fact that the number of cases in which a sentence of prison was imposed is identical to that in which the prosecutor requested a sentence of imprisonment! However, the same study indicates that, in almost every case in which the defence lawyer requested a shorter sentence than the sentence requested by the prosecutor, such requests were granted.¹³⁹

(11) Alternative sentences

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

Data on the kinds of sentences imposed on convicted juvenile offenders can be found in recent studies, although none of them are comprehensive national data.

The most recent data are contained in the results of a 2008 focus group discussion of judges and prosecutors. They indicated that 30 per cent of the 65 sentences imposed in Shkodra District during the previous six months were sentences of imprisonment and that an estimated 10 to 20 per cent

¹³⁶ Ibid.

¹³⁷ The UNODC-UNICEF Manual uses criteria for disaggregation that are somewhat different.

¹³⁸ Sentences of more than 10 years were eliminated in 2008, as indicated above.

¹³⁹ *Observance of the Rights of Juvenile Offenders in Criminal Proceedings*, pp. 20–21 (133 out of 134 requests).

of the cases handled in Durrës concluded with sentences of imprisonment.¹⁴⁰ The same source estimated that the prosecutor requested a prison sentence in 30 per cent of the juvenile cases tried in the capitol during the previous six months, and the judge imposed such a sentence in 70 per cent of the cases in which it was requested.

One earlier study indicates that, in 2003, sentences of imprisonment were imposed in 27 of 29 convictions in Shkodra.¹⁴¹ Data from the Tirana court covering the years 2002–2006 show that non-custodial sentences were imposed in 8 per cent of convictions.¹⁴²

Another study covering seven districts found that 53 per cent of all sentences imposed on convicted juveniles during the years 2005–2006 included a term of imprisonment.¹⁴³ Fourteen per cent of the convicted juveniles were fined, and the remaining one third to other alternative sentences, presumably suspended sentences.¹⁴⁴ Only one community service sentence was imposed during the period covered by this study.¹⁴⁵

The divergent data and estimates cited in these studies underline the importance of comprehensive and accurate data.

One kind of sentence that is neither revealed by these data nor contemplated by the TransMONEE indicators is the sentence of imprisonment to the time already spent in pretrial detention. Some sources interviewed commented that such sentences are common, and may raise questions as to whether pretrial detention is in effect being used inappropriately to punish offenders before they are given a fair hearing.

(12) Pre-sentence diversion

The UNODC-UNICEF Manual defines this indicator as “the percentage of children diverted or sentenced who enter a pre-sentence diversion scheme,” adding that it is intended to measure “the number of children diverted before reaching a formal hearing.” The definition is confusing, and the Manual admits that what constitutes diversion “will need to be identified in the local context.”¹⁴⁶

The only information on diversion obtained by the assessment team was supplied by the NGO that provides mediation, the only form of diversion presently in use, in certain districts. It covers young adults aged 18–21 years as well as juveniles, and is not expressed as a percentage of the cases brought in those districts.

Since diversion is an important part of modern juvenile justice systems and reliance on diversion appears likely to increase, data on diversion should be compiled systematically.

¹⁴⁰ Ibid., pp. 22–23.

¹⁴¹ *Juvenile Justice in Albania*, pp. 55–56.

¹⁴² Ibid., p. 60.

¹⁴³ *Observance of the Rights of Juvenile Offenders in Criminal Proceedings*, p. 23.

¹⁴⁴ These are sometimes termed ‘probation’ but in reality they amount to a suspended sentence, in the absence of a probation service.

¹⁴⁵ Ibid., p. 25.

¹⁴⁶ Children who are sentenced cannot enter a pre-sentence diversion scheme; diversion before any hearing takes place would be only part of diversion, and it is unclear why the percentage of offenders diverted should be calculated with reference to the number diverted-or-sentenced, rather than the number accused or prosecuted.

(13) Aftercare

This indicator is defined as “the percentage of children released from detention receiving aftercare.”¹⁴⁷ Post-release programmes do not exist in Albania.

Other relevant data and information

Repeat offending

Data on recidivism by juvenile offenders are not compiled systematically. One study contains data on juveniles sentenced by the Tirana court, disaggregated by first offender/repeat offender. No repeat offenders were reported for any of the years covered.¹⁴⁸

Another study, covering seven districts for the year 2005 and part of 2006, found that 12 per cent of the juveniles sentenced were repeat offenders.¹⁴⁹

Children prosecuted or charged with an offence during the year

Data on this specific indicator are not cited in any of the reports consulted in the preparation of this assessment. Data on ‘criminal proceedings against juveniles’ are contained in one study, although they concern only the capital. In the absence of diversion, there should only be a slight difference between the two indicators.¹⁵⁰

The introduction of diversion presumably will increase the difference between the number charged and the number prosecuted, depending on whether diversion occurs before or after charges are placed.¹⁵¹

Disaggregation by ethnicity

The Albanian Government recognizes only three national minorities: Greeks, Macedonians and Montenegrins.¹⁵² There are no official data on the number of Roma and ‘Egyptians’.¹⁵³ Estimates from other sources vary greatly and suggest that the combined size of these minorities may be 100,000–320,000.¹⁵⁴

¹⁴⁷ There seems to be a conceptual or definitional problem with the way this indicator is defined, because aftercare programmes are generally considered important for offenders released from custodial facilities after serving a sentence, not those released from pretrial detention because, for example, they are not convicted or are given a non-custodial sentence.

¹⁴⁸ *Juvenile Delinquency in Albania*, pp. 47–48 (covering years 2002, 2004 and 2006).

¹⁴⁹ *Observance of the Rights of Juvenile Offenders in Criminal Proceedings*, p. 15.

¹⁵⁰ The difference between the two would correspond to cases in which an accused child flees or escapes before trial, or in which the prosecutor decides to withdraw charge for reasons such as the discovery of new evidence.

¹⁵¹ Diversion procedures are not defined by law and no data have been published on the number of cases diverted before and after charges are placed, although available information does indicate that most cases are diverted by the police rather than the prosecutor.

¹⁵² *Core document forming part of the report of States parties*, para. 4.

¹⁵³ Sometimes considered a Roma subgroup, Egyptians maintain that they are a separate population whose origins are in Egypt. Some claim that they are the descendants of slaves brought to the Balkans during the Ottoman Empire.

¹⁵⁴ Roma and Egyptians in Albania: From Social Exclusion to Social Inclusion: Summary of the World Bank Needs Assessment Study on Roma and Egyptians in Albania, available at www.errc.org/cikk.php?cikk=2285, accessed 20 May 2009.

Data on offending and criminal justice are not disaggregated by nationality or ethnicity. NGOs disagree as to whether Roma and 'Egyptian' children are overrepresented in the population of offenders, detainees and prisoners.¹⁵⁵ Information from a court in northern Albania estimated that 5 to 10 per cent of juvenile offenders are Roma, which if representative would be disproportionate to the size of the Roma population in Albania (less than 1 per cent of the total population).¹⁵⁶

¹⁵⁵ Compare *Juvenile Delinquency in Albania*, p. 37, which states that 'many' apprehended juveniles are of Roma or Egyptian origin with *Report on Human Rights in Albania (1997–2003)*, Albanian Helsinki Committee, Tirana, 2006, which states, "Criminality level among the Roma minority in Tirana is very low," p. 121.

¹⁵⁶ Note on the results of a focus group of judges and prosecutors organized by the Citizen's Advocacy Office in 2008.

Annex 2: List of persons interviewed

Government

- V. Gumi, General Director of Codification, Ministry of Justice
- L. Pernaska, Chair, Parliamentary Subcommittee on Children and Women
- K. Spahiu, Deputy Chairman, High Council of Justice
- A. Broci, Judge, Minor's Section, Tirana District Court
- A. Fullani, Director, School of Magistrates
- K. Hysenaj, Prosecutor, Minor's Section, Tirana
- A. Premci, Director, State Police
- A. Gjurgji, Head, Child Protection and Domestic Violence Unit, State Police
- J. Vreka, Director, Police Academy
- L. Kodra, Deputy Director, Prison Department
- H. Mereçoza, Director, Vaqarr prison
- F. Sufaj, Deputy Director, pretrial detention centre 'Jordan Misja'
- A. Duke, Director, Durrës pretrial detention centre
- L. Sado, National Institute of Statistics
- V. Nano, Head of Statistics Department, Ministry of Interior
- G. Tushi, Director of Inspection, State Social Services

Civil society

- H. Kotherja, Executive Director, Centre of Integrated Legal Services and Practices
- R. Abdiu, Head, Legal Clinic for Minors
- K. Gega, Forensic Psychiatrist, Legal Clinic for Minors
- A. Hazizaj, Director, Children's Human Rights Centre/Defence for Children International Albania
- E. Papavangjeli, Programme Manager, Albanian Helsinki Committee
- Fr. M. Grun, Director, Don Bosco Vocational Training Centre
- R. Gjoka, Executive Director, Albanian Foundation for Conflict Resolution and Reconciliation of Disputes
- A. Tafani, Coordinator, Victim-Offender Mediation (VOM) programme
- M. Bala, Coordinator, Peer Mediation programme
- M. Papa, Director, Citizen's Advocacy Office/Transparency International
- A. Shamia, Director, Youth Albania Professional Services

International organizations and donors

R. Mono, Deputy Head of Mission, Embassy of Sweden

L. Gjermani, Programme Officer, Embassy of Sweden, Section for Cooperation with Albania

R. Miklau, Head, European Assistance Mission to the Albanian Justice System (EURALIUS)

I. van Neiewkerk, Legal officer, Organization for Security and Co-operation in Europe (OSCE)

L. Ujkaj, Manager, European Commission, Justice and Home Affairs Programme

UNICEF

C. Auer, UNICEF Representative in Albania

L. Shestani, Social Services Programme Officer

A. Deda, Consultant, Community Service Orders pilot project

A. Meraj, Child Protection Officer

Other

Six detained juveniles, Durrës pretrial detention centre

Annex 3: List of documents consulted

Legislation

Criminal Code of the Republic of Albania, Law No. 7895 of 27 January 1995 (extracts)

Code of Criminal Procedure of the Republic of Albania, Law No. 7905 of 21 March 1995 (translation)

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Committee on the Rights of the Child, Consideration of reports submitted by States parties under Article 44 of the Convention, Concluding Observations: Albania, CRC/C/15/Add.249, 31 March 2005

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NGO documents

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Hysi, V. and Saliu, E., *Observance of the Rights of Juvenile Offenders in Criminal Proceedings*, Albanian Helsinki Committee, Tirana, 2007

Albanian Helsinki Committee, *Report on Human Rights in Albania (1997-2003)*, Tirana, 2006

Arbi, M., et al., *Pre-Detention [sic] and Prison Conditions in Albania*, Albanian Helsinki Committee, Tirana, 2005

Hysi, V. and Shoshi, K., *Juvenile Justice System in Albania*, Albanian Helsinki Committee, Tirana, 2005

Hysi, V., ed., *The Alternatives of Punishment as One of the Ways of Improving Human Rights Situation in Albania and Better Integration of the Offenders into the Society [Report of a Seminar]*, Albanian Helsinki Committee, Tirana, 2002

Haxhiymeri, E., *Juvenile Delinquency in Albania*, Children's Human Rights Centre of Albania, Tirana, 2007

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