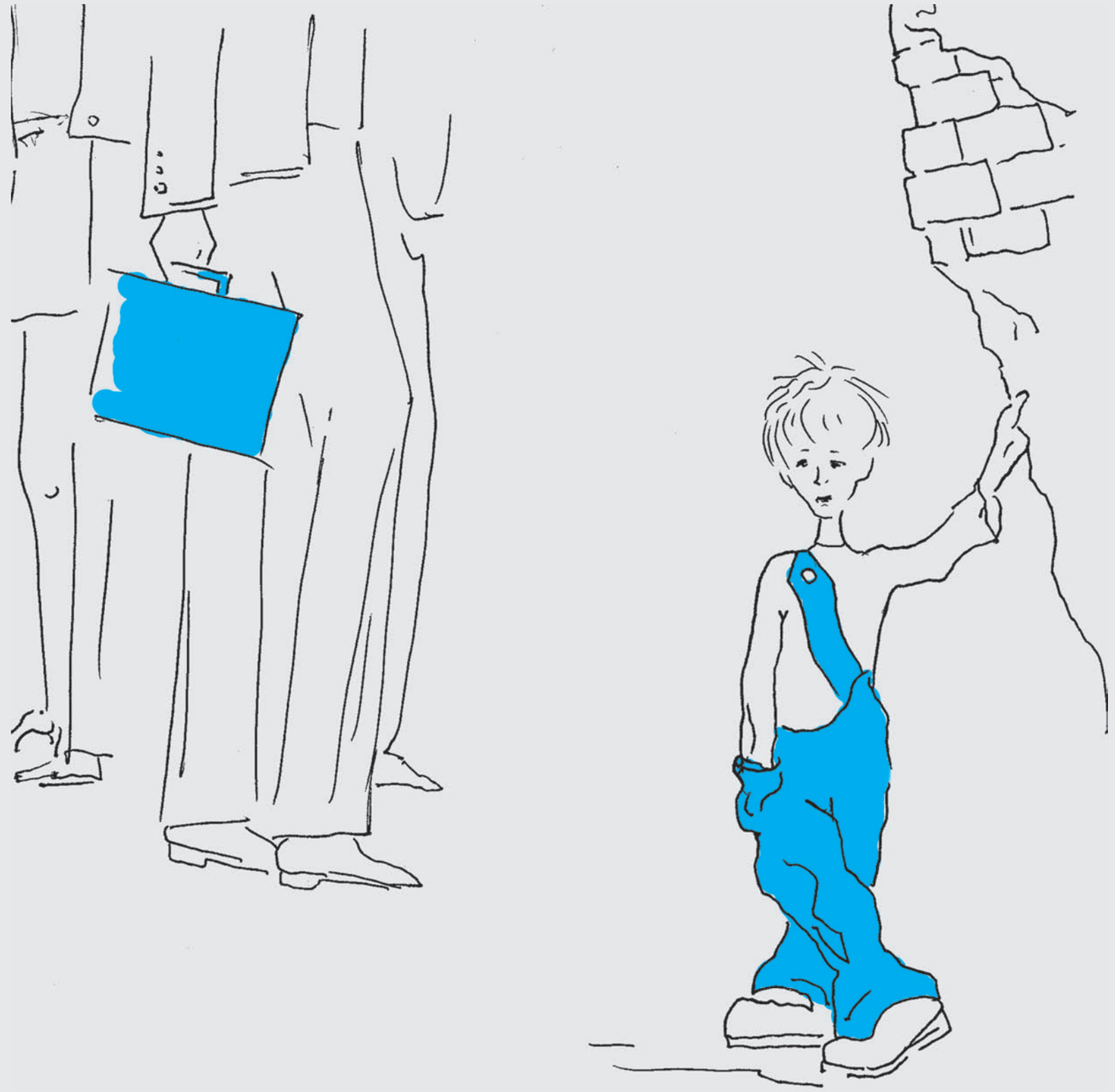

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The Government of
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Evaluation Report 2002-2003

JUVENILE JUSTICE IN THE REPUBLIC OF MOLDOVA

unicef

JUVENILE JUSTICE IN THE REPUBLIC OF MOLDOVA

Evaluation Report

REPORT PREPARED BY:

Raisa Botezatu, Judge at the Supreme Court of Justice

Tatiana Catana, Chisinau city Prosecutor

Jana Costachi, President of the Association of Law Career Women

Vasile Rotaru, Lecturer at Moldova State University

WE EXPRESS OUR SPECIAL THANKS TO INDIVIDUALS LISTED BELOW FOR THEIR CONTRIBUTION TO THIS REPORT:

Igor Dolea, Head of the Criminal Law and Procedure Department, Faculty of Law, Moldova State University

Galina Chirinciuc, former Minister of Justice

Vasile Plasciuc, Ministry of Internal Affairs, expert

Viorica Craevschi, Ministry of Labour and Social Protection

Svetlana Rijicov, Alecu Russo University, Balti

Andrei Vicol, Deputy Director of the Penitentiaries Department

Anatol Danii, Ministry of Education

Clara Grinberg, Child Rights Department, Chisinau Municipal Authorities

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ABBREVIATIONS:

CAO	– Code of Administrative Offences
CCP	– Code of Criminal Procedure
CRC	– Convention on the Rights of the Child
ECHR	– European Convention on Human Rights
CCSE	– Code of Criminal Sentences Execution
CIDCR	– Centre for Information and Documentation on Children's Rights
NCPCR	– National Council for the Protection of Children's Rights
oCC	– old Criminal Code
nCC	– new Criminal Code
IJA	– Inspectorate for Juvenile Affairs
MIA	– Ministry of Internal Affairs
ME	– Ministry of Education
MJ	– Ministry of Justice
MLSP	– Ministry of Labour and Social Protection
MH	– Ministry of Health
UN	– United Nations Organization
RM	– the Republic of Moldova
RCJA	– Regulation of Commissions for Juvenile Affairs
RIJA	– Regulation of Inspectorates for Juvenile Affairs
SEPD	– Statute on Execution of Punishment by Detainee

Foreword

This study represents a first attempt to assess the situation of children in conflict with the law in the Republic of Moldova. An inter-sectorial working group, established under the auspices of the National Council for the Protection of Child Rights in October 2001, carried out the study with UNICEF's technical assistance and coordination.

The conclusions of this study highlight the need to develop a comprehensive and distinct juvenile justice system in the Republic of Moldova that would ensure respect for the rights of all children who come into conflict with the law.

Children and young people accused of committing criminal offences are currently dealt with within the regular adult justice system with no special attention to, or provision for, a child's right to survival, protection, development and participation. They do not receive specialized assistance of a social worker, adequate legal representation, and spend long periods of time in pre-trial detention where poor conditions seriously jeopardize their health and early reintegration in society.

UNICEF supports, in accordance with the provisions of the UN Convention on the Rights of the Child (1989) and other relevant international standards on juvenile justice, the creation of a juvenile justice system which promotes respect for the human rights of children. Such a system would encourage diversion from the formal justice system to extra-judicial procedures whenever appropriate, promote restorative justice as a theory of justice which would focus on reparation rather than punishment and provide community-based options which prevent deprivation of liberty and promote early re-socialisation of juveniles.

We hope that both governmental and non-governmental agencies and organizations will find the conclusions of this assessment useful for planning immediate and long-term strategies and activities to improve the situation of children who come into conflict with the law.

Giovanna Barberis,
UNICEF Representative

Introduction

Juvenile justice has been attracting increasing attention throughout the world. The international community and most societies have acknowledged that children alleged as or found to have committed an offence should benefit from treatment different from that accorded to adults.

At the time of writing, Moldova has no separate system of juvenile justice to respond to the special needs of children. There are neither institutional structures, such as juvenile courts, nor specially trained juvenile justice practitioners, such as judges, investigators, prosecutors or attorneys who would have the sole authority to handle juvenile cases.

As a result, justice practitioners have not received adequate training in the special needs of children, while cases involving children are investigated in the same way as those involving adults. Because of this, proceedings may last from a couple of months to a couple of years. Children alleged as or accused of having infringed the penal law are routinely put through the same ordeal of being arrested, accused and detained as adults, except that their situation is worsened by their physical and mental immaturity, lack of support and legal awareness, and consequently little, if any, chance of protecting their rights while in custody, during trial or at detention facilities. For the same reasons, social rehabilitation and return to society of incarcerated children is nearly impossible without professional support. All this negatively affects the circumstances of children in conflict with the law.

These and other problems have been highlighted in the final observations addressed to the government of Moldova by the UN Committee on the Rights of the Child, an international body responsible for implementing the UN Convention on the Rights of the Child.

This report is a collaborative effort of a group of authors. In October 2001, the National Council for the Protection of Children's Rights created a working group to evaluate and monitor juvenile justice at the national level. Supported by UNICEF, the working group is comprised of experts serving in the ministries of justice, internal affairs, education, labour and social security, as well as representatives of the Supreme Court of Justice, Prosecutor General's Office, Human Rights Institute, Moldova State University and civil society organizations.

The working group has conducted this study of the situation of children who have come into conflict with the justice system. The study is the result of a participatory, interactive process which has brought together professionals from across a wide range of areas, including public authorities, justice practitioners and representatives of civil society. The report identifies major problems related to the administration of juvenile justice at each level and suggests specific interventions to address them. Experts have analysed the circumstances of children who have entered into conflict with the law in different settings: in the street, at correctional institutions and at the stage of their return to society. The national legal framework and possible ways of bringing it into line with international standards have also been analysed. A survey of institutions and structures responsible for the prevention of juvenile delinquency and social reintegration of children has been made. Hopefully, this report will serve as a starting point for a nation-wide debate on juvenile justice bringing together all governmental and non-governmental organizations capable of improving the current situation.

It needs to be noticed that the Government's cooperation program with UNICEF for 2002-2005 prioritises reforms of the juvenile justice system. Backed by UNICEF, a project called "Reform of the Juvenile Justice System" was launched in Moldova in January of 2003. The project aims primarily at fostering legislative reforms, promoting consistent juvenile justice policies and practices, strengthening institutional and human capacity, developing alternatives to institutional care, helping juveniles return to society and providing them with legal assistance.

This is why we believe that this assessment of the juvenile justice system is the first step on the road towards successful change in the best interests of the child.

The phenomenon of children in conflict with the law

I

1 Legal definition of children in conflict with the law

Moldovan laws contain no cumulative definition of children in conflict with the law, nor is any special term used to designate them. A child is deemed to have entered into conflict with the justice system if he or she has committed offences prosecutable under the *old version of the Criminal Code (oCC)*, which is in effect at the time of writing, the *new version of the Criminal Code (nCC)*, adopted through Law no. 985 of 18 April 2002 but not currently in effect, and the *Code of Administrative Offences (CAO)*. Some juvenile cases are handled pursuant to the *Regulation of Commissions for Juvenile Affairs (RCJA)* and the *Regulation of Inspectorates for Juvenile Affairs (RIJA)*.

Article 10 of the oCC sets the general age of criminal responsibility at 16. Children from 14 to 16 are criminally liable only for very serious offences, which include murder, burglary in exceptionally large proportions, premeditated or aggravated bodily injury, rape, aggravated robbery and assault, larceny-theft, aggravated or severely aggravated hooliganism or public order offences, premeditated damage or destruction of property, theft of drugs, firearms, munitions and explosives, 39 offences overall.

The nCC makes 14 to 16-year olds criminally liable for over 150 offences, worsening the situation of children in conflict with the law.

Article 12 of the *Code of Administrative Offences* sets the age of administrative liability at 16. Cases of children under 16 who committed offences prosecutable under the CC or the CAO are governed by the *Regulation of Commissions for Juvenile Affairs*. Article 17 of the RCJA, sections *a) and b),* gives the Commission the power *"to investigate the cases of juveniles who, being under the age of 14, or, as the case may be, at the age from 14 to 16, have committed socially dangerous acts, which are acts that would have been regarded as a criminal offence had it not been for the minor age of the persons who committed them".* Section *d)* of the same article empowers the Commission to *"handle the cases of juveniles who have committed anti-social acts"* (without defining the content of or the minimum age of responsibility for such acts). Paragraph 4 of the *Regulation of Inspectorates for Juvenile Affairs*, adopted by the Ministry of Internal Affairs on 24 August 1998, defines "antisocial behaviour" as begging, fortune-telling in exchange for money or services and acts that have elements of offence and are committed by minors.

It needs to be emphasized that the RCJA does not set the age limit below which children cannot be held responsible for "antisocial" or "socially dangerous" conduct and hence cannot be brought before the Commission for Juvenile Affairs. The only passing reference to this important issue is in virtue of Article 18, which stipulates that juveniles over 11 may be placed in a residential school for children with problem behaviours but does not elaborate any legal procedure for doing so.

The RCJA was put into force during the Soviet times, in 1967, and plenty of its provisions are either outdated or fall short of meeting national and international standards. For instance, children may beg or engage in similar street behaviours because they have been abandoned by their parents or forced to do so by adults, in which case they require attention and care. Revising some legal provisions concerning children could improve their circumstances.

PUBLIC OPINION ABOUT CHILDREN WHO HAVE ENTERED INTO CONFLICT WITH THE JUSTICE SYSTEM

At the beginning of 2002, Centre for Information and Documentation on Children's Rights (CIDCR) conducted a public opinion survey to assess what the public at large thinks about juvenile delinquency. A random sample was selected for the survey from among the young population covering the entire range of urban and rural settings, ages, educational backgrounds, gender and ethnicity. The main finding of the survey is that an overwhelming 94.6% of the respondents, regardless of their residence, age or educational background, regard juvenile delinquency as a grave problem.

Most of those polled named poverty, domestic violence, high school drop-out rates and disrespect for laws the major factors that bring children into conflict with the law.

71.8% of those surveyed said that juvenile delinquency is accorded inadequate attention; 80% believe that the existing juvenile delinquency prevention measures fall short of what is needed. In the opinion of 36.6% of the respondents, the family is the central unit responsible for the prevention of juvenile delinquency, while 16.5% said it was the government, 15.7% the community, 15.4% the police and 10% schools.

The study shows that parents and tutors tend to attribute the responsibility for preventing juvenile delinquency to other social bodies, while the victims of crimes and public officials point the finger back at the family.

Almost 17% of the respondents believe that penalties applied to juveniles are too tough, while 46.75% hold the contrary opinion.

This study shows that a majority of the public favours punitive approaches to juvenile delinquency, believing that a retributive penalty is or should be the main response to the offence committed by a juvenile. At the same time, the public is generally unaware of the wide range of detrimental effects that the deprivation of liberty may have, especially on juvenile's personality, and has little knowledge of alternatives to institutionalisation.

Speaking about public opinion, we must note that juvenile justice is not even remotely an issue of much importance either for the public or for mass media. Also, a juvenile who is taken care of by the police or a correctional facility is of no interest to public authorities.

Both national and local media sources try to address the problem of children in conflict with the law. Yet juvenile delinquency that gets to newspapers and TV screens is mostly portrayed from a unilateral, sensationalist perspective, where the child is seen as little more than an offender and only on rare occasions is he or she seen from the human rights perspective as a child in a difficult situation. Even rarer are the efforts to investigate the child's educational background or the circumstances that might have prompted him or her to engage in problem behaviours.

On the other hand, it is often juveniles' own legal ignorance that leads to problem behaviours.

2 Children in conflict with the law and a juvenile justice database

Juvenile offences account for approximately 10% of all offences. In recent years, juveniles have been increasingly involved in gang offences, often being instigated by adults.

According to the Ministry of Internal Affairs, the number of children in conflict with the law was on a continuous upward trend between 1992 and 1997, up from 1,652 cases in 1992 to 2,325 in 1997.

The juvenile delinquency rate dropped by 6.2% in 1998, to 2,261 offences, only to surge to 2,622 in 1999, 2,928 in 2000 and down to 2,684 in 2001.

Offences against property, both private and public, constitute the largest part of juvenile delinquency cases, accounting for 75% to 80% of all offences committed by juveniles in any given year. Juveniles committed 1,234 burglaries in 1997, 1,219 in 1998, 1,515 in 1999, 1,681 in 2000 and 2,090 in 2001.

Less frequent offences committed by juveniles are, in a descending order, larceny-theft, robbery, infliction of grave bodily harm, rape, and murder.

Around 40% of offences are committed by groups of juveniles or by mixed adult/youth groups.

Year	**Offences** ___ Total juvenile offences	**Burglaries** (theft of public or private property)	**Larceny-theft** (open taking of property of another)	***Robbery*** (assault on a person to deprive him/her of possessions)	**Person offences** (infliction of grave bodily injury)	Rape	Murder
1997	2,325	1,234	169	47	22	20	7
1998	2,261	1,219	213	32	8	16	7
1999	2,622	1,515	207	35	14	12	15
2000	2,928	1,681	213	75	17	14	18
2001	2,684	2,090	164	47	11	14	14

Year	Total juvenile offences and the number of persons involved in them	Juvenile gang offences	Mixed adult/ juvenile gang offences	Repeat offenders	Offences committed while drunk or intoxicated	Had a "preventive" record with the police or the Commission for Juvenile Affairs
1997	2,325/2,330	371	667	126	270	23
1998	2,261/2,520	434	477	145	216	40
1999	2,622/2,442	437	557	118	148	35
2000	2,928/3,032	553	714	—	—	—
2001	2,684/2,629	482	363	144	109	30

Juveniles at the age from 16 to 17, mostly boys, make up the largest single age group of juvenile offenders.

Most juvenile offences are committed in urban settings, primarily in Chisinau, Balti, Tighina, Cantemir, Hancesti etc. Most juveniles commit offences in the cities where they live. Thus, of 2,330 juveniles who committed offences in 1997, 1,674 were local residents and 656 were non-locals. The figures for 1998 are: 2,520 total offenders, of whom 1,806 were local residents, 714 non-locals; 1999: 2,442 total offenders, 1,685 locals, 757 non-locals; 2001: 2,629 total, 1,683 locals, 946 non-locals. We have no statistical data to make a similar breakdown for 2000.

Year	Number of juvenile offenders	Unemployed	At the age between 14 and 15	At the age between 16 and 17	Boys	Employed
1997	2,330	1,607	851	1,479	2,175	167
1998	2,520	1,936	894	1,626	2,375	94
1999	2,442	1,966	915	1,527	2,283	67
2000	3,032	2,598	1,046	1,968	—	86
2001	2,629	1,908	980	1,649	2,490	57

Year	Number of juvenile offenders	Enrolled in secondary school	Enrolled in vocational school	Enrolled in universities
1997	2,330	242	137	32
1998	2,520	288	88	22
1999	2,442	272	66	20
2000	3,032	249	26	30
2001	2,629	222	26	12

	1998	1999	2000	2001
Total juveniles convicted		1,485	1,934	1,894
Deprivation of liberty	245 (14,0%)	165(11,1%)	190 (9,8%)	227 (12%)
Correctional labour (Article 27 of the oCC)		—	—	—
Fines	105 (6,0%)	140 (9,4%)	258(13,3%)	270 (14,2%)
Conditional sentence (Article 43 of the oCC)	800(45,8%)	605 (40,7 %)	1,042(53,9%)	1,018 (53,8%)
Suspended sentence (Article 44.1 of the oCC)	305(17,5%)	197(13,3%)	302(15,6%)	52 (2,7%)
Community service (Article 24.1 of the oCC)	5(0,3%)	—	—	—
Other penalties	273(15,6)	378(25,5%)	142 (7,4%)	327 (17,3%)
Lesser sentence than prescribed by law (Article 42 of the oCC)	88 (5,0%)	158(10,6%)	252 (13,0%)	228 (12 %)

Due to the socio-economic crisis in Moldova, the majority of children who have entered into conflict with the law are not enrolled in any educational institution, are unemployed, come from disadvantaged families or have a record of previous offending.

According to conviction statistics, 1,746 juveniles were convicted in 1998, 1,485 in 1999, 1,934 in 2000 and 1,894 in 2001, of whom 14%, 11.1%, 9.8% and 12%, respectively, were sentenced to confinement.

The number of juveniles sentenced to correctional institutions in 2001 accounted for slightly less than 2% of all persons serving prison sentences. Juveniles are most often deprived of their freedom for very serious offences. For example, 11.9% of the population confined in Lipcani juvenile correctional facility for boys in 2001 were serving sentences for murder, 13.7% for rape, 15.8% for larceny-theft and the same number for robbery. Yet, most juveniles were there for theft/burglary (34.6%). These largely exhaust the range of offences for which juveniles may be sentenced to confinement. Most juveniles serve one to five year sentences (54.4% of all incarcerated juveniles in 1999, 47.7% in 2000 and 47.5% in 2001), and 5 to 10 year sentences (47.6% in 1999, 48.9% in 2000 and 52.5% in 2001). Three months to one year and 10 to 15 year sentences are applied rarely, if at all. No juvenile received any of these sentences in 2001.

Overall, juveniles accounted for 11.1% of all convicted persons in 1998, 9.5% in 1999, 11.1% in 2000 and 11.4% in the first nine months of 2001.

According to the Penitentiaries Department, there were no cases of torture or inhuman treatment of detainees by detention facilities personnel between 1994 and 2001, except for one case reported from adult penitentiary No.9 in 1999.

Penitentiaries are severely under-financed; consequently, detainees frequently lack food, medical services, bedding, clothing, accommodation, hygienic and sanitary arrangements and other first-need services.

The following is a breakdown of the juvenile population in Lipcani correctional facility for boys as of 1 October 2002:

Offence:

- *murder* 17
- *rape* 8
- *theft/larceny/burglary* 64
- *robbery* 13
- *unlawful possession and use of drugs* 4
- *other offences* 2

Length of sentence:

- *up to 1 year* 2
- *1 to 3 years* 20
- *3 to 5 years* 22
- *5 to 10 years* 73
- *10 to 15 years* 3

Educational background:

- *no education* 1
- *dropped out from secondary school* 105

Previous offence:

- *repeat offence* 1
- *first-time offender* 119

In many localities, juveniles are detained pending case disposition at the premises of local police stations. This entails multiple problems, as police premises are not properly equipped to meet the needs of juveniles. Juveniles are frequently kept together with adults, being housed in facilities that violate living space standards.

The Report of the Committee for the Prevention of Torture of the Council of Europe, released in Strasbourg on 26 June 2002, provides evidence about inhuman treatment of all detainees in police custody, including juveniles.

Apart from this, legal requirements for detaining juveniles are sometimes ignored. For example, in January of 2002 a prosecutor's office made an unannounced inspection of Biucani police department in Chisinau and found one juvenile who had been administratively detained for 7 hours without notification of his parents, overstepping the legally permissible limit by 4 hours.

The duration of preventive detention may also be inadmissibly long. Under the law, a criminally prosecuted person under the age of 16 may not be held in custody in excess of four months, and not more than 6 months if under 18. However, there are no determinable limits on detaining a person while court hearings are in progress, with competent authorities being only bound to process the case in reasonable terms. This means that a juvenile may be held in custody pending case disposition indefinitely.

Unfortunately, we have no statistical data either on the number of juveniles in police custody or the duration of detention, as there is no centralized database to collect and summarize it and each criminal prosecution office occasionally incorporates disparate pieces of statistics into reports. This makes meaningful analysis and verification nearly impossible.

In any case, we believe it necessary to further limit the resort to preventive detention of juveniles. As police authorities themselves acknowledged, plenty of juveniles locked up together with career criminals pending case disposition get "contaminated" by the "romanticism" of criminal

life. Judicious resort to preventive detention is all the more necessary because the authorities acknowledge that a large number of juveniles are acquitted and released following preliminary investigation, or penalties other than incarceration are applied. A traumatizing experience of being arrested is a punishment in itself, even if the child is ultimately released at disposition. According to public prosecution offices, two out of four juveniles acquitted in 1998 had been detained prior to case disposition. Seven juveniles were acquitted in 1999, two of whom had been held in custody prior to case disposition. Six and three juveniles had charges against them dropped in 2000 and 2001, with two and one, respectively, having been held in police custody.

Police reports on the number of juveniles held in custody prior to being acquitted, or having charges against them dropped differ enormously from estimates made by the Supreme Court of Justice. One should therefore bear in mind that most of our statistical data comes from state agencies and may at times be rather inaccurate.

Speaking about data quality, we believe it necessary to form a new structure or order an existing body to collect and summarize all statistical data related to children in conflict with the law. Having a database of this kind would greatly facilitate systematic studies and research into juvenile justice and would provide accurate, up-to-date information to researchers and justice practitioners.

Unfortunately, no study has been conducted in Moldova to assess the opinion of the children who have come into contact with the justice system about the way the system works, the way they were treated, the effectiveness of rehabilitation programs and the impact that the justice system has had on their life.

Legal framework governing juvenile justice

II

1 Domestic laws and international standards

After proclaiming Moldova's independence on 27 August 1991, and concomitantly with the onset of legal and judicial reforms, the Moldovan authorities enacted new laws and revised the *Criminal Code, the Code of Criminal Procedure, the Code of Administrative Offences, Criminal Sentences Execution Code*, along with other laws that regulate, *inter alia*, a variety of issues related to juvenile justice.

The main source of law is the Constitution of the Republic of Moldova, adopted on 29 July 1994. Article 1 of the Constitution proclaims Moldova a democratic state governed by the rule of law, in which human dignity, human rights and liberties, free development of the individual, justice and political pluralism are guaranteed and held as supreme values. Constitutional provisions upholding fundamental human rights and freedoms are interpreted and applied in conformity with the Universal Declaration of Human Rights and other international legal acts to which Moldova is a party.

International law prevails over domestic law if a conflict arises between them. The Constitutional Court ruled on 14 October 1999 that universally acknowledged norms and principles of international law, along with international treaties to which Moldova is a party, are an integral part of Moldova's legal framework and therefore the country's domestic law. If international treaties and domestic laws contain conflicting provisions on issues of fundamental human rights, law-enforcement agencies must, under the Constitutional Court's interpretation of p. 2, Article 4 of the Constitution, abide by the former. The Constitution stipulates that Constitutional Court's interpretations of laws are legally binding for all subjects of law.

That international legal acts prevail over domestic law has also been confirmed by the Supreme Court of Justice, which recommended in its decision No. 2 of 30 January 1996 that courts should directly enforce provisions of international legal acts to which Moldova is a party if domestic laws run counter to them. The Supreme Court upheld the same principle in its 19 July 2000 decision "*On Courts' Enforcement of Some Provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms*". Moldova has adhered to a number of international legal acts related to juvenile justice, including the United Nations Convention on the Rights of the Child, the European Convention for the Protection of Human Rights and Fundamental Freedoms, Universal Declaration of Human Rights, United Nations Guidelines for the Prevention of Juvenile Delinquency, United Nations Rules for the Protection of Juveniles Deprived of their Liberty, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, amongst others. These are therefore directly enforceable by courts and judges increasingly tend to apply them directly to their judicial practice.

The Constitution summarizes the general principles of penal justice, including juvenile justice, of which the most important are:

Presumption of innocence (Article 21) – Anyone charged with a penal offence is presumed innocent until proved guilty according to due process of law in a public trial at which he/she has had all the guarantees necessary for his/her defence;

Non-retroactivity of law – No one can be convicted for any act or omission which did not constitute a criminal offence at the time when it was committed. Nor may a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed;

The right of every person to know his/her rights and responsibilities (Article 23) – Everyone has the right to recognition as a person before the law. The state guarantees the right of everyone to know his or her rights and responsibilities, publishing and otherwise making accessible all laws and statutory acts;

The right to life and physical and moral integrity (Article 24) - No one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Inviolability of individual liberty and the security of person (Article 25) – No one can be searched, arrested or detained save in the cases and in accordance with a procedure prescribed by law. Detention may not exceed 72 hours; a person may be arrested only pursuant to a minimum 30-day arrest warrant. Everyone who is arrested should be informed promptly of the reasons for his or her arrest.

2 Criminal responsibility of juveniles under the Criminal Code

Moldova's Criminal Code, adopted on 24 March 1961, along with its subsequent amendments, is in effect at the time of writing and will be so until the new Criminal Code, adopted through Law nr 985 on 18 April 2002, will enter into force.

Neither the old nor the new version of the CC contain separate chapters specifically applicable to juveniles; rather, references to minors are made in different articles. Article 10 of the oCC imposes criminal responsibility on juveniles over 16 for the majority of offences. Juveniles over 14 are criminally liable for 39 offences (see section 1).

Article 21 of the nCC imposes criminal responsibility on persons over 14 for grave, very grave and exceptionally grave offences, or over 150 offences overall, many more than under the old Criminal Code.

Article 23 of the oCC says that persons under 18 may not be sentenced to more than 10 years in prison, except if a person at the age from 16 to 18 committed an offence punishable by life imprisonment, in which case he or she may be sentenced to up to 15 years in prison.

Article 70 of the nCC stipulates that juveniles may not be sentenced to more than 15 years in prison for any offence, worsening the situation of children compared with the oCC.

Under article 23, par. 6 of the oCC, juveniles should be detained in different security settings than adults.

First-time offenders may be sentenced to minimum-security facilities only. Repeat offenders are confined in medium-security detention facilities. Despite these legal provisions, because of the lack of funds convicted juveniles are all held in the same security settings, regardless of the length of their sentences or previous convictions.

Article 72 of the nCC stipulates that juveniles sentenced to prison shall serve their sentences in juvenile correctional facilities. The nCC does not elaborate whether first-time and repeat offenders should be committed to different correctional facilities. Thus, first-time offenders could conceivably end up serving their sentences together with repeat offenders, which runs counter to the UN Convention on the Rights of the Child and the UN Rules for the Protection of Juveniles Deprived of their Liberty, as these latter prescribe that juveniles should be detained only under such conditions as would assure their protection from harmful influences and risk situations (Article 28 of the Rules).

Both the old and the new version of the Criminal Code prohibit imposing life sentences on juveniles. As a general rule, courts have the discretion to order punishment within the sentencing limits prescribed by law for a given offence. In doing so, courts must be directed by their legal consciousness, the nature and the social threat of the offence, the character of the accused and the aggravating or attenuating circumstances. Article 37 of the oCC stipulates that minor age is a mitigating circumstance that must be taken into account when the decision on penalty is made. Article 75 of the nCC contains some other criteria for individualizing the disposition of juvenile cases, such as the requirement to establish the motive for the offence, the impact of the sentence on the child's correction and rehabilitation, as well as his/her family situation.

At the same time, inciting juveniles to commit an offence is an aggravating circumstance for an adult, warranting a more severe sentence and in certain cases being an offence in itself (Articles 38, 224 oCC and articles 77, 208 nCC).

Bearing in mind the circumstances of the case and the character of the offender, courts have the discretion to refrain from giving immediate effect to the criminal sentence and suspend it (Article 43 oCC). Article 90 of the nCC contains a provision to the same effect, yet with a constraint that persons whose offence carries imprisonment in excess of 5 years for premeditated acts and in excess of 7 years for reckless acts are not eligible for conditional sentencing, again making juveniles worse off.

Articles 51 of the oCC and 91 of the nCC provide for releasing incarcerated juveniles on parole or substituting part of the remaining sentence for a more lenient disposition.

Depending on the character of the juvenile whose offence poses no serious threat to public safety, courts may impose disciplinary/educational measures, which are not a criminal penalty and do not lead to a criminal record (Article 60 of the oCC, article 104 of the nCC).

Disciplinary/educational measures serve the same purpose as penal sanctions, which is correction and rehabilitation of the juvenile and prevention of juvenile delinquency. These measures are divided into several groups: *moral education* (public apologies to the victim, reprimand, warning, parent or community supervision etc.); *material education* (juveniles over 15 are made liable to repair the harm through their own labour); or placement in a residential school for children with problem behaviours.

The power to impose these measures rests with courts or Commissions for Juvenile Affairs to which juvenile cases may be referred for disposition.

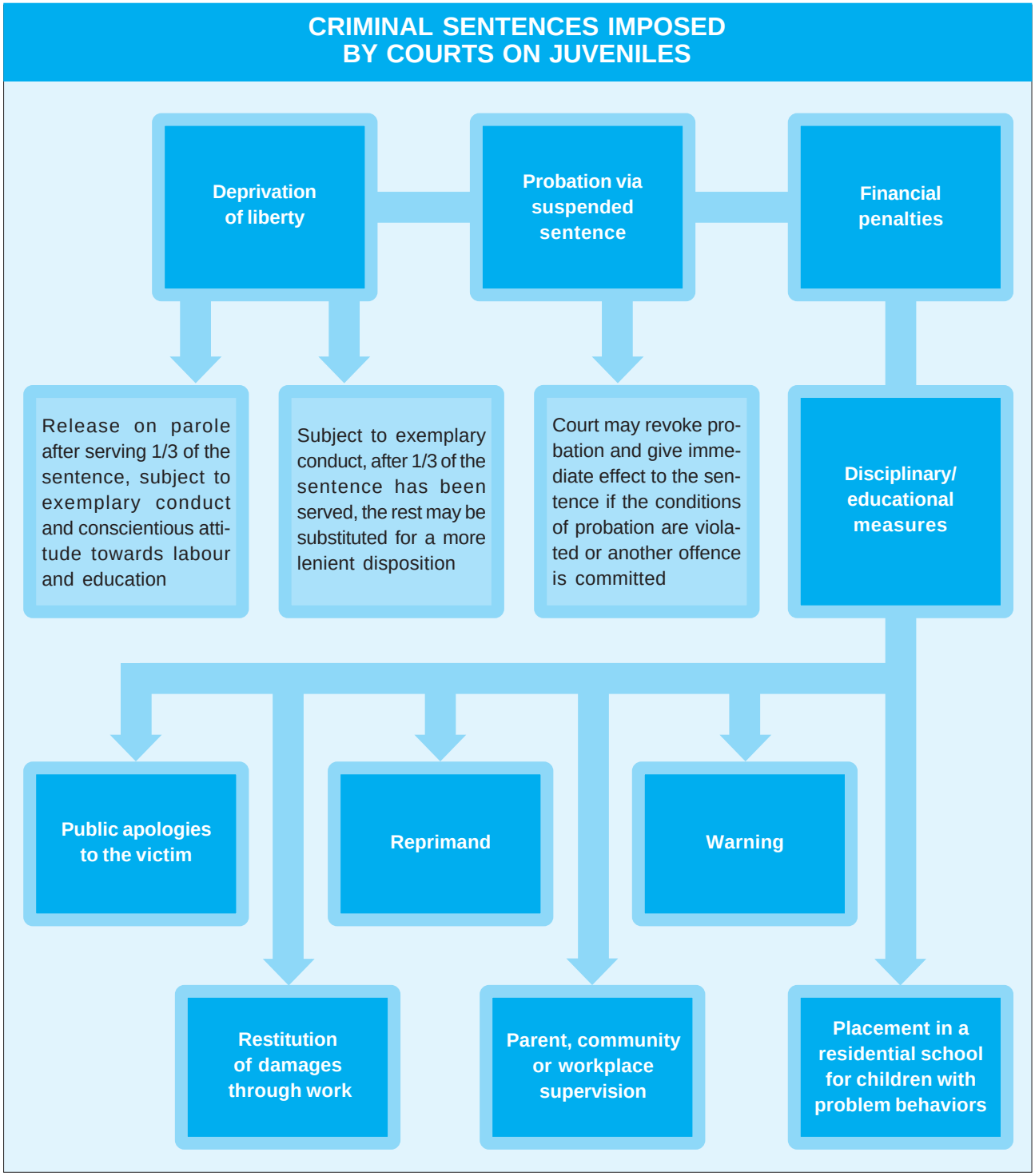
The *Code of Criminal Procedure (CCP)*, which entered into force on 24 March 1961, has been amended time and again, as were most of the laws described above, in an effort to bring it into line with the Constitution and international legal acts to which Moldova is a party.

Even though the CCP has no separate chapter governing criminal proceedings against juveniles, which leads to certain difficulties in its practical application, it has enough related articles setting out these procedures.

A child who committed a criminally prosecutable offence at an age that entails criminal responsibility will be handled according to the current law of criminal procedure. Both at the stage of crimi-

nal investigation and during court hearings, the child enjoys all the rights and fulfils all the obligations of persons charged with an offence.

In contrast to adult offenders, the CCP gives special rights to persons under 18. Criminally prosecuted juveniles are entitled to be assisted by their parents or guardians during court hearings (Article 237 of the CCP). Even though the Code does not expressly require the participation of their parents or guardians in criminal proceedings, it is customary to invite them to do so.



3 Other laws regulating juveniles' legal responsibility

The *Code of Administrative Offences,* adopted on 29 March 1985, defines the content and scope of "administratively prosecutable offences", including those for which juveniles are liable, sets penalties and their delivery and regulates the authority of the agencies prosecuting these offences, such as courts, administrative boards under local executive authorities, the Ministry of Internal Affairs, departmental committees and public inspectorates, etc. These authorities investigate administrative offences committed by juveniles over 16 and apply administrative sanctions as prescribed by the CAO.

Even though the purpose of the Code is to set a simpler procedure for investigating conduct less dangerous to public safety than that prosecutable under the Criminal Code, the CAO fails to establish all legal safeguards available to a criminally prosecuted person. (For instance, the Code does not require the participation of a lawyer nor offers one free if needed).

The rights of children confined in correctional facilities are governed by the *Penitentiaries Law* nr. 1036 adopted on 17 January 1996; *Preventive Arrest Law,* no. 1226 of 27 June 1997, *Code of Criminal Sentences Execution* no. 1524 of 22 June 1993, and the *Statute on Prisoners' Rights and Responsibilities* no. 923 of 20 December 1994.

Supreme Court's interpretations of laws governing juvenile justice are designed to clear up vague legal provisions and facilitate their practical application by courts. Decision of Supreme Court 12 November 1997 *"On application of existing laws to juvenile delinquency cases"* offers courts useful explanations and guidance, which are frequently relied on by criminal investigators as well.

An electronic database has been developed containing a wealth of information on Supreme Court's practices and rulings, with a separate section on juvenile justice. Yet justice practitioners handling juvenile cases have limited access to this database owing to lack of computers and subscription money.

Justice practitioners handling juvenile cases are also governed by their codes of ethics, including:

1. Judges Code of Ethics, adopted at the Judges' Conference on 4 February 2000. Violating the provisions of this code may lead to disciplinary proceedings against a judge.

2. Prosecutors Code of Ethics, approved by the General Prosecutor's Office on 7 April 2000.

ON APPLICATION OF EXISTING LAWS TO JUVENILE DELINQUENCY CASES

(Supreme Court ruling no. 37 of 12 November 1997)

"5. Courts must strictly adhere to the norms of criminal procedure, which entitle juveniles to legal defence. Due notice must be given to the fact that under p. 1 and 2, Article 43 and p. 1, Article 44 of the CCP, participation of a juvenile's defender is mandatory from the time of apprehension, arrest and during court hearings, regardless of whether the suspect or the accused who committed the offence before turning 18 has attained majority by that time. (…)

8. Bearing in mind the defendant's age, court hearings must proceed in such a way as to exclude conditions and circumstances that may have a detrimental effect on the juvenile. This should also be born in mind when juvenile suspects or witnesseses are questioned, especially in cases involving sex offences. (…)

10. Courts should adhere to the provisions of article 53 of the CCP, which requires them to investigate the juvenile' character, living conditions and educational background, establish the motives, the causes and conditions that may have contributed to the offence, as well as identify adult accomplices or persons who may have drawn the juvenile into criminal conduct. (…)

20. Courts should not impose penal sanctions on a juvenile whose offence does not pose a serious threat to society, if correction and reeducation can be achieved through disciplinary and educational measures prescribed by articles 10 and 60 of the CC.

21. On imposing a prison sentence of up to 3 years on a first-time juvenile offender, a court must, pursuant to article 272.1 of the CCP, consider the possibility of suspending the sentence, strictly complying with the legal requirement to take due notice of the character and social danger of the offence and the perpetrator and other relevant circumstances, as well as of the likelihood of juvenile's correction and re-education without isolating him from society. (…)

23. If disciplinary/educational measures, conditional or suspended sentences, or other alternatives to the deprivation of liberty are ordered at disposition, or if the juvenile is released on probation, courts shall consider appointing an educator (a social assitant) for the juvenile upon receiving a request to this effect.

Institutional framework of juvenile justice

III

1 Ministries and departments involved in the administration of juvenile justice

Moldova does not have a single executive body managing the juvenile justice system. Juvenile justice functions belong to a variety of ministries, departments, committees and boards, and sometimes the responsibility for the same issue is split between many structures.

The Ministry of Internal Affairs is most heavily involved in prevention and investigation of offences committed by juveniles. The Ministry's internal regulation no. 223 of 24 August 1998, ordered all heads of departments, divisions and services to train all police forces working on the ground in the prevention of juvenile delinquency.

Heads of local police departments must incorporate juvenile delinquency prevention measures into their work plans, ensure the participation of their subordinates in identifying juveniles who break the law and take steps to enhance professional competence of all police forces fighting juvenile delinquency.

MIA's *Public Order Division*, through its *Minors and Morals Section,* is most closely involved in addressing a variety of concerns related to youth. At the county level, local *minors and morals inspectors* are responsible for the prevention of juvenile delinquency, family violence, trafficking in children, prostitution, including juvenile prostitution, and pornography.

The task of MIA's *Judicial Police Division* is, *inter alia*, to take steps to prevent and uncover juvenile offences, collect information on juveniles who break the law and, based on this information, identify and disrupt criminal gangs that involve juveniles in criminal conduct.

The task of the *Ministry's Criminal Investigations Division* is, *inter alia*, to identify specific causes and conditions giving rise to juvenile delinquency and to regularly provide this information to Inspectorates for Juvenile Affairs, as well as educational institutions and employers.

MIA's *Organization and Inspections Division* is responsible for comprehensive situation analysis of juvenile delinquency and assesses the performance of all police departments in preventing it.

MIA's *Educators and Educational Institutions Division* selects inspectors for juvenile affairs from among the ministry's units, making sure they are individuals of established moral and professional standing, and assesses their performance in preventing juvenile delinquency.

Local police departments maintain *Inspectorates for Juvenile Affairs (IJA)*, governed by the *Regulation of Inspectorates for Juvenile Affairs.* The most recent version of the regulation was ap-

proved by the Minister of Internal Affairs on 24 August 1998. The IJA may consist of one or more inspectors, depending on the juvenile population in the area it serves. Inspectors deal primarily with two categories of juveniles: juveniles tried by courts or criminally prosecuted, and juveniles who have committed acts which pose a threat to society but which are not prosecutable under the existing legislation. Juvenile inspectors are informed about every juvenile taken to the police department and charged with an offence.

Juvenile inspectors play a crucial role in working with children who have entered into conflict with the law. Their primary task is to supervise juveniles' conduct and implement delinquency prevention measures. Nominees for the position of juvenile inspectors, including persons transferred from other subdivisions of the ministry, must take a one-month course at the IJA, followed by compulsory exit examinations. The course includes the study of laws governing the position of a juvenile inspector, group-centred and individual-centred juvenile delinquency prevention measures and techniques for combating juvenile delinquency and identifying at-risk youth. Course contents are usually tailored to local needs and circumstances.

Juvenile inspectors usually have university-level background in law or education. Moldova's justice system does not have probation officers or personnel specifically trained to work with children in conflict with the law. Nevertheless, the Police Academy has been running, for over a year now, one-month refresher course for juvenile inspectors with less than 3-year work experience.

The MIA maintains a residential institution for children, called the *Centre for Temporary Placement of Juveniles*, or *Juvenile Referral Centre.*

Centre for Temporary Placement of Juveniles (Juvenile Referral Centre)

The Centre for Temporary Placement of Juveniles is an independent service functioning under the auspices of the Ministry of Internal Affairs and providing temporary care for children from 3 to 18 years of age who lack parental supervision. The Centre is governed by its internal regulations approved by the MIA on 31 May 2002. Prior to this, the centre had no regulation. The Centre is located in Chisinau and takes in:

- *abandoned children;*
- *children whose parents died, are unknown, under court injunction, or deprived of parental rights;*
- *children on their way to the residential school for children with problem behaviours, needing care until court orders are executed;*
- *run-away children who require public protection and care;*
- *children who ran away from special schools or similar institutions;*
- *children under 14 alleged to have committed acts posing a threat to society and needing to be urgently isolated until case disposition;*
- *children who presented themselves in person asking for help.*

The Regulations do not set any limits on how long juveniles may stay at the centre, but pledge to protect the child until he or she is reintegrated into the family, placed under parental supervision or foster care or provided with other kind of care. Children are housed in rooms of maximum six persons, separated according to their age and sex.

Children can stay in the centre all the time. The centre's bed space capacity is 25. An average of 1,400 to 1,600 children are housed there annually, of whom 30% are girls and 70% boys. The centre's personnel numbers 53, of whom 21 are police officers and 32 are civil servants, including 7 educators, 1 medical officer, 2 medical assistants, 2 sanitary workers etc.

A child can be placed in the centre following:

- *a court disposition,*
- *a decision of the head of the centre,*
- *a decision of the Commission for Juvenile Affairs,*
- *a decision of a police department.*

Even though the centre's personnel maintain an open and forthcoming attitude towards the children in need, the centre is nevertheless a closed institution. Moreover, children with different individual characteristics are held together, from children detained for vagrancy to juveniles adjudicated delinquent, which in certain situations goes contrary to international norms.

The MIA also maintains *detention facilities* where suspects are held while preliminary investigation is in progress. These do not have separate cells for juveniles; as a result, juveniles are held together with adults during preventive arrest.

The Ministry of Justice, through its *Department for Legislation, Endorsement and Expert Appraisal*, the *Penitentiaries Department*, and at the county level through its local *Judicial Divisions*, is responsible for drafting and improving laws governing juvenile justice. It is also responsible for incarceration of convicted juveniles. The Penitentiaries Department maintains a juvenile correctional facility for boys in Lipcani. Convicted girls are confined in the correctional facility for women in Rusca.

The Ministry of Education, through its *School Management Division* (*Children's Rights and Adoptions Section* and *Special Education Division*), and at the county level through its *General Education Divisions*, handles issues related to the education of children. School curricula now include a course on moral/spiritual education, taught to 1-4-th graders, and a course on moral and civil education taught to 5-9th graders. Prevention of juvenile delinquency is also among the Ministry's tasks.

The Ministry's *Special Education Division* maintains *a residential school for children with problem behaviours* at Solonet, designed to supervise children whose conduct is considered to pose a threat to society, but who are under the age of criminal responsibility or whom courts decided to divert away from the criminal justice system.

The Ministry of Health, through its *Mother and Child Care Division*, and at the county level through its *Public Health Divisions*, deals with issues related to juveniles' health. The ministry maintains *alcohol and substance abuse treatment centres*, which treat, *inter alia*, persons sentenced to forced alcohol or substance rehabilitation.

Alcohol and substance abuse treatment centres

Juveniles may get to one of these centres:

- *following a mandatory medical check-up;*
- *via police authorities (the minors and morals division);*
- *via contact persons.*

We should note that treatment in these centres is not anonymous, as they must report the iden-

tity of the persons they treat to the police, as they equally must treat all persons the police sends them, even against the person's will. Yet, treatment available at these centres amounts to a temporary halt in substance abuse without comprehensive rehabilitation.

The **Ministry of Labour and Social Protection**, through its *Equal Opportunities and Family Policies Department,* elaborates and implements social security policies at the national level. The Department is also responsible for supporting families with children, focusing on disadvantaged and at-risk families.

A *Family and Child Division* under the Ministry's *Social Assistance Department* steers and monitors the new system of social assistance for families and children.

At the county level, the task of the *Families with Children and Equal Opportunity Service,* functioning under the *General Social Assistance Division*, is to identify specific problems faced by families and children, set county-level priorities and flexibly use the available resources to address those priorities. This division also steers *Families with Children and Equal Opportunity Services* operating under local *Social Assistance Offices*.

The draft *Social Assistance Law*, adopted by government decision 997 of 24 July 2002 and already past the first parliament reading, envisages establishing, from 2003, a position of a social assistant subordinated to local authorities. The task of the social assistant will be to support persons, groups of persons - children and families with children being a priority group - and communities in need, which are unable to ensure decent living for themselves through their own effort due to economic, socio-cultural, biologic or psychological causes. Also, on 31 December 2002 the government approved a draft *Law on the Protection of Children in Difficulty*, designed to promote and consolidate child protection measures through:

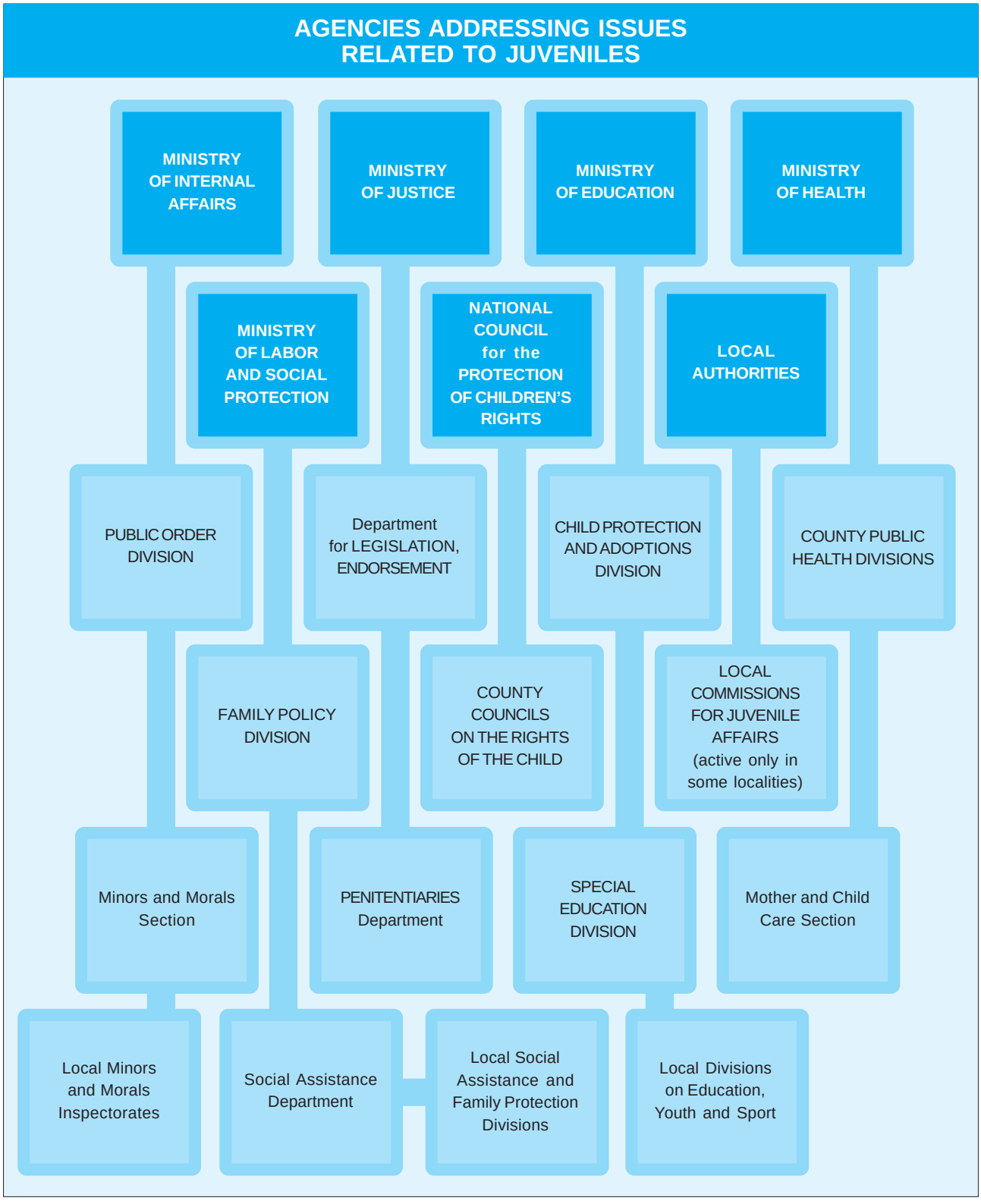
- *creating a network of professional social support services for at-risk children and families (counselling services and child/parent support)*
- *creating a network of parental assistants;*
- *developing community-based child protection services.*

The Department of Statistics and Sociological Analysis is responsible for evaluations and statistics, including juvenile statistics, thus implicitly monitoring the situation of children in conflict with the law.

The institutional framework laid out above shows those different categories of children in conflict with the law fall simultaneously under the competence of various state agencies, which impedes comprehensive action to address their needs.

In an effort to consolidate the functions diffused over a variety of agencies, the Government set up, by its decision 106 of 30 January 1998, the ***National Council for the Protection of Children's Rights***, an inter-sectorial body responsible for implementing family and child protection measures. As a steering organ, the Council oversees the government's child and family protection policies, monitors compliance with the *United National Convention on the Rights of the Child* and the *Convention on the Elimination of All Forms of Discrimination against Women*, supervises and coordinates collaboration with international agencies, donors and NGOs. To ensure effective implementation of the Council's decisions, the Government formed NCPCR Permanent Secretariat by its 23 January 2002 decision called "*On approving the National Concept*

of Child and Family Protection". The Secretariat's functions are to provide executive and operational support to NCPCR working groups which cooperate with and assist public institutions and NGOs in providing assistance to families and children.



2 Local agencies and organizations with juvenile justice responsibilities

The National Council for the Protection of Children's Rights established, by its decree of 14 September 1999, **County Councils on the Rights of the Child**, an agency coordinating programs and efforts to protect children's rights at the local level. However, considering that at the local level child protection functions are also split between different agencies, county councils face the same problem of competing departmental interests and inter-sectorial rivalry.

Because family and child protection functions are dispersed over a wide range of local and national authorities, with each addressing only a narrow segment of the problem, efforts and a lot of resources are wasted to establish interdepartmental communication.

At the county level, *Families with Children and Equal Employment Services* operating under the *Social Assistance Division* have one or two experts in family and child assistance and one expert in the area of equal opportunities.

By its decree no. 680 of 22 July 1999, the government established *Child Protection Sections* under the County Councils, only to halt them four months later, by its decision 1050 of 8 November 1999 called "On Changes in the Composition of County Councils". This decision subordinated *Child Protection Sections* (later renamed *Child Protection and Adoptions Division)* to the ME's *General Education Division*. These contradictory decisions led to some confusion, so much so that at the beginning of 2003 Chisinau municipality, Ungheni, Cahul and Soroca counties had child protection divisions working independently, while the rest of the regions had similar agencies subordinated to the Ministry of Education.

The **Child Protection Department** established by Chisinau municipal authorities on 26 June 1997, is an altogether different approach to institutional protection of children. The Department is called upon to support children in the family environment and assess the needs of disadvantaged and at-risk families. The department has trained all practitioners responsible for child protection at a variety of municipal agencies, achieving concerted action, comprehensive coordination of efforts and a prompt, more child-centred response. The structure is at present composed of 5 district sections, located in the premises of district authorities. Each of the 5 district sections has a senior officer for juvenile delinquents and street children. These officers concomitantly serve as secretaries for CJAs.

This highlights once again a need to put into place a separate child protection system both at the local and the national level, which would also fulfil one of the recommendations made by the UN Committee on the Rights of the Child in its concluding observations of 4 October, 2002.

Commissions for Juvenile Affairs are extra-judicial agencies governed by the ***Regulation of***

Commissions for Juvenile Affairs. **The Regulation was approved on 25 March 1967 by a decree of MSSR's Supreme Soviet Assembly.** The Statute, if rather outdated, assigns specific responsibilities to the Commission in preventing juvenile delinquency, supervising children in conflict with the law, coordinating the response of governmental and community organizations to juvenile delinquency and controlling the content and implementation of educational programs for children.

Commissions investigate:

- *juveniles who have committed "antisocial" acts prosecutable under penal or common law, but are under the age of criminal or administrative responsibility;*
- *juveniles who committed an offence at the age from 14 and 18, but against whom prosecution has either not resulted in formal proceedings, or, having started them, discontinued them and sent the file to the Commission.*

Article 18 of the RCJA elaborates the range of dispositions available to the Commission. These are mostly educational/disciplinary measures broadly similar in content and scope to non-institutional measures envisaged by the Penal Code.

The RCJA was decreed into effect as a standard regulation by the MSSR's Supreme Soviet back in 1967; consequently, it does not have the force of organic law. Therefore, applying sanctions envisaged by the Statute explicitly contradicts Article 54 of the Constitution, which prescribes that "the exercise of certain rights and liberties can be restricted only by law".

According to the Statute, Commissions for Juvenile Affairs are composed of County Counsellors, community representatives, educational and health authorities, social assistants, public order authorities and representatives of other institutions, 10 members overall. Participation is voluntary.

Each Commission has a secretary whose sole responsibility is to oversee the current workflow and ensure the implementation of CJA's decisions. If need be, a position of a child inspector may be established as well. The secretary is the sole employee of the Commission preparing and handling all files.

The Commission may summon parents and children to its meetings to clarify the circumstances of an incident or the issue at hand.

The Commission's orders are binding on all public institutions, enterprises, community organizations and public officials who must report back within two months on the steps taken to implement the disposition.

CJAs should register and take steps to support children left without parental care, children who have parents or other persons with whom they live but who fail to ensure proper conditions for educating them, children who dropped out of school and do not work and other at-risk youth who require community care. A child can be expelled from school or other educational institution only subject to the Commission's consent.

CJAs, in conjunction with police authorities, are responsible for keeping track of and supervising the conduct of children sentenced to disci-

plinary/educational measures or measures other than confinement, children who were conditionally sentenced, released on probation or returning from residential schools for children with problem behaviours or a correctional facility. If need be, the Committee may take steps to find employment for the young person or to help him/her enrol in an educational institution.

The Commission may inspect the conditions under which children are held at residential, medical, detention or correctional facilities and referral centres; speak with juveniles held there; address their complaints; examine their personal files; submit pardon pleas; request courts to suspend their sentences, apply an alternative disposition or a more lenient sanction; and request competent authorities to consider administrative sanctions if the Committee's decisions or proposals are ignored.

Commissions for Juvenile Affairs examine juvenile cases submitted by public prosecutors and courts or brought before it by local councils, police authorities, educational institutions, parents' committees or community representatives. It also has the power to act on its own. CJA's decisions can be appealed in court.

With the onset of administrative and territorial reforms, Commissions for Juvenile Affairs have virtually come to a halt. The new law on local authorities admits in principle that some commissions are possible without specifying what these are. According to our information, Commissions for Juvenile Affairs have been re-convened in very few localities.

Chisinau appears to be the only place where CJAs continue to convene regularly. According to Chisinau municipal authorities, the city's district CJAs handled 980 juvenile cases in 1998, 549 cases in 2000 and 496 in 2001.

Moldova's legal framework provides for other structures to administer justice at the community level. There is a R*egulation on Community Educators* adopted by MSSR's Council of Ministers on 24 June 1967 and the *Regulation on Community-based Children's Rooms* approved by MSSR's Council of Ministers on the same day. However, neither is operational at present.

In conclusion, we want to highlight again the detrimental effect that the lack of a government agency directly responsible for developing and promoting child care policies and standards has on the system.

With roles and functions split between various agencies, the system's overall capacity to respond to the needs of children in conflict with the law is very limited. The main features of the system are its inability to respond to new problems generated by the transition period; its limited capability to intervene promptly at different stages of a crisis; poor professional performance, compared with tangled administrative procedures; lack of justice practitioners with adequate training in social assistance, psycho-social therapy and social management; limited ability to conceive and try out alternative approaches owing to ramified administrative structures and poor professional skills; which taken together leaves few, if any, alternatives to institutional confinement of children with problem behaviours.

UNITED NATIONS GUIDELINES FOR THE PREVENTION OF JUVENILE DELINQUENCY (THE RIYADH GUIDELINES)

The Riyadh Guidelines, adopted in 1990, came as a result of an important meeting of reputable human rights and justice practitioners in 1998 in the capital of Saudi Arabia.

The Riyadh guidelines advocate a positive, active attitude towards the prevention of juvenile delinquency. At the same time, the guidelines aim at increasing the awareness of the fact that juveniles who have infringed the law are above all human beings.

"…Youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood", (The Riyadh Guidelines, (5e)).

The Riyadh guidelines have three main features: 1. They are comprehensive; 2. They promote proactive prevention policies; 3. They regard children as fully fledged participants in the life of society.

The guidelines are based upon the following fundamental principles:

1. The prevention of juvenile delinquency is an essential part of crime prevention in society. By engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, young persons can develop non-criminogenic attitudes.

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

3. For the purposes of the interpretation of the present Guidelines, a child-centred orientation should be pursued. Young persons should have an active role and partnership within society and should not be considered as mere objects of socialization or control.

4. In the implementation of the present Guidelines, in accordance with national legal systems, the well-being of young persons from their early childhood should be the focus of any preventive programme.

5. The need for and importance of progressive delinquency prevention policies and the systematic study and the elaboration of measures should be recognized. These should avoid criminalizing and penalizing a child for behaviour that does not cause serious damage to the development of the child or harm to others. Such policies and measures should involve:

(a) The provision of opportunities, in particular educational opportunities, to meet the varying needs of young persons and to serve as a supportive framework for safeguarding the personal development of all young persons, particularly those who are demonstrably endangered or at social risk and are in need of special care and protection;

(b) Specialized philosophies and approaches for delinquency prevention, on the basis of laws, processes, institutions, facilities and a service delivery network aimed at reducing the motivation, need and opportunity for, or conditions giving rise to, the commission of infractions;

(c) Official intervention to be pursued primarily in the overall interest of the young person and guided by fairness and equity;

(d) Safeguarding the well-being, development, rights and interests of all young persons;

(e) Consideration that youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood;

(f) Awareness that, in the predominant opinion of experts, labelling a young person as "deviant'', "delinquent" or "pre-delinquent" often contributes to the development of a consistent pattern of undesirable behaviour by young persons.

6. Community-based services and programmes should be developed for the prevention of juvenile delinquency, particularly where no agencies have yet been established. Formal agencies of social control should only be utilized as a means of last resort.

Administration of juvenile justice in practice

IV

1 Decision-makers handling juvenile cases

Investigators

The police play a fundamental role in the administration of juvenile justice. The *Law on Police* gives police officers the power to apprehend juveniles charged with an offence, take them to the police precinct and initiate legal proceedings. Article 104 of the Code of Criminal Procedure makes it obligatory for police officers to notify parents or legal guardians on apprehending a juvenile. However, Article 13 of the *Law on Police,* which elaborates legal procedures for apprehending a person, does not impose a similar requirement on police officers.

Article 14 of the *Law on Police* prohibits police officers from using firearms against juveniles, except for cases of juvenile gang assaults, armed assault, armed resistance or gang assault that threatens the life and well-being of others, and only if no other means of restraint are possible. The law also sets limits on the use of force, with instruments of restraint being allowed only to prevent crime or overcome resistance to legal demand of a police officer, provided that non-violent control methods cannot achieve this end.

Criminal prosecution of juveniles rests with criminal investigations sections functioning under police departments or criminal investigators from the prosecutor office or national security services. The latter mostly investigate crimes against the state.

In some cases the law delegates the power to conduct preliminary investigation to other agencies, especially local police precincts and juvenile inspectors.

Ultimately, the decision to create a juvenile police record rests with Police Commissioners, who, based on the available information, determine whether a police file is necessary and if so, create a “preventive” police file or record.

To prevent juvenile delinquency, Inspectorates for Juvenile Affairs (IJA) may create “preventive” police files on juveniles returning from correctional institutions, convicted juveniles whose sentence has been suspended, conditionally sentenced or pardoned juveniles, juveniles charged with an offence but not detained prior to case disposition, underage drug abusers, including those returning after compulsory medical treatment and convicted juveniles whose sentence is other than the deprivation of liberty.

“Preventive” police records are kept on juveniles who committed an offence but were diverted to community-based care, those who committed socially dangerous acts prior to attaining the age of criminal responsibility, those who committed less serious acts warranting community supervision or administrative sanctions, underage consumers of alcohol and illicit substances and chronic dodgers of special educational programs.

IJA may also register parents who systematically neglect their parental responsibilities, forsaking child care and education and implicitly setting the child on a path towards problem behaviours and delinquency.

On creating a juvenile police file or record, IJA inspectors:

a) speak with the juvenile, his or her parents or guardians, explaining to them the reasons for creating a police file or record, their rights and responsibilities, and the conditions which he/she must fulfil to have the record destroyed;

b) inform community organizations, employers and school managers where the child is working or studying, and a treatment centre in the case of alcohol or substance abusers, that the juvenile has been registered with the police for an offence against public order.

A signed statement from a medical facility confirming that a juvenile consumes illicit substances without prescription is reason enough for police officers to create a "preventive" police record.

"Preventive" files and records are suspended and juveniles are removed from under IJA supervision if:

- *the juvenile is corrected;*
- *the juvenile turns 18;*
- *the court lifts the sentence;*
- *the probation period expires;*
- *court lifts conditional or suspended sentence, or issues commitment orders confining the juvenile in a correctional facility, as established by his or her original sentence;*
- *the juvenile commits an offence and is detained;*
- *the juvenile dies.*

The Statute of the IJA allows inspectors to visit juveniles at home, school, workplace, speak with them, their parents or other relevant persons, invite the child, his or her parents or other relevant persons to the inspectorate to clarify the circumstances of the offence, stay at the police department with a juvenile who has committed an offence for up to three hours, assess the pace of juvenile's progress towards re-education at his/her educational institution or workplace, and launch proceedings to deprive parents of their parental rights if deemed necessary.

Juveniles who may be taken to the IJA are:

a) persons who, before attaining the age of criminal or administrative responsibility, committed "antisocial acts", offences against public order or other offences;

b) juveniles who committed infractions which warrant administrative sanctions or community-based care;

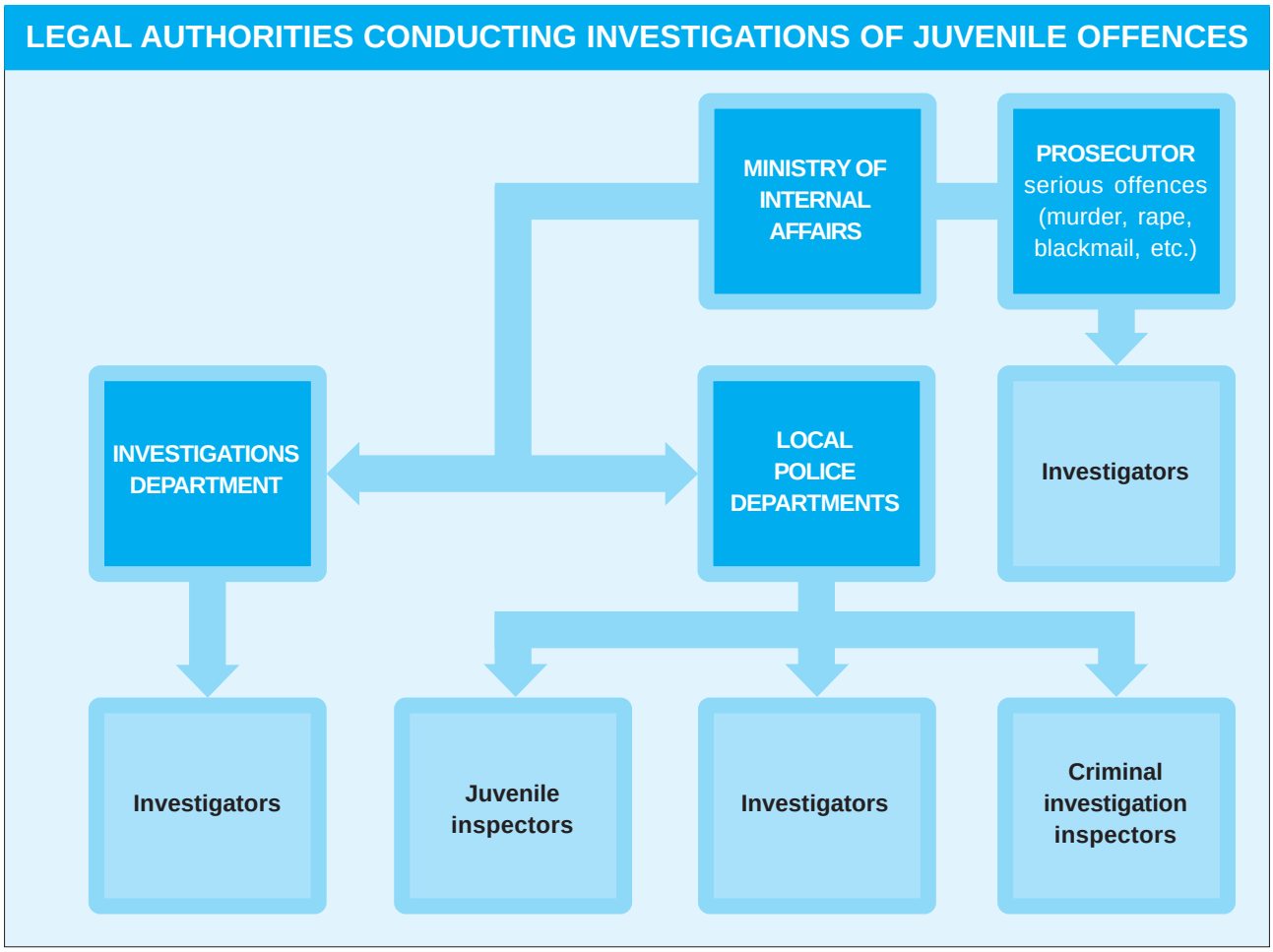
c) juveniles referred to the Temporary Placement Centre, whose papers or records need to be put in order or who may have to undergo treatment at a medical institution;

d) juveniles who committed criminally prosecutable offences and juveniles at the age from 16 to 18, whose identity has not been established and who are in need of help and supervision.

e) juveniles left without parental care;

f) homeless and abandoned children.

Juveniles who have committed a criminally prosecutable offence at the age of criminal responsibility are taken to the local police department.



Juveniles in a state of drunkenness or intoxication are taken to the police department or the IJA to establish their identity, family information and the circumstances of the incident, after which they are handed over to their parents or guardians, representatives of residential schools or similar educational institutions or medical facilities if still drunk or injured.

It needs to be mentioned that the functions assigned to juvenile inspectors outstrip their capacity to fulfil them. On the one hand, apart from dealing with issues directly related to juvenile delinquency, they have to address issues that are not directly related to it, such as schooling. On the other, their functions are not limited solely to juvenile delinquency, as they are concomitantly trained to perform routine police tasks as well.

In this respect, it would be expedient to transfer some of juvenile inspectors' functions to social assistants, limiting inspectors' responsibilities to investigating and processing juvenile delinquency cases. An argument in support of this is that social assistants receive better professional training than juvenile inspectors.

Courts

Criminal cases involving juveniles are handled by common courts. Jurisdiction over juvenile offences belongs to the Supreme Court, Court of Appeal, tribunals and lower courts, the latter in essence handling most juvenile cases.

The Supreme Court has some unique powers as well, summarizing judicial practices and sta-

tistics and providing explanatory judgments on how laws should be applied. An example of this is Supreme Court's decision of 12 November 1997, "On Application of Existing Laws to Juvenile Delinquency Cases".

Also, on request from lower courts, Supreme Court judges may also provide methodological assistance.

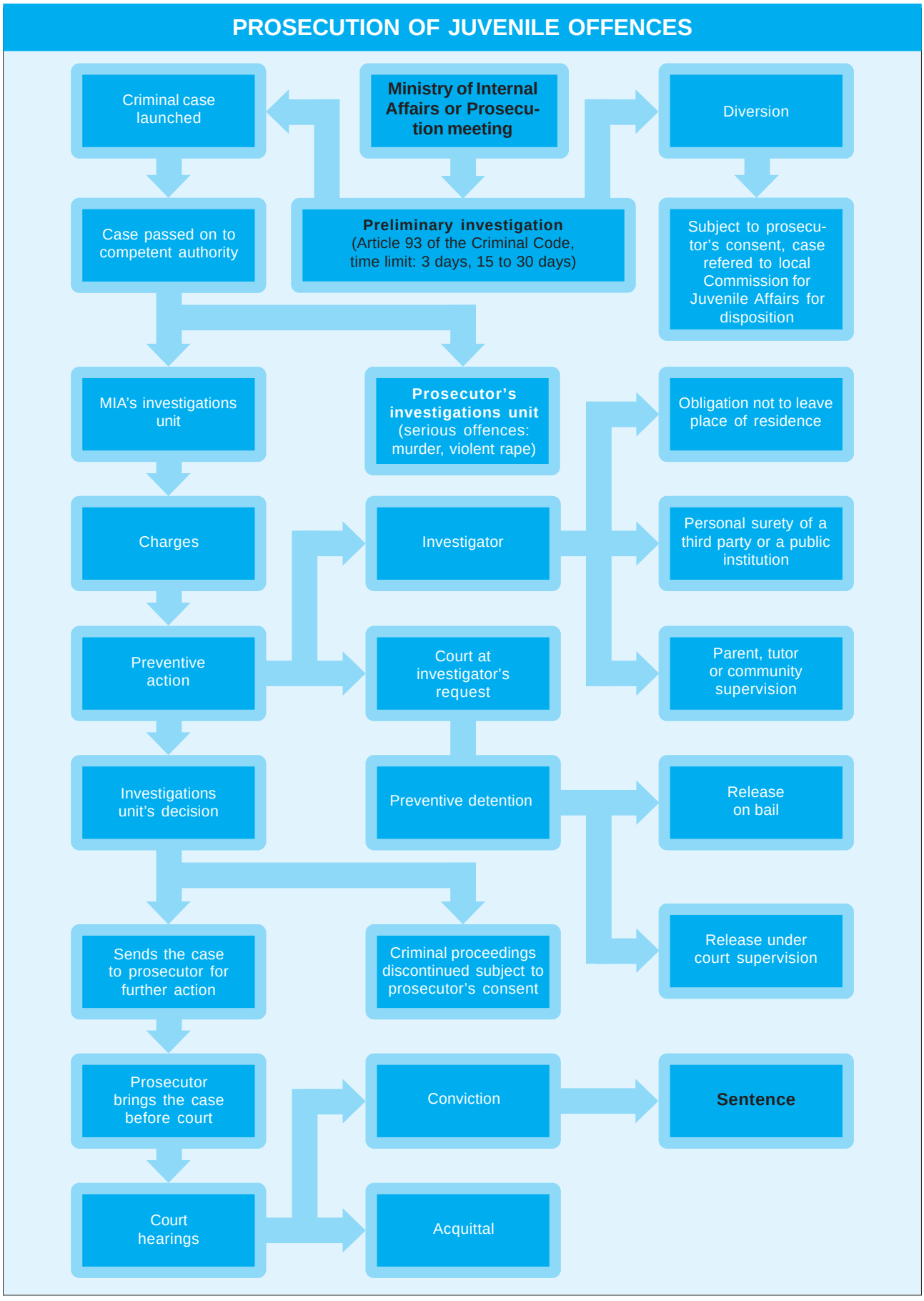
If the juvenile who has infringed the law is judged not to pose a serious threat to society, courts may refer the case to the local Commission for Juvenile Affairs.

Decision-making process in juvenile cases

The *Code of Administrative Offences* defines the content of "administrative offences", sets penalties and their delivery and regulates the authority of the agencies prosecuting these offences, such as courts, administrative boards under local executive authorities, the Ministry of Internal Affairs, departmental committees and public inspectorates, etc. These authorities investigate administrative offences committed by juveniles over 16, who are administratively liable only under Article 47.1 of the CAO (inflicting light corporeal injury), 47.3 (injury), 51 (burglary, limited to cases when the value of property stolen is small), 120-128 (traffic misdemeanours); 154 (violation of weapons sales regulations); 164 (non-aggravated hooliganism); 165 (illegal use of arms); 174 (malicious disobedience to legitimate demands of a police officer); 174.5 – 174.8 (illegal acts against a police officer). The *Regulation of the Commission for Juvenile Affairs* covers all other juvenile cases.

Moldova does not have separate judicial authorities, such as juvenile courts or juvenile criminal prosecutors, who would have sole jurisdiction to handle administrative infractions committed by juveniles, as recommended by the UN Convention on the Rights of the Child and other international legal acts such as *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), the UN Rules for the Protection of Juveniles Deprived of their Liberty*, *and United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines).* Lack of juvenile justice authorities stems primarily from the insufficiency of financial means needed to institute and maintain them. A provisional means of improving matters is to have some of the existing personnel or structures specialize in juvenile justice, as was indeed the case in the recent past. Up until 1995, the Supreme Court had a panel of judges specializing in juvenile justice, and the Ministry of Justice appointed experienced juvenile judges to each of the lower courts, vesting them with the sole authority to adjudicate juveniles cases.

Even though Moldova has no juvenile courts or judges, laws prescribe more lenient approach to juveniles. For example, article 31 of the CAO forbids administrative arrests of juveniles. The CCP stipulates that preventive detention is an exceptional measure, which cannot exceed four months for persons under the age of 16, six months for persons under 18 and one year for adults. Article 33 of the CAO recognizes minor age of an offender as a mitigating circumstance. The same provision is inscribed in both versions of the Criminal Code. Laws also impose special conditions for interrogating a young person, such as the compulsory presence of an educator etc.


PROSECUTION OF JUVENILE OFFENCES
Criminal case launched
Ministry of Internal Affairs or Prosecution meeting
Diversion
Case passed on to competent authority
Preliminary investigation (Article 93 of the Criminal Code, time limit: 3 days, 15 to 30 days)
Subject to prosecutor's consent, case refered to local Commission for Juvenile Affairs for disposition
MIA's investigations unit
Prosecutor's investigations unit (serious offences: murder, violent rape)
Obligation not to leave place of residence
Charges
Investigator
Personal surety of a third party or a public institution
Preventive action
Court at investigator's request
Parent, tutor or community supervision
Investigations unit's decision
Preventive detention
Release on bail
Sends the case to prosecutor for further action
Criminal proceedings discontinued subject to prosecutor's consent
Release under court supervision
Prosecutor brings the case before court
Conviction
Sentence
Court hearings
Acquittal

Juveniles' legal representatives are entitled, with some exceptions, to study the criminal case once the criminal investigation is over and participate in court hearings (take part in court investigations, provide and challenge evidence and submit requests), as well as appeal the court's ruling.

Article 292 of the CAO makes parents or guardians liable for damages caused by a juvenile who committed a minor act of public disorder at the age from 16 to 18 and cannot restore the damage on his own.

Juveniles are entitled to other safeguards at the stage of criminal investigation. For instance, juvenile cases may be tried by a panel consisting of three judges rather than one, as is the case under regular procedure. However, this legal provision is rarely, if at all, applied in judicial practice. At all stages of criminal proceedings against a juvenile and during court hearings, prosecutors, investigators and courts must investigate the causes and circumstances that may have contributed to the offence, such as:

1) the juvenile's living conditions and educational background;

2) causes and circumstances that may have given rise to the offence;

3) whether the act has been committed under peer pressure, either from adults or other juveniles.

Pursuant to Article 53 of the CCP, if evidence is available that a juvenile is "mentally retarded and this is not due to a mental disorder", legal authorities must ascertain whether he could fully realize the meaning and consequences of his/her acts, to which end, parents, teachers, mentors or other persons who may provide relevant information should be questioned, requisite papers should be obtained and other investigations and court procedures should be undertaken.

In conclusion, the legal procedure for prosecuting criminal and administrative offences is largely in line with minimum requirements of international law. However, the provisions specifically applicable to juveniles, albeit incorporated into Moldova's criminal legislation, are not systematically laid out in a separate chapter or law. Legal provisions related to juveniles are scattered over different chapters of the Criminal Code and the Code of Criminal Procedure, complicating their systematic and uniform application. The Code of Criminal Sentences Execution is an exception, containing separate chapter 14, which systematically elaborates the "execution of prison sentences imposed on juveniles".

The draft Code of Criminal Procedure, being debated by the Parliament at the time of writing, contains a separate chapter on juveniles, systematizing the current norms but failing to change juvenile prosecution procedures. Even so, this is a significant step forward in streamlining the administration of juvenile justice.

Other agencies with juvenile justice decision-making powers

In the past, courts trying a juvenile case could request guardianship authorities to prepare and submit a child's profile and this information would largely determine the disposition of the case. Prior to making conclusions about a child's character, guardianship authorities would speak with his or her parents and teachers. At present, concomitantly with the shift to the principle of contradiction, it is wholly up to the parties to request this information, so that guardianship authorities may supply it only if requested to do so by one of the parties. We need to note that the involvement of these structures in examining juvenile cases has declined drastically in the recent past.

ALTERNATIVES TO FORMAL PROCEEDINGS AND RESTORATIVE JUSTICE

Internationally recognized standards of juvenile justice require that whenever possible and opportune, alternative measures should be applied to a child found to have committed an offence, such as referral to extrajudicial authorities (commissions, counsels, boards or other competent authorities). The purpose of extrajudicial procedures is to divert the child to community-based care, averting psychological shocks and stigmatisation that might result from arrest, legal action and sentencing.

Diversion may be used at any point of decision-making - prior to detention (the police refrain from arresting a child who has infringed the law), prior to court hearings (prosecution drops charges), or as a punishment in itself (a court imposes a sentence other than the deprivation of liberty). The earlier the child is diverted away from the justice system, the more secure will he or she be against the negative consequences that direct contact with law-enforcement authorities may have on his or her personality.

Alternative measures should conform to some basic rules to respect the rights of the child:

- *these measures should be inscribed in laws;*
- *the juvenile should admit to committing an offence;*
- *the juvenile should agree to the extrajudicial procedure proposed;*
- *any decision should comply with human rights norms and provide for legal safeguards, such as the right of appeal*

Diversion measures may include, inter alia*, community service or programs, probation and mediation between the victim and the perpetrator.*

Diversion is part of the "restorative justice" approach, a legal theory which advocates conciliation rather than punishment. Theoretically, it is underpinned by a legal theory that views a properly functioning society as an equilibrium between rights and responsibilities. Whenever an incident upsets the equilibrium, some mechanism should be started to restore it.

To restore the equilibrium, the perpetrator should accept the responsibility for the harm caused to the victim, while the victim should be willing to accept compensation for damages.

Restorative justice holds the offender responsible for repairing the damage caused, giving him/her the opportunity to display the best of his abilities and qualities, while also touching the chords of guilt, very common among the young who have infringed the law.

Some localities have set up *Local Commissions for Minors* to address problem behaviours of minor concern. These Commissions are usually made up of a school headmaster, teachers, parents and a local juvenile inspector. If problem behaviours are not amenable to solution at this level, the case may be referred to the Commission for Juvenile Affairs managed by local authorities.

Diversion and extrajudicial disposition of juvenile cases

Under Moldovan legislation, the major alternative to formal processing of juvenile cases is referring them to the Commission for Juvenile Affairs.

Members of the **Commission for Juvenile Affairs** meet with the child, his/her parents, men-

tors and teachers. As mentioned earlier, the Commission has a wide range of measures at its disposal, from finding employment for the juvenile or aiding him or her financially, to requesting the court to deprive parents of parental rights or impose more stringent measures on the child, such as sending him to a residential school for children with problem behaviours.

Moldovan laws give the authorities some other tools to handle criminal cases without resorting to formal proceedings.

Pursuant to article 5.1 of the CCP, if a person has obviously committed an act which has constituent elements of an offence but does not pose a serious threat to society and community-based correction is deemed feasible, a public prosecutor, or the investigations unit subject to prosecutor's consent, may refrain from launching criminal proceedings and refer the case to the Commission for Juvenile Affairs or order workplace or community supervision. Any diversion of this kind requires the explicit consent of the juvenile.

Criminal proceedings may be discontinued if the case is referred to the CJA, or an administrative sanction is applied, or the person is placed under community or workplace supervision. However, these legal provisions are rarely used in today's judicial practice.

Article 5.4 of the CCP empowers courts to discontinue criminal proceedings and apply administrative sanctions pursuant to article 48.1 of the oCC or article 55 of the nCC if the offence does not amount to a serious social threat and is punishable by up to 1 year in prison. Courts also have the power to discontinue the proceedings and refer the case to the CJA, or order workplace or community supervision pursuant to article 50 of the oCC. The nCC has no provision to this end. However, alternative dispositions are applied on a lesser scale than they could even under the old Criminal Code. According to the MIA, only 80 out of 2,330 juveniles who committed offences in 1997 were spared criminal sentencing and diverted to community-based care, 114 out of 2,520 in 1998, 91 out of 2,442 in 1999 and 116 out of 2,629 in 2001. No data are available for 2000.

Under article 275 of the CCP, if the court rules that a misdemeanour at hand does not pose serious social danger, and the juvenile who committed it can be corrected without criminal sentencing, criminal proceedings are discontinued and disciplinary/educational measures are applied pursuant to Article 60 of the oCC and Article 104 of the nCC.

For some offences committed by juveniles, courts must consider the possibility of suspending the sentence. Article 29 of the RCJA empowers the Commission to refer the case involving a petty misdemeanour to lay magistrates (not yet in existence) or to local community organizations, provided that a more lenient disposition of this nature has a noticeable educative potential.

Overall, the judicial system seems to use, to a certain extent, the available diversion measures. However, these measures are largely the legacy of the socialist system, long gone. They are no longer operational, as there is no legal mechanism for applying them in today's world. For example, placing a juvenile under the peer supervision of fellow employees or community educator cannot produce the effect sought, as supervisors often lack the knowledge and skills necessary to deal with these children. Even though it is unjust to disclaim the influence that workplace supervision may have, achieving positive impact takes at the very least the participation of social workers and education professionals.

Some alternative sanctions are too vaguely defined to assess their impact on a child who offends against public order. For example, we have no data to ascertain whether or to what extent placing a child under parental or foster care is effective in today's world. Nor is it quite clear what such measures as warnings, reprimands or strict reprimands actually amount to. Because of this, they are used rarely, if at all, and have not been included in the new Criminal Code.

We believe it necessary to develop new alternative measures, such as community service *in lieu* of incarceration, or conditional release, which would serve not only punitive but also delinquency prevention purposes. Community service, for instance, is effective because labour not only serves educational purposes, but also socializes the young and teaches them to value their free time. These sanctions, applicable, *inter alia*, to persons over 16, have been incorporated into the nCC.

Community participation

Even though the current legislation provides for community participation in administering juvenile justice, mostly through local Commissions for Juvenile Affairs made up of community representatives, the CJAs, as mentioned earlier, are inactive in most localities. Lay magistrates, which are non-governmental community structures, existed until the beginning of 90s. Every community of 50 or more persons could form a similar body, empowering it to solve minor conflicts, especially those related to misdemeanours and violations of community norms. As lay magistrates disappeared, no substitute has been put in their place. We believe them worth resuscitating, especially in rural areas, with respective adjustments that the reality of today requires.

Restorative justice practiced in other countries is yet to be explored in Moldova. Old laws do not envisage the possibility of direct negotiation or mediation between the victim and the perpetrator. When these do take place, they are usually informally initiated by the perpetrator or his family in an effort to convince the victim to retract the accusations.

Pursuant to Article 3 of the CCP, competent authorities must initiate criminal action whenever there are legal grounds for doing so. Exceptions are made for persons charged with rape without aggravating circumstances, damage through fraud or breach of trust, copyright violations, or in the case of theft by the person living with the victim or hosted by him or her. In any of these cases the victim must file a complaint to start criminal action against the perpetrator; however, criminal action on any of those charges may be discontinued if the parties are reconciled, except for cases involving theft from proprietors with whom the perpetrator was living together or was hosted by them.

The new Criminal Code provides for discontinuing criminal proceedings if the parties come to a mutually acceptable agreement about any offence punishable by up to 5 years in prison.

UNITED NATIONS STANDARD MINIMUM RULES FOR THE ADMINISTRATION OF JUVENILE JUSTICE ("THE BEIJING RULES")

The Beijing rules, adopted by UN General Assembly in 1985, serve as a guideline for state parties in developing their juvenile justice systems. This international act elaborates the norms of juvenile justice, with a special emphasis on children's' rights.

The Beijing rules are recommendations and therefore not legally binding. However, some principles proclaimed by the Beijing rules have been subsequently incorporated into the UN Convention on the Rights of the Child, adopted in 1989, becoming legally binding on state parties, including Moldova.

Article 1.4 of the Beijing rules stipulates that "juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles…".

Article 1.3 of the Beijing rules calls on state parties to give "sufficient attention … to positive measures that involve the full mobilization of all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law".

The Beijing rules encourage efforts to establish, in each national jurisdiction, a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice.

The Beijing rules urge legislators drafting juvenile justice laws to inquire into which categories of juveniles commit offences and for what reasons, which rehabilitation programs will best help them, which sanctions would be most likely to discourage other young persons from committing similar offences and at the same time be consistent with their mental, moral, social and psychological well-being.

We would like to emphasize the following fundamental principles established by the Beijing rules:

- *Equitable and humane treatment of juveniles in conflict with the law. Juvenile justice should protect the well-being of the juvenile and ensure that any reaction to juvenile offenders is always in proportion to the circumstances of both the offenders and the offence.*
- *Consideration should be given, whenever appropriate, to dealing with juvenile offenders "without resorting to formal trial by competent authority"; that is, a full range of alternative, extrajudicial measures should be used, such as community programs, which the child should be encouraged to attend.*
- *Both detention pending trial and confinement of a child in a correctional facility after trial should be used only as a measure of last resort and for the shortest possible period of time, and only after alternative measures have been explored.*
- *Basic procedural safeguards should be provided to juveniles at all stages of the proceedings, including the right to the presence of a parent, the right to privacy of the proceedings and reports, and the right to competent personnel. Proceedings should be conducted in such a way as to allow juveniles to participate in them and make their voice heard.*
- *Neither capital punishment nor corporal punishment may be imposed for any crime committed by juveniles.*
- *All personnel and police officers dealing with juvenile cases should be receiving continuing professional training.*
- *Juveniles in institutions should receive adequate education to prepare them for subsequent return to society.*

The possibility of release should be considered both immediately after apprehension and at the earliest possible time thereafter.

2 Residential and non-residential facilities for juveniles

Juvenile corrections facilities and security regime

Moldovan laws provide for the separation of juveniles from adults in all detention facilities.

Juveniles serve their sentences in *juvenile correctional facilities*[1] (Article 23 of the oCC), which break down into *minimum-security and medium-security facilities* (Article 106 of the Code of Criminal Sentences Execution). The Criminal Code also refers to medium-security facilities as "correctional facilities with a strict regime".

At sentencing, courts decide in which type of correctional facility the child in conflict with the law shall serve his sentence. First-time offenders, according to article 23 of the oCC, can be sentenced to minimum-security facilities only. Repeat offenders are sentenced to medium-security facilities.

Due to the lack of resources needed to maintain juvenile detention facilities with different security regimes, all convicted boys are confined in Lipcani correctional facility.

According to the Ministry of Justice's Penitentiaries Department, the breakdown of the total juvenile population confined in Lipcani correctional facility by year is as follows:

01.01.1993 – 253
01.01.1994 – 269
01.01.1995 – 231
01.01.1996 – 226
01.01.1997 – 183
01.01.1998 – 151
01.01.1999 – 148
01.01.2000 – 65
01.06.2000 – 76
01.01.2001 – 87
01.01.2002 – 96
01.10.2002 – 120 (of whom 23 attained majority).

Convicted girls serve their sentences in Rusca female correctional facility. At this facility, the separation of adults from juveniles prescribed by law is purely symbolic. Furthermore, girls are provided with no schooling, only vocational training (military outfit manufacturing), being thus deprived of the opportunity to continue their education. Following is the number of girls confined in Rusca facility by year:

01.01.1993 – 9
01.01.1994 – 14
01.01.1995 – 9
01.01.1996 – 12
01.01.1997 – 5
01.01.1998 – 8
01.01.1999 – 5
01.01.2000 – 5
01.01.2001 – 2
01.01.2002 – 6
01.10.2002 – 4

[1] A literal translation of the term is a *juvenile corrections-through-labor facility.*

The *Code of Criminal Sentences Execution,* the *Statute on Execution of Punishment by Detainee* and the *Penitentiaries Law* elaborate the rights, the responsibilities and the restrictions imposed on juveniles confined in detention facilities.

Chapter 14 of the *Code of Criminal Sentences Execution* regulates the rights and responsibilities of incarcerated juveniles.

Juveniles serving their first sentence in a minimum-security correctional facility are entitled to one long and one short visit by relatives once in three months. They may also receive packages. Frequency and duration of relatives' and other persons' visits are regulated by Articles 20 and 21 of the *Statute on Execution of Punishment by Detainee.* Short visits, at the discretion of the warden, may last from 2 to 4 hours; long visits last from 24 hours to 5 days, if neither the juvenile nor his/her relatives have requested less.

Juvenile's good conduct may entitle him/her to receive up to 6 short and 4 long visits a year, scheduled at the discretion of the warden or the juvenile's immediate supervisor. Convicted juveniles may also be permitted to leave the correctional facility to visit their parents or immediate relatives, to wear civilian clothing, or, accompanied by detention facility personnel, to attend cultural, theatrical or sport events outside of the facility.

Juveniles confined in medium-security correctional facilities are at first held in isolated cells and are entitled to receive two short visits, one food package and one packet every six months. On evidence of juvenile's good conduct, the warden may transfer him[2] to a minimum-security correctional facility or permit him to receive more frequent visits from relatives, more packages or other benefits.

Juveniles sentenced to correctional facilities are entitled to receive education or vocational training designed to prepare them for their return to society (Article 116 of the *Code of Criminal Sentences Execution*, the *Penitentiaries Law*). Education is compulsory for juveniles of school age. General education and vocational training is provided at school-like settings or workshops within the correctional facility. Vocational training in workshop settings may not exceed 10 hours a day. Tools and materials for education and vocational training of convicted juveniles are provided by the Ministry of Justice. Methodological issues and general supervision rest with the Ministry of Education.

Both general education and vocational training should conform to educational standards set by the Ministry of Education for all educational institutions.

After having served half of the sentence and subject to "exemplary conduct and conscientious discharge of his/her responsibilities", a juvenile may qualify for release on probation, proposed to courts by correctional facility administrators (Article 51 of the oCC). After serving at least three fourth of his/her sentence and subject to the same conditions, a juvenile may have the rest of the sentence substituted for a more lenient disposition.

Article 91 of the nCC contains similar provisions, entitling a juvenile for conditional release if he/she:

- *has served at least half of the sentence for a "lesser offence" (punishable by up to 5 years in prison);*
- *has served at least two thirds of the sentence for a "grave offence" (punishable by up to 15 years in prison);*

[2] As there is no separate detention facility for girls, these provisions apply *ipso facto* to young males only.

- *has served at least three fourth of the sentence for an "exceptionally grave offence" (punishable with imprisonment for more than 15 years).*

Hence, the nCC makes juveniles worse off in this respect as well.

We believe that leaving the choice of bringing the convicted person before court for parole hearings entirely to the discretion of the warden, rather than imposing a legal requirement to do so, restricts the exercise of convicted persons' right to justice guaranteed by Article 20 of the Constitution and article 6 of the ECHR. This restriction affects sentenced children all the more severely.

Sentenced persons who violate the disciplinary regime may be sanctioned. The law explicitly states the types of short-term sanctions that may be imposed on sentenced juveniles, such as a reprimand, lifting the right to receive packages, stricter security regime, work at the detention facility or confinement in a disciplinary ward. Sanctions are applied at the discretion of the warden or his/her immediate subordinates after the *Educators' Council* has reviewed the case. Sentenced persons have the right to file complaints with higher authorities or the prosecutor about the sanctions imposed on them.

Sentenced juveniles who have attained the age of 18 are usually allowed to stay at the juvenile correctional facility until they turn 20, unless they have demonstrably failed to set on the path towards correction. Upon turning 20, a juvenile is transferred to a correctional facility for adults to serve the rest of his/her term. Transfers must be authorized by courts on request from the warden. The court decides where the person shall serve the rest of his/her term, choosing the security regime pursuant to Article 23 of the oCC and bearing in mind the social danger of the offence and the person's character.

Special residential school

If a court decides not to impose penal sanctions on the child or if the child is below the age of criminal responsibility, the court may order disciplinary/educational measures, including placement in a residential school for children with problem behaviours.

There is one *residential school for children with problem behaviours* in Moldova, located at Solonet in Soroca county. The school functions as a social rehabilitation centre, designed to re-educate children with problem behaviours and foster their reintegration in society.

The school, managed by the Ministry of Education, is governed by the *Regulation of Residential School for Children and Adolescents with Problem Behaviours*, adopted by Ministry of Education's decision 27/6 of 28 November 2000.

This educational facility differs from normal schools in that it has a stricter daytime regime, that children work, have a stricter schedule for using their free time, are to a greater extent accountable for their conduct and are at all times supervised by educators.

Vocational training at workshops, lectures, educational, cultural, sporting events, recreation and nighttime are regulated by the school's management pursuant to their internal rules.

Courts may commit a child to the school on request from the competent authorities. The school admits children at the age from 11 to 15. A child may stay there until he/she turns 16, subject to local authorities and the headmaster's consent.

Children with serious health problems, such as physical and mental disabilities, may not be admitted to the residential school. Education and vocational training is combined with actual work and manufacturing activities, targeting the acquisition of essential life skills.

UNITED NATIONS RULES FOR THE PROTECTION OF JUVENILES DEPRIVED OF THEIR LIBERTY

The Rules, adopted by the General Assembly resolution in 1990, are intended to counteract the detrimental effects of deprivation of liberty by ensuring that juveniles' rights are protected. The rules serve as an internationally accepted framework within which states regulate and organize the deprivation of liberty of all persons under 18.

Although the Rules per se are in the form of a non-binding recommendation, some of them have become binding by virtue of their incorporation into treaty law. They are also elaborations of the basic principles contained in the Convention on the Rights of the Child.

The Rules respond to the following elemental questions: What rights do detained juveniles have or should have? Under what conditions should a child who broke the law be detained?

The answers to these questions, broadly speaking, are as follows:

- **Deprivation of liberty should be curtailed as much as possible.** Deprivation of liberty should be a disposition of last resort and for the minimum period and should be limited to exceptional cases. Detention before trial should be avoided and limited to exceptional circumstances. Where nevertheless juveniles are detained the highest priority should be given to expeditious processing of the case.
- Juveniles can be detained and deprived of their liberty only according to the procedures and principles prescribed by international law. **Presumption of innocence must be observed, and all children alleged to have committed or found to have committed an offence must have access to private and unrestricted legal council, preferably free.**
- As a general rule, **every child deprived of liberty should be separated from adults.**
- **Deprivation of liberty should only be in facilities which guarantee meaningful activities and programs promoting the health, self-respect, and sense of responsibility of juveniles.** The facilities should also foster juveniles' skills to assist them in developing their potential as members of society.
- **The number of juveniles detained in a facility should be as small as possible to enable individualized treatment.** In order to be as similar as life outside of the facilities and to develop the juveniles' sense of responsibility, the Rules encourage setting up open facilities with no or minimal security measures.
- **The detention facilities should be decentralized to facilitate contact with family members.** Contact with the community is an integral part of humane treatment and is essential for preparing juvenile to their subsequent return to society.
- **Juvenile justice personnel should receive appropriate training including child welfare and human rights.** Personnel should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists.
- **Conditions of detentions should be periodically inspected** by qualified, independent inspectors without preliminary notification.
- **All juveniles should benefit from arrangements designed to assist them in returning to society,** including special courses, suitable residence, clothing, and sufficient means to facilitate successful reintegration.

Children receive vocational training at workshops or farms depending on their age and physical abilities.

At the time of writing, the residential school for children with problem behaviours in Solonet had 5 managers, 12 teachers and 10 educators. According to the Ministry of Education, the school had 37 children in April of 2003, all of them having been placed there for chronic truancy or larceny-theft. Two of them had prior records of disorderly behaviour and consumption of alcohol.

These data highlight once again a need to implement alternatives to incarceration, especially for lesser problem behaviours, as well as a need to develop new alternatives to formal proceedings. Whenever feasible, children who have broken the law should be referred to extrajudicial agencies in order to divert them to community-based programs and care. This would protect children from the effects that their contact with the law-enforcement authorities and the criminal justice system may have on them.

3 Alternatives to preventive detention and incarceration

Moldovan laws stipulate that pre-trial detention, designed to ensure speedy and unobstructed criminal proceedings, is a measure of last resort. Juveniles may be arrested pending trial subject to certain conditions about the terms and duration of detention. The available alternatives to pre-trial detention of both adults and juveniles are:

- *the defendant's own signed pledge not to leave the city or town of residence without permission;*
- *personal written surety of a third party or a public institution;*
- *close parent or tutor supervision, or institutional supervision if the child has been placed in a residential school.*

A person detained prior to trial may be conditionally released:

1) under court supervision, pledging to observe some or all of the following legal restrictions:

- *not to leave a given location;*
- *not to visit certain places;*
- *not to come into contact with certain individuals etc.*

2) on bail.

Laws allow applying these alternatives subject to some other conditions being met. For example, a person may be conditionally released under court supervision if alleged to have committed a reckless or a premeditated offence punishable by up to 7 years in prison, and released on bail if charged with an offence punishable by up to 10 years in prison.

Under Article 21 of the oCC, juveniles who have committed an offence may be penalized in one of the following major ways:

- *deprived of their liberty;*
- *fined;*
- *reprimanded publicly.*

Criminal legislation empowers courts to avoid imposing criminal penalties on minors in favour of disciplinary or educational measures.

Article 62 of the nPC envisages the following sanctions for juveniles:

- *fine;*
- *for juveniles over 16, unpaid community service lasting from 60 to 240 hours, for no more than 4 hours a day;*
- *three to six months under arrest;*
- *6 to 15 years in prison.*

In making a determination as to which punishment should be applied in a specific case, the CCP directs courts to take notice of the proposals made by the prosecutor, the victim, the defence counsel and the perpetrator. Courts impose a penalty that lies within the minimum and the maximum sentencing limits prescribed by the CC for a specific offence.

The Supreme Court's ruling of 12 November 1997, called „*On application of existing laws to juvenile delinquency cases*", urges courts to avoid unnecessary detention of juveniles who broke the law whenever laws allow imposing a measure other than the deprivation of liberty.

Criminal legislation prescribes some other non-institutional sanctions for juveniles who have broken the law:

Conditional sentences via probation

Article 43 of the oCC allows courts, after examining the circumstances of the offence and the character of the offender and believing it unnecessary to deprive a person of liberty, no mater for how long, to sentence him conditionally, setting a 1 to 5 year probation period. If that is the case, the court orders that the sentence shall not be given effect if the convicted person satisfactorily fulfils certain terms and conditions for a period of time established in the decision. The conditions that can be imposed on a minor are:

- *not to change his/her place of residence, work or study without permission from the supervisory authority;*
- *to support his/her family;*
- *not to visit certain places or locations.*

Article 43 of the oCC gives courts the power to attach other, unspecified terms and conditions to probation orders. In the opinion of the authors, this contradicts the judicial practice of the European Court of Human Rights which requires that laws should be clear, accessible and predictable.

Article 90 of the nCC mentions the possibility of conditional sentencing subject to certain terms and conditions, including a pledge not to change the place of residence, work or study without permission from the supervisory authority; not to visit certain places; to provide assistance to the victim's family; to undergo alcohol or substance rehabilitation, or treatment of sexually transmitted infections; to repair, within the term established in the decision, the damages caused; or to fulfil other requirements that may contribute to that person's correction. Courts' discretion to impose unspecified terms and conditions contradicts the criteria for the quality of law set by Article 7 of the ECHR.

If a conditionally sentenced person violates the terms and conditions of probation, the court may, at the request of the probation authority, revoke probation and give immediate legal effect to the sentence, depriving the person of his or her liberty.

If a conditionally sentenced person satisfactorily fulfils the terms and conditions of probation, he/she is considered not to have a criminal record after the probation period ends. These provisions, however, do not apply in the case of grave offences.

Courts frequently resort to imposing probation orders on juveniles. According to the Ministry of Justice, 800 juveniles were sentenced condition-

ally in 1998, 605 in 1999, 1,042 in 2000 and 778 in the first ten months of 2001.

Suspended sentences

Before it was amended in December of 2000, article 44.1 of the oCC allowed courts to postpone the execution of the sentence imposed on a juvenile. In the case of first-time offenders whose offence carried a prison sentence of up to 3 years, courts, bearing in mind the circumstances of the offence, the character of the offender, the likelihood of his or her correction without incarceration and other relevant facts, could suspend the sentence for 1 to 2 years. The nCC has no similar provision.

Courts could impose the following conditions on a juvenile whose sentence has been suspended:

- *to repair, within the period established by the court, the damage caused;*
- *to find employment or to enrol in an educational institution;*
- *not to change the place of residence without permission from the supervisory authority;*
- *to inform the supervisory authority about any changes in the place of residence, work or study;*
- *periodically present in person and register with the supervisory authority;*
- *not to visit certain places;*
- *to undergo treatment in the case of alcohol abuse.*

The authorities supervising the conduct of a juvenile were the Ministry of Internal Affairs, Inspectors for Juvenile Affairs, and local Commissions for Juvenile Affairs.

Once the period established in the decision has expired, the court would revisit the case and, at the request of the supervisory authority, either lift or confirm the sentence. These legal provisions were very frequently applied to juveniles: 305 convicted juveniles had their sentences suspended in 1998, 197 in 1999, 302 in 2000 and 57 in the first ten months of 2001.

As amended, this article applies to pregnant women or women with infants only.

Lesser sentences than prescribed by law

Before it was repealed on 1 June 2001, article 42 of the oCC had allowed courts, after considering the circumstances of the offence and the character of the perpetrator, to apply a lesser sentence than the minimum penalty prescribed by the Criminal Code for a given offence, or even choose a different sanction.

In contrast to adults, these provisions applied even to juveniles who committed grave offences (murder, robbery or rape). There was one restriction only: although allowed to apply a lesser sanction, courts could not go beyond a minimum sentence of 3 years in prison. Statistically, courts imposed lesser sentences on 88 juveniles in

1999, 158 in 1999, 252 in 2000 and 152 in 2001. On 1 June 2001 the Parliament removed Article 42 from the Criminal Code, toughening the penalties for juveniles who have infringed the criminal law.

To sum up, by amending Articles 44.1 and 43 and removing Article 42 from the Criminal Code, the Parliament has limited courts' ability to individualize penalties imposed on juveniles, effectively leaving them no choice but to resort to tough sentencing prescribed by the Criminal Code, which translated into a growing number of juveniles deprived of their liberty.

Lawmakers have reinstated courts' power to apply lesser sentences in Article 79 of the nCC, which sets no limit on how far courts can go in imposing milder sanctions for lesser offences, whereas in the case of grave and exceptionally grave offences, courts may not impose sanctions amounting to less than half of the minimum penalty prescribed by law.

4 Legal assistance available to children who have infringed the law

A child who has infringed the law has the right to a legal counsellor, chosen by him/her or provided free by the state. The defender must participate in the proceedings from the time charges are brought against the juvenile, or if the child is detained, from the moment the detention report or a detention warrant is submitted. Juveniles' defendants must have a background in law and a lawyer license from the Ministry of Justice.

Participation of the juvenile's defender is mandatory at the stage of both criminal proceedings and court hearings. At the stage of criminal investigation, the juvenile's defender may take part in all legal proceedings in which the juvenile participates or which are requested by the defence.

As a rule, persons suspected, alleged or accused of having infringed the penal law may waive legal counsel and choose to defend themselves on their own. A waiver can be made at any stage of the proceedings, but only by the person charged with an offence and only after an attorney has been given a real opportunity to participate. Even so, the Supreme Court's ruling of 9 November 1998, entitled „*On exercising the suspected or the accused persons' right to legal counsel during criminal proceedings*", urges competent authorities to reject, in the interest of proper administration of justice, any defence waiver made by a juvenile. Nor may the attorney waive his/her legal responsibility for protecting the client.

The Regulation of the Commission for Juvenile Affairs does not prescribe a defender to protect juveniles' interests before the Commission.

Article 23 of the *Statute on Execution of Punishment by Detainee* gives sentenced persons the right to meet with their attorneys, upon submitting a written request with the competent authorities. The request may be submitted either by the sentenced person or by his/her relatives or public organizations. These meetings with the lawyer are not limited in either their duration or number and do not count towards the meetings that a convicted person is entitled to have.

Even though the participation of a legal adviser in the proceedings is well-regulated and carefully safeguarded, we do not know whether or to what extent legal assistance provided by the defender of the person's own choosing, let alone the one provided free by the state, is real and effective in everyday judicial practice.

5 Supervision of execution of sentences imposed on juveniles

The Prosecutor Office is the main body supervising compliance of criminal proceedings and the execution of the sentence with the current legislation, which includes the responsibility to supervise the exercise of convicts' rights in correctional institutions. Under the *Law on Prosecution*, adopted in 2002, local and specialised prosecutors monitor the legality of criminal investigators' actions in order to ensure that offenders are brought to justice, sentences or other sanctions or reprieves are executed, legal requirements for detaining the suspects are strictly observed and laws are adhered to at detention or correctional facilities.

To fulfil these functions, prosecutors may visit detention or correctional facilities at their will; speak with detained, convicted or otherwise constrained persons in private; request explanations from the administrators of correctional facilities; check the legality of their internal rules and regulations; suspend them if necessary and appeal them if they contradict the law. Prosecutors must without delay set free any illegally detained or incarcerated person.

Article 51 of the oCC and article 54 of the SIJA stipulate that local police departments, through their inspectors for juvenile affairs, are responsible for supervising the conduct of conditionally sentenced juveniles and juveniles whose sentence has been postponed.

A person having a wide range of supervisory authority is an ombudsman, who has free access to correctional facilities and may freely speak with detained persons and administrators of detention facilities.

Currently, there are no legal provisions for any other independent authority to oversee juvenile detention facilities. We believe that some additional monitoring mechanisms are necessary, which would, *inter alia*, enhance the role of NGOs in monitoring the conditions under which juveniles are held.

6 Periodical review of dispositions and sentences

Currently there is no legally binding requirement for any authority to conduct periodical post-sentencing reviews in order to revise juvenile's legal status or security regime, which contradicts the spirit of Article 25 of the UN Convention on the Rights of the Child.

Nevertheless, laws allow reviewing convicted persons' status (release on parole, transfer to a minimum-security facility or milder sanction etc). However, courts may proceed only on request from detention facility administration. Submitting the convicted person's file for periodic review is left entirely to the discretion of correctional facility administrators, while convicted persons have no right to contest the administration's refusal to schedule parole hearings.

One exceptional path for lifting penalties or discontinuing criminal proceedings against a person is a general pardon.

Since Moldova's independence in 1991, the Parliament has issued 7 pardon laws, discontinuing criminal proceedings against persons who have infringed the criminal law. Pardon laws were extremely favourable for juveniles, with each law relieving persons under 18 from criminal responsibility, exception for juveniles who committed very serious crimes, such as murder, robbery, etc.

These laws exempted from criminal responsibility criminally prosecuted and adjudicated children, as well as children confined in correctional facilities.

According to the Penitentiaries Department of the Ministry of Justice, 55 juveniles were released from Rusca and Lipcani penitentiaries under the Pardon Law of 24 July 1996, further 9 were released under the Pardon Law of 16 April 1998, 80 under the Law of 20 August 1999 and 11 under the Law of 10 August 2001.

According to similar statistics provided by the Supreme Court of Justice, charges were dropped against 37 children and criminal proceedings discontinued against another 95 in 1998, followed by 38 and 168, respectively in 1999, 19 and 117 in 2000 and 12 and 90 in the first nine months of 2001.

As a general rule, authorized persons (administrators of correctional facilities, convicted persons, or to a limited degree NGOs, workplace supervisors or fellow employees) may submit a request for reviewing the convicted person's status to courts (asking to lift, change or suspend the sentence or release the person on parole). Courts are the sole decision-making authority in this respect.

Article 24 of the RCJA directs Commissions to conduct, at least once a year, and upon receiving a request from the school's administrator, or from parents or guardians, periodic reviews of whether there is continuing need to keep the juvenile at the residential school or a special medical institution.

Under article 49 e) of the RIJA, juvenile inspectors must assess, on at least a monthly basis, and for the entire duration of the probation period, the conduct of juveniles conditionally committed to a residential school for children with problem behaviours. Based on their assessment, inspectors may request the court to change its previous disposition.

To conclude this section, we want to emphasize that the juvenile justice system has to change from being imposed on a child to being more enabling, with the child actively participating in deciding his/her own destiny. This implies wider use of extrajudicial measures. With local Commissions for Juvenile Affairs virtually gone, new structures need to be created and duly empowered, especially in rural areas, where people know each other well. However, it would be more advisable to create specialized bodies to handle juvenile cases, or at least have parts of existing institutions specialize in juvenile cases.

Social reintegration of children in conflict with the law

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At this stage, Moldova has no comprehensive framework for social reintegration of children in conflict with the law, especially those confined in correctional facilities. There is no functioning social system to support these children either.

Inspectors for Juvenile Affairs should, *inter alia*, design social rehabilitation programs for children:

- *released from correctional facilities;*
- *convicted, whose sentence has been suspended;*
- *sentenced conditionally;*
- *exempted from criminal responsibility following general pardon;*
- *charged with an offence, but not detained prior to case disposition;*
- *returning from medical facilities after compulsory rehabilitation or treatment;*
- *convicted but subjected to measures other than the deprivation of liberty;*
- *who have committed an offence, but were exempted from criminal liability and diverted to community-based care;*
- *being under the age of criminal responsibility, have committed socially dangerous offences;*
- *returning from the residential school for children with problem behaviours;*
- *have been involved in misdemeanours warranting administrative sanctions or community-based measures*

Commissions for Juvenile Affairs, together with the police, monitor the conduct of children diverted to community-based care, sanctioned in ways other than deprivation of liberty or released on parole. Commissions register and supervise the conduct of children returning from residential schools and correctional facilities. If need be, the Commission may help the juvenile find employment or enrol in an educational institution.

Under Article 27 of the RCJA, Commissions must help settle in, provide employment or educational opportunities, or, if need be, appoint a tutor for all children who, upon release from a residential school, a medical facility, an orphanage or other institution located within the area of the Commission's reach, cannot be sent to their parents or guardians either because these have been deprived of their parental rights or are missing, or whenever the child cannot come back to where he/she had been living before confinement for other reasons, such as a lack of employment or educational opportunities.

Local CJA covering the area in which a juvenile detention facility is located has similar responsibilities towards children released from confinement before attaining the age of 18. However, Commissions fulfil few, if any, of these responsibilities in practice.

Article 1 of the *Code of Criminal Sentences Execution (CCSE)* says that social rehabilitation and integration of prisoners should be achieved through educational measures. To correct juveniles' conduct and prepare them for independent life, administrators of correctional facilities should organize educational and vocational programs in the spirit of respect for laws, conscientious attitude towards labour, study and morals, in order to make juveniles well-rounded and trained for a given vocation (Article 116 of the CCSE). Educational programs should be tailored to individual skills and abilities, the juvenile's character, his/her life experience and educational background.

Article 20 of the CCSE gives the community the right to participate in the rehabilitation of sentenced persons and to exercise public control over institutions and agencies responsible for executing criminal sentences.

On the surface, the legal framework for community participation in the administration of justice is in place. Yet paragraph 2 of the same article says that the powers, methods and content of community participation are regulated by law. Currently, there are no laws regulating these issues.

Under article 154 of the CCSE, the correctional facility must take steps, no later than six months before the person's scheduled release, to find employment for him/her and to help him/her settle in. This legal provision exists purely *de jure* too.

Pursuant to article 156, local authorities must find employment for a child who has been released from an institution and has parents. Given deteriorating economic environment and soaring unemployment rates, this provision is unfeasible. If a child released from an institution has no parents, the local Commission for Juvenile Affairs should place him in a residential school or refer him to guardianship authorities.

Pursuant to the *Law on Social Adaptation of Persons Released from Confinement* Nr. 297-XIV of 24 February 1999, the state takes on to help released persons reintegrate into society and create a public system of post-release tutorship. The law elaborates a range of social assistance services to which these persons are entitled and directs central and local authorities to develop national and local rehabilitation programs for them. The law does not contain separate provisions for children released from confinement, which means that it applies to them as well.

To ensure social protection of persons who after serving a prison sentence have difficulty in finding employment, the Law requires that the Department of Labour: a) provide them with accurate, up-to-date information about job vacancies and choose the one that most closely matches their skills, b) register them with the employment agency, c) give them the opportunity to receive vocational training or undergo refresher courser tailored to market demand, d) provide remunerated training in public works that are in demand, e) pay an allowance to every person released from confinement. The exact value of the allowance and payment methods are decided by the government.

Administrators of corrections facilities must, no later than 6 months before the person's scheduled release, instruct him or her on the basic legal provisions governing the labour market, explain to him/her how to find employment, as well as the rights and responsibilities that he or she is entitled to while looking for a job. After receiving a written statement from this person specifying his/her place of residence after release and possibly asking for Labour Department's help in finding employment, the correctional institution must forward all the information required to find employment for this person to a relevant employment agency.

Persons released from penitentiaries may seek employment either on their own or through employment agencies.

Under Article 15 of the above *Law,* persons released from detention facilities having nowhere to go must be referred to night shelters maintained by local authorities. These shelters exist in few localities.

Even though the law on social reintegration entered into force in 1999, no mechanisms for implementing it have been developed yet, nor has the Republican Coordinating Centre for Social Adaptation been formed.

Overall, there is no comprehensive rehabilitation policy for children in conflict with the law. The key role in implementing reintegration programs belongs to schools in the case of community-based care and correctional facilities in the case of institutional care. Yet neither of them employs social assistants, with professional psychological support not even being a legal requirement.

The standards for rehabilitation programs and trained practitioners to implement them are lacking too. Police officers trained in child assistance are lacking both at the community level and in correctional facilities, making it virtually impossible to exercise the child's right to social assistance envisaged by Article 40 of the CRC and United Nations Rules for the Administration of Juvenile Justice.

Despite the fact that university programs have been increasingly focusing on training social assistants, there is no national-level policy to recruit them. Balti University has recently suggested designing a program to train reintegration counsellors, and now is the time to create sustainable institutional demand to recruit them.

Social services for disadvantaged families and children at risk for problem behaviours are more of a bureaucratic nature.

The Parliament approved, on 28 May 1999, a *Strategy for Reforming the Social Assistance System*, laying the foundations for reforming the system of social protection, family and child support being its integral part.

Bearing in mind the complex and difficult social and economic situation of children and families, as well as the need to design new approaches to child and family protection, the government approved the *National Concept of Child and Family Protection* (Government's regulation N51 of 23 January 2002). In order to consolidate the system of child protection and refocus it towards the children in need, the Government also approved, by its decision N 1732 of 31 December 2002, a draft *Law on the Protection of Children in Difficulty,* which is being examined by the Parliament at the time of writing. If enacted, the law will cover the existing alternatives and lay the ground for new ones (such as re-socialization centres for children with problem behaviours).

CONCLUDING OBSERVATIONS OF THE UN COMMITTEE ON THE RIGHTS OF THE CHILD[3]

The Committee on the Rights of the Child, the foremost international authority on childrens' rights, examined, in October of 2002, a preliminary report of the Moldovan government on measures taken to implement the Convention on the Rights of the Child.

The Committee expressed its concern with regard to the administration of juvenile justice in Moldova, especially the system's conformity with articles 37,39 and 40 of the CRC and other relevant international instruments.

While welcoming the adoption of the new Criminal Code, the Committee expressed its concern that "there is no separate juvenile justice system or juvenile justice practitioners or trained judges, and that the special provisions for juveniles contained in the law have no implementation mechanism owing to lack of capacity and expertise".

The Committee recommended that the government of Moldova:

(a) Establish, as soon as possible, a separate system of juvenile justice;

(b) Continue reviewing laws and practices governing the juvenile justice system in order to bring it, as soon as possible, into full compliance with the Convention, in particular articles 37, 40 and 39, as well as other relevant international standards in this area, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines);

(c) Take legislative measures to set limited and short periods for pre-trial detention, in accordance with the provisions and principles of the Convention;

(d) Use detention, including pre-trial detention, only as a measure of last resort, for the shortest period of time possible and for no longer than the period prescribed by law, and ensure that children are always separated from adults;

(e) Use alternative measures to all forms of deprivation of liberty whenever possible and strengthen the role and capacities of the Commission for Juvenile Affairs at the municipal and district levels, while ensuring that they act in full compliance with the Convention;

(f) Strengthen preventive measures, such as supporting the role of families and communities, in order to help eliminate the social conditions leading to such problems as delinquency, crime and drug addiction;

(g) Incorporate into its legislation and practices the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, in particular to guarantee them access to effective complaint procedures covering all aspects of their treatment;

(h) Ensure access to education for girls and boys in detention;

(i) In light of article 39, take appropriate measures to promote the recovery and social reintegration of children involved in the juvenile justice system;

(j) Seek assistance from, among others, OHCHR, the United Nations Centre for International Crime Prevention, the International Network on Juvenile Justice, and UNICEF and through the United Nations Coordination Panel on Technical Advice and Assistance on Juvenile Justice.

[3] Source: http://www1.umn.edu/humanrts/crc/moldova2002.html

Conclusions and recommendations

VI

Conclusions

Major conclusions drawn by the authors of this report are:

1. Institutional framework:

- *Moldova does not have a separate juvenile justice system to respond to the special needs of children.*
- *Juvenile justice functions and responsibilities are split between a variety of administrative and judicial authorities, with no comprehensive coordination of efforts,* ***which hampers the system's effectiveness.***
- *There are no special judicial bodies or practitioners, such as juvenile courts, juvenile judges, juvenile investigators, prosecutors and attorneys with the sole authority to handle juvenile cases.*
- *The justice system as it now stands is unable to address the special needs of child victims or witnesses.*
- *No systematic, in-depth study or research has been conducted to make a comprehensive appraisal of the juvenile justice system.*
- *There is no centralized juvenile justice database.*

2. Legal framework:

- *There is no law specifically applicable to juveniles and addressing their special needs. Children in conflict with the law are handled pursuant to the Code of Administrative Offences, Criminal Code, Code of Criminal Procedure, the Law on the Rights of the Child and various regulations.*
- *Even though these laws prescribe some alternatives to formal procedures, they contain few legal provisions for applying them. Nor does the system have enough capacity and expertise to apply them.*
- *Despite the fact that Moldova has ratified the UN Convention on the Rights of the Child and has adhered at other relevant international instruments, and that international treaties have legal priority over domestic laws, progress in bringing the latter into line with the former is uneven and slow; meanwhile, more and more hardships emerge in handling the cases of children in conflict with the law.*
- *Most laws related to juvenile justice are outdated and fall short of incorporating the achievements and experience accumulated by other countries; as a result, current juvenile justice practices are directed more towards punishment than rehabilitation.*
- *The new Criminal Code expands almost fourfold the list of offences for which juveniles over 14 are criminally liable, making young persons worse off than they were under the old Criminal Code adopted in 1961.*
- *Laws restrict the application of lesser sentences and suspended sentences, sending more and more juveniles to correctional facilities without offering them much in the way of social rehabilitation after release.*
- *Some regulations (the RCJA, the Regulation on Local Educators and the Regulation on Community-based Children's Rooms) were adopted decades ago, being crafted for social and legal reality very different from those of today. Some of them are too vague, some run counter to international norms and some prescribe legal procedures which cannot be and are not applied any longer.*
- *In spite of being legally inferior to laws, some administrative regulations restrict the exercise of children's rights. This contradicts the rule that the exercise of some fundamental rights can be restricted only by law. That those administrative regulations have legal effect limits the exercise of children's rights and*

freedoms, because the procedures they envisage for handling certain behaviours (such as administrative offences or cases addressed by the CJA) reduce the number and quality of legal safeguards available to the child (for instance, no legal counsel is prescribed in the case of administrative offences).

3. Prevention of juvenile delinquency

- *The number of children who have entered into conflict with the law, as well as children at risk for problem behaviours, has grown sharply over the past decade.*
- *Most offences are committed by juveniles who live in unhealthy family or social environment, dropped out of school, are unemployed or benefit from little parental, tutor or community care or supervision. The risk of delinquency and problem behaviours is heightened by neglect, domestic violence, abandonment, street work, drug abuse, prostitution and trafficking.*
- *The justice system as it now stands fails to cope with juvenile delinquency, while the new family and child protection system has not yet materialized.*
- *Even though the family is considered to be at the centre of juvenile delinquency prevention, economic crisis has had disastrous effects on many families, undermining their ability to bring up their children and provide them with educational opportunities.*
- *Lack of basic legal training courses is acutely felt in schools and educational institutions. Surveys show that children are frequently unaware that certain acts infringe the law and could be prosecuted and punished by law-enforcement authorities. The other side of the coin is that young people coming into contact with law-enforcement authorities do not know their rights.*
- *The void created by the lack of parental or school care and guidance is often filled by criminals, who induce juveniles to participate in illegal behaviours. A significant role in this respect belongs to mushrooming models of negative behaviours and the "romantic" outlook on criminal life, with rules and hierarchies of its own.*
- *The police and other authorities responsible for the prevention of juvenile delinquency also suffer from severe shortages of funding and poor legislative framework, which does not allow them to act in the best interest of the child.*

4. Proceedings against juveniles and disposition of juvenile cases

- *Juvenile cases are investigated and prosecuted in largely the same way as those of adults, with criminal proceedings being inadmissibly long, lasting from several months to several years. This hampers the chances for the proper processing of the case and humane treatment of juveniles.*
- *Children alleged as or found to have infringed the penal law are held under preventive arrest inadmissibly long, together with adults and in improper sanitary conditions. Alternatives to preventive arrest, considered more effective internationally, are used rarely, if at all.*
- *With diversion measures lacking, the deprivation of liberty is the most frequent disposition of juvenile cases.*
- *Extrajudicial procedures are sometimes used in the case of children in conflict with the law. Nevertheless, the existing alternatives to formal proceedings are largely the vestige of the system that has virtually ceased to exist; they are neither operational nor feasible given the lack of institutional capacity and legal mechanisms for implementing them.*

- *The participation of social assistants in criminal proceedings against juveniles is at an extremely low level. Social assistants or other practitioners who could provide important information about the child participate in the proceedings only if requested to do so by one of the parties. This denies judges a more comprehensive view of the case that could produce a disposition in the best interests of the child, tailored to his or her individual needs.*
- *There are no data or systematic studies assessing whether or to what extent children's rights and procedural safeguards are respected at the stage of criminal investigation and court hearings. Judging from the data we could access, children's rights are frequently regarded as not being of major importance at either stage.*
- *Children deprived of their liberty are held together at correctional facilities, regardless of their individual needs and the specifics of their cases, which complicate their rehabilitation and individualized care.*
- *Appreciating the commitment of persons running juvenile correctional facilities, we need to say that young persons practically have no opportunity to receive an educational certificate while in detention, which violates their right to education and circumscribes their integration into society after release.*
- *Girls deprived of their liberty have no opportunity to continue their education.*
- *The state provides neither social nor any other kind of support to help released juveniles reintegrate into society.*
- *Children deprived of their liberty are also deprived of the opportunity to maintain regular contacts with their families and the community, which hampers their reintegration into society.*
- *Analysing the legal framework for sentence reviews, we need to say that there is no procedure for periodical revision of convicted child's status. Release on parole is left entirely to the discretion of detention facility administrators, which leaves too much leeway for subjective judgment.*

5. Training of juvenile justice practitioners

- *Practitioners (judges, prosecutors, police officers, attorneys, social assistants) do not receive special training in juvenile justice focusing on the special rights and needs of children.*
- *Many practitioners are not familiar with international standards for the administration of juvenile justice, such as restorative justice and alternatives to formal proceedings.*
- *Even though inspectors for juvenile affairs play an important role in working with children, they are not provided with continual refresher courses focusing on special responsibilities that their work with children entails. Furthermore, they are required to perform multiple tasks, which thwarts their efforts to fulfil them all properly.*
- *The juvenile justice system does not have social assistants. Positions of probation officers and reintegration counsellors are not yet available, with universities just starting to design programs to train them.*

6. Public awareness

- *The public at large has a limited awareness of the detrimental effects that contact with the law-enforcement and harsh penalties may have on the child. Consequently, public opinion favours tough penalties for children in conflict with the law as a primary means of their rehabilitation.*
- *The public at large is as little aware of the need to design innovative approaches to juvenile justice, especially alternatives to formal proceedings and effective opportunities for restitution.*

- *There are limited possibilities to conduct comprehensive and targeted public awareness campaigns explicating the causes of juvenile delinquency, successful prevention strategies and rehabilitation programs. With information and legal awareness lacking, the public continues to harbour prejudices against children in conflict with the law.*
- *Mass media outlets have received no instruction or training in the basics of juvenile justice and ethical considerations that should be observed when reporting on children in conflict with the law.*

Recommendations

Having studied Moldova's juvenile justice system, the authors of this report have made the following recommendations:

1. Institutional framework:

- *Create judicial authorities specializing in juvenile cases. A provisional alternative would be specialization of practitioners from existing institutions, vesting them with exclusive jurisdiction over juvenile cases.*
- *Concentrate in a single institution all juvenile justice functions and responsibilities.*
- *Encourage systematic research into juvenile justice, focusing on conditions giving rise to juvenile delinquency, prevention programs, children's rights and procedural safeguards, ways of strengthening the system, training courses for juvenile justice practitioners, etc. A separate piece of research should identify financial, legal and social obstacles that stand in the way of comprehensive implementation of juvenile justice policies and standards.*
- *Create a centralized juvenile justice data collection centre that would store and analyse the information related to juvenile delinquency, in order to formulate and pursue effective juvenile justice policies and practices.*

2. Legal framework:

- *Establish a working group to analyse the current legislation with a view to consolidating it and bringing it into line with international standards.*
- *Design and elaborate a set of legal norms regulating juvenile justice system, bearing in mind international standards and the experience accumulated by other countries.*
- *Remove legal provisions regulating outdated procedures and institutions that exist more* de jure *than* de facto*.*
- *Establish procedures and approaches for handling juvenile cases out of court, design a variety of alternative measures and dispositions that protect children's rights, allow individualizing the treatment and focus on social reintegration and rehabilitation of the child.*
- *Establish separate norms of legal procedure for juveniles, different from criminal procedures regulating adult cases and aiming at rehabilitation and recovery rather than punishment.*
- *Revise the new Criminal Code before it has taken effect, limiting the range of offences for which children under 14 are criminally liable to serious, very serious and exceptionally serious offences.*
- *Remove from article 79 of the new Criminal Code the provisions constraining courts' discretion to apply lesser sentences to juveniles and impose probation orders and suspended sentences.*
- *Remove from article 104 of the new Criminal Code the provisions that leave it up to courts to attach unspecified terms and conditions to probation and residential care orders.*

3. Prevention of juvenile delinquency

- *Draw up an elaborate juvenile delinquency prevention programme and incorporate it into the future Family and Child Protection Action Plan.*

- *To achieve this, make an in-depth analysis of the causes and conditions giving rise to juvenile delinquency and make an inventory of available programs, services and resources.*
- *Establish new collaboration mechanisms linking governmental agencies and civil society with a view to creating services and models engaging children in lawful, socially useful activities and preventing problem behaviours.*
- *Adjust delinquency prevention efforts and programs to respond primarily to the needs of at-risk families who need assistance in eliminating the conditions that expose children to problem behaviours.*
- *Draw up and implement programs to integrate and engage children and young persons who are out of school or unemployed, giving them the opportunity for positive self-assertion.*
- *Introduce educational programs to increase legal awareness and understanding of children's rights.*

4. Proceedings against juveniles and disposition of juvenile cases

- *Establish extrajudicial procedures for handling juvenile delinquency cases. These procedures should be used from the time the child comes into contact with the police or the prosecution, in order to divert him or her away from the criminal justice system, unless the latter is strictly necessary. Diversion measures should be used by courts and police authorities whenever possible, even at advanced stages of criminal proceedings. Alternatives to formal proceedings should be as diverse as possible, tailored to individual circumstances and aimed at social reintegration of the child, giving him or her opportunity for positive self-affirmation.*
- *Review the Regulation of Commissions for Juvenile Affairs, enhancing the Commission's ability to use diversion measures and alternatives to institutionalisation.*
- *Create the position of social assistants/ probation officers/ reintegration counsellors specializing in working with children in conflict with the law. Create jobs for them within law-enforcement agencies.*
- *Transfer some of the tasks performed by juvenile inspectors to social assistants.*
- *Ensure participation of social assistants in court hearings of juvenile cases. Social assistants should provide courts with the information about the child's character, the motives for the offence, his or her living conditions and family situation, as well as recommend the most appropriate disposition of the case.*
- *Create and put into practice an elaborate system of measures and dispositions that may be applied to juveniles who have committed prosecutable acts but who are under the age of criminal responsibility. This system should limit to the greatest extent possible the child's involvement in formal proceedings and the criminal justice system, without prejudice to the safeguards they are entitled to during such proceedings.*
- *Refocus sanctions towards recovery and social reintegration of children, offering them the opportunity to vent their feeling of guilt and restore a positive image of themselves in their own eyes. These alternative sanctions should be applied overwhelmingly within the community or the locality in which the juvenile lives.*
- *Appoint an independent and impartial controlling authority to examine, either exclusively or as a priority area, all complaints related to violations of children's procedural rights. These*

authorities should be readily accessible to juveniles and their families and involve representatives of the non-governmental sector.

- *Resort to placing a juvenile in an institution only as a disposition of last resort and for the minimum necessary period.* In lieu *of incarceration, we recommend alternative preventive measures and sanctions, which would allow monitoring juvenile's conduct and at the same time keep him away from institutional care.*
- *Rigorously monitor the conditions under which juveniles are detained to identify violations of their rights or poor sanitary/hygienic conditions, paying due attention to compliance with international standards, especially those related to the separation of juveniles from adults, living space, hygiene and health.*
- *Uphold the right of detained juveniles to maintain regular contact with their families.*
- *Conduct a study to assess to what extent the rights of criminally prosecuted juveniles are respected in everyday judicial practice, especially their right to legal counsel, participation of legal representatives and educators in the proceedings, the prohibition of the use of force and intimidation etc.*
- *Separate different categories of juveniles deprived of their liberty depending on their personality, the offence, the length of the sentence and previous convictions.*
- *Provide education to juveniles confined in correctional facilities.*
- *Revise legal provisions that leave it entirely up to the administrators of correctional facilities to request courts to schedule parole reviews. The range or persons or institutions that should have the right to submit requests to courts should be expanded.*
- *Establish mandatory periodic reviews of criminal sentences imposed on juveniles in order to evaluate juveniles' progress towards rehabilitation and change their status or soften the security regime accordingly. To help juveniles released from correctional institutions, we recommend providing moral, financial and other kinds of support.*

5. Training of juvenile justice practitioners and personnel

- *Design university and post-university programs, as well as refresher courses in juvenile justice. These should include the study of international standards, new theoretical frameworks, principles of restorative justice, diversion measures and alternatives to institutional confinement (community service, mediation and probation) etc.*
- *Organize training courses for juvenile justice practitioners (judges, police officers, prosecutors, correctional facilities personnel, social assistants), focusing on juvenile justice standards and procedures and the acquisition of special skills and knowledge required to handle juvenile cases.*
- *Incorporate courses in juvenile justice into law faculties' and Police Academy curricula.*
- *Train social assistants, probation officers and reintegration counsellors specializing in working with children in conflict with the law.*

6. Correctly informed public opinion

- *Design and conduct communication campaigns to inform the public at large about new legal initiatives related to juvenile justice, success models, the existing obstacles, etc.*
- *Design and implement communication campaigns to change public attitude towards children in conflict with the law and promote public support for community-based prevention and rehabilitation programs.*

- *Organize round table discussions, conferences and similar events involving officials and the mass media to achieve public support for juvenile justice reforms.*
- *Conduct training courses for journalists on the basics of juvenile justice and ethical restraints when reporting on children charged with an offence, as well as child victims and witnesses.*

MASS MEDIA AND CHILDREN IN CONFLICT WITH THE LAW

Independent thought, freedom of expression and distance from financial interests are considered to be the major qualities of professional journalists. Therefore, it is essential that journalists should reject any attempt to order them what and how they should write, no matter who might be behind the order.

However, professional journalists themselves started a global debate about the need to observe some ethical considerations when reporting on children. A conference for journalist organizations from over 70 countries was convened in Recife, Brazil, on 2 May 1998, adopting a paper entitled "Children's Rights and Media: Guidelines and Principles for Reporting on Issues Involving Children".

Children and young people are entitled to the same rights as adults. However, they have one special right - to be protected. Reporting on children almost always involves this right and therefore entails specific restrictions, especially nowadays, when it is practically impossible to limit or to assess the effect of a newspaper report or a TV program.

Journalists' ethical codes seek to promote a noble purpose that of serving the public without compromising children's rights.

From the perspective of juvenile justice, the mass media play an important role in preventing juvenile delinquency, giving young persons access to information and materials from a diversity of national and international sources and disseminating information on the existence of services and facilities for young persons in society.

Furthermore, journalists play an important role in portraying young persons in positive light and highlighting the important contribution they make to society, thus also encouraging them to positive behaviour.

To reduce the negative impact on juveniles, the mass media should minimize the levels of pornography, violence and drugs portrayed. Degrading presentations of women, children and interpersonal relations may seriously prejudice psychological development of a child; therefore, they should be avoided as well.

Journalists should be aware of the role they play in children's life and use their influence accordingly.

Using correct definitions: delinquents or victims?

The term "juvenile delinquent" has negative connotations and should be avoided whenever possible. The Riyadh Guidelines emphasize that "in the predominant opinion of experts, labelling a young person as "deviant'' or "delinquent" often contributes to the development of a consistent pattern of undesirable behaviour by young persons". These terms are used to label someone as a threat for public authorities, society and young people themselves.

Thus, a person whose behaviour or conduct does not conform to overall social norms and values is sometimes portrayed as a criminal, with little regard being paid to the fact that he or she is a child undergoing maturation and growth process and that this behaviour is likely to disappear spontaneously in most individuals with the transition to adulthood.

Children in conflict with the law are always victims, whether of hostile or unbearable family environment, abuse, neglect, lack of opportunities, or the victims of adults who use them for criminal ends. An impor-

tant task facing any society is to protect children from conditions and circumstances that jeopardize their moral, psychological and social development.

Therefore, the use of proper terms is not just a euphemism; rather, it is a means to promote values and attitudes that should become an integral part of the thought process of everyone involved in the juvenile justice system, from public officials who enter into daily contact with children to high-level authorities formulating juvenile justice policies.

Questions that a journalist should ask him/herself when reporting on a child in conflict with the law:

- *Does my report leave the reader with an impression that young offenders somehow deserve fewer rights than other people?*
- *Have I done my best to avoid showing the images or revealing the identity of young persons who have broken the law, unless it was strictly necessary? Unnecessarily revealing their identity may expose them to additional risks, lowering their chances for successful rehabilitation, which amounts to an infringement of their rights.*
- *Have I made sure that the child charged with an offence can make his/her voice heard? Have I by any chance suggested that being a street child or an offender against public order necessarily means involvement in criminal acts?*
- *Have I followed up on my reports about children placed under arrest or charged with an offence? Are they safe? If detained, under what conditions? Are they held together with other children or adults? Do they have access to legal counsel?*

JUVENILE JUSTICE AND THE UN CONVENTION ON THE RIGHTS OF THE CHILD

Articles 37, 39 and 40 of the Convention on the Rights of the Child, adopted in 1989 and ratified by Moldova, refer to children's rights to justice.

Article 37

States Parties shall ensure that:

(a) *No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;*

(b) *No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;*

(c) *Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;*

(d) *Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.*

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. *States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.*

2. *To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:*

(a) *No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;*

(b) *Every child alleged as or accused of having infringed the penal law has at least the following guarantees:*

(i) *To be presumed innocent until proven guilty according to law;*

(ii) *To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;*

(iii) *To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;*

(iv) *Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;*

(v) *If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;*

(vi) *To have the free assistance of an interpreter if the child cannot understand or speak the language used;*

(vii) *To have his/her privacy fully respected at all stages of the proceedings.*

3. *States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:*

(a) *The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;*

(b) *Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.*

4. *A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.*