

# **ANALYSIS OF THE JUVENILE JUSTICE SYSTEM IN GEORGIA**

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## **EXECUTIVE SUMMARY**

The Government of Georgia presented their second report on the implementation of the UN Convention on the Rights of the Child in 2003. In its Concluding Observations to the report, the UN Committee on the Rights of the Child recommended that the Government seek technical assistance in the area of juvenile justice from Unicef . This analysis, prepared by Unicef at the request of the government, examines the extent to which the current legislation and practice relating to children in conflict with the law is consistent with the UN Convention on the Rights of the Child, the UN Minimum Standards and Norms of Juvenile Justice and current notions of good practice in juvenile justice.

Although the numbers of children entering the criminal justice system are relatively small (approximately 900 in 2006), the figures show cause for concern. The statistics show nearly 50% increase from 2005 in the number of children being prosecuted for juvenile offences. The children are entering the criminal justice system at an earlier age, and overwhelmingly for property offences: often involving thefts of small amounts of money. In addition, a high proportion of these children spend time in detention, and for some children this is a significant amount of time. Conditions in the detention centres do not, at present, meet international minimum standards.

The overall conclusion of the analysis is that the present juvenile justice system fails to implement the articles of the UN Convention on the Rights of the Child and does not meet UN Minimum Standards and Norms on Juvenile Justice or current notions of good practice. The current system is rigid, and there is too little emphasis on prevention and diversion from the criminal justice system. Georgia does not have juvenile courts or juvenile judges. In addition, contrary to the UN Minimum Standards and Norms in Juvenile Justice, there is no specific juvenile criminal procedure for children who appear before the court. Children are tried in adult courts under the same procedure and conditions as apply to adult offenders.

The Criminal Code provides the judge with a range of possible non-custodial sanctions when sentencing, but in practice, the options are few, and there are an inadequate range of alternatives to detention. The proposed amendments to the Criminal Code, which would result in a reduction of the age of criminal responsibility from 14 to 12 are a cause of considerable concern in the light of the failure to implement Convention provisions.

### **Prevention of offending**

The only body engaged in preventive work with children, the Inspection of Minors, has been abolished under the police reforms. There is no obvious successor and no body or agency with responsibility for development of prevention programmes.

### **At the police station**

At present, the safeguards for children at the police station are limited. Police are not trained in interviewing or working with juveniles. Although the present law requires that there be an independent adult present when a child over the age of 14 is being questioned, people fulfilling this function have no understanding of their role. Thus, the assistance and protection that such a person should be offering to a child undergoing questioning by the police is low and inadequate. In addition, although children have access to legal advice and representation, the lawyers are generally students or newly qualified lawyers, inexperienced and lacking in training and supervision.

### **Procedure on arrest**

Under current procedure, once a child is arrested, he or she will be detained in the police isolator for up to 48 hours while an investigation is conducted and a decision made as to whether there is evidence to charge the child. The child may then be held for a further 24 hours before appearing in court. The conditions in the isolator do not, at present, conform to international minimum standards. The police lack flexibility: they do not have the power to release the child into the care of his parents or guardian during this time, to give a warning as an alternative to detention and investigation or generally to divert children away from the criminal justice system.

**Pre-trial detention**

Once a child appears before the court, a decision will be made whether to grant bail to the child, release him under supervision or to place the child in pre-trial detention. There is no system of summary trial for children who admit offences and this leads to unnecessary pre-trial detention. The government has recently introduced amendments to the Criminal Procedure Code and reduced the period of time for which a child can be detained pre-trial. Nevertheless, detention is not used as a last resort and for the shortest possible time as required by the UN Convention on the Rights of the Child. In addition, the conditions in the pre-trial detention centre do not meet international standards.

**Diversion**

Contrary to the requirements of the UN Convention on the Rights of the Child and the UN Minimum Standards and Norms, the police, prosecutors and judges have no power to divert children from the criminal justice system into community based programmes that address offending behaviour and work with the child and his or her family. The establishment of such schemes for first time offenders and repeat minor offenders would ensure that children are not taken to court for minor offences and suffer all the disadvantages that prosecution causes. It would enable children to stay with their families, in education and allow them to receive support.

**Sentencing:** It is possible at present for the court to place the child under supervision, or impose a fine as an alternative to custody. There are, however, only a tiny number of projects providing community based sentencing projects for children as an alternative to custody. At present, around 37% of convicted children are given a custodial sentence. There is only one, grossly overcrowded juvenile penitentiary currently holding 142 young persons aged 15 -19, all sleeping in one dormitory. The conditions and facilities at the prison do not meet minimum human rights standards.

**Recommendations.**

1. The juvenile justice system for children over the age of 14 should be reformed to ensure compliance with the UN Convention on the Rights of the Child and the UN Minimum Standards and Norms in Juvenile Justice. This would involve changes in policy, legislation and practice.
2. In order to bring about the necessary reform, a new Juvenile Justice Law or Code should be drafted and implemented.
3. The Ministry of interior should establish special units within the police for dealing with juvenile offenders as well as juvenile victims and witnesses in accordance with Rule 12 Beijing Rules and the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.<sup>2</sup> Such units should also be responsible for developing policy on prevention and working with other stakeholders to deliver prevention programmes.
4. The police and prosecutors office should be given discretion to divert children away from the criminal justice system as an alternative to prosecution.
5. An 'independent' adult scheme should be established. Independent adults should receive training and be accredited or certified to support children who are detained at police stations and questioned. A national body for Independent Adults should be formed which would be responsible for the curriculum, accreditation/certification and quality standards.
6. An accreditation or licensing system should be introduced for lawyers representing juveniles. The Ministry of Justice, the Higher Council of Justice or the Supreme Court Office should take the responsibility for setting the training curriculum and for ensuring that lawyers can access the appropriate

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<sup>2</sup> ECOSOC Resolution 2005/20.

training before working with juveniles. Accredited juvenile lawyers should be paid at higher level than at present, reflecting their expertise.

7. A duty lawyer scheme for juveniles, ensuring that juveniles can access lawyers as needed at any time of day, should be established and funded, either directly by the state or through a legal aid scheme.

8. All police stations should have a juvenile suite in which an arrested juvenile can be interviewed or can stay if arrested at night and it is not possible for the juvenile to be released into the care of the parent.

9. All interviews with children should be recorded at least on audio tape. Each police station and isolator should install video suites within a three year period, so that all interviews with children should be video recorded.

10. All police stations, isolators, courts and custodial facilities should produce child friendly, easily accessible, literature informing children of their rights, and what will happen while they are at the police station. This should include details of how long they will be kept, details of the regime and how to make a complaint if they feel their rights have not been upheld

11. The General Prosecutor's Office should establish a juvenile unit and ensure that its members receive specific training in working with juveniles. .

12. Court procedure should be reviewed with a view to reform. It is recommended that:

- In each court district there should be at least one and preferably two nominated juvenile judges, who should receive specialist training in handling juvenile cases
- In each court district there should be a court room specifically for juvenile cases. This should be organised in a child friendly manner.

- When in the court, the accused child should sit with his parents and lawyer. The placement of a child in the cage during the trial should cease.
- The judges should sit on the same level as the child.
- A lawyer should represent any child being investigated and at all stages of the proceedings. Such lawyers should receive specialist training and an accreditation scheme established for them.
- The child should receive a leaflet detailing what will happen in court, well before the trial starts

13. A range of community based services should be developed nationally, including:

- preventive services for children at risk of anti-social behaviour or offending.
- A range of pre-trial diversion programmes.
- A range of alternatives to custodial sentencing and pre-trial detention, including fostering, supervision

These programmes should be developed and funded as a matter of urgency, and should be made available country wide and for every child who could benefit.

14. There should be a review of custodial sentencing policy for juveniles to ensure that deprivation of liberty is used as a matter of last resort and for the shortest possible time.

- An assessment and report on each child should be placed before the court and considered by the judge before a custodial sentence is given;
- Judges should be able to give more than one suspended sentence for a child;
- Judges should be informed of community initiatives and alternatives to custodial sentencing.



- All judges should be required, as part of their training, to visit the police isolators, the pre-trial detention centres and Avchala.

15. Children should no longer be placed in police isolators. The small number of children arrested for serious offences of violence or for persistent property theft, should be placed in secure accommodation. All other children should be released under the supervision of their parents or the children's home in which they live.

16. The criteria for use of pre-trial detention should be amended and should be used only as an exceptional measure. A range of alternatives to pre-trial detention should be developed.

17. The regime and conditions in the pre-trial detention centre should undergo an urgent review and change to ensure compliance with international standards

18. An urgent review of custodial provision for convicted juveniles should be undertaken.

- Staff should be trained in behaviour management and child development
- The juvenile reform facility at Avchala should adopt a child protection policy to minimise abuse and bullying of children
- The provision of education and vocational training should be reviewed
- Family contact programmes should be implemented.

19. The present practice which permits the publication of names of children accused or tried for a criminal offence, and details of the offence, should be reviewed with a view to implementing the child's right to privacy at all stages of criminal proceedings.

20. The Ministry of Justice and the probation service need to work more closely together to ensure that each child who has served a term of imprisonment has a discharge care plan before release.

## **ANALYSIS OF THE JUVENILE JUSTICE SYSTEM IN GEORGIA**

### **1.0 Introduction**

1.1 Georgia acceded to the UN Convention on the Rights of the Child on 2<sup>nd</sup> June 1994. It submitted its initial report on implementation of the Convention to the UN Committee on the Rights of the Child on 8<sup>th</sup> October 1998<sup>3</sup>, and its second, periodic report<sup>4</sup> on 28<sup>th</sup> April 2003. The UN Committee in giving its Concluding Observations on the second report on 27<sup>th</sup> October 2003<sup>5</sup> recorded its deep concerns about the allegations of ill-treatment of children by the police and the lack of follow up to the recommendations made by the Committee with respect to juvenile justice in the Concluding Observations to Georgia's initial report. The Committee recommended that:

- a) the Government fully implement the juvenile justice standards contained in the Convention, and particularly Articles 37, 39 and 40, as well as the UN Standard Rules for the Administration of Juvenile Justice (the Beijing Rules) and the UN Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines);
- b) Use detention, including pre-trial detention, only as a measure of last resort, for a short a time as possible, and develop alternative measures, such as community service and half-way homes to deal with juvenile delinquents in a more effective and appropriate manner;
- c) Take appropriate measures to promote the recovery and social integration of the children involved in the juvenile justice system; and
- d) Strengthen preventive measures, such as supporting the roles of families and communities.

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<sup>3</sup> CRC/C/41/Add.4/Rev.1 8<sup>th</sup> October 1998

<sup>4</sup> CRC/C/104/Add 1. See also CRC/C/SR/ 914 and 195.

<sup>5</sup> CRC/C/15 Add 222 27<sup>th</sup> October 2003

- 1.2 The Committee on the Rights of the Child also recommended that the government seek technical assistance in the area of juvenile justice from Unicef.<sup>6</sup> At the request of the government of Georgia and Unicef, the author undertook an analysis of juvenile justice in Georgia in October and November 2006. The purpose of the analysis was to determine whether the Concluding Observations had been addressed and the extent to which the current legislation relating to children in conflict with the law is consistent with the UN Convention on the Rights of the Child, the UN Minimum Standards and Norms of Juvenile Justice and current notions of good practice in juvenile justice.
- 1.3 This paper analyses the juvenile justice system as it applies to children over the age of 14. It does not cover children under the age of 14, even though they may find themselves subject to sanctions for criminal acts or anti-social behaviour.
- 1.4 The author is grateful to all those who spared time to discuss the current juvenile justice system and provided information, including relevant ministries, NGOs, institutions, prisons, members of the police force and children themselves.
- 1.5 The initial conclusions of the analysis were shared with a cross-Ministerial Working Group in November 2006. Feedback and further information were obtained from members, who agreed to seek to formalise their role, and to continue working on juvenile justice issues.

## **2.0 Background**

- 2.1 In July 2006, the population of Georgia stood at 4,401,300.<sup>7</sup> Unfortunately, there are no clear figures available for the number of children in the population as the state statistical body records the

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<sup>6</sup> CRC/C/15/Add 222 para 69, 27<sup>th</sup> October 2003.

<sup>7</sup> See Statistics Georgia, [www.statistics.ge](http://www.statistics.ge)

number of persons under 19 years rather than under 18.<sup>8</sup> However, the approximate number of children in 2006 was 1,042,250, forming 23.68% of the population.<sup>9</sup> The number of children in Georgia has decreased over the last three years both in real numbers and as a percentage of the population as a whole.

Age	2004 (in thousand)	2005 (in thousands)	2006 (in thousands)
0-1	45.00	48.4	45.6
1-4	195.7	188.6	189.1
5-9	252.3	247.2	250.2
10-14	310.7	307.3	301.9
15-19	349.2	343.7	340.6
<b>Total child population</b> (under 18 estimate)	1065.6	1049.27	1042.25
Total population	4315.2	4321.5	4401.3
<b>Child population as percentage of total population</b> (estimate)	24.68%	24.28%	23.68%

- 2.1 Approximately 83.8% of the total population are Georgians, 6.5% Azeri, 1.5% Russian with 2.5% from other ethnic backgrounds.<sup>10</sup> 83.9% of the population are Orthodox Christians, and 9% Muslim.
- 2.2 Although Georgia's economy suffered severe damage as a result of civil strife in the regions of Abkhazia and South Ossetia, it has made substantial economic gains since 2000 and a GDP growth rate of 9.3%

<sup>8</sup> The UN Convention on the Rights of the Child states that a child is person under the age of 18 (Article 1)

<sup>9</sup> This is a relatively low figure compared to neighbouring states, such as Azerbaijan at 37%.

<sup>10</sup> Figures taken from the 2002 census

in 2005. However, per capita income is still low, with approximately 50% of the population below the poverty line.<sup>11</sup>

### **3.0 International Treaties**

3.1 As stated above, Georgia acceded to the UN Convention on the Rights of the Child on 2<sup>nd</sup> June 1994 and to the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography on 28<sup>th</sup> June 2005. Georgia has not, as yet, acceded to the Optional Protocol on the Involvement of Children in Armed Conflict. Georgia has also acceded to the International Covenant on Civil and Political Rights,<sup>12</sup> the International Covenant on Economic, Social and Cultural Rights,<sup>13</sup> the Convention on Elimination of Discrimination against Women<sup>14</sup>, the Convention on the Elimination of all Forms of Racial Discrimination<sup>15</sup> and the Convention against Torture and other Inhuman or Degrading Treatment or Punishment.<sup>16</sup> In addition, Georgia is a party to a number of other child-related instruments, such as the ILO Minimum Age Convention (No. 138)<sup>17</sup>, the ILO Convention No. 182 on the Worst Forms of Child Labour<sup>18</sup>, the Hague Convention on the on the Civil Aspects of International Child Abduction<sup>19</sup> and the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption<sup>20</sup>.

3.2 As a Member State of the Council of Europe, Georgia has ratified the European Convention on Human Rights and Fundamental Freedoms,<sup>21</sup> the European Convention for the Prevention of Torture and Inhuman or

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<sup>11</sup> See CIA Factbook 2001 estimate was 54% below poverty line.

<sup>12</sup> On 3<sup>rd</sup> May 1994. Georgia also acceded to the Optional Protocol on the International Covenant on Civil and Political Rights on the same date

<sup>13</sup> On 3<sup>rd</sup> May 1994.

<sup>14</sup> 26<sup>th</sup> October 1994. Georgia also acceded to the Optional Protocol to this Convention on the 15<sup>th</sup> January 2002

<sup>15</sup> 2<sup>nd</sup> June 1999

<sup>16</sup> 26<sup>th</sup> October 1994. Georgia also acceded to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 9<sup>th</sup> August 2005

<sup>17</sup> Ratified on 23<sup>rd</sup> September 1996

<sup>18</sup> Ratified on 24<sup>th</sup> July 2002

<sup>19</sup> Acceded to on 24<sup>th</sup> July 1997 and entered into force 1<sup>st</sup> October 1997

<sup>20</sup> Acceded to on 9<sup>th</sup> April 1999 and entered into force on 1<sup>st</sup> August 1999

<sup>21</sup> Ratified on 20<sup>th</sup> May 1999. Georgia has also ratified all the Protocols to the Convention

Degrading Treatment or Punishment<sup>22</sup>, the Framework Convention for the Protection of National Minorities<sup>23</sup> as well as the European Social Charter<sup>24</sup>.

- 3.3 The Constitution of Georgia requires domestic legislation to correspond to universally recognised principles and rules of international law. An international treaty ratified or acceded to by Georgia takes precedence over national law in the event that there is conflict between the provisions, unless such treaties contradict the Constitution itself.<sup>25</sup>

#### **4.0 Juvenile Justice Instruments**

- 4.1 The most important instrument for juvenile justice is the UN Convention on the Rights of the Child<sup>26</sup> (specifically articles 37, 39 and 40), supported by the UN Minimum Standards and Norms in Juvenile Justice. The minimum standards are made up of the UN Standard Minimum Rules for the Administration of Juvenile Justice<sup>27</sup> the UN Rules for the Protection of Juveniles Deprived of their Liberty,<sup>28</sup> the UN Guidelines for the Prevention of Juvenile Delinquency,<sup>29</sup> and the more recent Vienna Guidelines for Action on Children in the Criminal Justice System.<sup>30</sup> The UN Minimum Standards and Norms supplement, expand and support the provisions in the UN Convention on the Rights of the Child. Although the guidelines are soft law and are not directly binding on Georgia, *“together they constitute a comprehensive set of universal standards and set out desirable practices to be pursued by*

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<sup>22</sup> Ratified 20<sup>th</sup> June 2000

<sup>23</sup> Ratified 20<sup>th</sup> December 2005

<sup>24</sup> Georgia signed the Revised European Social Charter on 30<sup>th</sup> June 2000 and ratified it on 22<sup>nd</sup> August 2005

<sup>25</sup> Article 6 of the Constitution of Georgia

<sup>26</sup> adopted by the General Assembly of the United Nations, 20 November 1989 and ratified by Tajikistan on 26<sup>th</sup> October 1993.

<sup>27</sup> UN Res 40/33-Beijing Rules 1985, Annex 2

<sup>28</sup> UN Res 45/113 -JDLs 1990 Annex 4

<sup>29</sup> UN Res 45/112- Riyadh Guidelines 1990 Annex 3

<sup>30</sup> Administration of Juvenile Justice ECOSOC resolution 1997/30. The Committee on the Rights of the Child now considers this instrument to form part of the international juvenile justice standards which States are obligated to uphold.

*the world community*”<sup>31</sup>. The Committee on the Rights of the Child, the monitoring body for the UN Convention, uses these instruments in addition to the Convention, to evaluate States’ laws and practices.

- 4.2 There are four overarching principles of the UNCRC that apply just as much to children who are in conflict with the law as in any other area of a child’s life. These are: that the best interests of the child shall be the primary consideration (Art 3); that children should not be the subject of discrimination (Art 2); the right to survival and development (Art 6) and the right for children to express their views and have those views taken into account in all decisions affecting them (Art 12).
- 4.3 The UNCRC makes it clear that the inherent special needs and vulnerability of children must be taken into account in the implementation and development of laws on juvenile justice. The primary goal of a juvenile justice system should not be that of punishment for the crime, but rehabilitation and reintegration of the juvenile<sup>32</sup>.

## **5.0 Criminal statistics**

- 5.1 Georgia responded to the Seventh UN Survey on Crime, Trends of the Operations of Criminal Justice Systems (1998 -2000) as well as the Ninth Survey covering the period 2002-2004. Further statistical information was also provided by the General Prosecutor’s Office and other ministries. Unfortunately the responses to the Ninth Survey have not yet been published by UNODC. This, plus the fact that Georgia did not submit a response to the Eighth Survey, results in a lack of longitudinal data. There are no long term figures on recorded crime, first contact or the number of prosecutions.

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<sup>31</sup> *The UN Manual on Juvenile Justice* at 6, Crime Prevention and Criminal Justice Division, submitted pursuant to UN GA Res 45/112. In addition ECOSOC res. 1997/30 on the Administration of Juvenile Justice lays down the most recent thinking on juvenile justice.

<sup>32</sup> Art. 9 ICCPR states that the essential aim of the treatment of prisoners in the penitentiary system shall be their reformation and social rehabilitation. The UNCRC, Art. 40(1), provides that children be treated in a manner consistent with the desirability of promoting the child’s assuming a constructive role in society. Also see the Standard Minimum Rules for the Treatment of Prisoners (1955), Rule 58



5.2 There are three main methods of measuring crime committed by juveniles: arrest rates, victim surveys and self-reporting data. The information collected in Georgia appears to rely heavily upon arrest rates. There is no information available on how many crimes are reported as committed by children and, to the best of the author's knowledge, there has been no research with children to determine the level of self-reported crime. The only long term data available relates to convictions. While this information is useful in determining crime trends, it says little about the underlying rate of offending by juveniles. Good statistical information is, however, essential for good policy making. The number of convicted juveniles is contained in the chart below.

Years	Total number of people convicted	Total number of juveniles convicted	%
1990	7481	499	6.7
1991		492	
1992	3730	335	9.0
1993			
1994	8283		
1995	7094	455	6.4
1996		491	
1997	7646	357	4.7
1998	6998	357	5.1
1999	7973	383	4.8
2000	8284	388	4.7
2001	8897	525	5.9
2002	8579	497	5.8
2003	8110	459	5.7
2004	9071	598	6.6
2005	9168	475	5.2
2006 (9 mths)	11043	633	5.7

5.3 Interestingly, although the number of convictions handed down to juveniles has increased significantly in 2006, juvenile crime as a proportion of total criminal convictions has not undergone a similar increase. The proportion of juvenile offending has remained fairly constant over the years. In 1992, juvenile convictions amounted to 9% of total convictions. Since then the proportion of juvenile convictions has varied from 4.7% of all convictions to 6.6% in 2004. Thus, the view expressed by many government ministers and criminal justice personnel that juvenile offending was increasing as a proportion of overall criminal convictions cannot be sustained on the figures provided.

5.4 Males make up the vast majority of those convicted, with only 12 girls (1.9%) convicted in the first 6 months of 2006. Interestingly, the age of conviction has changed over the last 6 years, with a steadily increasing number of 14 and 15 year olds being convicted: from 16.8% of total juvenile convictions in 2000 to 31.4% in the first nine months of 2006. A number of factors may be responsible for this change, including the closure of the Special Vocational School, the fact that the Commission of Minors no longer has jurisdiction over 14-16 year olds committing minor offences, and the change in the Criminal Code which permits judges to impose a term of imprisonment on 14-16 year olds.

*Number of convicted juveniles*

	2000	2001	2002	2003	2004	2005	2006 (9 mths)
Total number juveniles convicted	388	525	497	459	598	475	633
Boys	386 (99.5%)	520 (99.0%)	486 (97.8%)	450 (98.0%)	588 (98.3%)	469 (98.7%)	621 (98.1%)
Girls	2 (0.5%)	5 (1.0%)	11 (2.3%)	9 (2.0%)	10 (1.7%)	6 (1.3%)	12 (1.9%)

Aged 14-15	65 (16.8%)	99 (18.86%)	102 (20.5%)	122 (26.6%)	170 (28.4%)	127 (26.7%)	199 (31.4%)
Aged 16-17	323 (83.2%)	426 (81.14%)	395 (79.5%)	337 (73.4%)	428 (71.6%)	348 (73.3%)	434 (68.6%)

5.5 It is very clear from the figures that imprisonment is increasingly used as sentence for juveniles. While in the year 2000, imprisonment was only ordered by the court on 14.9% of convicted juveniles, by 2006 it was used for 37.4% of convicted juveniles. In figures given to the Seventh Survey only 35 convicted juveniles were held in prison in 1992.<sup>33</sup> This rose to 84 in 1996, although the number was down to 27 in 2000. In November 2006, when the author visited the juvenile reform facility (Avchala), there were 145 juveniles held, a figure which rose to 150 a few days later. While the increase in the figures is partly due to the reduction in the age at which juveniles can be given a prison sentence, the increase in the use of imprisonment raises a number of issues: in particular, whether the rise in numbers is due to a change in policy or is a reflection of a change in the nature of the crime being committed by juveniles. The rise in the number of 14 -15 year olds being imprisoned also raises serious concerns, particularly in the light of the proposed amendments to the Criminal Code which would reduce the age of criminal responsibility from 14 to 12 years of age.

*Imprisonment rate for convicted juveniles*

	2000	2001	2002	2003	2004	2005	2006 (first 9 mths)
Sentencing							
Imprisonment	58 (14.9)	74 (14.1%)	106 (21.3%)	108 (23.5%)	140 (23.4%)	104 (21.9%)	237 (37.4%)

5.6 It would appear that the nature of crime committed by juveniles has not changed significantly. The statistics for crimes against the person as

<sup>33</sup> Figures were taken on selected day, thus the figure represents how many children were in the juvenile colony that selected day and not how many were admitted over the year.

opposed to property crime, for the years 2000- 2006 show very small levels of offending by juveniles.

*Crimes of violence committed by juveniles*

	2000	2001	2002	2003	2004	2005	2006 (1 <sup>st</sup> months) 9
Murder	5	10	14	12	5	5	18
Manslaughter	4	4		1			
Intentional grave damage to health	4	7	9	7	8		11
Damage to health	3		1	1	1	3	
Rape	3		3	3		1	4
<b>Total</b>	<b>19</b>	21	27	24	14	10	33
<i>Number imprisoned</i>	11 (58%)	11 (52%)	19 (70%)	15 (63%)	13 (93%)	8 (80%)	28 (85%)

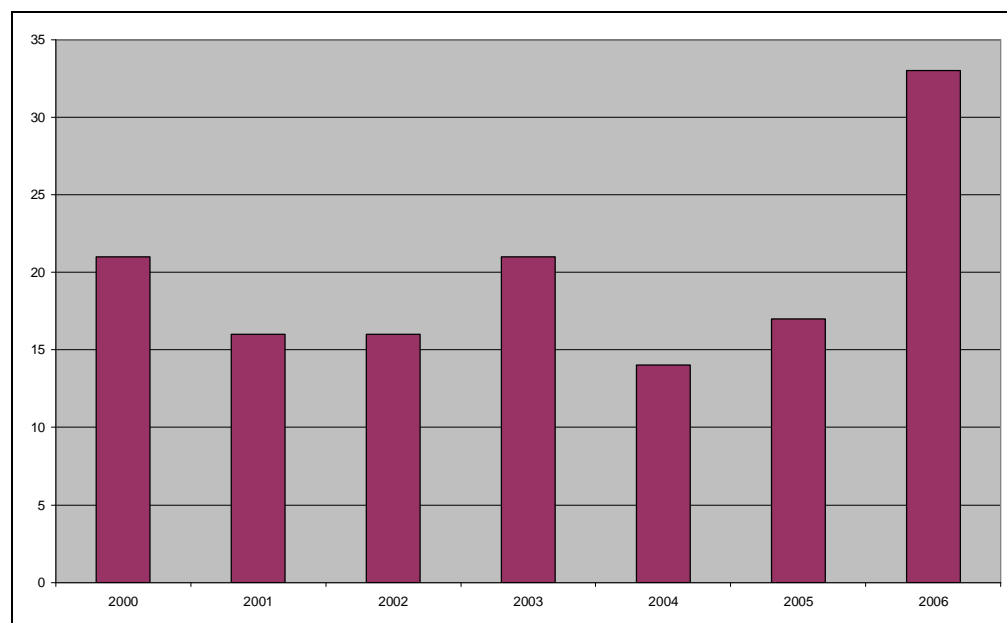
*Property offences committed by juveniles*

<b>Type of crime: property offences</b>	2000	2001	2002	2003	2004	2005	2006 (1 <sup>st</sup> nine months)
Theft	276	384	330	235	286	299	367
Larceny	13	33	42	52	62	41	41
Robbery	11	14	16	10	23	23	67
Fraud		1	1		2	1	3
Total	300	432	389	297	373	364	478
Number imprisoned	39 (13%)	47 (11%)	74 (19%)	79 (27%)	93 (25%)	73 (20%)	179 (37%)

5.7 What is, however, noticeable on closer inspection of the figures is the increase in the rate of imprisonment for theft offences. This has risen from 10.9% of convictions for theft in 2000, to 27.2% in 2006. While imprisonment for property offences has risen steadily over the decade, there has been a huge leap in the rate of imprisonment in 2006. This is undoubtedly partially due to a zero tolerance approach adopted by the government, which has been reflected in a greater use of imprisonment on juveniles. At the same time, it also reflects the lack of diversionary measures and alternative sentencing programmes available to address juvenile offending.

5.8 Not only has the rate of imprisonment of juveniles increased steadily, but the length of the imprisonment term has also shown some shift over the decade. The number of children given sentences of 5-10 years and 10-15 years has increased. In 2000 20.7% of those convicted received sentences of between 5 and 15 years, 16.2% in 2001, 16.1% in 2002, 21.3% in 2003, 14.3% in 2004, 17.3% in 2005 but in 2006, 32.5% of convicted juveniles received a sentence of between 5 and 15 years, mostly for committing property offences.

*Numbers of juveniles receiving sentences of 5-15 years*



5.9 Compared with western Europe, Georgia has a very low number of juvenile prosecutions. However, it does have a high rate of imprisonment for juveniles. In the first nine months of 2006, 37.4% of convicted juveniles were given a custodial sentence. The comparable figure for England and Wales (which has one of the highest rates of imprisonment in western Europe) is approximately 9%. Further the term of imprisonment is far longer. In England, the *maximum* length of sentence for a juvenile is two years (of which one year is spent in the community under supervision), unless the juvenile has committed a very serious offence against the person, such as murder.<sup>34</sup> Most juveniles given a custodial sentence will receive far less than the maximum, 3 - 6 months being the most common. In Georgia, 32.5% of juveniles received a sentence of more than 5 years, many of them for property crime. While a high rate of imprisonment maybe a result of policy, it also reflects the limited range of alternative sentencing provision available in Georgia. In order to comply with the provisions of the UN Convention on the Rights of the Child and the UN Minimum Standards and Norms in Juvenile Justice, and ensure that deprivation of liberty is used only as a last resort and for the shortest possible period of time, Georgia needs to establish a range of community based diversion schemes and alternative sentencing programmes.

## **6.0 Children in the Georgian criminal justice system**

6.1 Up until 1999, the age of full criminal responsibility in Georgia was 16, with 14-16 year olds only having criminal responsibility for certain, more serious offences. Due to amendments to the Criminal Code in 1999, the age of criminal responsibility in Georgia is currently 14<sup>35</sup> for all crimes. Crimes are categorised under the Criminal Code into minor crimes,<sup>36</sup> serious crimes<sup>37</sup> and grave crimes.<sup>38</sup> All children aged 14 -18

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<sup>34</sup> ie murder, manslaughter, rape and other similar offences.

<sup>35</sup> Article 33 Criminal Code

<sup>36</sup> See Article 12 Criminal Code. A minor crime is a deliberate or unintentional crime for which the maximum punishment provided by the Criminal Code is 5 years of imprisonment;

who have criminal responsibility are, according to both the Criminal Code<sup>39</sup> and the Criminal Procedure Code,<sup>40</sup> to be treated as minors.

6.2 The Criminal Code of Georgia (1999) is the main legislation governing the criminal justice system in Georgia. In addition to the Criminal Code, the Code of Criminal Procedure (1998) sets out due process guarantees for persons accused of committing a crime. There have been numerous amendments both to the Criminal Code and the Criminal Procedure Code: some 50 amendments to the Criminal Code since 1999 and 62 to the Criminal Procedure Code. Further amendments to both instruments are currently before Parliament, including a reduction in the age of criminal responsibility from the age of 14 to 12. In writing this analysis, the author has had to rely on English translations of the Codes, which may not always contain the latest amendments.

## **7.0 Prevention of offending**

7.1 The Riyadh Guidelines which form part of the UN Minimum Standards and Norms on Juvenile Justice<sup>41</sup> require that States develop and implement delinquency prevention programmes at every level of government. These should cover both those who have committed offences and those at risk of offending. The Commissioner for Human Rights in the Council of Europe, Thomas Hammarberg, has recently stated that the key components of a preventive strategy are: ‘Support to families at risk, decisive reaction on signs of domestic violence, social workers with outreach capacity, neighbourhood networks and a school which not only teaches but also cares for every individual child .... The young persons themselves should of course be involved in

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<sup>37</sup> Defined as an intentional crime for which the maximum punishment provided by this Code is 10 years of imprisonment, or an unintentional crime for which the maximum punishment provided by this Code is 5 years of imprisonment.

<sup>38</sup> Defined as an intentional crime for which the sentence is more than 10 years of imprisonment or life imprisonment

<sup>39</sup> Article 80 Criminal Code

<sup>40</sup> Article 37 Criminal Procedure Code.

<sup>41</sup> Adopted and proclaimed by General Assembly Resolution 45/112 of 14<sup>th</sup> December 1990

these efforts and not be considered as mere objects of socialization and control'.<sup>42</sup>

- 7.2 As yet, there has been little focus on the development of preventive services in Georgia. The National Plan of Action for Children 2003 - 2007 notes the lack of attention paid to prevention programmes and proposes the introduction of a system of 'informal justice,' including family group conferences and restorative justice programmes to address the lack of provision. The author was unable to find that any such schemes have been established for children at risk of offending, though a number of small pilot schemes are offered by NGOs to children who have already committed offences, under the umbrella of probation. These schemes are very new and take a small number of children. They are discussed below.
- 7.3 The only government body engaged in preventive work in October 2006 when interviews were being undertaken for this analysis, was the Inspection of Minors (IOM) under the Ministry of Interior. This body held a register of children who were identified as having already committed offences or had been engaging in anti-social behaviour, including failing to attend school regularly. The basis on which children could be registered was not entirely clear. The Instructions on Organising Activities for Prevention of Crime by Juveniles or Against Them merely provide that those '*juveniles that carry out anti-social activities and have been noticed in regular violation of public order*' could be registered. Children aged 14-18 were registered following a referral from school, neighbours, the police administrative branch and even parents, or on release from custody. Children under the age of 14 were referred to the Ministry of Education, although the Instructions clearly did allow the IOM to work with younger children. From 1<sup>st</sup> January – 1<sup>st</sup> September 2006, 730 children were registered, all of whom had been

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<sup>42</sup> See Council of Europe website: [www.coe.int.t.commissioner](http://www.coe.int.t.commissioner) '*Its wrong to punish child victims*' by Thomas Hammerberg 08.01.07



charged with an offence.<sup>43</sup> The vast majority registered with the IOM were charged with theft (437). 37 were charged with robbery, 12 with drugs and illegal use, 9 with intention to kill, 10 with physical wounding and 1 for rape. The remaining children were charged with other minor offences.

- 7.4 The IOM's preventive work consisted largely of meetings with children, and working in schools.<sup>44</sup> They also assisted children to get back into school and to access leisure time and after-school activities, as well as meeting with parents to discuss behaviour management. At the time of interview in October 2006, the IOM hoped that proposals for their abolition and absorption of their work into that of the patrol police would not go ahead. As an alternative, it was suggested that the capacity of the IOM should be increased not only to work with children who had offended but also those who were vulnerable and at risk of offending.
- 7.5 The IOM was abolished in November 2006 as part of the police reform process. The work formerly undertaken by IOM will be absorbed into general patrol police work. There will continue to be Minors Division at central government level, but this will consist only of 4 or 5 staff whose role is to collate and analyse statistical data and co-ordinate activity and monitor activity at regional level. The Minors Division will not have a policy setting role.
- 7.6 While the police reforms generally are to be welcomed, this aspect of the reform is to be regretted from a child rights perspective. It has resulted in the loss of a specialist division of police and the only body undertaking preventive work. The task of introducing a greater range of preventive measures and activity is likely to be harder as a result of this loss. Busy patrol police with little experience of working with children

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<sup>43</sup> A greater number than previously registered. In 2003, the number registered was 617 and in 2004, the number was 557.

<sup>44</sup> Although there were changes to their functions contained in Order 635 of 17<sup>th</sup> May 2006. At the time of interview, the IOM had a staff of 287 under the Ministry of the Interior.

and families will struggle to give preventive work with juveniles priority; especially as such work can be time consuming,

- 7.7 There appears to have been little consideration of how the skills and the work of the IOM will be replaced. There are no juvenile specialists in the Criminal Police Department, nor indeed in the Patrol Police Department and thus little expertise in dealing with either child offenders or indeed, child victims. There would appear to have been no transitional arrangements in place to enable a smooth hand over of the cases of children on the register from the IOM to the patrol police, nor any consideration of how preventive work will be handled. In addition, it would seem that few if any of the patrol police at district level have received any training on working with children.
- 7.8 In the Strategy on the Reform of the Criminal Legislation, the Working Group established by the President<sup>45</sup> envisages public community police units co-operating with each other on crime prevention issues. It sees crime prevention working on two levels: one directed towards individuals already committing petty offences or living in deprived circumstances and one on a more general level, providing public information and other preventive measures. The bodies responsible for undertaking this work would be the Public Councils,<sup>46</sup> with funding provided by the local municipalities. It also recommends a special unit within the Ministry of the Interior to oversee work on prevention. Implementing this strategy would be a step towards meeting the requirements of the UN Convention on the Rights of the Child and the UN Minimum Standards and Norms of Juvenile Justice. In addition, in order to meet Convention standards, the Ministry of the Interior need to

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<sup>45</sup> Working Group established by Presidential Decree No 914 of 19 October 2004. See also Government of Georgia Order No 195 20<sup>th</sup> May 2005

<sup>46</sup> The strategy document recommends that Public Councils be established in all local police departments. The councils will be composed of members of society elected for 5 years. The tasks of the councils will be to monitor the police and discuss and negotiate priorities with local police forces. The councils will monitor the condition of detainees at the police stations and will receive and hand over complaints about the police to the General Inspection Unit.

formulate a national plan for preventive work and provide training courses on prevention for police at dealing with juveniles all levels.

## **8.0 The Criminal Process for children aged 14-18**

- 8.1 Where a minor is regarded by the law as having criminal responsibility, the criminal process is divided into three stages: that of initial investigation, the period during which a child has been charged but not yet tried<sup>47</sup> and finally, the trial itself. During this process a juvenile may, at any time, be placed in detention and deprived of his liberty, provided that certain conditions are met.<sup>48</sup> The General Prosecutors Office in its brief overview of the juvenile justice system in Georgia sets out two objectives for the system: first, the promotion of the well-being of the juvenile and second, the principle of ‘proportionality’. This is interpreted as meaning that the response to young offenders should be based on the consideration not only of the gravity of the offence but also of personal circumstances.<sup>49</sup> These objectives are identical to those set out in the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), Rule 5 and the commentary to the Rules.
- 8.2 Articles 37 and 40 of the UN Convention on the Rights of the Child set out the rights that should be assured to children in conflict with the law. These rights are not specifically set out in Georgian legislation, but many can be found in the Criminal Procedure Code. The guarantees in the Convention are:
- a) to be presumed innocent until proven guilty (contained in Article 10 Criminal Procedure Code);
  - b) To be informed promptly and directly of any charges against him or her, and to have legal or other appropriate assistance in

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<sup>47</sup> During this time he is referred to as ‘the accused’ Article 91 Criminal Procedure Code

<sup>48</sup> The circumstances in which a person may be detained are set out in Articles 147 – 164 Criminal Procedure Code

<sup>49</sup> See Article 641 Criminal Procedure Code

the preparation and presentation of his or her defence (Articles 11, 12 and 73 Criminal Procedure Code);

c) 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 and other appropriate assistance and his or her parents or legal guardians (Articles 15, 644, 646 Criminal Procedure Code);

d) 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 (Articles 73, 75, 114 Criminal Procedure Code);

e) The right of appeal (Article 21, 234 and 659 Criminal Procedure Code);

f) The right to an interpreter if necessary (contained in Article 17 Criminal Procedure Code);

g) To have his or her privacy respected at all stages of the proceedings. Article 656 of the Criminal Procedure Code provides that the trial of juvenile cases shall be heard in camera. However, Article 16(7) of the Code provides that all court judgments, ruling and decision in cases shall be made public. There does not appear to be any provision restricting the publication of names of children accused or tried for a criminal offence, nor any restriction on publication of the details of the offence, contrary to Article 40(2)(b)(vii) of the UN Convention on the Rights of the Child and Rule 8 Beijing Rules, which require that a juvenile's right to privacy shall be respected at all stages and that, in principle, no information that may lead to identification of a juvenile offender shall be published.

## **9.0 Arrest and Detention of Juvenile Offenders**

9.1 A juvenile may only be arrested and thus detained if the grounds set out in Article 151 of the Criminal Procedure Code are met.<sup>50</sup> As with adult offenders, juveniles may be deprived of their liberty for a short term where:

- a) there are sufficient grounds to suspect that he or she has committed a crime for which imprisonment is prescribed as a sanction<sup>51</sup>, or
- b) to prevent the juvenile committing a criminal offence, or
- c) to prevent a suspect's escape or disappearance or
- d) to prevent the destruction of evidence.<sup>52</sup>

9.2 A juvenile will be considered to be arrested from the moment his liberty is restricted by an authorised official for the purpose of bringing him to the police station or other law enforcement agency. Police may arrest a suspect if<sup>53</sup>

- a) the person was caught committing a crime or immediately after committing it;
- b) if an eye witness or victim identifies the person as having committed the crime;
- c) evidence of the crime is found on the person;
- d) If the suspect hid after the crime but was later identified by the victim;
- e) When a decision or order for the person's arrest has been made.

9.3 On arrest, Article 145 of the Criminal Procedure Code requires that the police officer should inform the child in a way that the child can understand why he has been detained, and should explain his rights to him. These include the right to stay silent, to consult a lawyer, to have an interpreter if necessary, to be informed that anything said may be

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<sup>50</sup> Article 652 Criminal Procedure Code

<sup>51</sup> Virtually all property crimes including theft are imprisonable offences.

<sup>52</sup> Article 141 Criminal Procedure Code

<sup>53</sup> Article 142 Criminal Procedure Code

used in court, to have a medical examination, the right to have up to two witnesses present during any search, the right to inform relatives of the place of detention etc,<sup>54</sup>

- 9.4 On detention, the arresting officer should file a detention record (a suspect detention protocol). If not filed at the moment of detention it should be done once the child reaches the police station. This document contains general details about suspect and the time, place and reasons for arrest and the condition of the suspect. It also records whether the suspect was informed of his rights as contained in Articles 145 and 73 Criminal Procedure Code and lists those rights. The form requires signatures from the police officer who undertook the arrest, the detainee and the detainee's lawyer. It is highly unlikely that a child will have a lawyer present when this form is filled in on his arrival at the police station, and it must be presumed that the form is signed some time after the event by the child's lawyer.
- 9.5 Once a juvenile has been registered and the suspect detention protocol filled in, a juvenile may either be placed in an interview room at the police station or can be placed directly into the isolator. At the Tbilisi Vake-Saburtalo District police station the children were placed directly into an interview room and we were informed by the police at this station, and by the IOM, that this was general practice. It is not clear, however, whether this is a country-wide practice.
- 9.6 Article 644 of the Criminal Procedure Code provides that a teacher or legal representative of the juvenile (a parent or guardian) may be present from the start of the questioning. In addition, Articles 645 and 647 of the Criminal Procedure Code requires a lawyer to be present during questioning. In the event that the child or parent does not appoint their own lawyer, it is up to the police to ensure that a lawyer

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<sup>54</sup> See Articles 72 and 73 Criminal Procedure Code

attends. The police spoken to all had links with local lawyers or NGOs whom they contacted when a child was arrested.

- 9.7 The practice of not placing the child in a cell but straight into an interview room is to be welcomed, but it causes some problems in practice. The police at the Tbilisi Vake Saburtala District police station do not call the parent of the child until the child has been registered at the police station. However, the period of time between the child being placed in an insecure interview room, and the interview proceeding, was estimated by the police as being between 20 and 30 minutes. This will rarely be a long enough period to allow the parents to reach the police station. The general practice was to call a teacher from a nearby school for the deaf to come and be present while the child was interviewed. In addition, although a child might be asked if he wishes to ring a lawyer of his choice, it is unlikely that the child would know who to call, and thus, the police will themselves call a lawyer to attend.<sup>55</sup> While the lawyer assigned will be independent and is not connected with the police or the prosecutors office, most of the lawyers assigned are either trainee lawyers or very newly qualified. It is unclear whether these lawyers have received specific training in representing children. Nor is it clear whether they are offered any supervision to assist them in performing their role by more experienced lawyers. We were informed that a lawyer is paid at most 2 Lari for attending at the police station.
- 9.8 These procedures raise concerns and fall short of international standards. The short period of time between arrival at the police station and the start of questioning does not allow time for the parents to arrive at the police station and to be present at questioning, making this right largely meaningless. The teachers who attend have no training and little knowledge of their role. Their role should be to support the child and to ensure his or her best interests, to help the child express his

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<sup>55</sup> See Article 82(6) Criminal Procedure Code

views clearly if he wishes to do so, to encourage the child to discuss issues with his lawyer, and to ensure that the questioning is understood by the child. The lawyer's role is to ensure that the child's rights are understood and upheld, and also to ensure that the questions asked are appropriate, fair and not oppressive to the child. Research evidence shows that children are inclined to provide the answers that their interrogators want to hear, particularly if the child believes that he will be allowed to leave the police station if he provides the answers sought. The duty on the lawyer: to ensure that the child is able to give his version of events and is not pushed into falsely admitting the crime, is a heavy one. There does not appear to be any opportunity for the teacher or the lawyer to speak to the child before the questioning begins, Thus there is no opportunity to explain why they are there, their role or what is going to happen to the child as a result of being arrested. To a great extent, the protection provided by the attendance of the teacher and the lawyer is illusory.

- 9.9 We would recommend that procedures are amended to allow the lawyer, at the very least, to talk to his child client in private before any questioning by the police occurs. We would also recommend that parents should be given the time to travel to the police station and attend when their child is being questioned. Each police station should ensure that they have a juvenile suite in which children can be placed until their parents arrive. This room should not resemble a cell, but rather an interview room, and should contain some books and other materials for children to keep them occupied while waiting. In addition, we would recommend the establishment of training and accreditation for those who are currently used to accompany children while they are questioned by the police, the formation of a national body of such 'independent adults' and the involvement of a wider range of people. The Bar Association, the Ministry of Justice or the Higher Council of Justice should ensure that lawyers receive appropriate training in working with juveniles. Many states operate a duty lawyer scheme, to ensure that lawyers are available 24 hours a day for arrested juveniles.



Consideration should be given to establishing a similar scheme in Georgia.

9.10 There is some existing NGO activity in this area, including an EU funded project run by the Institute for Democracy in Batoumi providing 3 mobile teams consisting of lawyers, teachers and psychologists to arrested children. It would be helpful to have an evaluation of this project to determine its effectiveness in protecting children's rights.

9.11 *Times of questioning*

A child may be questioned for up to 2 hours at any time and for not more than 4 hours during a day. However, there is nothing in the Criminal Procedure Code that covers at which time during the day a child may be questioned. As a matter of good practice, children should not be questioned during the late evening or night. It would appear that there is a practice of only keeping children at the police station for a short period of time before transfer to the isolator. The impact of this practice is likely to be that questioning around the time of arrival at the police station is inevitable, whatever the time of day. We were informed that none of the police stations had juvenile suites in which an arrested juvenile could stay if arrested at night.

9.12 *Search and Seizure*

Although amendments to the Criminal Procedure Code in 2005<sup>56</sup> have addressed the issues of search and seizure, the Criminal Procedure Code does not contain special provisions relating to search or the taking of samples from children. Article 145 CPC provides that the police may search an arrested person if there are reasonable grounds for believing he is armed or intends to get rid of incriminating evidence. As a matter of good practice it would be desirable to have specific rules for the searching of juveniles and for the taking of intimate samples. In particular, this should cover the police authorised to

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<sup>56</sup> Article 73(d)

undertake such searches. As a matter of good practice, and to protect children, it is recommended that consideration be given to amending the law to ensure that a parent or other appropriate adult of the same sex is always present whenever a child is searched or asked to give a sample. Not only is this necessary to ensure that children are not at risk of abuse, but also to ensure that the sample is given only when necessary.

#### 9.13 *Exercising Discretion*

Rule 6 of the Beijing Rules requires that decision makers should be able to exercise discretion at any stage in the criminal process, including in relation to the decision on whether to continue with an investigation or prosecution. The Rule requires that consideration should be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial. In addition, Rule 10 of the Beijing Rules provides that a judge or other competent body shall, without delay, consider the issue of release. The police do not have the discretion envisaged in the Rules. There are only two choices open to them once they have arrested a child. The first is to release the child where there is absolutely no evidence against him. The second is to continue to detain the child while further investigation is undertaken. If the child falls within the criteria in Article 151 of the Criminal Procedure Code, and is arrested, the decision to release can only be taken after there has been further investigation and a decision made on whether or not to charge the child. If there is any evidence at all against the child, he or she will be detained in the police isolator, even if the child admits his guilt and confesses to the offence.

9.14 Under the present system, the police have no discretion in relation to an arrested child. They are unable to make a decision to release him or her into the care of the parents or a children's home while further investigation takes place. Such a lack of discretion does not conform to international standards. The police should be given discretion to release the child before the investigation is complete or simply not to

proceed with an investigation. This does not necessarily mean ignoring the offending behaviour, but taking alternative, diversionary measures to deal with offending where this is necessary. Police should be given the power either to warn a child that further offending may lead to prosecution, or to refer a child to a diversion programme that would address the child's offending behaviour.

- 9.15 The Inspection of Minors under the Ministry of Interior had a preventive role, but did not investigate crimes committed by minors, or indeed committed against them. There are, at present, no special units within the police who specialise in working with juveniles. Rule 12 of the Beijing Rules provides that in order to work effectively states should train police officers to deal specifically with juvenile offenders. In large cities, special police units should be established for that purpose. Georgia does not have such police specialists, and as said above, have recently lost those police skilled in undertaking preventive work with juveniles.

### **10.0 Detention at the police isolator**

- 10.1 The majority of juveniles arrested will be moved from the police station to the police isolator within a relatively short period of time. The child may be kept there for up to 48 hours during which time the investigation will continue and a decision made on whether to charge the child.<sup>57</sup> If charges are not brought within this time, the suspect must be released. If the prosecutor makes a decision to file charges, the case will normally come before the court within 24 hours. The child will not be released until the case comes before the court and can thus spend up 72 hours in the isolator.<sup>58</sup>

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<sup>57</sup> Article 72.2 Criminal Procedure Code provides that a detained suspect must be charged within 48 hours

<sup>58</sup> Article 18 Constitution of Georgia

- 0.2 There are 65 isolators nationwide, sometimes in police stations and sometimes separate from them. There are two isolators in Tbilisi<sup>59</sup>. While boys and adults are kept separately in the isolator, the conditions under which both are admitted and kept appear to be identical. Girls are not held separately but are placed with adult women.
- 10.3 A visit was made to the Central Police station isolator in October 2006. The isolator accepts children suspected of committing a criminal offence from the age of 14 to 18. On arrival a duty officer registers the child. An issue can arise as to the age of the child if he or she has no identity documents. In such a case, the isolator will admit the child if the police have recorded on the detention protocol form that the child is 14 or older, even if the child himself states that he is younger than that age. The burden of proving he is younger than 14 lies on the child.
- 10.4 The isolator visited was not able to give us figures for detention of juveniles over the last year, though were able to tell us that 391 people had been detained at the isolator in August 2006 of whom 22 were children. At the time of the visit, there were 6 juveniles detained in the isolator, all aged 16 and 17. Although we were not allowed to speak to the juveniles, we were informed that all were suspected of petty theft.
- 10.5 While it is recognised that the time spent in an isolator is short, the maximum time being 72 hours, nevertheless the conditions do not meet human rights standards set out in the UN Rules on the Protection of Juveniles Deprived of their Liberty (JDL) or the UN Standard Minimum Rules for the Treatment of Prisoners.<sup>60</sup> Rule 31 JDL requires that juveniles deprived of their liberty have the right to services that meet all the requirements of health and human dignity. The cells in which children are kept contain 4 beds. Bedding is provided, but there are no mattresses on the beds, and the children lie on the metal base.

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<sup>59</sup> These are accountable to and report to the Georgi at the Minister of Interior

<sup>60</sup> Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977

More concerning, however, is that the light within the cell is insufficient to enable a child to read. Thus children sit in semi-darkness for the entire time they spend in the isolator.<sup>61</sup> Food is provided only twice a day at 10.00am and 2.00 pm.<sup>62</sup> It is unlikely that the diet provided in the two meals contained sufficient calories.<sup>63</sup> Staff were not aware of the calorie needs of adolescent boys and were unable to indicate the calorific value of the food being provided. We were told that a juvenile could ask for something to eat in the evening, but it is unclear that any of them know this, would be prepared or encouraged to ask or are likely to receive food if they do ask.

10.6 The regime operated in the isolator requires detained children to be locked in their cells for 23 hours a day, without any form of activity. No reading material of any other form of occupation is provided. Children are technically able to take one hours exercise during the day in a yard, measuring approximately 3 metres by 2 metres. At the time of our visit, the yard was completely filled with a parked vehicle, and we were told that the vehicle was kept there for most of the day. It is difficult to understand how, therefore, in this isolator, it was possible for a child to take any exercise.

10.7 While in the isolator, the investigator can interview and question a child, though not between the hours of 11pm and 10am. The setting of night-time at 11 pm is late and consideration should be given to limiting the period during which investigation can take place to no later than 8pm at night. An investigator can tape record interviews, but there is no requirement on them to do so, and the practice is rare. This is to be regretted as an accurate record of what was said and the manner in which it is said can be of great assistance to the court as well as a valuable measure of protection for a child.

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<sup>61</sup> Rule 11 UN Standard Minimum Rules on Treatment of Prisoners

<sup>62</sup> On the day we visited, the inmates were provided with bread, gretchke, macaroni and borscht.

<sup>63</sup> Contrary to Rule 37 JDL

10.8 The UN Rules for the Protection of Juveniles Deprived of their Liberty<sup>64</sup> remind states that juveniles who are detained under arrest are presumed innocent and should be treated as such. If a juvenile is detained whilst under arrest or awaiting trial, the conditions of that detention should include at the least:

- a) a right of legal counsel and free legal aid and to communicate regularly with their legal advisers
- b) provision of work with remuneration and the right to continue education or training
- c) the receipt and retention of materials for their leisure and recreation as are compatible with the interests of justice.

10.9 The facilities, conditions and regime operated in the Isolator fall far short of meeting children's human rights. The total lack of stimulation, placement in ill lit cells, the lack of comfort, the fact that children in reality stay in their cell for 24 hours a day and the provision of only two meals a day, are all tantamount to violations of children's rights and fail to meet the UN Minimum Standards and Norms on Juvenile Justice.

10.10 In addition, the Rules require that on admission a juvenile should be given a copy of the rules governing the detention facility and a description of their rights and obligations in language they can understand.<sup>65</sup> While a short description of rights is contained in the reception area, this is little more than a statement of the law, and does not explain to the juvenile what will happen to him whilst he is in the isolator, nor how long he will be kept and the regime, or possibility of making a complaint.

10.11 *Initial appearance before the court*

After a child has been detained for 48 hours, he or she must be charged or released, If charged, the child's case must be heard by a court within 24 hours. If the prosecutor fails to take the case before the

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<sup>64</sup> Adopted by General Assembly Resolution 45/113 of 14<sup>th</sup> December 1990

<sup>65</sup> Rule 24 JDL

court within this time frame, or the court does not order pre-trial detention, the juvenile must be released immediately (Articles 145.7 and 145.9 Criminal Procedure Code).

10.12 We were informed by lawyers that plea bargaining with the investigator occurs on a regular basis, both in respect of adults and children. The prosecutor may propose that the child admits guilt in return for the prosecutor agreeing a lesser charge and sentence. Many juveniles believe that by agreeing to a plea bargain they will be released and thus there is a strong incentive to accept a plea bargain, even in those cases where the juvenile does not accept that he has committed a crime. In addition, lawyers representing children find when they visit a juvenile in the isolator, many have already confessed to committing the crime. However, on seeing their lawyer, a considerable number of these children wish to withdraw the confession, alleging that it is not true. In such instances, it would be helpful if the interviews conducted by the police were tape recorded so that it is quite clear what was said by the child and the questions asked.

10.13 During our visit to the isolator, we were not permitted to speak to any of the detained children, and were thus unable to ascertain whether children were given adequate access to their lawyers, and were able to communicate with them in private and have them present during questioning.

### **11.0 Pre-trial Detention<sup>66</sup>**

11.1 At the initial hearing, which must take place within 24 hours of the filing of charges, the prosecutor or the investigator with the consent of the prosecutor, may ask for measures of constraint (ie restriction on freedom) as contained in Article 152 of the Criminal Procedure Code to be applied by the court. Article 151 provides that such measures may

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<sup>66</sup> For a detailed report on pre-trial detention, see 'Pre-trial Detention in Georgia; Norlag Project Report, December 2005

be applied for if there is a substantiated assumption<sup>67</sup> or a reasonable belief that the measures are necessary to prevent an accused person absconding from investigation or trial, to prevent him committing further criminal activity, interfering with evidence in the case, destroying evidence or threatening witnesses. The measures that may be ordered are detention, bail<sup>68</sup> or personal guarantee and personal supervision of a minor. The supervision can be in the parental home or a closed children's home if the child lived there or, a judge may order the child to be committed to such an institution.<sup>69</sup> In the case of a juvenile, detention can only be ordered where the crime charged carries a minimum prison term of three years<sup>70</sup> and where less restrictive measures are inappropriate.<sup>71</sup> Evidence from NORLAG however, indicates that the criteria set out in Article 151 are not applied rigorously and that pre-trial detention is ordered on virtually all first time juvenile offenders.

11.2 As a general rule, an accused, his legal representative and his lawyer have the right to participate and be heard when such an application is made, but if they fail to appear, the petition will nevertheless be heard.<sup>72</sup> It would seem from Article 645 of the Criminal Procedure Code that in the case of juveniles, the juvenile must be represented by a lawyer, although detention could be ordered in the absence of the juvenile's relatives.<sup>73</sup>

11.3 Following amendments to the Criminal Procedure Code in 2005 which came into force on 1<sup>st</sup> January 2006, the maximum term of pre-trial detention has been reduced from nine months to four months. When a

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<sup>67</sup> Due to amendments to the Criminal Procedure Code on 23<sup>rd</sup> March 2005, the prosecutor must, upon requesting an order must provide reasons justifying or substantiating the reasons for the application and why a less restrictive measure will not be sufficient.

<sup>68</sup> No figures are available for the use of bail for children. Anecdotally, we were informed that the court often asks for parents or children to pay a sum of money in order to obtain bail that are beyond their means.

<sup>69</sup> At present there are no closed institutions that are able to supervise children in this manner.

<sup>70</sup> Article 652.1 Criminal Procedure Code

<sup>71</sup> Article 652.2 Criminal Procedure Code

<sup>72</sup> Article 140.6 and 140.9 Criminal Procedure Code

<sup>73</sup> Article 649.2 Criminal Procedure Code



prosecutor seeks an order for pre-trial detention, the judge may make an order for 2 months. However, the time period may be extended twice, each for a further period of one month.<sup>74</sup> The period may also be extended for a further period of 60 days if the case is returned for additional investigation.<sup>75</sup> The total period of time that a juvenile can be detained up until the end of the trial has also been amended. Article 18 para 6 of the Constitution of Georgia, reflected in Article 162 of the Criminal Procedure Code (which came into force on 28<sup>th</sup> April 2006), provides that the total period of time in detention (including both pre-trial and during trial) should not exceed 9 months. The 9 month period begins on arrest, or where there has not been an arrest (ie detention prior to court appearance) at the moment when a judge imposes detention.

11.4 On 27<sup>th</sup> October 2006, there were 184 juveniles held in pre-trial detention.<sup>76</sup>

Prison No. 2: (Kutaisi)	16
Prison No 3 (Batumi)	28
Prison No 4 (Zugdidi)	9
Prison No. 5 (Womens' and Delinquents Institution of the Penitentiary Department)	105
Prison No. 6 Rustavi	20
Hospital for prisoners of the Penitentiary Department	6

<sup>74</sup> See Article 162. The period may be extended if the after the expiration of the detention period, the accused has violated a less restrictive measure, a graver charge has been brought against him, the complexity of the case or the parties have not had sufficient time to get familiar with the case files after the completion of a pre-trial investigation. In addition, if the case is returned for additional investigation from the court of trial, a judge of this court may prolong the detention up to 60 days. At the expiry of this term, the person should be immediately released unless the case has been transferred to court (see NORLAG report)

<sup>75</sup> Article 162.4 Criminal Procedure Code

<sup>76</sup> This term includes children held pre-trial and those whose trial has started but has not concluded.

11.5 A visit was made to the juvenile wing at Prison No. 5 in October 2006. Although the official figures record that there were 105 juveniles at this prison, on the day of the visit there were only 93 juveniles in the juvenile wing. Figures were provided for the length of stay of each child, although it was not clear whether children were on pre-trial detention or 'trial detention'. Eleven children had been detained for more than the current maximum of 10 months up to the end of the first instance trial. However, at the time of their initial detention, the reduced times for pre-trial detention had not come into force.<sup>77</sup> It is hoped that the reduced number of children in pre-trial detention after six months reflects the new regime.

Number of months in pre-trial detention	Number of children
Less than a month	4
1 month	19
2 months	6
3 months	7
4 months	17
5 months	13
6 months	6
7 months	6
8 months	3
9 months	0
10 months	2
11 months	2
12 months	7

11.6 The conditions in which children are kept in pre-trial detention in Prison No 5 are poor. Neither the conditions, nor the operating regime comply with the Georgian Law on Imprisonment<sup>78</sup> or with the UN Standard

<sup>77</sup> These did not come into force until 1<sup>st</sup> January 2006

<sup>78</sup> Adopted 22<sup>nd</sup> July 1999, currently undergoing amendment

Minimum Rules for the Treatment of Prisoners or indeed, the UN Rules for the Protection of Juveniles Deprived of their Liberty. These instruments give children the right to facilities and services that meet all the requirements of health and human dignity.

- 11.7 Juveniles are kept in 4 bedded, 8 bedded and 12 bedded cells with a small toilet and shower area. In many cells there were no lights in the toilet making it difficult to use the facility. The beds had bedding but this was dirty and unhygienic. The children spend all day, other than one hour a day when they are permitted to take exercise, in the cell. They eat their meals in the cells. There were an insufficient number of chairs in the cell for all to sit down, meaning that some children lay on their beds all day and night. One or two of the cells had a television otherwise the children had no means of stimulation. None of the cells contained a book, paper, pens or cards. The children had absolutely no form of activity to keep them busy. Exercise is limited to one hour a day and, as in the police isolator, was taken in a covered concrete yard measuring approximately 3 metres by 2 metres. Children are placed in cells to fill vacancies and little consideration is given to the suitability of placement. Cells are checked on an irregular basis. The food provided is of poor quality. On the day that we visited breakfast consisted of porridge and butter, lunch of cabbage and bread, while bread and tea was provided for the evening meal. Children are meant to receive 40 grams of meat a day, but there had been no delivery that day and staff were unable to say when the children had last been given meat. Children do not as a general rule receive fruit, fresh vegetables or eggs.
- 11.8 A child who infringes disciplinary rules can be placed in an isolator cell for a maximum period of 5 days. The cell measures 1 metre by 2 metres and has a toilet within the cell. The only other item is bed latched to the wall. When the bed is unlatched it fills up virtually all the space. The cell had no glass in the window and no heating. Staff were unable to show us a log of who had been placed in such punishment

cells and for what reason. Spending up to 5 days in solitary confinement in such space and conditions, without any form of stimulation is likely to amount to a violation of Article 3 of the European Convention on Human Rights on the basis that it constitutes inhuman and degrading punishment or treatment.

11.9 The conditions in Prison No 5 fail to meet the health and needs of the children held there, nor did they preserve children's human dignity. Overall the design of the facilities and the physical environment is not in keeping with the rehabilitative aim of juvenile justice. Juveniles are not guaranteed the benefit of meaningful activities or programmes that will assist them to develop their potential as members of society. There is scant regard to the need of the detainees for privacy, sensory stimuli, opportunities for association with peers and participation in education (even though some are of compulsory school age), work, sports, physical exercise or leisure time activities as required by the UN Rules on Juveniles Deprived of their Liberty. Sleeping accommodation did not meet the required standards. The food is inadequate and of insufficient quality and quantity. Drinking water is not available at all times. But of far greater concern is the length of time for which children are locked in the cells and the consequent lack of exercise. Children are likely to be held for a minimum of 4 months within the facility and some have already spent 12 months locked up for 23 hours a day with no form of activity. The conditions and regime are likely to have a deep and enduring impact on both children's physical and, more importantly, mental health. While the prison staff denied that any of the children suffered from mental health problems or self-harming, such a denial lacks credibility. The regime is fundamentally inhumane and deeply damaging and should be reviewed as soon as possible.

11.10 The extensive use of pre-trial detention should also be reviewed. The UN Convention on the Rights of the Child and the UN Rules on Protection of Children Deprived of their Liberty require that deprivation of liberty be used as a last resort and for the shortest possible period of

time. The report of the Norwegian Mission of Legal Advisers to Georgia (NORLAG) on pre-trial detention indicates that pre-trial is often used unnecessarily and for the wrong reasons, often due to a lack of police and investigator competence, because the accused is charged with a grave crime or because of worry that the accused might commit another crime if not placed in pre-trial detention and that the investigator will be blamed as a result. The over-use of pre-trial detention is exacerbated by the lack of alternatives to detention. States are required to establish diversion schemes and alternatives to detention and to use open detention facilities for children. However, such programmes and facilities are not available. Georgia needs as a matter of urgency to establish alternatives to pre-trial detention for juveniles.

## **12.0 The system of courts and adjudication**

- 12.1 The Georgian criminal justice system does not have juvenile courts, specialist juvenile judges or a separate form of court procedure for children. There are no professionals within the criminal justice system dedicated to dealing specifically with children, whether as offenders, victims or witnesses. Judicial hearings for juveniles do not differ from those for adults, except to the extent that there are additional safeguards accorded to them due to their age. In addition, while judges are required to undergo some training in pedagogy and psychology before hearing juvenile cases, there is no system of specialised training for other professionals working in either the law enforcement agencies or in the bodies administering justice. This does not conform with the Beijing Rules, Rule 22.1 which requires **all** those personnel dealing with juvenile cases to receive specialised training.
- 12.2 The protection offered to children over the age of 14 within that Criminal Code, does not fulfil the obligation on the State under Art 40(3) UNCRC, to establish *"...laws, procedures, authorities and institutions specifically applicable to children alleged as, accused or*

*recognised as having infringed the penal law*". Although the Criminal Code does provide additional safeguards for juveniles, such as reduced sentences<sup>79</sup> and an obligation on the Court to consider all the circumstances and living conditions of the juvenile before sentencing,<sup>80</sup> children proceed through the adult criminal justice system and are tried in an adult court. The current system is therefore not sufficient to comply with the UNCRC or the Beijing Rules

12.3 The Courts with jurisdiction to conduct criminal proceedings at first instance include the district/city courts and the regional and circuit courts.<sup>81</sup> There is no separate juvenile court and Art. 639(2) of the Criminal Procedure Code makes it clear that the conduct of proceedings concerning minors shall be the same as that for adults.

12.4 The general due process guarantees and rights applicable to all persons involved in the criminal process in Georgia and contained in the Criminal Procedure Code<sup>82</sup> apply to children as much as to adults. In addition, Art. 645 of the Criminal Procedure Code provides that in the case of a juvenile accused of a criminal offence, a lawyer shall be appointed. If the child or his legal representative don't appoint one, the investigator or prosecutor must ensure the appointment of a lawyer. This provision of the Criminal Procedure Code is in conformity with the Beijing Rule 15.2<sup>83</sup>.

12.5 While the Criminal Procedure Code does not provides for specialist judges to examine cases concerning an offence committed by a minor. It does stipulate that *'judges having undergone a special training in pedagogy and psychology shall be authorised to try juvenile*

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<sup>79</sup> Articles 86-88 Criminal Code

<sup>80</sup> Article 89 Criminal Code

<sup>81</sup> Article 48.2 Criminal Procedure Code

<sup>82</sup> Including equality before the law and the courts (Art. 9 Criminal Procedure Code); presumption of innocence (Article 10); the right of defence (Article 11); protection of human honour and dignity (Article 12); ; inviolability of personal life (Article 13); openness of criminal procedure (Article 16); guarantee of understandable language in criminal proceedings (Art 17) the right of appeal (Article 21).

<sup>83</sup> Beijing Rule 15.2 *"The parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile. They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile.*

*offences*.<sup>84</sup> The training provided appears to be a short course, but does not amount to the systematic training in juvenile justice and human rights, as required by Rule 22 of the Beijing Rules.

12.6 Courts are frightening and intimidating places for children facing trial who, like adults, are placed in a cage in the court, away from their parents. At the outset of court hearings, judges explain the rights of the accused, but it is likely that many children fail to understand the legal language used by the judge, and are not familiar with court procedure. The physical placement of the parents so far away from their child reduces the support that they are able to offer a child facing trial. There is some evidence that parents are not always informed of the trial date where children are in pre-trial detention and do not, as a result attend the trial. A failure to ensure that presence of a parent or guardian is highly disadvantageous to the child who is more likely to face a custodial sentence in their absence.

12.7 Rule 14.2 of the Beijing Rules requires that proceedings should be conducive to the best interests of the juvenile, and should be conducted in an atmosphere of understanding which allows the juvenile to participate and to express himself freely. The ability of a juvenile to defend himself, and to fully understand the proceedings, is also seen as of paramount importance by the European Court of Human Rights. Due to the very adult nature of the procedure, it is doubtful that current court procedures and the current treatment of children in court in Georgia would be regarded as fully compliant with the European Convention on Human Rights.<sup>85</sup>

12.8 There are also procedural issues in the court that leads to delay and to children being subject to pre-trial detention for far longer than necessary. Where a child admits his guilt to the offence charged, there

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<sup>84</sup> Article 654 Criminal Procedure Code.

<sup>85</sup> See for instance *T and V v United Kingdom* Application no. 24724/94 European Court of Human Rights 1994, which sets out the requirements for a fair trial for juveniles.

is no system of summary trial: in other words no system by which his case can be fast-tracked and brought into the court shortly after charge for final hearing. Instead, the child must wait in the queue, often for months, for his case to be heard. This is not in the child's best interests and is not using detention as a last resort for the shortest period of time. It is also deeply inefficient and costly from a resource perspective. Consolidated trials would assist the process of reducing delay and would reduce the time children spent in detention.

#### 12.9 *Access to a lawyer*

Under Art 37(d) UN Convention on the Rights of the Child, children who are deprived of their liberty have the right to prompt access to legal or other appropriate assistance.<sup>86</sup> In the intimidating arena of an adult court, it is vital that minors are adequately represented to ensure that their case is properly considered and that mitigating factors are presented.

12.10 Articles 78 – 84 and 645 of the Criminal Procedure Code deal with the right of the suspect and the accused to proper legal assistance. While an adult may choose to dispense with counsel and defend himself, a minor is not permitted to do so. Article 645 provides that where a child or his relatives do not appoint their own lawyer, the inquirer, investigator or prosecutor must ensure that a lawyer is appointed and attends from the very first interview with a child suspect. Legal representation is free of charge for those who are without the means to pay. It is not clear from the Criminal Procedure Code whether a child is assessed on his own means or whether the parents' means are also taken into account.

12.11 In practice, lawyers appointed to represent juveniles are generally either trainee lawyers or newly qualified and are very poorly paid at 2 lairi a day. It is questionable whether juveniles are being adequately

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<sup>86</sup> See also Beijing Rule 15 on the right of juveniles to legal assistance and representation.



represented in all cases. Such lawyers need to receive training and supervision when taking on the role of defence counsel for juveniles which at present is unavailable.

### **13.0 Sentencing**

13.1 The Beijing Rules lay down detailed guidelines on sentencing<sup>87</sup>. Any sanction imposed on a child must always be proportionate to the circumstances of the offence and also to the circumstances and the needs of the juvenile, as well as the needs of society.<sup>88</sup> The best interests of the child should be the guiding principle in any decision.<sup>89</sup> It is not clear from the legislation that the best interests of the child are of any relevance to the court, or are considered, when sentencing a child. The Criminal Code provides a range of sanctions specifically for juveniles in Articles 80 -100. These include a fine, deprivation of the right to pursue a particular activity, socially useful labour, corrective labour, a jail term<sup>90</sup> and imprisonment for a particular term.<sup>91</sup>

### **13.2 Release from punishment**

Juveniles can, under Article 68 of the Criminal Code, be released from criminal liability if they committed a crime for which the punishment does not exceed two years, if it can be shown that the child gave himself up and confessed to the crime and acted in a way which restored the damage. We were unable to find any juvenile cases to which this has applied. Article 69 also allows an accused to be released from liability for an offence for which the maximum sentence is two years, if he or she has reconciled with the victim. These provisions could be the basis for the introduction of restorative justice schemes, such as victim/offender mediation programmes. However, given that most offences carry more than a two year sentence,

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<sup>87</sup> Rule 17

<sup>88</sup> Rule 17.1(a)

<sup>89</sup> Rule 17.1(d)

<sup>90</sup> This can only be applied to a male juvenile offender who has reached the age of 16.

<sup>91</sup> Article 82 Criminal Code

including theft, it would be helpful if the maximum term was increased or it applied to all minor and serious crimes.

### 13.3 *Non-custodial sentences*

Articles 90-100 deal specifically with the release of a juvenile from criminal liability and punishment. A juvenile offender who is convicted for the first time may be released from criminal liability if the court holds that it would be more appropriate to correct the juvenile through the application of coercive educational measures. The educational measures referred to include a caution, supervision, an obligation of restitution, restriction of conduct,<sup>92</sup> or placement in a special educational or medical institution. More than one of these measures can be ordered at any one time. In practice there are no special educational institutions, and thus this sentencing option has ceased to exist. The figures on the number of non-custodial sentences passed is set out in the chart below.

	2000	2001	2002	2003	2004	2005	2006 (first nine months)
Total number of juveniles convicted	388	525	497	459	598	475	633
Correctional work	2	3		3	7	9	
Suspended sentence	274 (70.6%)	408 (77.7%)	358 (72%)	325 (70.8%)	411 (68.7%)	333 (70.1%)	359 (56.7%)
Postponed sentence	45	9	3	2	1	3	
Other punishments	9	31	30	21	39	27	37

13.4 As can be seen from the numbers, the courts are making very little use of non-custodial penalties generally, but tend to use a suspended

<sup>92</sup> If supervision or a restriction on conduct is ordered, the body supervising the juvenile will be responsible for imposing the conditions of supervision and restriction. If a juvenile systematically fails to meet the conditions of one of these non-custodial orders, the case can be returned to court for a reconsideration of the sentence.

sentence as a sanction for first time offenders. While the use of non-custodial penalties is to be welcomed, the use of a suspended sentence may not be wholly beneficial for first time offenders, as it does nothing to help children, who may be in very difficult circumstances. Without some assistance to address the issues which led to the offending in the first place, many children are likely to offend a second time, and find themselves facing a custodial sentence. Some form of intervention through either probation, a restorative justice scheme or child protection would be desirable.

### 13.5 *Probation for juveniles*

In addition to the non-custodial sentences listed above, Article 63.5 of the Criminal Code provides that if a juvenile under the age of 18 is convicted of a first offence, the court may release him on probation provided that the crime is not a grave crime. The use of probation in Georgia is relatively recent. Although the Law on Probation was passed in 2001, it was only in 2003 that the Ministry of Justice created the Department of Enforcement on Non-Custodial Punishment and Probation and created a functioning probation service. At the time of the scoping mission for this analysis, there were 300 juveniles on probation, 71 of whom lived in Tbilisi. A number of the juveniles who are on probation have been released from Avchala. Unfortunately, probation are not involved in planning for the juvenile's release and do not visit the juvenile in Avchala prior to release. Juveniles who are on probation visit their local probation service, but do not generally take part in any specific activities. However, a number of innovative probation projects taking small numbers of convicted juveniles have started in the last few months.<sup>93</sup> These involve intensive work with juveniles, assisting juveniles to address their offending behaviour, to resolve family problems and help the juvenile to re-enter education or

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<sup>93</sup> Projects have been supported by NORLAG and implemented through PRI, while others are financed by the EU and USAID. The Tacis programme also has a probation project. There was an opportunity to speak to the Centre for the Protection of Human Rights, The Institute of Democracy, Empathy and Cure.

find work. Due to the recent start of these projects there has, as yet, been no evaluation of their impact on juveniles.

13.6 The non-custodial measures available only partially fulfil the requirements imposed on a State under Art 40(4) UNCRC to provide “*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*”. Access to good non-custodial programmes is very limited at present, and dependent upon grants from non-state funding bodies, Such programmes need to be funded by the state and be available country wide and for every child who could benefit.

### 13.7 *Imprisonment*

The UN Convention on the Rights of the Child provides that imprisonment should only be given as a matter of last resort and for the shortest possible time.<sup>94</sup> The maximum term of imprisonment that can generally be imposed on a juvenile in Georgia is 10 years. This will be served (while the juvenile is still a minor) in an educative institution (ie Zemo Avchala Juvenile Offender Reform Facility). However, a term of between 10 and 15 years may be given where the juvenile is convicted of an especially grave offence and is aged between 16-18.<sup>95</sup>

13.8 A court may not pass a sentence of life imprisonment on a juvenile who committed an offence while under the age of 18.<sup>96</sup> Before sentencing a juvenile the court must consider his background and upbringing, his level of mental development, health and other personal circumstances as well as the influence adults have had upon him, in addition to the general principles of sentencing contained in Article 53 Criminal

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<sup>94</sup> Article 37(b) UN Convention on the Rights of the Child.

<sup>95</sup> Article 88.2 Criminal Code

<sup>96</sup> Article 51 Criminal Code

Code.<sup>97</sup> The Ministry of Justice estimate that 80% of juveniles held in pre-trial detention will receive a custodial sentence, part of which will be served in Avchala, the only juvenile facility in Georgia, located some 30 km outside Tbilisi.

13.9 Avchala was opened in 2002 as a juvenile prison for 14-18 year olds. The prison was originally designed to take a maximum of 75 boys, but at the time of the visit on Thursday 30<sup>th</sup> November, 142 sentenced juveniles were held, all in one large dormitory. A few days later we were informed that this figure had increased once more, and a further 8 juveniles had been admitted. Occupancy is therefore double the intended maximum which puts great pressure on the very limited facilities. Of the 142, the majority were aged 16 and 17 years old, though there were three 14 year olds and ten 15 year olds. The minimum sentence for children placed at Avchala is six months, but only two of the children had been given a minimum sentence. Because the sentence of imprisonment given to children is generally three years or more, it was estimated that 60% of the children will move onto adult prisons. The Director is able to keep juveniles up to the age of 20, and is particularly keen to do so where this would mean that a boy could complete his sentence at Avchala. However, very few boys are kept in Avchala over the age of 18 due to overcrowding. At the time of our visit there were nine 18 year olds and four boys aged 19. Nineteen of the 142 boys had convictions for murder, attempted murder and rape.

13.10 The conditions and regime at Avchala are demonstrably better than those available to pre-trial detainees at prison No 5 or the police isolators, but they are still not compliant with the UN Minimum Standards and Norms. Overcrowding contributes significantly to the violations of minimum standards. All the juveniles in Avchala share one dormitory. They are locked in the dormitory at 7pm until the next morning. Supervision of the inmates is superficial. Prison guards are on

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<sup>97</sup> Article 89 Criminal Code

watch, but stay outside the dormitory. The placement of so many children together without adequate supervision raises huge child protection concerns. We were not able to check whether there was a bed is available for each child or whether in the light of the overcrowding, boys are sharing beds. We were assured by the Director that bullying and fighting did not take place in the dormitory and that mental health problems amongst the boys were virtually unknown. It is extremely difficult to believe that this is so. The circumstances of the boys and the pressure that their situation places upon them, make it inevitable that bullying and exploitation will take place. It is inevitable that the safety of some boys is compromised and that they are not adequately safeguarded against abuse. There is an urgent need to reduce the number of boys held at Avchala, to provide accommodation in small and safe rooms with adequate supervision and to improve the facilities.

13.11 The boys are provided with some education at Avchala. However, this is limited and partial: it is only offered between 10am and noon on weekdays. There are a maximum of 60 seats in the classrooms and thus insufficient space for 142 boys to receive education. Most of the boys, some 80%, according to the staff at Avchala, are functionally illiterate, and there is a pressing need to appoint special needs teachers who could focus on basic literacy and numeracy skills, as well as basic life skills training. Apart from some limited education, the boys do not participate in any meaningful activity. There is no vocational training at Avchala and no workshops. The living conditions, the lack of stimulation and the lack of exercise are likely to have a lifelong impact on the juveniles held there, both in terms of their physical and mental health.

13.12 Although there are four social worker staff at the prison there appears to be no planning for when a child is released. Thus some children will find themselves with no accommodation, job or skills on release, making the risk of re-offending high. There needs to be co-operation

between probation and the staff in Avchala to ensure that a child's release is properly planned and arrangements for the child's support are in place.

13.13 There is no independent inspection body monitoring the conditions in Avchala. This is deeply unfortunate as it allows the poor conditions and overcrowding to go unaddressed. It would be helpful if the Higher Council of Justice and the Supreme Court were to visit Avchala to see the problem of overcrowding for themselves. Judges need to take account of the level of overcrowding when passing sentence.

13.14 The Ministry of Justice is currently in the process of building a larger juvenile penitentiary, and plans to admit convicted juveniles there towards the end of 2007. However, with current policy and practice, this too is likely to fill up and become overcrowded. The Ministry of Justice recognises that there is a lack of community-based alternatives to custody, and also recognises that placing juveniles in custody is expensive. The great majority of boys detained in Avchala have been sentenced for property offences and many are first time offenders. It is not clear that imprisonment is necessary in order to protect the public, or is effective for such offenders. Further, it is doubtful that imprisonment is being used as a last resort or indeed for the shortest period of time in accordance with the requirements of the UN Convention on the Rights of the Child. Overcrowding could be controlled by the more rigorous application of the criteria for imprisonment contained in Article 53 and 89 of the Criminal Code, by greater use of alternative community based sentences, and by the imposition of shorter sentences. The long periods of time spent by young people in the prison system makes it extremely difficult for them to be rehabilitated in the community. Family ties and community ties will have been lost, education neglected, with little possibility of employment both due to the stigma of having been imprisoned and the failure to acquire any vocational skills.

13.15 The Criminal Code has provisions relating to early release and parole,<sup>98</sup> but these are not widely used. The court can conditionally release a juvenile sentenced to corrective labour or imprisonment before the expiration of the term if the court holds that completion of the sentence is no longer necessary for corrective purposes.<sup>99</sup>

13.16 Article 98 of the Criminal Code provides that a juvenile can be released on parole if he has served

- a) no less than one third of the sentence awarded for a misdemeanour
- b) no less than two-thirds of the term of the sentence awarded for a grave offence
- c) No less than half the term of the sentence awarded for any especially grave offences.

13.17 We were informed by the Director of Avchala that fourteen cases were submitted to the court for early release in 2006. Although it is encouraging to see some applications for early release, it would appear that it is rare to review the sentence of a juvenile to determine whether a need for custody continues to exist. The failure to review amounts to non-compliance with Article 25 UN Convention on the Rights of the Child, the European Convention on Human Rights<sup>100</sup> and Rules 23.2 and 28 Beijing Rules. The government is currently in the process of passing a new Penitentiary Code through Parliament. It has not been possible to obtain a copy of the latest version of the Bill, though information on the Bill indicates that the new Draft Code will improve conditions in Avchala. The extent of this potential improvement is difficult to determine at the moment, but any proposed improvements in conditions are to be welcomed.

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<sup>98</sup> Article 98 Criminal Code

<sup>99</sup> Article 72.1 Criminal Code

<sup>100</sup> See T and V v UK Application no. 24724/94



## **14.0 Criminal records**

- 14.1 With respect to criminal records, the conviction will be removed from a juveniles record one year after the completion of imprisonment for a misdemeanour and three years after the date of completion of a term of imprisonment for any serious or especially grave offences.<sup>101</sup>

## **15.0 Current proposals for reform of the law**

- 15.1 A large number of amendments to both the Criminal Code and the Criminal Procedure Code were before Parliament at the time of writing this report. The most significant of those amendments is the proposal to reduce the age of criminal responsibility from the age of 14 to 12. The effect of the changes would be to allow prosecution, conviction and sentencing of a child of 12 or 13 for a wide range of crimes, from murder and rape at one end of the spectrum, to stealing a car, intentional slight damage to health or theft in aggravating circumstances at the other end.
- 15.2 Various reasons were given for the proposed amendment by those interviewed. The most common was that 12 and 13 year olds were acting as 'Kingpins' and were involved in significant amounts of crime and boasting of their impunity. There would appear to be no evidence, other than anecdotal evidence, to this effect. Indeed, if such offending was taking place in the under -14 population, the child protection system would be the most effective mechanism to deal with such behaviour. A further argument was that reducing the age of criminal responsibility would be a deterrent. It is unlikely that such a deterrent will work well at this age, as for a deterrent to be effective, children need to know and understand the consequences of particular actions. While most children aged 12 and 13 will understand the concept of right and wrong, it is unlikely that they will have the capacity to understand the nature of the consequences being proposed: ie that if

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<sup>101</sup> Article 100 Criminal Code

they commit a criminal act, they are likely to be arrested, charged, tried in court and subjected to a custodial punishment. The proposals are 'too remote' for younger children and will not be seen as relevant to them. Thus, reducing the age of criminal responsibility is likely to have little deterrent impact upon this group. Reducing the age of criminal responsibility is unlikely to reduce offending.

15.3 A reduction in age is likely to be in breach of Georgia's obligations under the UN Convention on the Rights of the Child. An age of criminal responsibility set at 14 is in line with many other member states of the Council of Europe. Only the common law states of the UK and Ireland, Switzerland, Liechtenstein and France having an age lower than 14. The low age of criminal responsibility in these states has been specifically criticised by the UN Committee on the Rights of the Child, who are now themselves considering whether to issue a general statement in which the age of 15 is promoted as the appropriate age for criminal responsibility. The reduction in the age of criminal responsibility from 14 to 12 could also lead to a challenge under Article 6 of the Convention, the right to a fair trial. The European Court of Human Rights has considered the age of criminal responsibility and the right to a fair trial in the case of **T v United Kingdom**<sup>102</sup>, involving an eleven year old boy charged with murder of a two year old. The court held that the formality and ritual of the adult court was incomprehensible and intimidating and that the right to fair trial had been violated, even though the boy was represented by skilled and experienced lawyers. In the light of the lack of juvenile courts in Georgia, and the lack of specialised juvenile lawyers and judges, much the same criticism could be levelled at the Georgian system, and any challenge to the European Court would stand a good chance of success.

15.4 If the age of criminal responsibility was to be reduced to 12, this would have an impact on the entire criminal justice system, from the moment

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<sup>102</sup> Application NO 24724/94 16<sup>th</sup> December 1999

of arrest to the passing of sentence. It would pose a major challenge to the present Georgian juvenile justice system which is already struggling to meet international standards and norms, and is overcrowded, under-resourced and under-skilled.

## **16.0 Conclusion**

- 16.1 Statistics show that, contrary to popular opinion amongst those working in the criminal justice system, Georgia does not have a significant juvenile crime problem and that the rate of juvenile crime is not rising. It is recognised that States find the juvenile justice provisions of the UN Convention on the Rights of the Child amongst the most challenging provisions to implement, but the small numbers of juvenile offenders give Georgia a prime opportunity to review and reform the way in which it deals with such offenders.
  
- 16.2 The current system of criminal justice relating to children does not comply with the UN Convention on the Rights of the Child or the UN Minimum Standards and Norms of Juvenile Justice. There have been some attempts at reform by the government, for instance the closing of the Temporary Isolation Centre and the Special Vocational School, two closed institutions for juveniles, but these have been piecemeal. While the closure of these two institutions is to be welcomed, such amendments can make the situation for children worse rather than better. For instance, the closure of the Special Vocational School and the reduction of the age at which imprisonment can be ordered from 16 to 14, has resulted both in the loss of an alternative custodial sentence to imprisonment and a consequent increase in the numbers of children placed in Avchala.
  
- 16.3 In order to comply with the provisions of the Convention, the government needs to undertake a substantial programme of reform. This would include the development of Convention compliant policy, legal reform and practice reform. At present the current system of

juvenile justice which is largely still the system implemented under Soviet rule provides too little discretion, flexibility and alternatives to criminalisation to meet human rights standards. Once a child is suspected of a crime, he or she will find himself inexorably drawn into the criminal justice system. Once arrested, the police have no discretion to discontinue their investigation and divert the child out of the criminal system and neither does the prosecutor. There is far too great a use of pre-trial detention and too few options of non-custodial sentencing available to the courts. The detention facilities presently used for juveniles all fundamentally violate children's rights. In addition, the basic building blocks of a juvenile justice system are not present in Georgia. There are no juvenile police, juvenile courts, juvenile criminal procedure or specific juvenile sentencing options. There are no juvenile specialists within the staff of the criminal justice system and no weight given to the best interests of children or their special needs. The proposal to reduce the age of criminal responsibility would make the situation even more critical. The current criminal justice system is totally unsuitable and would not be able to cope with children aged 12 to 14. Violation of these children's human rights would be inevitable and serious.

- 16.4 Putting in place a human rights compliant juvenile justice system would require substantial investment over a period of time. However, failure to undertake such reform will result in an ever-increasing and ever younger number of children being locked up at ever greater expense. At the same time, all the research evidence indicates that locking up children is ineffective. Research in Western Europe and the USA shows that juveniles who have been given custodial sentences have the worst rate of recidivism. Nearly 80% re-offend within two years. The reason for this recidivism is well known: it is the failure to tackle the issues that underlie the offending. The use of custodial sentencing for juveniles does not reduce future offending behaviour. Rather it is likely to contribute to future offending due to loss of family and community links and is counter-productive both for the child and society.

16.5 Georgia needs as a matter of urgency to take the first steps towards addressing juvenile justice reform. This includes greater support for children and families in the community, early intervention programmes for children at risk of offending, diversion programmes for those who have offended, the development of a child friendly justice system and alternative, community based sentences for children who offend.

### **17.0 Recommendations**

17.1 This report contains recommendations throughout the text. The main recommendations are repeated here.

17.2 The juvenile justice system for children over the age of 14 should be reformed to ensure compliance with the UN Convention on the Rights of the Child and the UN Minimum Standards and Norms in Juvenile Justice. This would involve changes in policy, legislation and practice.

17.3 In order to bring about the necessary reform, a new Juvenile Justice Law or Code should be drafted and implemented.

17.4 The Ministry of interior should establish special units within the police for dealing with juvenile offenders as well as juvenile victims and witnesses in accordance with Rule 12 Beijing Rules and the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.<sup>103</sup> Such units should also be responsible for developing policy on prevention and working with other stakeholders to deliver prevention programmes.

17.5 The police and prosecutors office should be given discretion to divert children away from the criminal justice system as an alternative to prosecution.

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<sup>103</sup> ECOSOC Resolution 2005/20.

- 17.6 An 'independent' adult scheme should be established. Independent adults should receive training and be accredited to support children who are detained at police stations and questioned. A national body for Independent Adults should be formed which would be responsible for the curriculum, accreditation and quality standards.
- 17.7 An accreditation or licensing system should be introduced for lawyers representing juveniles. The Ministry of Justice, the Higher Council of Justice or the Supreme Court Office should take the responsibility for setting the training curriculum and for ensuring that lawyers can access the appropriate training before working with juveniles. Accredited juvenile lawyers should be paid at higher level than at present, reflecting their expertise.
- 17.8 A duty lawyer scheme for juveniles ensuring that juveniles can access lawyers as needed at any time of day should be established and funded, either directly by the state or through a legal aid scheme.
- 17.9 All police stations should have a juvenile suite in which an arrested juvenile can be interviewed or can stay if arrested at night and it is not possible for the juvenile to be released into the care of the parent.
- 17.10 All interviews with children should be recorded at least on audio tape. Each police station and isolator should install video suites within a three year period, so that all interviews with children should be video recorded.
- 17.11 All police stations, isolators, courts and custodial facilities should produce child friendly, easily accessible, literature informing children of their rights, and what will happen to them. This should include details of how long they will be kept, the regime and how to make a complaint if they feel their rights have not been upheld

17.12 The General Prosecutor's Office should establish a juvenile unit and ensure that its members receive specific training in working with juveniles. .

17.13 Court procedure should be reviewed with a view to reform. It is recommended that:

- In each court district there should be at least one and preferably two nominated juvenile judges, who should receive specialist training in handling juvenile cases
- In each court district there should be a court room specifically for juvenile cases. This should be organised in a child friendly manner.
- When in the court, the accused child should sit with his parents and lawyer. The placement of a child in the cage during the trial should cease.
- The judges should sit on the same level as the child.
- A lawyer should represent any child being investigated and at all stages of the proceedings. Such lawyers should receive specialist training and an accreditation scheme established for them.
- The child should receive a leaflet detailing what will happen in court, well before the trial starts

17.14 A range of community based services should be developed nationally, including

- preventive services for children at risk of anti-social behaviour or offending.
- A range of pre-trial diversion programmes.
- A range of alternatives to custodial sentencing and pre-trial detention, including fostering, supervision

These programmes should be developed and funded as a matter of urgency, and should be made available country wide and for every child who could benefit.

17.15 There should be a review of custodial sentencing policy for juveniles to ensure that deprivation of liberty is used as a matter of last resort and for the shortest possible time.

- An assessment and report on each child should be placed before the court and considered by the judge before a custodial sentence is given;
- Judges should be able to give more than one suspended sentence for a child;
- Judges should be informed of community initiatives and alternatives to custodial sentencing.
- All judges should be required, as part of their training, to visit the police isolators, the pre-trial detention centres and Avchala.

17.16 Children should no longer be placed in police isolators. The small number of children arrested for serious offences of violence or for persistent property theft, should be placed in secure accommodation. All other children should be released under the supervision of their parents or the children's home in which they live.

17.17 The criteria for use of pre-trial detention should be amended and should be used only as an exceptional measure. A range of alternatives to pre-trial detention should be developed.

17.18 The regime and conditions in the pre-trial detention centre should undergo an urgent review and change to ensure compliance with international standards

17.19 An urgent review of custodial provision for convicted juveniles should be undertaken.



- Staff should be trained in behaviour management and child development
- The juvenile reform facility at Avchala should adopt a child protection policy to minimise abuse and bullying of children
- The provision of education and vocational training should be reviewed
- Family contact programmes should be implemented.

17.20 The present practice which permits the publication of names of children accused or tried for a criminal offence, and details of the offence, should be reviewed with a view to implementing the child's right to privacy at all stages of criminal proceedings.

17.21 The Ministry of Justice and the probation service need to work more closely together to ensure that each child who has served a term of imprisonment has a discharge care plan before release.