

JUSTICE FOR CHILDREN: JUVENILE CRIME and JUVENILE JUSTICE PRACTICE IN KOSOVO

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GLOSSARY

CSW	Centres for Social Work
JJC	Juvenile Justice Code
KPS	Kosovo Police Service
UNICEF	United Nations Children's Fund
UNDP	United Nations Development Programme
UNMIK	United Nations Mission in Kosovo
MLSW	Ministry of Labour and Social Welfare
RAE	Roma, Ashkali and Egyptian Communities



FOREWARD



This report was written by Professor Carolyn Hamilton and Kirsten Anderson for UNICEF Kosovo. The research methodology was also designed and supervised by Professor Hamilton and Ms. Anderson.

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EXECUTIVE SUMMARY

This report presents research findings from a study of the juvenile justice system in Kosovo. The aims of the study were to collect baseline data in order to analyse the rate and nature of juvenile¹ offending in Kosovo; to undertake a thorough analysis of the implementation of the juvenile justice system in Kosovo, and in particular, the implementation of the *Juvenile Justice Code 2004* (JJC); and to provide recommendations on how the juvenile justice system could be strengthened.

The *Juvenile Justice Code* (JJC) was passed in April 2004 under the authority of the United Nations Mission in Kosovo (UNMIK) as part of an initiative aimed at reforming the criminal justice system to ensure its compliance with international and European human rights standards. It establishes special procedures for juveniles in conflict with the law and introduces new concepts and institutions into Kosovo law and juvenile justice administration, including diversion measures, an increased range of non-custodial sentences and the establishment of a Probation Service. While this new framework provides greater legal protection to juveniles in conflict with the law, its effectiveness inevitably depends on the extent and level to which it is being implemented by relevant institutions and professionals.

Methodology

Research for the project was carried out in Kosovo from June to December 2007. Following an initial scoping visit and a review of relevant legislation, the authors devised a research methodology, drawing on both quantitative and qualitative methods. Both raw and collated

quantitative data was collected from juvenile justice institutions and was used to measure the rate and nature of juvenile offending in Kosovo. Also, quantitative data was used to measure and analyse the extent to which the provisions of the JJC have been implemented. Qualitative data was also collected from semi-standardised interviews with professionals in juvenile justice institutions (prosecutors, judges, probation officers, social workers from the Centres for Social Work and police officers) in all regions of Kosovo (42 interviews) and with a number of juvenile offenders undergoing, or having undergone diversion measures, non-custodial sentencing measures, and several who were in custody (20 interviews). The purpose of the interviews was to gather qualitative data on the functioning of the juvenile justice system in a more contextualised, in-depth manner and to identify obstacles to the full implementation of the JJC. Also, monitoring visits were made to places of juvenile detention, including Lipjan/ Lipljan Correctional Centre, all regional pre-detention facilities (5 visits) and police stations (5 visits) in order to monitor the conditions of detention in these facilities.

Juvenile Offending in Kosovo: A Statistical Overview

The authors found a distinct lack of routine, systematic data collection, collation and analysis on juvenile crime and the operation of the juvenile justice system in Kosovo. This lack of regular collection and analysis of data inevitably impairs the development of effective, evidence-based juvenile crime prevention strategies and the ability to monitor how the juvenile justice system complies with international and European human rights standards.

Based on data collected and analysed by the authors, the following observations were made in relation to the extent and nature of juvenile crime in Kosovo:

¹ Throughout the report, the term 'juvenile' is used to refer to persons aged under 18 years. The term 'children' is also used to refer to persons aged under 18 years. The term 'minor' (which refers to persons aged 14 – 18 years) is used only where quoting relevant provisions of the *Juvenile Justice Code*.

Extent of Juvenile Crime

- According to data provided by the Kosovo Police Service, juveniles were suspected of committing 4,723 offences in the period 1 July 2006 – 30 June 2007. The vast majority of these crimes (91.4%) were by suspects aged 14 – 18.
- The Kosovo Police Service records show that the number of juveniles *suspected* of crime has doubled from 2005-2007. However, this does not necessarily mean that juvenile crime had doubled in recent years. This is because there has not been such a dramatic increase in the number of juvenile cases referred to criminal courts. This number has increased between 2005-2007 but slowly.
- The authors have calculated that, roughly, the rate of juvenile offending, based on the number of suspected offences by juveniles, is 652 per 100,000 of the juvenile population.
- Where the estimated rate of juvenile offending in Kosovo is compared to other countries in the Western Balkans, the rate of juvenile offending in Kosovo is significantly higher than that of other Western Balkan countries (Croatia and Slovenia).
- In comparison to Western European countries, Kosovo appears to have a lower rate of juvenile offending in terms of the number of juvenile suspects, but has a higher rate of juvenile offending according to the number of juvenile convictions. This may indicate that a relatively high proportion of juvenile suspects in Kosovo are convicted, rather than, for example, being diverted out of the criminal justice system.

- Data from the Ministry for Labour and Social Welfare, Kosovo Police Service and the Kosovo Judicial Council (on all juveniles convicted in a 12 month period) indicates that the greatest proportion of juvenile crime occurs in Prishtinë/Priština, followed by Gjilan/Gnjilane.

Types of Crimes Commonly Committed by Juvenile Offenders

- Data from the police and courts indicates that the offences most commonly committed by juveniles are property offences, in particular, theft or other minor property offences, which account for 48.5% of all suspected offences committed by children under 14 and 29.6% of all suspected offences by 14 – 18 year olds. Juveniles are most commonly convicted for theft or aggravated theft in all regions except Prizren. In Prizren and Prishtinë/Priština, unauthorised ownership, control, possession or use of a weapon is one of the top five offences committed by juveniles.
- Juveniles do not commonly commit offences at the more serious end of the spectrum – serious offences against the person accounted for only 0.5% and 1.3% of all suspected offences recorded by police in a 12-month period in the under 14 years and 14 – 18 year age groups, respectively.
- A significant proportion of suspected offences by juveniles aged 14 – 18 are public disorder offences.

Juvenile Crime by Gender and Ethnicity

- Police data demonstrates that female minors are responsible for only a very small proportion of suspected juvenile offences (4% of suspected offences by children aged under 14 and 2% by children aged 14 – 18).
- There does not appear to be a significant variation by gender in the types of offences commonly committed by juveniles, both for the under 14 and 14 – 18 year age groups.
- When disaggregated by ethnicity, police data indicates that the vast majority of suspected offences committed by juveniles are committed by Albanians. This is not surprising, given that Kosovo-Albanians constitute the majority of Kosovo's population.
- A significant proportion of children under the age of 14 who are suspected of committing offences are Roma, Ashkali, Egyptian (RAE) children (8.1%). Compared to the known figures for the RAE population, this rate is disproportionately high. In contrast, children of Roma, Ashkali, Egyptian ethnic backgrounds constitute only a small minority of children suspected of having committed an offence in the 14 – 18 years age group (2.5%).

Circumstances of Juvenile Crime

- According to courts data, a significant proportion of juveniles commit offences in cooperation with others (where identified by courts data, 43% of a juvenile convictions from 1 Jul7 2006 – 30 June 2007) were for offences committed in cooperation with

others). This could indicate a relatively high proportion of group crime involving juveniles in Kosovo.

The Implementation of the Juvenile Justice System

The authors found that there were various obstacles to the full implementation of the JJC, in particular, in relation to diversion, non-custodial sentencing and juveniles in custody.

1. Diversion²

The JJC seeks to ensure that juvenile offenders are diverted from the formal criminal justice system through two different measures: non-initiation of preparatory proceedings and the use of diversion. Where an offence committed by a juvenile is punishable by imprisonment of less than 3 years or a fine, the prosecutor has the discretion to not initiate proceedings or discontinue, (Article 54(1) JJC). Data obtained by prosecutors' offices indicates that in some regions, particularly in Pejë/Peć and, to a lesser extent, Prizren, a significant proportion of cases are dismissed once they are referred to Prosecutors offices. However, it is not possible to tell from the figures whether cases are dismissed as a result of the prosecutor exercising his discretion not to initiate preparatory proceedings and how many did not proceed for other reasons.

Under Article 13 of the JJC, diversion measures may be imposed on a juvenile offender where the juvenile has committed a criminal offence punishable by a fine or by imprisonment of three years or less, and

- a) The juvenile has admitted the offence; and
- b) Has expressed readiness to make peace with the injured party; and
- c) The juvenile, or the parent or guardian on the juvenile's behalf, consent to the diversionary measures.

² Unless otherwise specified, where the term 'diversion' is used in the report, it refers to both diversion and diversion at the trial of a juvenile offender.

Prosecutors are responsible for referring juvenile offenders for diversion. Although also judges have the power to make an order for diversion, this power is rarely exercised in practice.

Although Article 1(2) of the JJC requires that juvenile offenders “*must be considered for diversion measures where appropriate,*” there is little evidence that this Article is being implemented in practice. Prosecutors in all regions except for Prizren and, to a lesser extent, Gjakovë/Đakovica, do not regularly refer juveniles for diversion (in 4 regions, data indicates that no juvenile cases were referred for diversion in a 12 month period). Data obtained from the Probation Service (which implements diversion measures) confirms the low levels of referral of juveniles for diversion in all regions except Prizren. Article 15 of the JJC allows for the imposition of 8 different diversion measures: mediation between the juvenile and the injured party, mediation between the juvenile and his or her family, compensation, regular school attendance, acceptance of employment or training, community service work, education in traffic regulations and psychological counselling. Due to poor record keeping in prosecutors’ offices, it is impossible, except for in the region of Prizren, to determine the extent to which each type of diversion measure is being imposed. In Prizren, the data shows that mediation between the juvenile and the injured party is being imposed much more frequently than other diversion measures contained in Article 15.

The authors found several obstacles to the use of diversion measures:

New concepts: understanding the law, training and specialisation

Interviews with Municipal Prosecutor Offices indicated that there was a lack of familiarity with the Articles relating

to diversion measures contained in the JJC. They had a poor understanding of the utility and purpose of diversion measures, and how diversion measures can be used to minimise the workload of prosecutors by removing juvenile offenders from the court system. Information gained from the interviews suggests that there has, in general, been insufficient training provided to Municipal Court prosecutors. With the exception of Gjilan/Gnjilane, none of the Municipal Court prosecutor’s offices in Kosovo have designated a specialised prosecutor to work exclusively on cases involving juvenile offenders (although in Gjakovë/Đakovica, Pejë/Peć and Ferizaj/Uroševac it appears that informally, all juvenile cases tend to be referred to one prosecutor).

Thresholds for diversion

Under article 14 of the JJC, only offences punishable by a term of imprisonment of less than three years can be considered for diversion. Available data shows that the large majority of juvenile offenders in Kosovo commit offences that attract a sentence of less than three years imprisonment. However, a significant number of juveniles in conflict with the law in Kosovo are suspected of having committed offences that attract a punishment of more than three years imprisonment (e.g. the offence of unauthorised ownership, control, possession or use of a weapon), and therefore fall outside of the threshold for diversion.

One of the three criteria set out in Article 14(2) is that a juvenile offender must express a willingness to make peace with the injured party before a referral for diversion can be made. Prosecutors from regions in which diversion measures are not regularly imposed appear to be interpreting this part of Article 14 as requiring a formal meeting and conciliation between the juvenile

and the injured party. This presents practical difficulties, including the need to coordinate time schedules, the willingness of the injured party to agree, the inconvenient location of the offices, lack of office space (meeting rooms) and so on, which impairs the prosecutors' ability to meet threshold criteria for referring a juvenile for diversion.

Measures of Diversion

Article 15 of the JJC lists a number of diversion measures that may be imposed on juveniles, including: mediation between the minor and the injured party; mediation between the minor and his or her family; compensation for damage to the injured party; regular school attendance; acceptance of employment or training for a profession; performance of unpaid community service work; education in traffic regulations; and psychological counseling. Many of these measures are not available at local level. While this is a problem, so too is the prescriptive nature of the measures. It is not clear that the measures contained in Article 15 provide fully for the needs of juveniles in conflict with the law. It is good practice to allow more flexibility in determining an appropriate diversion measure for juveniles, to ensure that it will be responsive to the needs and root causes of the child's offending.

Professional conduct, procedure and internal accountability

There is no guidance available to prosecutors detailing the steps to be taken and the information to be considered in reaching a decision on whether or not to refer a juvenile for diversion. Individual prosecutors do not appear to have supervision sessions with their seniors or managers in which their use of diversion is discussed and cases reviewed, and thus there is no check on whether or not prosecutors are complying with Article 1(2).

The power of judges

Judges do not appear to be using their power to impose diversion measures on minors. Very few of the judges that we spoke to during the course of the research used their power to make an order for diversion.

The lack of co-ordination

The use of diversion is generally hampered by the lack of co-ordination between the main criminal justice professionals. Despite limited coordination between judges and prosecutors, our research indicated that judges and prosecutors do maintain a reasonable amount of communication. The research noted, however, very little communication between the probation service and the Guardianship Authority/ CSWs, hampering the ability to produce meaningful social inquiry reports.

2. Non-Custodial Sentencing

The JJC contains a number of non-custodial sentencing options, which are available to judges when a juvenile is convicted of a criminal offence. Article 6 divides the sentencing options into measures (diversion measures and educational measures, which include institutional and non-custodial measures) and punishments, which include fines and orders for community service work. The judge may sentence a convicted juvenile to 'measures' only, and is prohibited from imposing a 'punishment', if he or she was under the age of sixteen years at the time of the commission of a criminal offence. However, not all of these measures are available in practice. In relation to the implementation of the JJC's non-custodial sentencing provisions, the following findings were made:

Social Inquiry Reports

Social inquiry reports must be made available to judges when a juvenile

admits guilt or is convicted of an offence. Likewise, they must not include recommendations from the Probations Service until a juvenile has admitted guilt or been convicted despite common practice whereby prosecutors request social inquiry reports at the prosecution stage.

The comprehensiveness and quality of social inquiry reports produced by the probation service will inevitably have an impact on judges' sentencing decisions. In interviews undertaken with judges and prosecutors, both groups of professionals emphasised the importance of considering social inquiry reports in making sentencing decisions and recommendations and both relied quite heavily on the reports. Most prosecutors and judges interviewed considered the social inquiry reports to be of reasonable to good quality and sufficiently comprehensive, although a few negative comments were received concerning the lack of comprehensive information in relation to the social and economic conditions of the child and the child's parent/s. A peer review of 69 social inquiry reports from all regions in Kosovo found that the reports, while generally comprehensive, did not contain any information from CSW records. This information can be invaluable to the court and can also save the probation service a great deal of time as much of the basic information on a child and the family will already be available if there is a CSW file. The interviews with probations officers and CSW staff also indicated that, generally cooperation and information sharing between the two institutions was generally poor.

Availability of Measures and Punishments

Not all measures and punishments included in the JJC are available in practice, which was emphasised in many of the interviews with judges and prosecutors. Measures of committal to a

disciplinary centre (Article 19), committal to an educational institution (Article 24) and committal to a special care facility (Article 26) are not able to be imposed as none of these institutions exist. In addition, the measure of intensive supervision in another family (Article 21) cannot be imposed very often, as there are no registrars of suitable families / foster carers available. The lack of availability of measures in practice inevitably impacts on the extent to which judges are able to choose an appropriate and effective sentence that is "in the best interest of the child".

The most commonly imposed sentence is the educational measure of intensive supervision (including intensive supervision by a parent / guardian in Article 20, which is implemented by the Probation Service, and intensive supervision by the Guardianship Authority in Article 22, which is implemented by the Guardianship Authority). Indeed, 53% of all sentences handed down by the Municipal and District Courts in Kosovo from 1 July 2006 – 30 June 2007, were intensive supervision measures. The interviews with juvenile offenders indicated that there is general satisfaction with both types of intensive supervision measures. However, it is questionable how effective such orders are. The number and length of supervision visits by the Probation Service and the CSWs appear to be too few to justify being treated as providing intensive support. In addition, the only measure of effectiveness of intensive supervision orders at present is whether the juvenile is once again convicted as it is unlikely that most parents are going to report failures to comply with the conditions of the order. Evaluation of the effectiveness of intensive supervision orders is clearly needed in order to ensure that these orders accomplish their set objectives, rehabilitation and education of minors in conflict with the law.

19% of juveniles in the same period were sentenced to disciplinary measures, which, owing to the non-availability of disciplinary centres,³ consisted only of judicial admonition. The authors were unable to determine why these cases proceeded to trial: whether it was because the defendants pleaded not-guilty or because diversion was not available or not offered. There is no evidence available to determine why such a sanction was imposed. If a plea of guilty was entered, judges should consider using diversion rather than judicial admonition. Diversion measures remove a juvenile from the criminal justice system and avoid the negative effects that the formal criminal justice process will have on a child. Diversion measures also reduce delay between commission of the offence and the imposition of a sanction. More importantly, though, and unlike judicial admonition, diversion measures address the child's offending behaviour thus reducing the chance of re-offending.

8% of convicted juveniles were given a punishment of community service, which is implemented by the Probation Service. Interviews with juvenile offenders showed that they felt their community service sentence was a positive experience. All had completed their work placements and felt they developed skills and a work ethic. One probation officer indicated that it could be difficult for some juveniles to complete community service orders, as they live in villages and have to commute to the nearest town to take up their work placements. At present, the placements at which juvenile can complete community service orders is limited to a list of publicly owned enterprises. This list should be broadened to include a larger and more geographically diverse range of placements.

³ The option to sentence a child to committal to a disciplinary centre is contained in Article 19 of the JJC, but this is not available in practice.

Obstacles to the Selection of Non-Custodial Sentencing Measures

Unsurprisingly, the information obtained from the interviews with juvenile justice professionals indicates that the most significant obstacle to the imposition of non-custodial sentencing measures is the lack of availability of these measures in practice. Most of the judges and prosecutors interviewed felt that the lack of availability, together with the non-feasibility of some measures, significantly limited the options in selecting non-custodial sentencing measures for juvenile offenders. The lack of availability of non-custodial sentencing options impair the ability for Kosovo to comply fully with Article 40(4) of the International Convention on the Rights of the Child, which states that parties should provide a range of non-custodial dispositions "to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence."

One particular problem highlighted by a number of professionals related to juvenile offenders who were without parental care or were estranged from their families. A further difficulty concerned juveniles who had mental health problems. Several judges and prosecutors felt that the lack of institutions available to cater to juvenile offenders with mental health issues or with a disability was deeply problematic, leaving them with no effective sentencing option to meet the needs of such offenders.

3. Juveniles in Detention

The Use of Police Detention

In compliance with the UN Convention on the Rights of the Child, Article 62 of the JJC provides that arrest, police detention or detention on remand of a juvenile shall only be used as a measure of last resort

and for the shortest possible period of time. Police data confirmed that police officers are using arrest procedures in JJC infrequently, with juveniles arrested for only 1.8% of all offences for which they are suspects. Generally, police officers are using arrest procedures for more serious offences. However, there is evidence that arrest procedures are also being used for offences at the less serious end of the spectrum (including theft, criminal damage and other minor property offences). This is a matter of concern as it indicates that police officers may not be arresting juvenile offenders only as a last resort measure.

The data indicates that some juveniles, though not many, are held in police custody beyond the 24 hour maximum period stipulated in the JJC. While the numbers overall are small, some juvenile offenders have spent a significant length of time in police custody, the longest period being 90 hours and 40 minutes. Police station holding cells are not suited to holding juveniles for significant periods of time. While police officers stated that minors were always kept in separate cells to adults, cells were very small with no natural light in some and no furniture besides a bed / mattress. Regional disparities in the conditions of cells exist and should be reviewed in order to ensure standardization.

It is not clear whether juveniles are informed of their rights under the JJC when arrested and taken into police custody, and this requires further investigation and the development of monitoring mechanisms such as a form signed by minors that confirms they have been informed of their rights.

Pre-Trial Detention

The prosecutor may apply to the court for an order that the juvenile be remanded and placed in pre-trial detention. Pre-trial detention should only be ordered

as an exception and where one of the circumstances in Article 281 of the *Criminal Procedure Code of Kosovo* is present. These circumstances include: that the juvenile is at risk of not attending a main trial or of going into hiding; the evidence indicates that the juvenile will obstruct criminal proceedings; or there is a risk that the he or she will re-offend. Where the court makes an order for pre-trial detention, the juvenile will be held in Lipjan/Lipljan Correctional Facility.

Data⁴ shows that of the 75 juveniles admitted to Lipjan/Lipljan over a 12 month period (1st July 2006 – 30th June 2007), 68, or just over 90%, were held on pre-trial detention. However, 'snapshot' data, listing all juveniles detained in Lipjan/Lipljan on 16th October 2007, shows that only 3 of the juveniles were being held on pre-trial detention that day. The data shows that 16 juveniles held in pre-sentence detention in Lipjan/Lipljan over the 12 month period were held for longer than one month, while 52 juveniles were held for one month or less.

The JJC allows for pre-trial detention of up to one month, with a possibility of extension up to two months (Article 64.2, JJC)

Several juveniles were held for very long periods in pre-sentence detention (for periods of up to 17 months). Holding juvenile offenders in pre-trial detention for such long periods of time is highly problematic. To ensure that pre-trial detention is used for the shortest possible period of time, cases involving juveniles should be expedited and unnecessary delays should be avoided. Several district court prosecutors indicated that the time taken to complete the investigation phase of cases involving juveniles could at times be very long, which could explain the long periods of time that some juveniles

⁴ Provided by Lipjan Correctional Facility.

are held for in pre-trial detention. Evidence from the interviews with detainees in Lipjan/Lipljan Correctional Facility indicated that juveniles on pre-trial detention were not accorded the same access to education and leisure facilities and visits from family as other detainees.

Custodial Sentences

For juveniles aged 14-16, the court may order that the child be committed to an educational institution (Article 24), or to an educational-correctional institution or to a special care facility (Article 26), while a convicted juvenile who has reached the age of sixteen and has committed an offence punishable by more than five years imprisonment may be given a sentence in the juvenile prison at Lipjan/Lipljan (Article 30). Statistics from the Kosovo Judicial Council over the period 1 July 2006 to 30 June 2007 show that out of 795 juvenile offenders convicted, only a relatively small proportion (1%), were given a custodial sentence in the Lipjan/Lipljan Correctional Facility, while 2% of those convicted in the same period of time were sentenced to educational-correctional measures. These figures have to be treated with some caution. It is possible that custodial sentences were handed down in a greater proportion of cases, as a significant number of sentences were recorded in the data as 'other', 'unknown' or 'institutional' (which, combined, accounted for 14% of all cases). Unfortunately, these categories are not further defined in the data.

Data from the courts over the period 1 July 2006 – 30 June 2007 shows that, where custodial sentences were passed, they were all for serious offences attracting a punishment of more than five years imprisonment (in accordance with the conditions for imprisonment under Article 30 JJC). Juvenile offenders who receive educational-correctional measures are also placed in Lipjan/

Lipljan. The courts data shows that educational-correctional measures were imposed in 13 cases of forest theft and 5 cases of aggravated theft. Although this data does not, of course, account for other aggravating factors, it is worrying that educational-correctional measures are being imposed for such offences as forest theft. These sentences were all handed down by the Prishtinë/Priština Courts. There would appear to be a particular problem with sentencing of forest theft in Prishtinë/Priština, which needs to be reviewed as it may suggest the absence of effective defence council for minors in conflict with the law.

Conditions of Detention

The research indicated that generally, the conditions of detention at Lipjan/Lipljan accord with international standards and were thought to promote the "rehabilitation and development of the minor offender", in accordance with article 29 of the JJC. Detainees were found to have adequate access to information, including information on rights, rules and procedures for making complaints. Researchers identified adequate material conditions, including food, lighting, personal hygiene, access to clean clothing and bedding, ventilation and lack of overcrowding in cells. However, there was an absence of desks and chairs in cells. The informal policy on the use of restraints on minors appeared to be limited to situations of prevention of physical harm to inmates and prison officers, prevention of escape and during transport. It is unclear whether solitary confinement was being used as a punishment, and this should be further investigated. Lipjan/Lipljan should have a formal, written policy on the use of restraint and solitary confinement. Neither should be used as a punishment for juveniles, though both may be used in limited circumstances, including where the juvenile is likely to cause serious harm to himself or others. Lipjan/Lipljan

should record any use of restraint and solitary confinement.

Detainees serving educational-correctional measures or juvenile imprisonment appeared to have access to educational and leisure facilities, were able to complete secondary school diplomas while in Lipjan/Lipljan and could undergo various vocational training programmes. Some difficulties are experienced, however, in ensuring there are adequate teachers in the facility. Outdoor exercise appeared to be permitted for a period of 2 – 3 hours a day for detainees on educational-correctional measures and for those serving custodial sentences. It appeared that these detainees were also permitted to play sports daily. However, detainees in pre-trial detention appeared to have limited or no access to education and leisure facility and had only a limited of family visits.

In terms of protection of juveniles in Lipjan/Lipljan, detainees were found to be separated by category of detention (pre-trial detention, educational-correctional measures and juvenile imprisonment). Juvenile male detainees are not held together with adult detainees. However, a number of concerns arose from the research:

1. Juvenile female detainees were not separated from adult female detainees. Whilst the number of juvenile female detainees in Lipjan/Lipljan is very low, separation of girls from adult females is good practice.
2. Although the JJC specifies that educational-correctional measures shall be executed in a semi-confined institution established specifically for this purpose (Article 109(1)), the only facility at present within Kosovo is Lipjan/Lipljan, and every juvenile offender sentenced to a period of time

in an educational-correctional centre will serve his or her sentence there. As it is classified as an 'educational measure' pursuant to the JJC, an educational-correctional measure can be imposed on a minor offender from the age of 14 (article 6(3)), whereas the sentence of juvenile imprisonment cannot be imposed on a minor until he or she reaches the age of 16. The interviews with juvenile offenders undergoing educational-correctional measures and juvenile imprisonment in Lipjan/Lipljan indicate that there is no material difference between the two sentences.

3. All juvenile offenders interviewed stated that they had never been visited by a judge or prosecutor in contravention of Article 123(2) of the JJC, which provides that a juvenile judge shall visit juveniles held in detention every six months to ensure they are being treated in accordance with the law. According to international standards, detention facilities in which juveniles are held should be inspected regularly by qualified inspectors, who are not part of the administration of the facility. Such inspectors should have unrestricted access to all juveniles, all persons working at the facility and all records of such facilities.⁵ The JJC provides judges with the power to carry out such inspections. It is a matter of considerable concern that these inspections do not appear to be carried out in practice. Such inspections are vital to ensure that the children's rights are protected while in custody.

According to Article 138 of the JJC, when a minor is released from detention, the Probation Service "shall offer assistance to the child after release for as long as

⁵ United Nations Rules for the Protection of Juveniles Deprived of their Liberty (General Assembly resolution 45/113 of 14 December 1990), Article 72.

he or she needs it.” Where it is in the best interests of the child, the Probation Service may seek assistance from the Guardianship Authority. The interviews undertaken with probation officers and CSW staff indicated that very little support is currently being offered to juvenile offenders once they are released from detention. This can be attributed to a lack of defined competencies for each institution and a lack of coordination in most regions between the Probation Service and CSWs and other juvenile justice institutions in relation to the provision of after-care. International standards provide that children must have access to services to assist them to re-integrate back into society following their release from custody.⁶ This is very important in ensuring they are supported, continue being rehabilitated and do not re-offend.



⁶ United Nations Rules for the Protection of Juveniles Deprived of their Liberty (General Assembly resolution 45/113 of 14 December 1990), Article 80.

RECOMMENDATIONS

1. Amendments to the JJC

High Priority

The Kosovo Legislative Assembly should amend a number of provisions of the JJC:

- Amend article 15 JJC: rather than limiting the form of particular diversion measures, the JJC should add to the list of diversion options “other educational measures” which the municipal prosecutor or judge can devise. In such cases, the Probation Service should undertake an assessment and draw up a plan together with the child, setting out the details of the action to be taken to enable the juvenile to address his or her offending behaviour.
- Amend the JJC to provide that: (a) at the first hearing of a juvenile case, the prosecutor be under a duty to file a statement with the judge showing that diversion has been considered and setting out the reason/s why diversion was not used; and (b) giving the judge the power to order the prosecutor to re-consider re-trial diversion.
- Consideration should be given to changing the Article 14 criteria away from a minimum term of imprisonment for the offence to a more child-specific and child-focused criteria, using notions of seriousness and circumstances of the offender and offence. Alternatively, consideration should be given to raising the term of imprisonment threshold from three to five years. Additionally, ensure that guidance for prosecutors and judges is developed to define the steps to be taken in reaching a

decision or not to refer a minor to diversion.

- Amend the JJC to allow for conditional discharge orders as well as intensive supervision measures. Conditional discharge orders would be appropriate where a juvenile requires minimal supervision only. This would free up the resources of the Probation Service to be targeted to juveniles who require more intensive supervision in order to correct their offending behaviour.

2. Improving the practical implementation of the JJC

Urgent

- The Ministry of Justice KJC should issue guidelines requiring judges to re-consider the use of the educational-correctional measure in light of the need to remove juvenile offenders serving this sentence from Lipjan/Lipljan Correctional Facility.
- The Ministry of Justice, Office of the Public Prosecutor of Kosovo and the Kosovo Judicial Council should review current practice relating to the investigation and trial of juveniles and, in particular, the issue of delay. New procedural measures should be introduced to ensure that juvenile cases are expedited and undue delay avoided.
- The Ministry of Justice should develop individual plans so that juveniles held in pre-trial detention are assured the same access to educational and leisure facilities and contact with family as detainees serving juvenile imprisonment and educational-correctional sentences.

High Priority

- Ensure that the Kosovo Judicial Council and the Office of the Public Prosecutor develop a procedural and practice guide to diversion. This should include guidance on the interpretation of article 14 criteria.
- Review the use and effectiveness of intensive supervision measures in more detail. Allocate resources to build capacity for probation officers and CSW social workers to improve the implementation of intensive supervision measures, including ensuring an increase in the number length of supervision visits to juveniles on intensive supervision measures and the development of minimum standards for what constitutes “intensive supervision.”
- For juvenile offenders sentenced to intensive supervision measures, develop intensive supervision plans, to which the child and parent agree, and ensure that these are presented to the court.
- Issue guidance to probation officers on drafting supervision plans.
- Develop, with the CSWs and Probation Service, a limited number of specialist well trained foster parents to help implement intensive supervision measures for children without parental care.

Medium Priority

- The Probation Service should work to expand the current list of work placements at which juveniles can carry out community service orders.

- The Ministry of Justice should make available a specific budget line for the Probation Service to reimburse juveniles serving community service orders for transport to and from their work placement sites where the family income is below a specified limit.

3. Capacity building in juvenile justice institutions

High Priority

- Establish juvenile prosecutors, or as an interim minimum measure, nominate a limited number of prosecutors to address cases involving juveniles in each region.
- Ensure that juvenile prosecutors receive systematic, in-depth, inter-active training on the JJC, with particular focus on the value and use of diversion. Supplementary training should be provided at least every 6 months.
- Develop specialist posts for probation officers working with juvenile offenders and provide these probation officers with clear guidance and training on how to draft social inquiry reports.
- Develop specialist posts for CSW social workers working with juvenile offenders.

Medium Priority

- Establish an internal review process in each Municipal Court prosecutor's office for review of juvenile files to ensure that diversion is considered for all cases within the JJC's threshold.

4. Improved coordination between juvenile justice institutions

High Priority

- Clearly define the responsibilities of the CSW and Probation Service in relation to the provision of post-detention after-care. An Administrative Instruction should be developed, requiring Lipjan/Lipljan Correctional Facility, the Probation Service and the CSWs to develop and provide after-care for juveniles leaving Lipjan/Lipljan.

Medium Priority

- Formalise the relationship between the CSWs and the Probation Service, which should include the development of a protocol on information sharing and how to make joint recommendations on sentencing to the courts and the establishment of regular meetings to share information.

5. Improved monitoring of the juvenile justice system

High Priority

- Establish a Juvenile Justice Committee, including Municipal Court judges, a representative from the local prosecutor's office, the Kosovo Police Service, the Kosovo Probation Service and the CSW, to ensure good communication between different juvenile justice institutions and review of the implementation of the JJC on a regular basis.
- The Office of the Public Prosecutor of Kosovo / Kosovo Judicial Council should set targets for diversion.
- The Juvenile Justice Committee should review the performance of

all seven Municipal Prosecutors' offices dealing with juvenile cases against these targets at least twice a year.

- The Ministry of Justice, Office of the Public Prosecutor of Kosovo and the Kosovo Judicial Council should establish an Independent Commission to keep under review the time spent in pre-trial detention by juveniles. The Commission should also collect and analyse raw data on the time spent, by juveniles, in police detention and pre-trial detention to ensure compliance with the maximum time limits set out in the JJC.
 - The Ministry of Justice, Office of the Public Prosecutor of Kosovo and the Kosovo Judicial Council should develop guidelines to ensure that judges and prosecutors make regular monitoring visits to Lipjan/Lipljan Correctional Facility, both to detainees in pre-trial and post-trial detention.
 - Kosovo Correctional Services should regularly collect and review data on the imposition of custodial sentences in order to ensure that imprisonment is being imposed only for the most serious offences for the shortest possible period of time.
 - Kosovo Correctional Services should review the practice of placing girls with adult female detainees in Lipjan/Lipljan Correctional Facility.
- High Priority**
- The Government should develop, in consultation with specialised statisticians, a standardised data collection strategy for recording, collecting and collating data on juvenile crime and the implementation of the juvenile justice system. The strategy should include: the identification of the data to be collected; which institutions are responsible for recording each type of data; which institutions should be responsible for collecting each type of data; and which institution should be responsible for collating the data.
 - Train relevant staff (those responsible for recording information on juvenile crime and the juvenile justice system) in local juvenile justice institutions (police stations, prosecutor's offices, Municipal and District courts, CSW offices and Probation Service offices) on the importance of data collection and how the standardised data collection systems should be implemented at the point of recording data.
 - Develop systems for collecting and collating data at central levels, at: the Ministry of Justice, the Kosovo Judicial Council, the Ministry of Internal Affairs, the Ministry for Labour and Social Welfare.
 - Every year, the Ministry of Justice should appoint a juvenile justice expert to analyse the data collated by juvenile justice experts. This might be done at a public university in order to develop the capacities to analyse data on juveniles and monitor implementation of the code

1

INTRODUCTION

This report presents research findings from a study of the juvenile justice system in Kosovo. The study forms part of the Support to the Kosovo Juvenile Justice System Project, an EU funded project, the aim of which is to establish a juvenile justice system in Kosovo based on children's rights and evidence-based research, and to promote a juvenile justice prevention programme. The aims of the study were to: collect baseline data in order to analyse the rate and nature of juvenile offending in Kosovo; to undertake a thorough analysis of the implementation of the juvenile justice system in Kosovo, and in particular, the implementation of the *Juvenile Justice Code 2004 (JJC)*; and to provide recommendations on how the juvenile justice system could be strengthened. While the study examined the implementation of the juvenile justice system as a whole, it focused on several key provisions of the JJC which introduced new concepts into the Kosovo juvenile justice system, including diversion measures and additional non-custodial sentencing measures.

The research for this report was carried out in Kosovo from June to December 2007. Researchers reviewed relevant legislation related to juvenile justice; gathered both raw and collated quantitative data from juvenile justice institutions; conducted semi-standardised interviews with juvenile justice professionals and juvenile offenders undergoing various diversion and sentencing measures in all regions in Kosovo; and visited detention facilities where juvenile offenders were detained, both on pre-trial and post-trial detention.

The methodology of the study, some of the data collected for the report, and some initial conclusions and recommendations were shared with the project's steering group in October 2007. Feedback was obtained from project stake-holders, including representatives from the Ministry of Justice and other criminal justice institutions, including the Kosovo Police Service, the Ministry for Labour and Social Welfare, the Probation Service, prosecutors and judges, along with the Human Rights Centre at the University of Prishtinë/Priština.



2

BACKGROUND

2.1 Children and Young People in Kosovo

A census has not been carried out in Kosovo since 1981, and thus accurate statistics of the population are not available. However, according to calculations made by the Statistical Office of Kosovo at the end of 2005, the estimated population of Kosovo was 2,069,989 inhabitants.⁷ There is no data currently available on the child and young person population (those aged under 18) in Kosovo, but it is thought that Kosovo has the youngest population in Europe, with the United Nations Development Programme (UNDP) estimating that over half of the population of Kosovo is under the age of 25, and around 21 per cent of the population is between the ages of 16 and 25.⁸

Children and young people in Kosovo face many challenges as a result of Kosovo's recent turbulent history, uncertain future and the prevailing economic and social conditions. The 2006 UNDP Human Development Report,⁹ which focussed on youth in Kosovo, found that many young people experienced poverty, lack of educational attainment and unemployment. Kosovo remains the poorest region in the Balkans, and one of the poorest in Europe.¹⁰ While the economy has been strengthening since 1999, growth has been very slow and the economy remains unstable and sluggish.¹¹ Uncertainty over the political future of Kosovo, which has prevailed since 1999, has impaired economic growth by limiting investment in Kosovo industry and the

exploitation of its resources. According to the World Bank Poverty Assessment, in 2005, 12% of the population of Kosovo were living in extreme poverty (subsisting on 0.93 euro cents a day), and it was estimated that 37% were living in relative poverty (subsisting on 1.42 euros a day). Poverty appears to affect children in Kosovo disproportionately: it is estimated that extreme poverty affects 17.3% of pre-school aged children and 19.6% of children aged 6 – 14.¹² Levels of extreme poverty are reported to be highest in the Ferizaj/Uroševac region, where around 29% of people are subsisting on less than 0.93 euro cents a day. High levels of extreme poverty are also reported in Mitrovicë/Mitrovica and Peja/Peć.¹³

Unemployment rates in Kosovo are high, particularly among young persons. Youth unemployment in Kosovo is very high, estimated at 49.5 percent. Kosovo youth are twice as likely as adults to be unemployed¹⁴. Each year, 30,000 young people are swelling the ranks of jobs seekers, while a maximum of 15,000 new jobs are expected to be available according to the Draft Kosovo Development Strategy and Plan. In addition, the political crisis in Kosovo in the 1990s severely disrupted the education system. Reforms have been carried out over the last nine years, and there now appear to be high enrolment rates at the primary level of schooling. 88 % of the applicable age group were enrolled in primary school in the 2005/2006 school year.¹⁵ However, enrolment rates are lower at the secondary and tertiary levels, 74 % and 18 % respectively. Other problems in Kosovo's education system include the

¹² In Robert Fuderich, UNICEF, 'Child Poverty in Kosovo', *Development and Transition*, December 2006, p. 9.

¹³ United Nations Development Programme, *Youth: A New Generation for a New Kosovo* (2006) p. 30, reports that 24.2 % of persons in Mitrovicë/Mitrovica and 22.6% in Peja/Peć are living on less than 0.93 euro cents a day.

¹⁴ Youth Employment Action Plan, ILO, 2006

¹⁵ Kosovo Poverty Assessment, World Bank 2007

⁷ Statistics Office of Kosovo, *Series 4: Kosovo Vital Statistics* (2006) p.6.

⁸ United Nations Development Programme, *Youth: A New Generation for a New Kosovo* (2006) p. 1.

⁹ Ibid.

¹⁰ Ibid, p. 29.

¹¹ Ibid, p. 27.

slow implementation of curricula reforms and poor quality of teaching.¹⁶ The lack of educational attainment among many of Kosovo's young people and the scarcity of job opportunities in the public and private sectors has inevitably made young people vulnerable to becoming involved in the informal economy, including in organised crime.¹⁷

In addition to the above socio-economic factors impacting on Kosovo's youth, the political uncertainty over the future of Kosovo, which has only recently been settled, has inevitably provoked feelings of uncertainty and stress among Kosovo's young population and caused them to experience a period of "double transition", as they transition into adulthood during this time of political uncertainty and transition in Kosovo.¹⁸ The political, economic and social conditions prevailing in Kosovo impact on the development of its youth, and have made young people vulnerable to poverty and unemployment. These conditions influence the susceptibility of young people to coming into conflict with the law and should be considered when analysing data on juvenile offending and examining the juvenile justice system in Kosovo.

2.2 Development of the Current Juvenile Justice Framework

Since the UN Security Council Resolution 1244 (1999) was passed on 10 June 1999, Kosovo has been under the temporary administration of the United Nations Mission in Kosovo (UNMIK). UNMIK was initially responsible for all aspects of civil administration in Kosovo, including the administration of the legal and judicial systems. In May 2001, UNMIK Regulation 2001/9 approved the constitutional framework for the establishment of an indigenous provisional government in Kosovo. The constitutional framework recognised

the applicability of international human rights law to Kosovo, including the UN Convention on the Rights of the Child.¹⁹ Following elections in November 2001, a new National Assembly was created and the Provisional Institutions for Self Government (PISG) were appointed in May 2002, with the competencies of UNMIK being gradually passed to the PISG. In December 2005, two new bodies were created: the Kosovo Judicial Council²⁰ and the Ministry of Internal Affairs.²¹ This was followed shortly by the establishment of the Ministry of Justice. Many competencies related to the administration of the criminal justice system were passed to these bodies.

In 2003 and 2004, UNMIK drafted and passed several new statutes, with the aim of reforming the criminal justice system and ensuring its compliance with international and European human rights standards. The JJC was passed in April 2004. It aims to comply fully with international human rights instruments, most notably, the UN Convention on the Rights of the Child. The JJC establishes special procedures for children in conflict with the law and introduces new concepts and institutions into Kosovo law and juvenile justice administration, including diversion measures, an increased range of non-custodial sentences and the establishment of a Probation Service. While this new legal framework provides greater legal protection to children in conflict with the law, its effectiveness inevitably depends on the extent and level to which it is being implemented by relevant institutions and professionals.

2.3 The Juvenile Justice Code: Key Principles and Provisions

In accordance with Article 40 of the UN Convention on the Rights of the

¹⁶ See Statistical Office of Kosovo, in *Ibid*, p. 42 – 5.

¹⁷ See Statistical Office of Kosovo, in *Ibid*, p. 24.

¹⁸ See Statistical Office of Kosovo, in *Ibid*, p. 21 – 2.

¹⁹ Article 3.2(f) Constitutional Framework for Provisional Self-Government UNMIK/REG/2001/9 (15 May 2001).

²⁰ UNMIK Regulation No. 2005/52.

²¹ UNMIK Regulation No. 2005/52, amending UNMIK Regulation No. 2001/19.

Child, the JJC establishes special procedures and measures for children who are in conflict with the law. Other general pieces of legislation relevant to juveniles in conflict in the law include the Provisional Criminal Code of Kosovo), the Provisional Criminal Procedure Code of Kosovo and the Law on the Execution of Penal Sanctions. The JJC stipulates, in Article 1, that the juvenile justice system is guided by a number of principles. These include: the need to emphasise the well-being of the juvenile and ensure that any response to offending by juveniles is proportionate to the circumstances of the offender and the offence; that juvenile offenders shall be considered for diversion measures where appropriate; that deprivation of liberty shall be imposed only as a last resort and for the shortest possible time; that the child shall have the right to express him or herself freely; that every child deprived of their liberty shall be treated with humanity and in a manner which takes into consideration the unique needs of persons their age, and the child's right to privacy shall be respected at all stages of the criminal justice process. All of these principles mirror and implement the provisions of the UN Convention on the Rights of the Child and UN minimum standards and norms of juvenile justice.²²

The JJC defines a 'child' as a person under the age of 18 (Article 2.1) and sets the minimum age of criminal responsibility at 14 years (Article 38 JJC and Article 11.2 PCK) in accordance with the recommendation of the UN Committee on the Rights of the Child.²³

²² See the UN Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) (1985), UN Guidelines on the Prevention of Juvenile Delinquency (Riyadh Guidelines) (1990), UN Rules for the Protection of Juveniles Deprived of their Liberty (the JDLs) (1990).

²³ Based on article 40(3) of the UN Convention on the Rights of the Child and Rule 4 of the Beijing Rules, the UN Committee on the Rights of the Child, in its *General Comment No. 10 on Juvenile Justice* (2007) stated that the minimum age of criminal responsibility should be set, by member states, at 12 years at the lowest,

The provisions of the JJC apply to any person charged with a criminal offence committed as a 'minor' (a person aged 14 – 18 years), regardless of his or her age at the time when proceedings are initiated (Article 3(1)). Part Two of the JJC sets out and deals with the applicability of different measures and punishments that can be imposed on juvenile offenders. Measures include diversions measures and educational measures. Punishments include fines, orders for community service and juvenile imprisonment (Article 6). Punishments can only be imposed on children who are over the age of 16 years (Article 6(3)). Article 7 concerns the process of selection of applicable measures and punishments and provides, in particular, that "when selecting any measure or punishment to be imposed on a juvenile offender, the court shall give primary consideration to the best interest of the child" (Article 7(1)).

Article 40(3) of the UN Convention on the Rights of the Child requires states to promote the establishments of laws, procedures, authorities and institutions to give effect to measures of dealing with children in conflict with the law without resorting to judicial proceedings. The UN Committee on the Rights of the Child, in its general comment on juvenile justice, stated that, "given the fact that the majority of child offenders commit only minor offences, a range of measures involving removal from criminal / juvenile justice processes and referral to alternative (social) services...should be a *well established practice* that can and should be used *in most cases*."²⁴ The JJC's provisions on diversion measures (Articles 13-15, 50 and 67.3) attempt to give effect to Article 40 of the Convention and recognises that dealing with juvenile offenders without resorting to criminal

though a higher age, for example, 14 years or 16 years, is recommended (CRC/C/GC/10 paras 16 and 17).

²⁴ UN Committee on the Rights of the Child, *General Comment No. 10 (2007): Children's Rights in Juvenile Justice*, CRC/C/GC/10 (9 February 2007), para. 11. Emphasis added by authors.

procedures serves the important function of promoting a rehabilitative, rather than punitive, juvenile justice framework.

In addition to diversion measures, the JJC provides various alternatives to the imposition of custodial sentences. Article 17 provides for various educational measures which can be imposed on juvenile offenders: (a) disciplinary measures (which includes judicial admonition or committal of a juvenile offender to a disciplinary centre); (b) measures of intensive supervision (including supervision by a parent or guardian, intensive supervision in another family or intensive supervision by the Guardianship Authority, based in the Centres for Social Work); and (c) institutional measures (which involves the committal of a juvenile offender to an educational institution or an educational-correctional institution). The JJC also includes the imposition of fines (Article 27) or community services orders (Article 28) as alternative punishments to imprisonment. These provisions give effect to Article 40(4) of the UN Convention on the Rights of the Child, which requires state parties to ensure that “[a] variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.” Also, the inclusion of various non-custodial sentencing measures into the JJC is intended to give alternatives to the imposition of custodial sentences, which, according to the UN Convention on the Rights of the Child “shall be used only as a measure of last resort and for the shortest appropriate period of time” (Article 37(b)). The reason for this is that the use of deprivation of liberty “has (very)

negative consequences for the child’s harmonious development and seriously hampers his/her reintegration in society.”²⁵

Part Three of the JJC deals with procedure, and in particular provides that “the authorities or institutions that participate in proceedings involving minors, as well as other persons and institutions from which notifications, reports or opinions are sought are obliged to proceed expeditiously and without any unnecessary delay” (Article 37(1)). Part Three also provides various procedural guarantees to juvenile offenders, and sets out the roles and duties of juvenile justice institutions and professionals, including judges, prosecutors, police, probation service and the Guardianship Authority in implementing relevant phases of the juvenile justice process. Part Four deals with the execution of measures and punishments. The provisions of the JJC will be considered in greater detail in chapters 5, 6 and 7 of this report.

2.4 Juvenile Justice Institutions

2.4.1 The Kosovo Judicial Council

The Kosovo Judicial Council regulates and administers the judicial system in Kosovo. Its duties include the appointment and, where necessary, dismissal of judges, prosecutors and lay-judges and the carrying out of disciplinary measures against judges, prosecutors and lay-judges in cases of misconduct and court administration.

2.4.2 Kosovo Police Service

The Kosovo Police Service (KPS) is the only domestic police service in Kosovo. It functions under the authority of the Special Representative of the Secretary General, under the control and supervision of the UNMIK Police Commissioner.²⁶ The Ministry of Internal Affairs has responsibility for the

²⁵ Ibid, para. 4.

²⁶ Article 2.1 UNMIK Regulation 2005/54.

functioning of the KPS.²⁷ According to Article 3 of UNMIK Regulation 2005/54, the functions of the KPS include: protecting and upholding human rights (Article 3(b)); apprehending perpetrators of criminal and minor offences (Article 3(d)); preventing, detecting and investigating criminal and minor offences (Article 3(e)); and providing assistance and being of service to the public on a non-discriminatory basis (Article 3(i)). A Police Inspectorate, which operates as an executive agency within the Ministry of Internal Affairs, oversees the work carried out by the KPS, and has the power to investigate allegations against KPS officers.

2.4.3 Office of the Public Prosecutors of Kosovo

Prosecutors are appointed and, where necessary, dismissed by the Kosovo Judicial Council. Staffing, budgetary and other administrative issues are overseen by the Ministry of Justice. Prosecutors have wide discretionary powers under the JJC. They are responsible for initiating preparatory proceedings against a juvenile (Articles 53 and 55), and have the power to decide not to initiate proceedings for offences punishable by imprisonment of less than 3 years, even where there is a reasonable suspicion that a juvenile committed a criminal offence (Article 54(1)). Prosecutors are also responsible for determining whether a diversion measure should be imposed on a juvenile offender (including ensuring that the criteria in Article 14 are met) (Article 50(1)), although judges also have the power to impose diversion measures (see Article 50(2)).

2.4.4 Criminal Courts and Judges

Court administration and administration of the judicial profession is regulated by the Kosovo Judicial Council. Municipal and District Courts in Kosovo both have jurisdiction to hear criminal cases

involving juvenile offenders. Municipal Courts may hear cases involving offences attracting a maximum sentence of less than five years' imprisonment, while District Courts have jurisdiction in cases which involve offences with a sentence of more than 5 years' imprisonment. District Courts are located in Prishtinë/Priština, Mitrovicë/Mitroica, Prizren, Pejë/Peć and Gjiilan/Gnjilane. Out of the 26 Municipal courts in Kosovo, 7 (Prishtinë/Priština, Ferizaj/Uroševac, Mitrovicë/Mitroica, Pejë/Peć, Prizren, Gjakova/Đakovica and Gjiilan/Gnjilane) hear cases involving juvenile offenders. When hearing a trial involving a juvenile offender, judges sit on a 'juvenile panel' composed of the juvenile judge and two lay judges, one woman and one man, who are selected from among professors, teachers, educators, social workers, psychologists and from other relevant professions. (Article 49).

2.4.5 Kosovo Probation Service

The Probation Service of Kosovo was established in 2003, but came into institutional force following the promulgation of UNMIK Regulation 2004/46 ('On the Execution of Penal Sanctions'). The Probation Service is an department operating under the umbrella of the Ministry of Justice. The Probation Service works with both adult and juvenile offenders and conditional release people. Staff are primarily drawn from the disciplines of pedagogy, sociology, law and psychology.²⁸ Article 194 of Regulation 2004/46 sets out the responsibilities of the Probation Service:

- Preparing social inquiry reports on juvenile offenders;
- Supervising and assisting convicted persons serving alternative punishments;

²⁷ Article 2.2 UNMIK Regulation 2005/54.

²⁸ Kosovo Probation Service, 2006 *Bulletin*, p. 6.

- Supervising and assisting perpetrators addicted to drugs or alcohol subject to mandatory rehabilitation treatment which is executed in liberty;
- Supervising and assisting convicted persons granted conditional release;
- Guiding and supporting convicted persons on the completion of their sentence; and
- Any other task as defined by the competent public entity in the field of judicial affairs.

The Probation Service has key responsibilities in implementing the more innovative provisions of the JJC. Probation officers are responsible for administering diversion measures (Article 79) and also have the responsibility for executing all educational measures (except for intensive supervision by the Guardianship Authority) community service orders and measures of mandatory treatment.

2.4.6 Guardianship Authority/Centres for Social Work

The Centres for Social Work (CSWs) are responsible for the social protection of vulnerable people in their respective municipality. CSWs come under the responsibility of the Ministry for Labour and Social Welfare in the Provisional Institutions for Self Governance, which has the overall responsibility for social welfare in Kosovo, including implementing interventions for the care and protection of children and young people. There are 31 CSWs situated in all municipalities in Kosovo. CSWs are responsible for delivering social services, including direct social care (provision of help with domestic duties, personal care, mobility, communication or supervision); counselling and guidance; and material assistance for

vulnerable persons, which includes juveniles in conflict with the law. CSWs are required under the JJC as the Guardianship Authority to be notified at various stages of the criminal process, including when a prosecutor decides not to initiate preparatory proceedings (Article 54(3)) and when a prosecutor does initiate preparatory proceedings (Article 46(2)). Where proceedings are initiated, the CSWs are also entitled to be notified of the course of the proceedings and to submit motions and state relevant facts and evidence (Article 45(1), and can be summoned to a juvenile's criminal trial (Article 68(2)). The CSWs must also be notified when a child under the age of 14 commits a criminal offence (Article 38). The CSWs must also implement the educational measure of intensive supervision by the Guardianship Authority (Article 95(1)).

2.4.7 Lipjan / Lipjan Correctional Facility

Lipjan/Lipljan Correctional Facility ('Lipjan/Lipljan') is the only correctional facility in Kosovo that holds juvenile offenders. It serves not only for juvenile offenders and those detained pre-trial, but also women adult prisoners. Lipjan/Lipljan falls under the authority of the Correctional Service of Kosovo, which is a department of the Ministry of Justice. It has two wings for juvenile detainees, which can accommodate 32 and 30 inmates respectively, and is a fully closed and highly secure facility. Children sentenced to juvenile imprisonment under Chapter VIII of the JJC serve their sentences in Lipjan/Lipljan. In addition, owing to a lack of alternatives available in practice, juvenile offenders sentenced to educational-correctional measures serve their sentences in Lipjan/Lipljan as do juvenile suspects waiting for completion of their trials.

2.4.8 Kosovo Judicial Institute

The Kosovo Judicial Institute is an independent body which acts in cooperation with the Kosovo Judicial Council or with its legal successors to oversee professional training of judges and prosecutors of Kosovo, as well as candidates for these positions, and for other issues related to the judicial system of Kosovo. (Law No: 02/L-25 on Establishment of KJI article 1, paragraph 1.8)



3 METHODOLOGY

The methodological design of this study was developed after the authors undertook an initial field study in Kosovo in June 2007, and a subsequent desk-based analysis of relevant laws and procedures. The authors held interviews with juvenile justice professionals in Prishtinë/Priština, Pejë/Peć and Mitrovicë/Mitrovica, in order to get an understanding of the operation of juvenile justice processes and institutions, and to use this knowledge to devise data collection strategies. This initial field visit also allowed the authors to identify research priorities, where particular areas of concern were identified. The research method was designed to include a variety of quantitative and qualitative data collection methodologies.

3.1 Quantitative Components

Quantitative research is used to measure social realities as objective and external and is suited to research which aims to give an objective picture of phenomena.²⁹ In this study, quantitative research methods were used to measure the extent and nature of juvenile offending in Kosovo. In addition, the authors used quantitative research methods for the purpose of analysing the extent to which certain provisions of the new JJC are being implemented. While qualitative methods were generally preferred when analysing the extent and manner by which key provisions of the JJC are being implemented by juvenile justice professionals, quantitative research was used to measure, objectively, the implementation of key provisions of the JJC which was used to quantify, balance and challenge the data gathered using qualitative methods.

In order to analyse the rate and extent of juvenile offending in Kosovo along with the extent and manner by which the JJC is being implemented, quantitative indicators were developed which were based on the UN Committee on the Rights of the Child's *General Guidelines for Periodic Reports*³⁰ and the United Nations Office on Drugs and Crime and UNICEF *Manual for the Measurement of Juvenile Justice Indicators*. Whilst these points of reference assisted in the construction of baseline indicators, they were not sufficiently comprehensive for the purposes of the study and were used as a guide only. Comprehensive indicators were developed, following the initial field visit and analysis of relevant laws and procedures, which were specific to the juvenile justice laws and institutions in place in Kosovo. The authors aimed to gather data on these indicators by initially seeking existing data from centralised sources, for instance, the Ministry of Justice, the Kosovo Judicial Council, Kosovo Police Service and the Ministry for Labour and Social Welfare. However, collated data proved difficult to attain from centralised sources, owing to the lack of systematic data collection processes in Kosovo (see chapter 4 for a fuller discussion). Where this data was unavailable, raw data was sought either from centralised sources, or, where this was not possible, researchers undertook to collect raw data from decentralised sources (from example, from the records of court administrators or prosecutors' log books). This raw data was then collated and analysed by the authors.

3.2 Qualitative Components

Qualitative research is designed to explore phenomena in-depth, rather than measure objective realities. It is suited to exploratory research, and research designed to analyse, in-depth,

²⁹ Alan Bryman, *Social Research Methods* (second ed.) (2004) p. 19 – 20.

³⁰ CRC/C/58, 20 November 1996.

participants' perceptions of realities.³¹ Several methods were used in this study to produce qualitative data. First, in-depth semi-standardised interviews were held with professionals who are responsible for implementing the JJC at juvenile justice institutions in all regions of Kosovo. Where available and where possible, interviews were held with the professional staff member/s at these institutions that were directly responsible for working on cases involving juvenile offenders.

The purpose of the interviews was to gather qualitative information on the participant's perceptions of obstacles to the full implementation of provisions of the JJC. Examining information

on the perceptions of juvenile justice professionals responsible for implementing the JJC is important as this is directly related to the manner in which these professionals are implementing the provisions of the JJC – their perceived obstacles to implementation informed the study about actual obstacles to full implementation. In addition, the interview questions were designed to simultaneously assess the substantive knowledge of interview participants of JJC provisions and the manner by which participants interpreted these provisions. The knowledge and interpretation of the JJC's provisions by juvenile justice professionals also impacts directly on the extent and manner by which the JJC is being implemented in practice.

Interview Participants: Juvenile Justice Professionals

Prosecutors	<p><u>Municipal Level:</u> Ferizaj/Uroševac, Gjakovë/Đakovica, Gjilan/Gnjilane, Mitrovicë/Mitrovica, Pejë/Peć, Prishtinë/Priština, Prizren</p> <p><u>District Level:</u> Gjilan/Gnjilane, Mitrovicë/Mitrovica, Pejë/Peć, Prishtinë/Priština, Prizren</p> <p><i>Total Interviews: 12</i></p>
Judges	<p><u>Municipal Level:</u> Ferizaj/Uroševac, Gjakovë/Đakovica, Gjilan/Gnjilane, Mitrovicë/Mitrovica, Pejë/Peć, Prishtinë/Priština, Prizren</p> <p><u>District Level:</u> Gjilan/Gnjilane, Mitrovicë/Mitrovica, Pejë/Peć, Prishtinë/Priština, Prizren</p> <p><i>Total Interviews: 12</i></p>
Probation Officers	<p>Gjilan/Gnjilane, Mitrovicë/Mitrovica, Pejë/Peć, Prishtinë/Priština, Prizren</p> <p><i>Total Interviews: 5</i></p>
Police	<p>Gjilan/Gnjilane, Mitrovicë/Mitrovica, Pejë/Peć, Prishtinë/Priština, Prizren</p> <p><i>Total Interviews: 5</i></p>
Social Workers	<p>Ferizaj/Uroševac, Gjakovë/Đakovica, Gjilan/Gnjilane, Mitrovicë/Mitrovica, Pejë/Peć, Prishtinë/Priština, Prizren</p> <p><i>Total Interviews: 12</i></p>
Detention Facilities	<p>Lipjan/Lipljan</p> <p><i>One Interview</i></p>
TOTAL	47 Interviews

³¹ Alan Bryman, *Social Research Methods* (second ed.) (2004) p. 19 – 20.

Interview Participants: Juvenile Offenders

Children in custody (Lipjan/Lipljan Correctional Facility)	Pre-sentence detention (2 interviews) Custodial sentence (2 interviews) Educational-correctional measure (2 interviews)
Children undergoing community service orders	Gjilan/Gnjilane Probation Service (1 interview) Mitrovicë/Mitrovica Probation Service (1 interview) Prishtinë/Priština Probation Service (1 interview)
Children undergoing mediation	Prizren (1 interview)
Children undergoing intensive supervision by a parent or guardian	Gjilan/Gnjilane (2 interviews) Mitrovicë/Mitrovica (1 interview) Pejë/Peć (2 interviews) Prishtinë/Priština (1 interview) Prizren (1 interview)
Children undergoing intensive supervision by the Guardianship Authority	Gjilan/Gnjilane (1 interview) Mitrovicë/Mitrovica (1 measure) Pejë/Peć (1 interview)
TOTAL	20 Interviews

Semi-standardised interviews were also conducted with a number of juvenile offenders who were undergoing or had completed non-custodial sentences and also with several juvenile offenders held in detention in Lipjan/Lipljan Correctional Facility. Researchers attempted to conduct at least one interview in each region with juveniles undergoing community service orders, intensive supervision by a parent, intensive supervision by the Guardianship Authority, and mediation. However, this was not possible, owing to the unavailability or unwillingness of a relevant juvenile to participate and /or the lack of implementation of all measures in some regions. The following interviews were conducted:

Interviews were arranged through the juvenile's probation officer (for those undergoing or having completed community service orders, mediation

and intensive supervision by a parent or guardian), social worker (for those undergoing or having completed intensive supervision by the Guardianship Authority), and (for those in custody) the Director of Lipjan/Lipljan Correctional Facility. During the interviews, children were accompanied by their probation officer / social worker, and at times, a parent. Most interviews were conducted at the relevant Probation Office / CSW office, though some were carried out in the child's home. The method of selecting interviewees resulted in the construction of a convenience sample, which does have limitations as to the type of information gathered. As the authors relied on the Probation Service and CSWs to gain access to child interviewees, and also on the willingness of interviewees to actively 'opt-in' to the research project, the sample of children interviewed is likely to include those children who had a more 'positive'

experience undertaking sentencing measures than may otherwise have been the case had the authors been able to randomly select the children to be interviewed. This has particular implications in terms of the conclusions drawn using qualitative data obtained from these interviews.

The purpose of the interviews with juvenile offenders undergoing non-custodial sentencing measures was to gather substantive information on the nature of these measures from the viewpoint of juvenile offenders, along with information on participants' perceptions of the quality and value of these measures. The interviews conducted at Lipjan/Lipljan Correctional Facility were carried out, in part, to monitor the conditions of detention for juvenile detainees, as they were designed to measure the material conditions, availability and nature of rehabilitative education and leisure activities, protections afforded to detainees, and access to contacts from the outside world, as perceived by detainees. Also, information was gathered on the participants' perceptions of the nature and quality of educational facilities at Lipjan/Lipljan Correctional Facility.

Researchers also conducted visits to Lipjan/Lipljan Correctional Facility, all regional pre-trial detention facilities (5 visits) and several police stations (5 visits) in which persons are held in pre-sentence detention. The purpose of these visits was to monitor conditions in detention facilities in which juveniles are held. Facilities were measured according to a series of checks developed by the authors that were informed by international and regional standards contained in the UN Convention on the Rights of the Child; the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules); the UN Rules for the Protection of Juveniles Deprived of their Liberty; and the UN Standard Minimum Rules for Treatment of Prisoners. The

purpose of these visits was to measure the extent to which detention facilities in Kosovo that hold juveniles complied with international and regional standards, and with the JJC.

Lastly, a peer review of social inquiry reports was carried out by a professional, in order to make an assessment of the quality of these reports and make recommendations on how they could be improved. This was deemed necessary as the social inquiry reports are relied on by judges and prosecutors to present an accurate and detailed account of the circumstances of the juvenile offender in determining which measure or sentence should be imposed on the offender. A random sample of reports was requested (the first fifteen reports completed in the month of June 2007) from Probation Service Offices in each region in Kosovo. Reports were received from offices in Pejë/Peć (15), Mitrovicë/Mitrovica (14), Prizren (15), Prishtinë/Priština (14) and Gjiļan/Gnjilane (11), and were reviewed by a former juvenile judge against a series of quality indicators developed by the authors.

3.3 Ethics

Interview participants, including juvenile justice professionals and juvenile offenders, consented to participate in the study. In order to ensure that this consent was informed, general information about the project and about the purpose of the interviews was provided to each participant. Records of the interviews (either in the form of a dictated transcript or typed notes) were kept confidential and were not provided to persons external to the study. Interviewees were ensured anonymity. Owing to the likelihood of personal sensitive information being discussed during the interviews with juvenile offenders, juvenile participants were interviewed by a maximum of two researchers only and were accompanied by either their social worker (for juveniles interviewed at the CSWs and Lipjan/Lipljan) or probation officers, and, in addition, were often accompanied by a parent(s).

4

JUVENILE CRIME IN KOSOVO: A STATISTICAL OVERVIEW

4.1 Juvenile Justice Institutions and Data Collection

Data collection on juveniles in conflict with the law and on the implementation of juvenile justice systems is of fundamental importance. Statistics can be used to identify the extent and rate of juvenile crime, and can give a picture of the types of crimes commonly committed by juveniles and whether particular groups of juveniles (e.g. children of a particular gender or from particular age groups) are more vulnerable to coming into conflict with the law. The statistical evidence also tells the whether crimes are commonly committed alone or in cooperation with other juveniles or adults, the time of day when juveniles are most likely to commit crime and which regions or areas are commonly associated with juvenile offending. Collecting quantitative data on these factors is invaluable as it allows states to design effective juvenile crime prevention strategies.

Statistics can also be used to ensure that juvenile justice systems are operating in accordance with international, regional and domestic human rights standards and that juvenile offending is being addressed in a manner which promotes the rehabilitation and re-integration of juvenile offenders. For instance, quantitative data can show the extent to which diversion measures and non-custodial sentencing measures are being utilised and ensure that imprisonment is being used as a last resort and for the shortest possible amount of time.³² The UN Committee on the Rights of the Child,

³² UN Committee on the Rights of the Child, General Comment No. 10 (2007): Children's Rights in Juvenile Justice, CRC/C/GC/10 (9 February 2007), para. 35.

in its *General Guidelines for Periodic Reports*,³³ requests data from states to indicate the extent to which the juvenile justice system, in practice, operates in compliance with human rights standards contained in articles 37, 39 and 40 of the CRC.³⁴ Overall, the collation and analysis of such data allows the government to determine priorities and to channel resources. It also provides a tool by which the government can examine the efficiency and effectiveness of the juvenile justice system as a whole.

Unfortunately, there appears to be very little, and sometimes no routine data collection and analysis on juvenile crime and the operation of the juvenile justice system in Kosovo. For this study, the authors initially sought to collect data on juvenile crime and the juvenile justice system centrally from the Ministry of Internal Affairs (for data from the Kosovo Police Service), the Kosovo Judicial Council (for data from the criminal courts), the Ministry for Labour and Social Welfare (for data from the CSWs), the Ministry of Justice (for data from the Prosecutors); and the Correctional Service of Kosovo (for data from Lipjan/Lipljan Correctional Facility). The Ministry of Internal Affairs, on the request of the researchers, returned collated data on juveniles aged under 14 and juveniles aged 14 – 18 suspected

³³ United Nations Committee on the Rights of the Child, *Guidelines for Periodic Reports CRC/C/58* (20 November 1996).

³⁴ It requires data on the frequency at which non-custodial sentencing options are used by young offenders, disaggregated by age, gender, region, rural/urban area and social and ethnic origin; the number of children deprived of their liberty, unlawfully, arbitrarily and within the law, as well as the period of deprivation of liberty, disaggregated by gender, age, region, rural/urban area and national, social and ethnic origin; the percentage of cases in which children deprived of their liberty have access to legal representation disaggregated by gender, age, region, rural/urban area and social and ethnic origin; and data on the number of children in conflict with the law given access to measures to promote their physical and psychological recovery and social re-integration, disaggregated by gender, age, region, rural/urban area and social and ethnic origin.

of having committed an offence, disaggregated by gender, ethnicity and type of offence. The Ministry of Internal Affairs does not appear to have access to collated statistics on the number of juveniles *charged* with offences which is kept by the Kosovo Judicial Council, which impedes its ability to analyse rates of juvenile crime. The fact that the authorities were able to provide collated data to the researchers indicates that this data is collected. However, there was no evidence to suggest that this data is normally or routinely collated and analysed.

The Kosovo Judicial Council provided the researchers with raw data on each juvenile offender appearing before Kosovo's relevant criminal courts ('relevant courts')³⁵ in a 12 month period, including information on the charge and sentence imposed, and gender and ethnic origin of the defendants. It is encouraging to note that this data is routinely collected at a centralised level. However, again, there was no indication that this data is routinely collated or analysed. Also, the raw data was not of a high quality, as there were some gaps in the data provided (e.g. several months of data were missing from some courts) and the data contained a significant number of incomplete fields.

The Ministry for Labour and Social Welfare provided the researchers with collated data on the number of 'juveniles in conflict with the law' which had been referred to the CSWs, disaggregated by region, gender and ethnicity, but not, importantly, by offence type. In addition, the data was not disaggregated according to whether the child was under 14 years (and thus under the age of criminal responsibility) or aged 14 – 18 (ie over the age of criminal responsibility). The failure to record referrals of children under the age of 14

in conflict with the law as a distinct and separate category makes it impossible for the Ministry to review the treatment and care provided to children aged under 14 years effectively.

The Probation Service provided collated, centralised data which was specially prepared for the researchers. It would appear that the collation and analysis of this data does not occur on a regular basis. In addition, the Correctional Service for Kosovo (central level) was unable to provide data from Lipjan/Lipljan, which suggests that data from Lipjan/Lipljan Correctional Facility is not routinely collected, collated or analysed at the central level. The researchers were, however, able to obtain raw data from the Director of Lipjan/Lipljan that was of a reasonably high quality.

Collecting data from prosecutors proved extremely challenging for the researchers. Initially, data was collected centrally from the Ministry of Justice. The Ministry of Justice provided collated data from each district and municipal prosecutor's office. However, the authors were unable to use this data for a number of reasons. Primarily, data categories were not standardised across all districts / municipalities, which made the collation and analysis of 'all of Kosovo' data impossible, and also made it impossible to compare data categories across regions. In addition, the data provided was of poor quality: recorded data was inconsistent, at times inaccurate, not sufficiently disaggregated, and used some vague data categories. It did not record whether diversion measures were used, which is a major impediment in understanding and measuring how the juvenile justice system is being implemented. Researchers then approached each prosecutor's office and collected data in raw form from prosecutor's registries, using data

³⁵ 'Relevant courts' refers to those Courts which hear criminal cases involving minor offenders.

categories developed by the authors. Using data collected in this manner also proved difficult, as registrars did not record data against all of the necessary data categories and fields were sometimes left blank (including for significant fields, such as the name of the offence a juvenile had been charged with).

The lack of systematic data collection and analysis in Kosovo has been identified by the UNDP as a serious problem across all sectors and a fundamental obstacle to the formation of evidence-based quality policies and programmes and to Kosovo's progress generally.³⁶ In its 2006 report on Kosovo's youth, the UNDP found that "there is a considerable disregard of statistics. Data are missing, are processed or published with delays or have glaring discrepancies...a vast number of documents are being prepared that do not have accurate and updated data."³⁷

As a result of, and a supplement to, the data collection phase of the research, two round-table workshops were carried out with the clerks and administrators from Courts and Prosecutors' Offices responsible for data collection in Kosovo³⁸ Information was gathered from the clerks and administrators on the obstacles they face in maintaining data collection systems. Clerks from both the courts and prosecutors offices identified a number of obstacles which impair their ability to maintain quality of data collection systems and processes:

- Lack of quality data collection instruments – standardised data collection forms in prosecutors

³⁶ United Nations Development Programme, *Youth: A New Generation for a New Kosovo* (2006) p. 30.

³⁷ United Nations Development Programme, *Youth: A New Generation for a New Kosovo* (2006) p. 30.

³⁸ Roundtable workshops took place in Prishtinë/Priština on 1st and 2nd April 2008.

offices and courts do not contain all necessary data fields, and data categories lack specificity (e.g. fields for the category of 'which diversion measure was imposed' or 'which educational measure was ordered');

- Poor data collection by police and prosecutors – necessary information on individual offenders are not necessarily being collected, for instance, a child's birth certificate or information on the child's address;
- Lack of information sharing between juvenile justice institutions;
- Lack of resources – there is an absence of electronic data collection systems and some clerks do not have access to a computer.

The lack of routine systematic data collection in Kosovo impairs the development of effective juvenile crime prevention strategies and the operation of juvenile justice systems. Routine, standardised data collection strategies on juvenile justice need to be developed in Kosovo. Data collection systems should be developed by trained professionals and need to be implemented by all juvenile justice institutions at the local levels (at the point of data creation). Systems for collating this data should then be developed at the central levels: at the Ministry of Justice, Kosovo Judicial Council, Ministry of Internal Affairs, the Ministry for Labour and Social Welfare and the Corrective Services of Kosovo. Data, once collated, should also be routinely analysed by relevant trained professionals at these centralised institutions and independent bodies / researchers.

4.2 Number of Juveniles in Conflict with the Law

Despite problems encountered in collecting data on juvenile crime, the baseline data collected by the researchers can be used to give a picture of the extent, nature and circumstances of juvenile crime in Kosovo. There are several means by which the extent or rate of juvenile crime can be measured. These include: data on the number of offences recorded by police in which juveniles are suspects (commonly used in Kosovo); data on the number of juveniles charged or arrested for committing a criminal offence; and data on the number of juveniles convicted. The most commonly used, and most accurate, figure is the arrest rate, though this can only give a partial picture of juvenile offending, as the data excludes juveniles who commit offences but are not arrested or charged.³⁹ Most developed states also use self-reporting surveys and victim surveys to determine the level of crime.

In Kosovo, data is available on the number of offences suspected of having been committed by juveniles (as recorded by police). Data on the number of juveniles convicted is also available in raw form, from relevant courts in Kosovo. However, data on the total number of juveniles tried before the courts (i.e. including both those convicted and acquitted) does not appear to be available.

The KPS statistics record the number of juvenile suspects, which is not to be confused with the number of juveniles charged with crimes. The KPS have recorded that, in a 12 month period (1 July 2006 – 30 June 2007), persons aged under 18 years were suspected of committing 4,723 criminal offences.

³⁹ In order to include offences for which no person is charged / arrested in criminal statistics, self-reporting studies or victim surveys can be used. However, such studies were outside the scope of this research project.

The majority of these offences (4,317) were recorded as having suspects aged between 14 and 18 years (see Table 1.1).

Table 1.1

Total Offences Recorded with Suspects Aged 14 - 18 Years		
Suspects under 14 years	406	8.60%
Suspects aged 14 - 18 years	4317	91.40%
TOTAL SUSPECTS	4723	100%

Data recorded by the Kosovo Police Service 1 July 2006 - 31 June 2007

Unfortunately, as an accurate estimate of the population of Kosovo under the age of 18 years is not currently available, making an accurate calculation on the rate of juvenile offending is difficult.⁴⁰ However, based on population estimates of the Statistical Office of Kosovo and the estimation by the UNDP on the proportion of the population under the age of 25, the authors have calculated that, roughly, the rate of juvenile offending, based on the number of suspected offences by juveniles, is 652 per 100,000 of the juvenile population.⁴¹ Again, using population estimates, a rough estimate of juvenile convictions can be produced of 314 per 100,000 juvenile population. This rate is likely to be slightly higher than this, as the data provided by the Kosovo Judicial Council contained missing months of data from several courts.

The Ninth United Nations Survey of Crime Trends(2003-2004) published by

⁴⁰ To obtain a figure on the rate of juvenile offending, as distinct from data on the instances of offending, the number of juvenile offenders arrested or charged needs to be divided by the total population of Kosovo under 18 years / 100,000.

⁴¹ This figure was calculated based on an estimation that 35% (724,496 persons) of the total population in Kosovo is under the age of 18 (as UNDP have estimated that 50% of the population are under 18 and 21% are aged between 16 and 25).

the United Nations Office on Drugs and Crime (the UN Survey), records the value and the rate of crime in many jurisdictions, with the rate of juvenile crime calculated against the total population (as distinct from the juvenile population). Table 1.2 lists the rates of offending in a number of other European countries with data recorded in the UN Survey.

Table 1.2
Rates of juvenile offending in Kosovo and other European countries

Country	Rate of juvenile offending, according to number of suspects ¹	Rate of juvenile offending, according to number of convictions
Bulgaria	142.51	43.20
Croatia	77.11	21.37
Czech Republic	60.48	31.57
England and Wales	N/A	182.98
France	309.08	N/A
Germany	500.39	58.94
Italy	52.84	4.66
Kosovo	228.17	109.87
Netherlands	405.20	72.28
Slovenia	97.21	31.27

Data was obtained from the Ninth United Nations Survey of Crime 2003 - 2004 Trends published by the United Nations Office on Drugs and Crime.

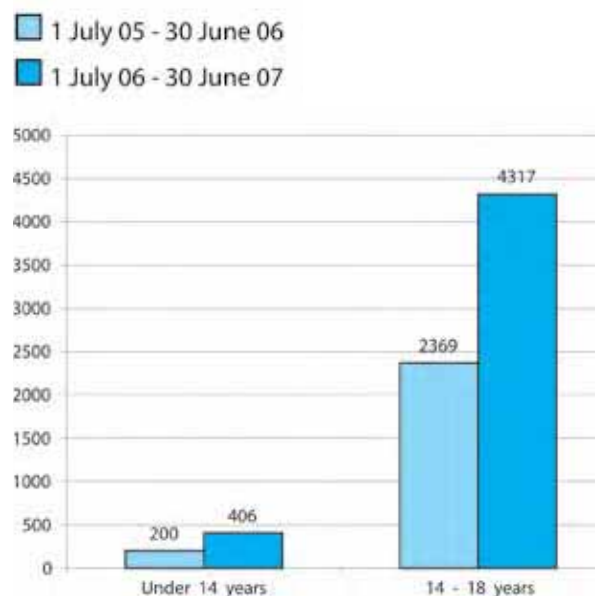
Table 1.2 indicates that the rate of juvenile offending in Kosovo is significantly higher than that of other Western Balkan countries in the UN Survey (Croatia and Slovenia). It would be interesting and important in developing effective crime prevention strategies to study why the rate of juvenile

¹ The rate of juvenile offending in Kosovo according to the number of juvenile suspects may appear slightly higher as the Kosovo Police Service data records the number of offences by juvenile suspects, rather than the number of juvenile suspects who commit an offence/s.

offending in Kosovo appears significantly higher than in other countries in the region. In comparison to Western European countries in the survey, Kosovo appears to have a lower rate of juvenile offending in terms of the number of juvenile suspects, but has a higher rate of juvenile offending according to the number of juvenile convictions. In fact, the ratio of the rate of juvenile suspects to the rate of juvenile convictions appears to be quite high in Kosovo in comparison to other countries contained in Table 1.2. This may indicate that a relatively high proportion of juvenile suspects in Kosovo are convicted, rather than, for example, being diverted out of the criminal justice system.

According to data provided by the KPS, instances of suspected juvenile crime have risen sharply from 2005 (Table 1.3).

Table 1.3
Total juvenile suspects, 05/06 and 06/07



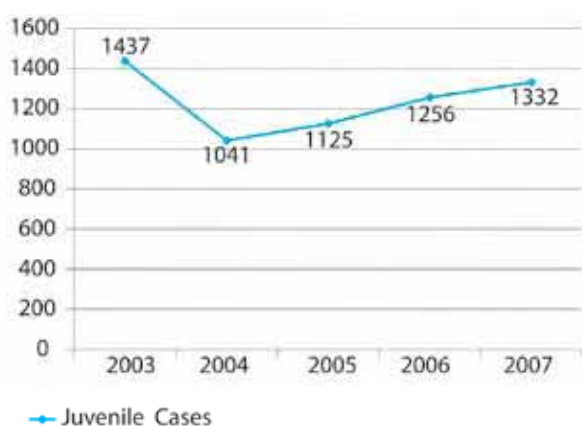
Data was provided by the KPS, and includes all crimes with juvenile suspects from 1 July 2005 – 30 June 2007.

However, without accurate data on the youth population aged 14-18, it is difficult to determine the extent to which the *rate* of juvenile crime has risen during this period.

According to data provided by the Kosovo Judicial Council on the total number of juveniles referred to criminal courts every year from 2003 – 2007, the number of juvenile crimes has risen, albeit quite slowly. Following a significant drop from 2003 to 2004, instances of juvenile crime have been rising steadily (Table 1.4). However, without accurate data on the youth population aged 14-18, it is difficult to determine whether the rate of crime is going up or not.

The disparity between the KPS and Kosovo Judicial Council data may indicate that, while the number of suspected offences by juveniles has risen sharply from 05/06 and 06/07, the number of juveniles actually charged with committing offences has risen at a much slower rate.

Table 1.4
Total juvenile cases referred to criminal courts, 2003 - 2007



Data was obtained from the 2003, 2004 and 2005 Annual Reports of the Department of Judicial Administration and the 2006 and 2007 Annual Reports of the Kosovo Judicial Council.

Data from the Kosovo Judicial Council also demonstrates that juvenile crime represents quite a low proportion of overall crime in Kosovo (Table 1.5). This is particularly significant given the high proportion of children and young people in Kosovo as it suggests that the *rate* of juvenile crime is low in comparison to the overall rate of crime.

Table 1.5

Juvenile cases as a percentage of total cases referred to criminal courts, 2003 – 2007	
2003	11.6%
2004	6.9%
2005	6.0%
2006	7.8%
2007	9.5%

Data was obtained from the 2003, 2004 and 2005 Annual Reports of the Department of Judicial Administration and the 2006 and 2007 Annual Reports of the Kosovo Judicial Council.

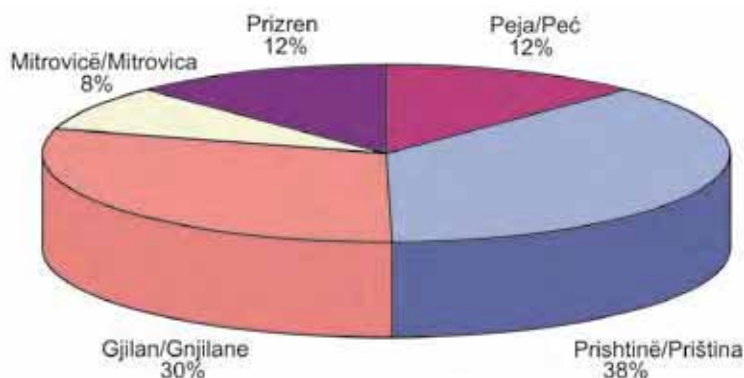
Table 1.5 also indicates that, following a drop from 2003 to 2004, the proportion of crimes committed by juveniles a proportion of total crime has been rising, though quite slowly. Again, without accurate data on the proportion of youth to adult population it is difficult to determine whether the rate of juvenile crime has risen.

Data provided by the Ministry for Labour and Social Welfare, which records the total number of ‘juveniles in conflict with the law’ referred to the CSWs in a 12 month period,⁴² can be used to give an indication of the extent of juvenile crime by region (Table 1.6).

Data provided by the Kosovo Judicial Council on juvenile offenders coming

⁴² ‘Juveniles in conflict with the law’ constitutes one category in the MLSWs referrals database. The relevant 12 month period for this data is 1 July 2006 – 30 June 2007. This data is not disaggregated into categories of children under 14 years and children aged 14 – 18.

Table 1.6
‘Juveniles in conflict with the law referred to the CSWs by Region



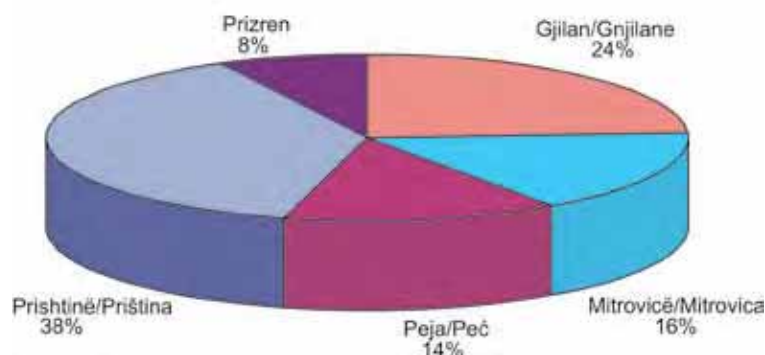
Data was obtained from the Ministry for Labour and Social Welfare. ‘Regions’ include the following CSW offices: Gjilan/Gnjilane: Viti/Vitina, Ranilluk, Kamenicë/Kamenica, Ferizaj/Uroševac, Shtërpçë/Shtërpçe, Kacanik/Kaçanik; Mitrovicë/Mitrovica: Mitrovica – J, Mitrovica – V/S, Zvečan/Zvečan, Leposaviq/Leposavić, Skënderaj/Srbica, Vushtrri/Vučitrn and Zubin Potok; Peja/Peć: Decan/Dečani, Klinë/Klina, Istog/Istok and Gjakovë/Đakovica; Prishtinë/Priština: Prishtina/Priština-1, Prishtinë/Priština-2, Obiliq/Obilić, Fushë Kosovë/Kosovo Polje, Glogovac/Glogovac, Lipjan/Lipljane, Podujevë/Podujevo and Shtime/Štimlje; Prizren: Dragash/Dragaš, Malishevë/Mališevo, Rahovec/Orahovac and Suharekë/Suvareka.

before relevant courts in Kosovo can also give an indication of the instances of juvenile crime by region.

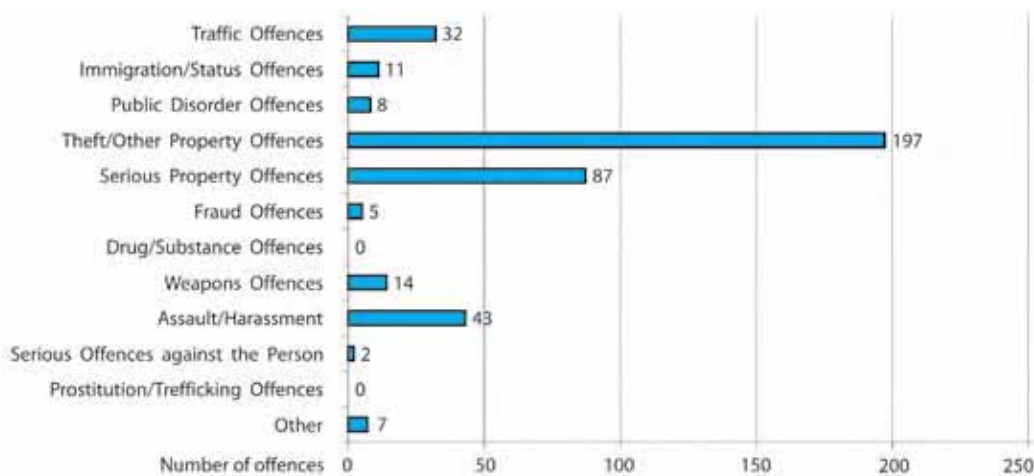
The data from both the Ministry for Labour and Social Welfare and the Kosovo Judicial Council indicates, as is to be expected, that the region in which the greatest proportion of juvenile crime occurs is Prishtinë/Priština – 38% of all ‘juveniles in conflict with the law’

referred to CSWs are in the Prishtinë/Priština region and 38% of all juvenile offenders appearing before relevant courts in a six month period are in Prishtinë/Priština. This is followed by Gjilan/Gnjilane, in which 30% of all ‘juveniles in conflict with the law’ referred to CSWs are in this region and 24% of all juvenile offenders appearing before relevant Courts appear in Gjilan/Gnjilane.

Table 1.7
Juveniles appearing before relevant courts by region, 1 January - 30 June 2007



Data was provided from the Kosovo Judicial Council. ‘Regions’ include the following relevant courts: Gjilan/Gnjilane: Gjilan/Gnjilane District Court; Mitrovicë/Mitrovica: Mitrovicë/Mitrovica District Court, Mitrovicë/Mitrovica Municipal Court; Pejë/Peć: Pejë/Peć District Court, Pejë/Peć Municipal Court, Gjakovë/Đakovica Municipal Court; Prishtinë/Priština: Prishtinë/Priština District Court, Prishtinë/Priština Municipal court, Ferizaj/Uroševac Municipal Court; Prizren: Prizren District Court.

Table 2.1**Number of suspected offences by persons aged under 14 years by category of offence**

Data was obtained from the KPS, and includes all suspected offences recorded by the KPS from 1 July 2006 – 30 June 2007. The offence categories were created by categorising the 'type of offence' data fields provided by the KPS.

4.3 Types of Crimes Committed by Juveniles

Data collected by the KPS and Kosovo Judicial Council can be used to determine the types of offences commonly committed by juvenile offenders.

For children aged under 14 years, property offences are the most commonly committed offences. The KPS data (Table 2.1) indicates 48.5% of all suspected offences committed by children under 14 are categorised as theft / other property offences. When combined with the category 'serious property offences',⁴³ 69.9% of children aged under 14 who are suspected of committing offences can be seen to have been suspected of committing property offences. In terms of offences at the more severe end of the spectrum, the data indicates that children aged under 14 years do not commonly commit serious offences of violence – only 2 children were suspected of such offences while under the age of 14 years (or 0.5% of all suspected offences

committed by children aged under 14 years).⁴⁴ This is a common pattern in virtually all states in the UN Survey, with property offences far outweighing violent offences against the person.

The KPS data (Table 2.2) reveals a similar breakdown of suspected offences committed by children aged 14 – 18 years. 49.0% of suspected offenders aged 14 – 18 years were recorded as having committed property offences. Of this 49.0%, 29.6% were suspected of having committed less serious property offences ('theft / other property offences'⁴⁵). A significant proportion of suspected offences by 14 – 18 year olds were assault / harassment offences,⁴⁶ with 17.2% of suspected offences committed by 14 – 18 year olds falling into this category. Offenders aged 14 – 18 years do not appear to commonly

⁴³ 'Serious property offences' in the under 14 years age group includes the following KPS offence categories: arson, burglary and robbery.

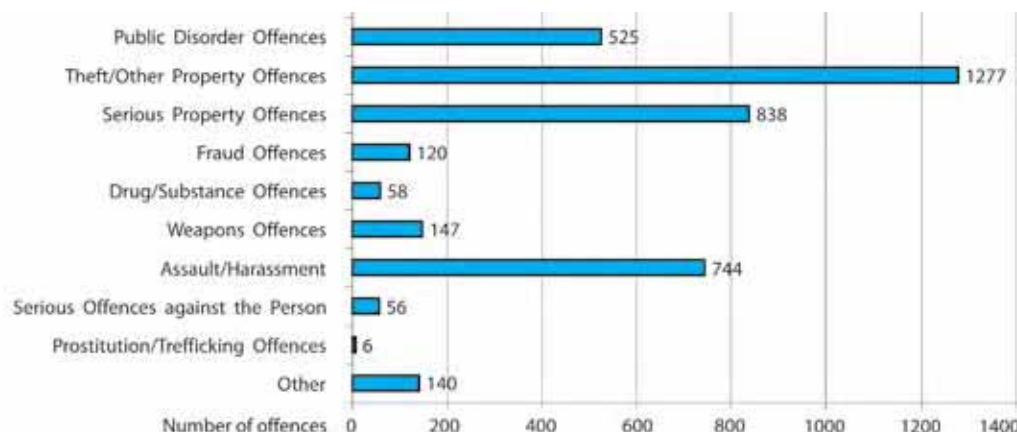
⁴⁴ 'Serious offences against the person' in the under 14 years age group includes the following KPS offence categories: murder and sexual assault.

⁴⁵ 'Theft / other property offences' in the 14 – 18 years age group includes the following KPS offence categories: theft, theft of motor vehicle, criminal damage, illegal woodcutting and looting.

⁴⁶ 'Assault / harassment' in the 14 – 18 years age group includes the following KPS offence categories: assault, harassment / intimidation and aggravated or grievous assault.



Table 2.2
Number of suspected offences by persons aged 14 - 18 years by category of offence



Data was obtained from the KPS, and includes all suspected offences recorded by the KPS from 1 July 2006 – 30 June 2007. The offence categories were created by categorising the ‘type of offence’ data fields provided by the KPS.

commit very serious offences, with only 56 suspected offences for this age group (or 1.3% of all recorded suspected offences) recorded as being ‘serious offences against the person’.⁴⁷ Interestingly, a significant proportion of suspected offences by juveniles aged 14 – 18 are public disorder offences. This includes: ‘demonstrations’ (7 suspected offences), ‘disturbing public order’ (435), ‘endangering the general security of persons or property’ (17), ‘endangering public health’ (1) and ‘obstructing justice’ (44). It is not clear from the data which specific sections of the Provisional Criminal Code would be included in the sub-category of ‘disturbing public order’, which constitutes a high number of suspected offences by persons aged 14 – 18. This could include, for example, offences of a political nature, offences arising out of ethnic tension or disorderly behaviour such as public drunkenness. As this category constitutes a high proportion of juvenile crime, it would be useful to investigate exactly which crimes are included within this category. Data provided by the Kosovo Judicial Council also provides evidence on the types of offences commonly committed by juveniles in different regions. The data below

examines the ‘top 5’ offences committed by juveniles in the different regions of Kosovo. The figures indicate that property offences, including, in particular, theft or aggravated theft, are the most commonly committed offences in four out of five regions in Kosovo (Table 2.3).

It is also interesting to note that, in Prishtinë/Priština and Prizren, the offence of unauthorised ownership, control, possession or use of a weapon constitutes one of the top five offences. This offence cannot be diverted under the JJC as it attracts a sentence of more than three years imprisonment. The apparent regularity with which juveniles commit this offence in these regions can perhaps be attributed to the easy availability of illegal light weapons in Kosovo. A survey undertaken by the South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons in 2006 concluded that there are an estimated 317,000 firearms in the illegal possession of individual citizens in Kosovo. It also found that past weapons collection programmes had been unsuccessful owing to the feelings of fear and instability among the population as a result of the political situation in Kosovo.⁴⁸

⁴⁷ ‘Serious offences against the person’ in the 14 – 18 years age group includes the following KPS offence categories: murder, rape, sexual assault and kidnapping.

⁴⁸ South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons, SALW Survey of Kosovo (2006).

Table 2.3
GJILAN/GNJILANE

Offence	Number
Aggravated Theft	72
Light Bodily Harm	26
Participation in Brawl	12
Theft	11
Unknown ²	9
Forest Theft	9

MITROVICĚ/MITROVICA

Offence	Number
Theft	50
Aggravated Theft	26
Unknown	15
Light Bodily Harm	12
Endangering Public Traffic	8

PEJĚ/PEČ

Offence	Number
Aggravated Theft	35
Theft	14
Forest Theft	10
Purchase Possession Distribution or Sale of Drugs	6
Light Bodily Harm	6

PRISHTINĚ/PRIŠTINA

Offence	Number
Aggravated Theft	78
Theft	43
Light Bodily Harm	36
Forest Theft	32
Unauthorised ownership control possession or use of weapon	22

PRIZREN

Offence	Number
Old Law Offence ³	19
Unknown	15
Unauthorised ownership control possession or use of weapon	13
Purchase Possession Distribution or Sale of Drugs	5
Aggravated Theft	5

Data was obtained from the Kosovo Judicial Council and includes the top five offences for which juveniles were convicted, by region, in Kosovo.

4.4 Juveniles in Conflict with the Law by Gender

Data provided by the KPS indicates that male juveniles are far more likely to commit criminal offences than female juveniles. Of the 406 recorded suspected offences in the under 14 years age group in a 12 month period, only 16 (4%) were committed by females. Similarly, in the 14 – 18 years age group, of the 4317 suspected offences recorded by the Kosovo Police Service, only 102 (2%) were committed by female suspects.

In terms of the types of offences commonly committed by juvenile offenders according to their gender, there does not appear to be a significant variation across gender, both for the under 14 and 14 – 18 years age groups. The Kosovo Police Service has recorded that the most common suspected offence by juveniles is theft for both age groups, where disaggregated by gender (Table 2.4), which is a common pattern that one would expect to see.

Table 2.4

Top 5 offences by suspects aged under 14 years by gender	
Males	Females
Theft (139)	Theft (3)
Burglary (65)	Arson (3)
Criminal Damage (53)	Traffic Offence (3)
Traffic Offence (29)	All remaining offences ⁴
Aggravated or Grievous Assault (28)	

Top 5 offences by suspects aged 14 - 18 years by gender	
Males	Females
Theft (971)	Theft (22)
Burglary (747)	Disturbing Public Order (18)
Disturbing Public Order (435)	Assault (7)
Aggravated or Grievous Assault (340)	Other (7)
Assault (314)	Burglary (5)

Data was obtained from the KPS, and includes the top five offences with juvenile suspects from 1 July 2006 – 30 June 2007.

This data indicates that there is little variation, where disaggregated by gender, in the offences commonly committed by juveniles.

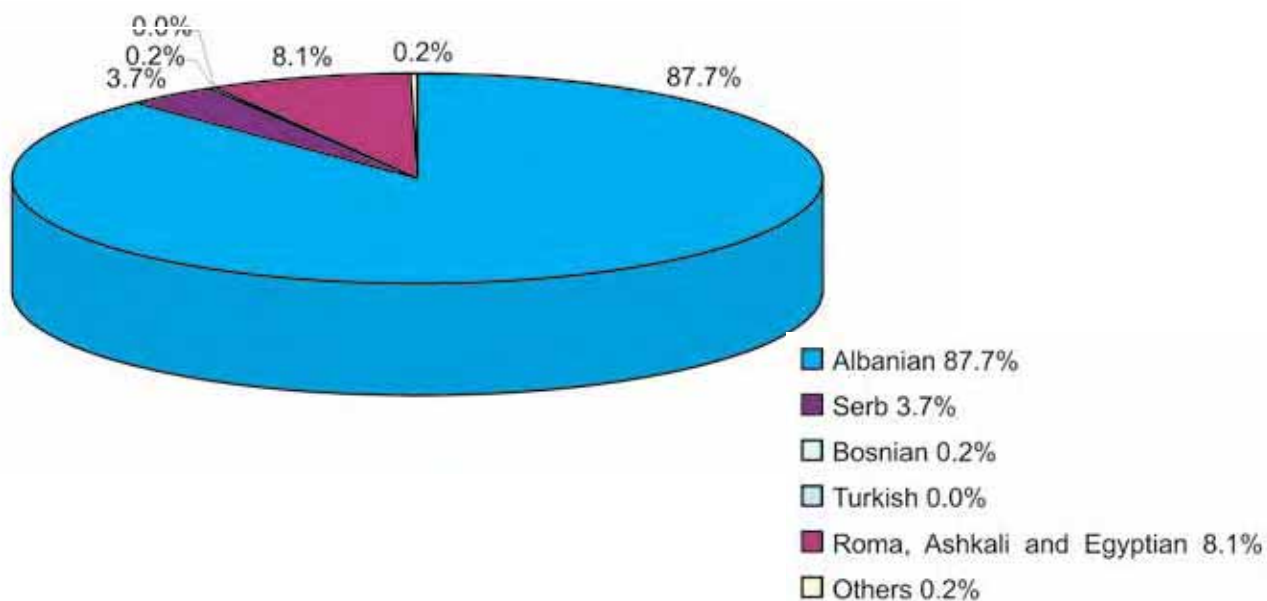
4.5 Juveniles in Conflict with the Law by Ethnicity

When disaggregated by ethnicity, the data suggests that the vast majority of offences committed by juveniles are committed by Albanians. This is not surprising, given that Kosovo-Albanians constitute the majority of Kosovo's population. Unfortunately, as an accurate population estimate on the number of children in Kosovo is not available, either as a whole-population estimate, or disaggregated by ethnicity, it is not possible to determine whether there are any significant variations on the grounds of ethnicity in the *rate* at which children come into conflict with the law.

significant proportion of children who are suspected of committing offences are Roma/Ashkali/Egyptian (RAE) children (8.1%). Unfortunately, the statistics do not provide a break down of the types of crimes commonly committed by RAE children. This is important to investigate further, for the purposes of providing a greater understanding of the nature of criminal behaviour by ethnicity, which will aid in the development of effective crime prevention strategies.

Again, when KPS data on juveniles aged 14 – 18 is analysed, it appears that Albanian children are by far more likely to come into conflict with the law (Table 2.6). Children of RAE ethnic backgrounds constitute only a small minority of children suspected of having committed an offence, in contrast to the relatively high proportion of RAE children

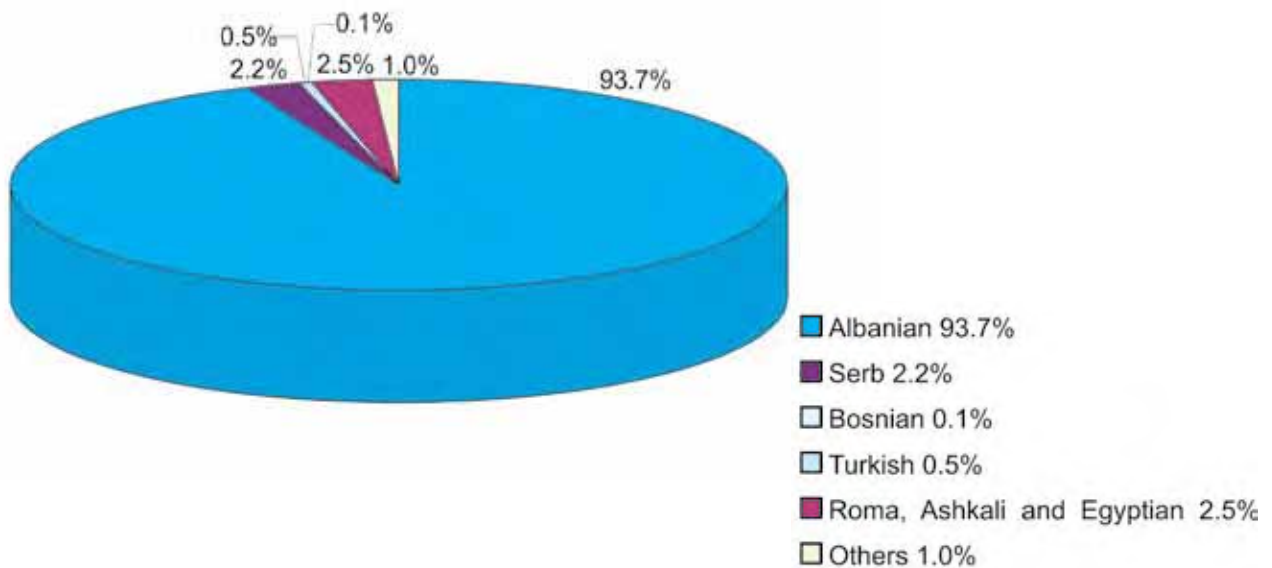
Table 2.5
Suspected offences committed by minors aged under 14 years by ethnicity



Data was obtained from the KPS and includes the total number offences with juvenile suspects, by ethnicity, from 1 July 2006 – 30 June 2007.

The KPS data on children aged under 14 years indicates that Albanian children are by far more likely to be suspected of committing a criminal offence than children from other ethnic groups (Table 2.5). It also appears that a

aged under 14 who are suspected of committing offences. We were not able to obtain any explanation for why the rate of crime for RAE children under the age of 14 is higher than for the 14-18 year old group.

Table 2.6**Suspected offences committed by juveniles aged 14 - 18 years by ethnicity**

Data was obtained from the KPS and includes the total number offences with juvenile suspects, by ethnicity, from 1 July 2006 – 30 June 2007.

4.6 Circumstances of Juvenile Crime

The data provided by the Kosovo Judicial Council indicates that a large proportion of offences committed by juveniles are committed in cooperation with others. Data extrapolated from court records of all juvenile convictions before relevant courts in a 12 month period (1 July 2006 – 30 June 2007) shows that, in 43% of these cases, offences were committed by juveniles in cooperation with others.⁴⁹ When compared to self-reporting data from the United Kingdom, for instance, it appears that a comparatively high proportion of juveniles in Kosovo are committing crimes with others, rather than individually. Self-reporting data collected in the United Kingdom in 2005 found that, of persons aged 10 – 25 who committed a ‘violent offence’, only 23% of offenders committed the crime with one or more co-offenders. Of persons aged 10 – 25

who committed a ‘property offence’, 35% committed the offence with one or more co-offenders.⁵⁰

Recommendations

- The Government should develop, in consultation with specialised statisticians, a standardised data collection strategy for recording, collecting and collating data on juvenile crime and the implementation of the juvenile justice system. The strategy should include: the identification of the data to be collected; which institutions are responsible for recording each type of data; which institutions should be responsible for collecting each type of data; and which institution should be responsible for collating the data.
- Train relevant staff (those responsible for recording information on juvenile crime and the juvenile justice system) in

⁴⁹ Data includes cases in which Kosovo Judicial Council data fields specify whether an offence was committed alone or in cooperation with others (which was identified in 539 out of 796 juvenile convictions in a 12 month period).

⁵⁰ Home Office, *Young People and Crime: Findings from the 2005 Offending, Crime and Justice Survey*, December 2005, Table A.3, p. 91.

local juvenile justice institutions (police stations, prosecutor's offices, Municipal and District courts, CSW offices and Probation Service offices) on the importance of data collection and how the standardised data collection systems should be implemented at the point of recording data.

- Develop systems for collecting and collating data at central levels, at: the Ministry of Justice, the Kosovo Judicial Council, the

Ministry of Internal Affairs, the Ministry for Labour and Social Welfare.

- Every year, the Ministry of Justice should appoint a juvenile justice expert to analyse the data collated by juvenile justice experts. This might be done at a public university in order to develop the capacities to analyse data on juveniles and monitor implementation of the code.



5 THE JUVENILE JUSTICE SYSTEM: DIVERSION

Article 40(3) of the UN Convention on the Rights of the Child places an obligation on states to promote measures to deal with children in conflict with the law without resorting to judicial proceedings.⁵¹ The JJC seeks to implement this principle through two different measures: non-initiation of preparatory proceedings and the use of diversion.

5.1 Non-Initiation of Preparatory Proceedings

The public prosecutor is under a duty to initiate preparatory proceedings against a juvenile if there is reasonable suspicion

The Treatment of Children under the Minimum Age of Criminal Responsibility

Children in Kosovo who commit an offence but are under the age of minimum criminal responsibility (14 years), will be referred by the police to the relevant CSW (Article 38 JJC). According to interviews with CSW staff, the CSW is unable to offer material support to such children, but can offer a range of social work inputs, including family support and support with ensuring regular school attendance. The extent and nature of the support offered by the CSWs to this group of children requires further investigation, as it is important to ensure that these children receive necessary support to protect their wellbeing and minimize the likelihood that they will re-offend.

⁵¹ The UN Committee on the Rights of the Child stated in General Comment No 10 (2007): Children's Rights in Juvenile Justice CRC/C/GC/10 (9th February 2007 para 11) that diversion measures should be a 'well established practice that can and should be used in most cases'.

that he or she has committed a criminal offence.⁵² However, where the offence is punishable by imprisonment of less than 3 years or a fine, the prosecutor has the discretion to not initiate proceedings, discontinue or terminate the proceeding according to Article 58.1 of the Code.⁵³ In reaching a decision not to initiate preparatory proceedings, the prosecutor should take into account the nature of the offence, the circumstances under which it was committed, the absence of serious damage or consequences for the victim and the juvenile's past history and personal characteristics. It was mentioned in interviews with prosecutors and CSW staff that the CSW will be notified where a prosecutor decides not to initiate preparatory proceedings, in accordance with Article 54(3) JJC.

It was not possible to obtain Kosovo-wide figures for non-initiation of preparatory proceedings under Article 54, due largely to the lack of uniformity in data categories used in the Public Prosecutor's offices, and the lack of disaggregation between the different causes of dismissal or non-initiation of prosecution. However, data obtained from all Municipal Prosecutors' offices can be used to give an indication on the extent to which juvenile cases are dismissed.

The data in Table 3.1 shows the total number of juvenile cases referred to municipal prosecutors. It is not possible to tell from the figures whether cases are dismissed as a result of the prosecutor exercising his discretion not to initiate preparatory proceedings under Article 54 and how many did not proceed for other reasons, for instance, a lack of evidence to substantiate charges. The figures do indicate, however, indicate that, in some regions, particularly in Pejë/Peć and, to a lesser extent, Prizren a significant proportion of cases are dismissed once they are referred to Prosecutors offices. Cases are not frequently dismissed

⁵² Article 53 JJC

⁵³ Article 58(1).

**Table 3.1****Cases dismissed out of total cases received by Municipal Court prosecutors**

in other regions, particularly in Gjilan/Gnjilane and Mitrovicë/Mitrovica. It would be helpful to obtain data on the extent of non-initiation under Article 54, and to know the factors that influence prosecutors to use non-initiation rather than diversion. In particular, whether this course of action is preferred to diversion and why, and whether non-initiation of preparatory proceedings is as effective in preventing recidivism diversion.

5.2 Diversion

In accordance with Article 40(3) of the UN Convention on the Rights of the Child, the JJC introduces the possibility of diversion for certain juveniles. Article 13 sets out the purpose of diversion, which is to prevent the commencement of proceedings against a juvenile offender whenever possible, and to promote positive rehabilitation and re-integration of the juvenile into his or her community, thus preventing recidivist behavior.

Diversion is permitted⁵⁴ where a juvenile has committed a criminal offence punishable by a fine or by imprisonment of three years or less, and:

- a) The child has admitted the offence; and

- b) Has expressed readiness to make peace with the injured party; and
- c) The child, or the parent or guardian on the child's behalf, consent to the diversionary measures.

The JJC does not explicitly set out the procedure to be applied when considering and referring a case for diversion. The power to refer a juvenile for diversion lies normally with the prosecution, as the purpose of the measure is to prevent the juvenile being involved in judicial proceedings, with the consequences of labeling and stigmatization. However, judges also have the power to make an order for diversion, even though the purpose of diversion is to prevent the *commencement* of proceedings against a juvenile, rather than divert part-way through.

Article 50(2) provides that the juvenile judge may impose a diversion measure if the conditions in Article 14 are fulfilled. This will result in the proceedings being stayed and there being no main trial.⁵⁵ In addition, Article 67(3) provides

⁵⁵ The Article does not make it clear whether judges may exercise this power only at confirmation hearing (Article 309 Provisional Criminal Procedure Code).

⁵⁴ Article 13 JJC

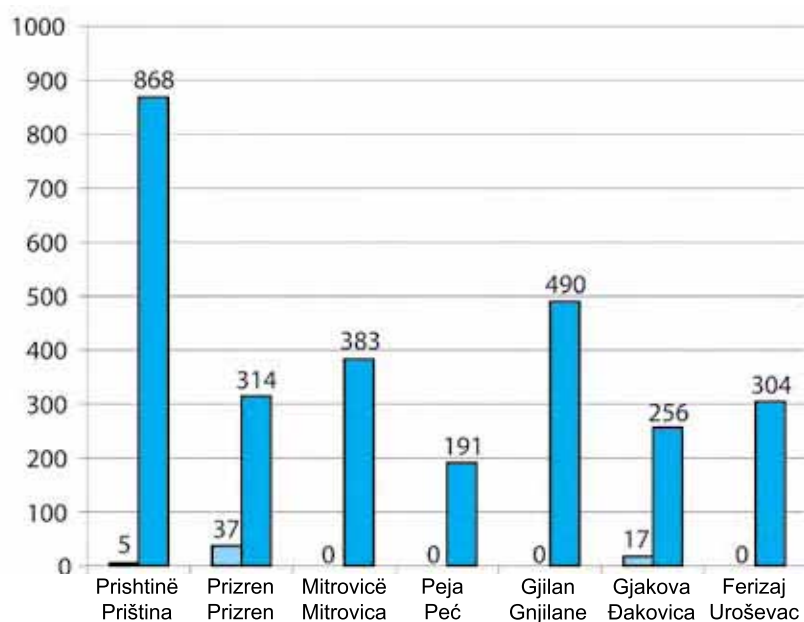
that at the main trial itself, the juvenile panel may terminate the proceedings by imposing a diversion measure if, once again, it finds the conditions under Article 14 are fulfilled. In both cases, the judge is required to summon the juvenile and parents or guardians and defense counsel before making such an order.

Interestingly, under the JJC, judges do not appear to have the power to refer a case back to the prosecutors for reconsideration of the appropriateness of diversion measures. Further, it would appear that defense counsel cannot appeal the refusal of the prosecutor to make a diversion order, but there is nothing to prevent defense counsel asking the judge to make such an order.

threshold requirements.

Although Article 1(2) of the JJC requires that juvenile offenders “*must be considered for diversion measures where appropriate,*” it is not clear that in practice, this Article is being implemented. Not only are prosecutors making little use of Article 14 diversion, but interviews with prosecutors show that few even consider the possibility. Data obtained on the use of diversion from all seven Municipal Court Prosecutor’s Offices handling juvenile cases indicates clearly that diversion measures were used in only a small number of cases, over a 12-month period (1 July 2006 – 30 June 2007).

Table 3.2
Cases resolved by Municipal Court prosecutors, by use of diversion measures



Data was collected from Municipal Court Prosecutors’ Offices and includes all recorded juvenile cases.⁵⁶

We found no evidence that defense counsel are using this opportunity. While Article 50(1) of the JJC gives prosecutors the power to impose diversion measures, it is recommended that the JJC be amended to place prosecutors under a clear statutory duty to consider diversion in order to ensure that this measure is duly considered in each case meeting the

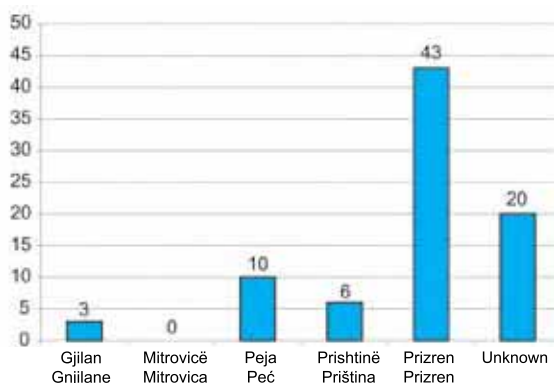
The data contained in Table 3.2 shows that prosecutors in Prizren and, to a

⁵⁶ Collated data was collected from Gjakovë/Đakovica and Ferizaj/Uroševac centrally from the Ministry of Justice. In other regions, raw data was collected from the prosecutors’ record books. The timeframe for this data is 1 July 2006 – 30 June 2007 for all regions except Gjakovë/Đakovica and Ferizaj/Uroševac, in which the date range is 1 January – 31 December 2007. Data from 2006 was not readily available, so researchers obtained data from 1 January – 31 December 2007.

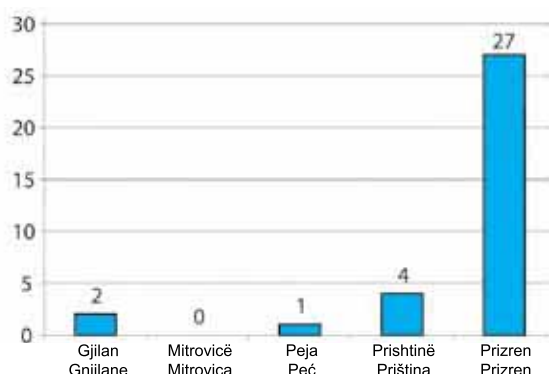


Table 3.3

Diversion measures implemented by the Kosovo Probation service by region, 2006



Diversion measures implemented by the Kosovo Probation service by region, Jan - June 2007



Data was obtained from the Kosovo Probation Service.

lesser extent, Gjakovë/Đakovica are making regular, if low level, use of diversion measures. Prishtinë/Priština, however, which has the largest number of juvenile offenders in the country, referred only 5 cases for diversion over a 12-month period. Prosecutors in the remaining 4 areas did not refer any cases at all during the time period for which data was collected. It is possible that this data does not record all cases in which diversion measures were used, as the records in a significant number of the prosecutor’s office were incomplete. In order to examine whether there were more cases of diversion than could be found in the prosecutor’s records, the researchers undertook interviews with prosecutors (which confirmed the very low rate of diversion) and obtained data from the Probation Service on the number of pre-trial referrals received. The number of diversion cases referred to probation were 82 cases in 2006 and 34 (27 in Prizren, 4 in Prishtinë/

Priština and 3 in Gjilan/Gnjilane) in the first six months of 2007 (Table 3.3).⁵⁷ There is a discrepancy between the number of juveniles recorded as being referred for diversion measures by the prosecutors’ offices, and those recorded by the Probation Service as having been referred. The reason for this is, in part, that the Probation Service data includes not only new referrals but ongoing cases of juveniles who were referred prior to 1 July 2006. In addition, owing to the poor record keeping in some prosecutor’s offices, it is likely that not all juveniles referred for diversion were recorded as such.

5.2(a) Which offences was diversion used for?

The data obtained from Municipal Court

⁵⁷ This data records the number of juvenile offenders referred to the Kosovo Probation Service to undergo diversion measures, as well as those completing and having completed diversion measures in the relevant time periods.

Prosecutors shows that in Prizren, diversion measures were imposed for the following offences: light bodily harm (11), theft (9), taking / destroying official stamps or documents (7), endangering public traffic (4), counterfeiting (2), threat to harm (1) and unauthorised border crossing (1). In Prishtinë/Priština, diversion measures were imposed for misappropriation (3) and fraud (2). The low use of diversion is all the more surprising given that the majority of offences juveniles commit are offences that are punishable by a sentence of less than three years, notably theft or other minor property offences and common assault (which accounted for 1,277 and 744 of suspected offences by 14 – 18 year olds recorded by the Police from 1 July 2006 – 30 June 2007)

It is difficult to determine an accurate percentage of juvenile cases in which diversion was used. While we know that 4,317 offences had juvenile suspects aged 14 – 18, we do not know the process once these offences reach prosecution, thus we do not know how many there was a decision not to initiate preparatory proceedings, either because of insufficient evidence or due to a decision to discontinue preparatory proceedings under Article 54 JJC. Nor do we know in how many cases the prosecutor's office used their discretionary power not to initiate preparatory proceedings even though there was reasonable evidence to suspect that the juvenile had committed an offence. Further, we do not know how many cases involving a juvenile offender progressed to a main trial, or how many were acquitted. We do know, however, the number of juveniles who were convicted of crimes. If we take this figure (796 juveniles convicted), the proportion of juveniles being convicted as against the number being referred for pre-trial diverted is 796 to 41 during a 12-month period⁵⁸

⁵⁸ Data records the total number of juveniles convicted by the courts in a 12-month period (1 July 2006 – 30 June 2007) against the number newly

which is another indication of the low level use of diversion.

5.2(b) Applicable diversion measures

The types of diversion measures that can be imposed on a minor offender are⁵⁹:

- 1) Mediation between the minor and the injured party, including an apology by the minor to the injured party;
- 2) Mediation between the minor and his or her family;
- 3) Compensation for damage to the injured party, through mutual agreement between the victim, the minor and his or her legal representative, in accordance with the minor's financial situation;
- 4) Regular school attendance;
- 5) Acceptance of employment or training for a profession appropriate to his or her abilities and skills;
- 6) Performance of unpaid community service work, in accordance with the ability of the minor offender to perform such work;
- 7) Education in traffic regulations; and
- 8) Psychological counseling.

Data was sought from Prosecutor's Offices on the type of diversion measure that was used. However, the only region that appears to record this information is Prizren.

The data indicates that, even in Prizren, which has the highest rate of use of diversion measures, not all diversion measures are utilised. Prosecutors in Prizren rely quite heavily on mediation between the minor and injured party (which accounts for 69.0% of all diversion measures imposed). Other measures have either not been imposed at all

referred to the Kosovo Probation Service in a 12-month period (1 January – 31 December 2006).

⁵⁹ Article 15 JJC

during the 12 month period (mediation between the minor and his family, employment or training for a profession and community service work) or not imposed very frequently: compensation for damage to the injured party (4.8%), regular school attendance (7.1%), education in traffic regulations (7.1%) and psychological counselling (17.2%) are not utilised very frequently.

Table 3.4

Total diversion measures imposed by prosecutors in Prizren by type of measure between 1st July 2006 and 30th June 2007	
Mediation between the minor and the injured party	58
Mediation between the minor and his family	0
Compensation for damage to the injured party	4
Regular school attendance	6
Employment or training for a profession	0
Community service work	0
Education in traffic regulations	6
Psychological counselling	10

Interviews with Municipal Court prosecutors and probation officers showed that the decision to use a limited range of diversion measures related to the limited capacity of probation offices to provide the full range of measures. The high use of diversion in Prizren appears to be facilitated by the institutional capacity of the probation service to carry out mediation, which is regarded as successful in resolving cases and preventing recidivism by the Prosecutor's Office. In Prishtinë/Priština, by contrast, the probation service regards mediation as being beyond their capacity at present. As no other

institution in Prishtinë/Priština has a mandate to carry out mediation, the view of the Prishtinë/Priština Municipal Court Prosecutor was that diversion measures cannot be imposed. This contradicts Article 79 of the JJC, which mandates the Probation Service to execute diversion measures imposed by prosecution or judges. Article 79 imposes an obligation on the relevant Probation Service office to execute mediation as a diversion measure.

In all regions, criminal justice professionals reported that the option of paying compensation to the injured party is not one that can be regularly used due to the fact that the majority of juvenile offenders and their parents simply do not have the financial means. There was also a degree of confusion and reluctance to use community service orders. Prosecutors and probation officers in some regions claimed in interviews that a community service order can only be imposed as a punishment and not as a diversion measure, demonstrating the lack of understanding of diversion and its purpose. Several interviewees also raised concerns about imposing a community service order as diversion measure on a child from the age of 14, when such orders can only be imposed as a punishment for a juvenile when they reach the age of 16. This factor appeared to contribute to a reluctance on the part of several prosecutors to impose community service as a diversion measure.

Prosecutors also referred to the difficulty of referring a juvenile for psychological counselling as a diversion measure, due to the lack of relevant institutions and facilities. The lack of institutional capacity to implement the diversion measures contained in Article 15 appears to have a significant and unfortunate impact on the use of diversion generally by the prosecutors.

5.2(c) What are the obstacles to the use of diversion measures?

The data indicates very clearly that there is a low level of use of diversionary measures. The reasons for this, it is argued after reviewing the quantitative and qualitative evidence, are partly due to the inevitable problems faced in implementing new concepts and practices contained in the JJC, as well as a lack of understanding of what the new JJC requires, too little training of professionals who have responsibility for implementing the law, a lack of finance to implement the law fully, the lack of procedure within the law and the failure to provide a practice guide to assist prosecutors. A range of inputs is needed to address the low use of diversion, including amendments to the JJC.

1. New concepts: understanding the law, training and specialisation

The concept of diversion is new to the criminal justice system in Kosovo, and is not always well understood by criminal justice professionals. Interviews with Municipal Court prosecutors indicated that there was a lack of familiarity with the Articles relating to diversion measures contained in the JJC. Prosecutors were confused between post-sentence non-custodial measures and diversion. They had a poor understanding of the utility and purpose of diversion measures, and how diversion measures can be used to minimise the workload of prosecutors by removing juvenile offenders from the court system. The general low level of knowledge and understanding of diversion inevitably contributes to a low, or non-existent, level of referral.

An illustration of this confusion was the view of prosecutors in some areas where diversion use is either low or non-existent, that diversion measures

were used 'often'. When questioned further it became clear that reference was being made to post-sentence education measures. In addition, several prosecutors did not appear to know that community service could be imposed as a diversion measure, and indicated that community service could only be imposed as a sentence or punishment.

Most Municipal Court prosecutors had not considered the impact that diversion measures could have in reducing their heavy workload, nor the intrinsic value of diversion for juveniles. Interviewees identified a lack of time and heavy individual workloads as an obstacle to the imposition of diversion measures. Municipal Court Prosecutors stated that in their view diversion took a considerable time to impose and that juvenile cases generally took longer to prepare than adult cases. Interestingly, in Prizren, where diversion is used on a regular basis, the Municipal Court prosecutor noted that such cases normally take only 2 – 3 hours of prosecution time, much less than a case that proceeds to trial. Unlike other regions, the Municipal Court prosecutor in Prizren also regarded diversion measures as valuable and successful in encouraging the rehabilitation of juvenile offenders and did not perceive any obstacles to the imposition of diversion measures.

Information gained from the interviews suggests that there has, in general, been insufficient training provided to Municipal Court prosecutors. Most interviewees told us that they had taken part in training sessions on juvenile justice and the JJC organised by the Kosovo Judicial Institute or Terre des Hommes. We were told that most training sessions lasted a day. We have not seen the training programme delivered but in our view, it has not been sufficiently effective in skilling-

up prosecutors to the required level. It is recommended that municipal prosecutors receive systematic, in-depth, inter-active training on the JJC, with a particular focus on the value and use of diversion. This training needs to be supplemented on a regular basis, and at least every 6 months. Further, in order for the training to have long lasting impact, a procedural and practice guide to diversion needs to be produced by the General Prosecutor's Office, Kosovo Judicial Council, Kosovo Judicial Institute or the Ministry of Justice.

It is recognised that there are no specialised juvenile prosecutors at the Municipal Court level. With the exception of Gjilan/Gnjilane, none of the Municipal Court prosecutor's offices in Kosovo have a specialised prosecutor working exclusively on cases involving juvenile offenders (although in Gjakovë/Đakovica, Pejë/Peć and Ferizaj/Uroševac it appears that informally, all juvenile cases tend to be referred to one prosecutor). The absence of specialised juvenile prosecutors may help to explain the apparent lack of familiarity with the JJC's provisions on diversion measures and general knowledge on the utility and purpose of diversion measures. It is recommended that a limited number of prosecutors be nominated as juvenile prosecutors in each area. As resources are limited, it would be more cost-effective to train a limited number of specialised juvenile prosecutors in depth rather than train all prosecutors at a superficial level. We consider that this approach would result in an increase of capacity in the local prosecutor's office and would lead both to a higher level of implementation as well as uniformity of implementation of the JJC provisions.

2. Thresholds for diversion

(a) *Term of imprisonment*

Article 14 sets the threshold for

diversion measures. Only offences punishable by a term of imprisonment of less than three years can be considered. Whilst juveniles in Kosovo predominantly commit minor offences that fall under this threshold, such as theft and other minor property offences, a significant number of juveniles in conflict with the law in Kosovo are suspected of having committed offences that attract a punishment of more than three years imprisonment. For instance, the offence of unauthorised ownership, control, possession or use of a weapon attracts a sentence of more than three years imprisonment, and thus there can be no consideration of diversion for such cases. However, according to statistics from relevant courts, offences concerning weapons are in the top five most common offences for which juveniles appear in relevant courts in two regions (Pejë/Peć and Prishtinë/Priština: see above). This raises the question of whether the threshold is too rigid, and whether setting a threshold which is related to the possible years of imprisonment rather than whether the child poses a risk to the community and is willing to address his offending behaviour is compliant with international standards and norms. It is suggested that consideration be given to changing the Article 14 criteria on the years of imprisonment. At the very least it is recommended replacing the three year criteria with a five year criteria. This would mean that Municipal Court prosecutors could exercise their discretion (where other criteria contained in article 14 are met) in relation to *any* juvenile offender coming under their jurisdiction. It is, however, preferable to see more child-specific and child-focused criteria in Article 14.

(b) *Making peace*

One of the three criteria set out in Article 14(2) is that a juvenile offender must express a willingness to make peace

with the injured party before a referral for diversion can be made. Prosecutors from regions in which diversion measures are not regularly imposed appear to be interpreting this part of Article 14 as requiring a formal meeting and conciliation between the juvenile and the injured party. This presents practical difficulties, including the need to coordinate time schedules, the willingness of the injured party to agree, the inconvenient location of the offices, lack of office space (meeting rooms) and so on. In Prizren, where diversion measures are imposed much more regularly, this provision is interpreted quite differently. A short meeting is held with the juvenile, in which the prosecutor establishes whether he or she is remorseful and will agree to compensate the injured party if appropriate (e.g. in a case of theft, by agreeing to hand back the object/s stolen). If satisfied that the juvenile is remorseful etc, the prosecutor can refer the case for diversion.

Given that Article 14 only requires the offender to *express a willingness to make peace with the injured party* there would appear to be no necessity for prosecutors to initiate a face-to-face mediation session between the offender and injured party before deciding whether to refer the juvenile for diversion. The criteria should apply to the juvenile offender and not to the victim of the offence. Provided the juvenile offender has expressed a willingness to make peace that is all that is necessary. Practice guidance for prosecutors should provide a clear interpretation of this provision.

3. Measures of diversion

As mentioned above, many of the diversion measures contained in the JJC are not available at local level. While this is a problem, so too is the prescriptive nature of the measures. It is not clear that the measures contained in Article 15 provide fully for the needs of

juveniles in conflict with the law. In order to meet current notions of good practice in juvenile justice, it is suggested that Article 15 should be amended to make the measures more child-focused. It is suggested that, rather than specifying particular measures, the JJC should provide that when a juvenile offender is referred for diversion, the probation service must undertake an assessment of the child and draw up a diversion plan, together with the child, setting out the action to be taken to enable the child to address his offending behaviour. This would allow diversion measures to be tailored to the child's needs. This might include the use of mediation, but in some cases it might be thought more appropriate to focus on working with the family, behaviour management or involving the juvenile in some form of activity. The diversion plan should be regarded as a contract between the juvenile, the parents and the probation service. The juvenile should be required to agree and to sign the 'contract' to make it clear to the child that he or she is an active participant in the plan. Such a change would also enhance professional practice within the probation service and give it more flexibility to develop in a way that meets local needs.

4. Professional conduct, procedure and internal accountability

Article 1(2) of the JJC requires that juveniles be considered for diversion where appropriate. The responsibility for 'considering' falls first and foremost on prosecutors, but the quantitative and qualitative data gathered shows a very low level of 'consideration'. We consider that while inadequate levels of training and understanding of the concept of diversion play their role in this, so too does the lack of procedure within the Code. There is not enough guidance available to prosecutors detailing the steps to be taken and the information to be considered in reaching a decision on whether or not to

refer a juvenile offender for diversion. It is recommended that that guidance to that effect is issued by the Office of the Public Prosecutor of Kosovo and the Kosovo Judicial Council for prosecutors and judges on how to impose diversion. Individual prosecutors do not appear to have supervision sessions with their seniors in which their use of diversion is discussed and cases reviewed, and thus there is no check on whether or not prosecutors are complying with Article 1(2). It is recommended that the Office of the Public Prosecutor of Kosovo together with the Kosovo Judicial Council, should hold discussions with the Minister of Justice and set targets for diversion and these targets are monitored in municipal prosecutor's offices. The performance of the seven municipal prosecutor's offices dealing with juveniles should be reviewed regularly, and at least twice a year against these targets. It is recommended that the review be undertaken by a local Juvenile Justice Committee (see below) in each area.

5. The power of judges

Judges do not appear to be using their power to impose diversion measures on juvenile offenders, either by suspending prosecution before a main trial (under article 50(2)) or by halting a main trial mid-way through in order to impose a diversion measure (under article 67(3)). Very few of the judges that we spoke to during the course of the research used their power to make an order for diversion.

By the time a case reaches the main trial it is debateable whether making an order for diversion meets the purpose of such a measure, which is to prevent the juvenile becoming involved in judicial proceedings. It is recommended that the legislation be re-considered. Rather than give the juvenile panel the right to order diversion at the main trial, it is recommended that at the first hearing the prosecutor should be under a duty to

file a statement with the judge showing that diversion has been considered and setting out the reason why a decision has been made not to refer the juvenile for diversion. Judges should have the power to order the prosecutor to re-consider the possibility of diversion where, in the view of the judge: the prosecutor has failed to consider the possibility of diversion; has not had sufficient evidence before him to make a decision; or has been unreasonable in making a decision not to refer the juvenile for diversion. The judge should also retain the power to make an order for diversion on his or her own motion, but only where the prosecutor has acted unreasonably in failing to refer a juvenile for diversion.

It is important for prosecutors to develop a practice of considering, in every case, whether a juvenile should be pre-trial diverted in accordance with Article 1(2) of the JJC. Giving the judge a power to refer a case back to the prosecutor where this has not been done would, in our view, contribute to the better implementation of the JJC.

6. The lack of co-ordination

The use of diversion is generally hampered by the lack of co-ordination between the main criminal justice professionals. Our research indicated that while the judges and prosecutors had a reasonable amount of communication, there was very little communication between the probation service and the CSW, hampering the ability to produce meaningful social enquiry reports. There was on occasions an overlap between probation and CSW with both bodies undertaking very similar work with the same child. In addition, there was often poor communication between the prosecutor's office and the probation service, yet good communication is essential if the system of diversion is to work. Overall, there was too little discussion and review of how the

JJC was being implemented at local level by the main stakeholders.

It is recommended that consideration be given to setting up a Juvenile Justice Committee that meets no less than once every two months. This Committee would include municipal court judges, a representative of the local prosecutor's office, the KPS, the probation service and the CSW. The Committee should be responsible for ensuring good communication between the different bodies and should review the implementation of the JJC on a regular basis. In particular, the Committee should review the use of such matters as diversion, the nature of diversion programmes, what can be offered at local level to meet local need, delays in getting cases to court etc. If targets are set, this Committee should assess the extent to which targets are met.

5.3 Conclusion

By including the new concept of diversion, the JJC sought to comply with international standards and norms. Unfortunately, in practice, few children in conflict with the law have benefited from diversion. The reasons for this are numerous and include the difficulty of implementing new practice, insufficient training on new concepts and practices, the lack of a procedural and practice guide, the lack of capacity in the probation service, poor communication etc. The low level of use of diversion should not be seen as a failure of the system, but as an opportunity to amend the JJC to meet children's needs, and to streamline practice. In conducting this evaluation, we have made a number of recommendations for change, which we have brought together below.

Recommendations

- Establish juvenile prosecutors, or as an interim minimum measure, nominate a limited number of prosecutors to address cases involving juveniles in each region.
- Ensure that juvenile prosecutors receive systematic, in-depth, interactive training on the JJC, with particular focus on the value and use of diversion. Supplementary training should be provided at least every 6 months.
- Ensure that the Kosovo Judicial Council and the Office of the Public Prosecutor of Kosovo develop a procedural and practice guide to diversion. This should include guidance on the interpretation of Article 14 criteria.
- Consideration should be given to changing the Article 14 criteria away from a minimum term of imprisonment for the offence to a more child-specific and child-focused criteria, using notions of seriousness and circumstances of the offender and offence. Alternatively, consideration should be given to raising the term of imprisonment threshold from three to five years. Additionally, ensure that guidance for prosecutors and judges is developed to define the steps to be taken in reaching a decision or not to refer a minor to diversion.
- Amend article 15 JJC: rather than limiting the form of particular diversion measures, the JJC should add to the list of diversion options "other educational measures" which the municipal prosecutor or judge can devise. In such cases, the Probation Service should undertake an assessment

and draw up a plan together with the child, setting out the details of the action to be taken to enable the juvenile to address his or her offending behaviour.

- Establish an internal review process in each Municipal Prosecutor's office for review of juvenile files to ensure that diversion is considered for all cases within the JJC's threshold.
- Establish a Juvenile Justice Committee, including Municipal Court judges, a representative from the local prosecutor's office, the Kosovo Police Service, the Kosovo Probation Service and the CSW, to ensure good communication between different juvenile justice institutions and review of the implementation of the JJC on a regular basis.
- The Office of the Public Prosecutor of Kosovo / Kosovo Judicial Council should set targets for diversion.
- The Juvenile Justice Committee should review the performance of all seven Municipal Prosecutors' offices dealing with juvenile cases against these targets at least twice a year.
- Amend the JJC to provide that:
(a) at the first hearing of a juvenile case, the prosecutor be under a duty to file a statement with the judge showing that diversion has been considered and setting out the reason/s why diversion was not used; and (b) giving the judge the power to order the prosecutor to re-consider re-trial diversion.



6 THE JUVENILE JUSTICE SYSTEM: NON-CUSTODIAL SENTENCING

The JJC contains a number of non-custodial sentencing options, which are available to judges when a juvenile is convicted of a criminal offence. Article 6 divides the non-custodial sentencing options into measures (diversion measures⁶⁰ and educational measures) and punishments, which include fines and orders for community service work. The judge may sentence a convicted juvenile to ‘measures’ only, and may not impose a ‘punishment’, if he or she was under the age of sixteen years at the time of the commission of a criminal offence.⁶¹ A judge may also impose a mandatory psychiatric or rehabilitative treatment measure on a juvenile.⁶²

The purpose of educational measures, according to Article 16 of the JJC is: “to contribute to the rehabilitation and proper development of a juvenile offender, by offering protection and assistance and supervision, by providing education and vocational training and by developing his or her personal responsibility, and thereby preventing recidivist behaviour.” An educational measure “shall be executed with respect for the personality and dignity of the minors, encouraging their physical, moral and intellectual development and protecting their physical and mental health”⁶³

Non-custodial educational measures that may be imposed as a sentence under the JJC include: judicial admonition

⁶⁰ For a discussion of diversion measures see chapter 5.

⁶¹ This means that a child under the age of 16 may not be sentenced to a term of imprisonment

⁶² Article 6(6) and Chapter IX JJC.

⁶³ Article 81(1)

(Article 18), committal to a disciplinary centre (Article 19), intensive supervision by a parent, adoptive parent or guardian (Article 20), intensive supervision in another family (Article 21) and intensive supervision by the Guardianship Authority (Article 22). However, not all of these measures are available in practice.

Article 7(3) of JJC provides that before selecting any measure or punishment the court shall, other than in minor offences, request a social inquiry report from the probation service together with a recommendation as to the appropriate measure or punishment. The probation services are placed under a duty to complete a social inquiry on the juvenile either at the request of the public prosecutor, the juvenile judge or the court.⁶⁴ The social inquiry report must include information about the child’s age and psychological development, family background, the background and circumstances in which the child is living, school career, educational experiences, the conditions under which the criminal offence has been committed and any other relevant information.

In addition to the requirement to obtain a social inquiry report before passing sentence, Article 7 JJC also requires that when selecting any measure of punishment the court shall, in accordance with the UN Convention on the Rights of the Child, “give primary consideration to the best interests of the minor”. The Article further requires that judges consider the gravity and type of offence, the child’s age and personal characteristics, including his or her psychological development, character and aptitudes, motive, education, personal life circumstances, whether any measure or punishment has been previously imposed and any other circumstances or relevant information.⁶⁵

⁶⁴ Article 7(2) JJC

⁶⁵ Article 7(1) JJC

6.1 Social Inquiry Reports

Social inquiry reports assist the judge in reaching a decision on sentencing. Such reports should be compiled once the court has found the juvenile guilty of an offence, or the juvenile admits his or her guilt. The comprehensiveness and quality of social inquiry reports produced by the probation service will inevitably have an impact on judges' sentencing decisions. In interviews undertaken with judges and prosecutors, both groups of professionals emphasised the importance of considering social inquiry reports in making sentencing decisions and recommendations and both relied quite heavily on the reports. Most prosecutors and judges interviewed considered the social inquiry reports to be of reasonable to good quality and sufficiently comprehensive. The few negative comments concerned the need for more in-depth focus on the social and economic conditions of the child and the child's parent/s, and the need for more detail on the relationship between the offender and injured party.

In order to obtain an objective assessment on the content and quality of social inquiry reports, a total of 69 randomly selected reports were collected from every Probation Service office in Kosovo. These reports were reviewed by a former juvenile judge against a series of quality indicators, which were developed by the authors. The peer review indicated that, while the reports were generally quite comprehensive, they contained gaps. The most notable gap was the lack of information from CSW offices. This information can be invaluable to the court and can also save the probation service a great deal of time as much of the basic information on a child and the family will already be available if there is a CSW file.

The interviews with probation officers and CSW staff indicated that, on the

whole, probation officers felt that there was good cooperation between themselves and the CSWs. However, interviewees from every CSW office except Prizren and Ferizaj/Uroševac stated that generally, coordination between the Probation Service and CSWs was poor, and that probation officers did not consult their records when drafting social inquiry reports on juvenile offenders to determine whether a file had already been established in the child and family. As children under the age of 14 who commit an offence are passed by the KPS to the relevant CSW office (Article 38), the CSWs are an invaluable source of information on the circumstances and background of juvenile offenders.

The peer review recommended that probation officers, when undertaking a social inquiry report on a juvenile offender, should always ask CSWs if the child is known to them and whether they have a file on the child. The peer review also recommended that reports should contain medical documentation and information from the child's school (this information is normally collected from the child's parents and not verified). The review also highlighted the need for more comprehensive information on the character and personality of juvenile offenders.

One note of concern raised in the interviews with probation officers was that probation officers have heavy workloads. As a result, imposing further tasks on them may be unrealistic. At present, probation officers do not specialise and there are no probation officers focusing solely on juvenile offenders. It is recommended that specialist posts for probation officers working with juvenile offenders be developed and that only trained, specialist juvenile probation officers should draft social inquiry reports.

The juvenile probation specialists should work closely with CSW staff, both in order to obtain information on juvenile offenders, and to formulate appropriate recommendations on sentencing to the court. It is recommended that in all cases where the probation service is asked to write a social inquiry report, the probation officer should contact

the CSW in the area in which the child resides to see if CSW already hold a file on the child and/or the family. It is also recommended that the relationship between the probation service and the CSWs be formalised. This should include regular meetings to share information and a protocol on information sharing and consultation.

Table 4.1

Measure / Punishment	Content of Measure / Punishment (JJC)	Availability
<i>Educational Measures</i>		
Judicial admonition (article 18)	Judicial reprimand and caution by the court.	Available
Committal to a disciplinary centre (article 19)	The committal of a juvenile to a centre (for a maximum of 4 hours a day for one month or 4 days of a school holiday for up to 8 hours a day), where he or she will be engaged in “useful activities”, which aim at developing the juvenile’s sense of responsibility.	Not available in practice – no disciplinary facilities in existence
Intensive supervision by a parent, adoptive parent or guardian (article 20)	The court may give a juvenile’s parent / guardian certain duties to fulfil. This measure will be supervised by the PS.	Available
Intensive supervision in another family (article 21)	The court may order the measure of intensive supervision in the family to be carried out in another family. This measure will be supervised by the PS.	Very limited availability – no registrars of suitable families / foster carers exist in Kosovo.
Intensive supervision by the Guardianship Authority (article 22)	The Court can order this measure where the juvenile’s parent / guardian is incapable of carrying out the intensive supervision, but where the juvenile can reside with their parent / guardian. The court, when imposing this measure, will define the duties of the juvenile, including overseeing the his or her education, facilitating access to training, access to medical care and other duties.	Available

Committal to an educational institution (article 24)	Full time supervision by “appropriate educators” for a time period between three months and two years.	Not available – no educational institutions exist in Kosovo.
Committal to an educational-correctional institution (article 25)	Where a juvenile requires special education and has committed an offence punishable by imprisonment of more than 3 years. The term of the sentence may be between one and five years.	Limited availability - juveniles currently sentenced to this measure must carry out their sentence in Lipjan/Lipljane, owing to the lack of availability of other suitable institutions.
Committal to a special care facility (article 26)	This may be imposed on a juvenile where he or she requires special care due to a mental disorder or physical disability.	No availability – no special care facilities exist in Kosovo

<i>Punishments</i>		
Fine (article 27)	A fine may be imposed on a juvenile where he or she has the means to pay the fine.	Available
Community service (article 28)	The court may order the juvenile to perform unpaid community service work for a specified term of between 30 and 100 hours (within a period not exceeding one year). The probation service must implement a community service order, including determining the type of work and the organisation at which the work must be performed.	Available
Juvenile imprisonment (chapter VIII)	The court may impose a term of imprisonment on a juvenile offender who is sixteen years or above and the imposition of an educational measure would not be appropriate due to the seriousness of the offence, the consequences and level of responsibility of the juvenile.	Available

Table 4.1 shows that, while there is a range of non-custodial sentencing options open to judges, in reality the options are extremely limited. This inevitably impacts on the extent to which judges are able to choose an appropriate and effective sentence which is “in the best interests of the child”.

Data provided by the Kosovo Judicial Council on juvenile cases coming before the Municipal and District Courts in Kosovo over the period 1 July 2006 to 30 June 2007, provides evidence on the measures and punishments being ordered.

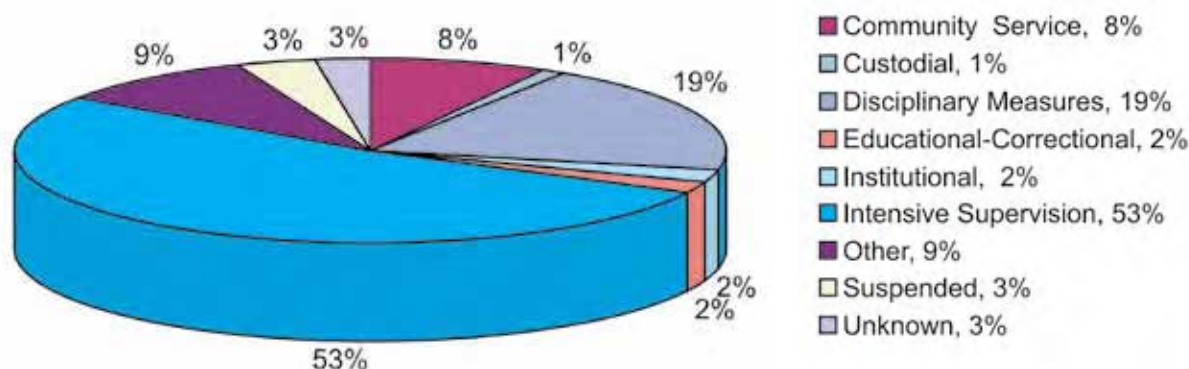
6.2 Availability of Measures and Punishments

Not all measures and punishments included in the JJC are available in practice, which was emphasised in many of the interviews with judges and prosecutors. Table 4.1 provides a summary of each measure / punishment and indicates whether this measure is available in practice.

6.3 Intensive Supervision

The measure of intensive supervision by the parent / guardian is implemented by the Probation Service and appears to be similar to the measure implemented by the CSWs. Parents will supervise the child and report to the Probation Service on the extent to which he or she is complying with the conditions imposed by the court, for instance, in attending

Table 4.2
Sentences imposed by courts by sentence type



Data was obtained from the Kosovo Judicial Council and includes all juveniles convicted in criminal courts from 1 July 2006 – 30 June 2007, by type of sentence imposed.

Table 4.2 shows that the most commonly imposed sentence is the educational measure of intensive supervision. Indeed, 53% of all sentences handed down by the Municipal and District Courts in Kosovo from 1 July 2006 – 30 June 2007, were intensive supervision measures. Unfortunately, the KJC data does not distinguish between the types of intensive supervision measures handed down. Thus the researchers were unable to determine how many juvenile offenders were sentenced to intensive supervision by a parent / guardian as against intensive supervision by the Guardianship Authority.

school or training regularly. Probation officers will normally visit the child at their home or workplace once or twice a month for between 30 minutes and one hour, in order to provide advice and counselling, but not material support. In addition, juvenile offenders are often required to report to the probation service. Interviewees carrying out both types of intensive supervision measures were generally quite positive about the support provided by probation officers. Parents who were present at the interviews were also generally very positive about the support and advice provided by probation officers.

The measure of intensive supervision by the Guardianship Authority (who is part of the CSW) is carried out by the CSWs: the only sentence for which the CSW has responsibility. This measure may be accompanied by special conditions (article 23 JJC), such as regular school attendance, training, refraining from contacting particular individuals or apologising to the injured party. The parent is required to monitor the child's compliance with the conditions of the measure and report to the relevant CSW. Interviews with CSW staff showed that, as a general rule, a CSW staff member visits the child for approximately one hour each month (though this was more frequent in some cases) to offer guidance and counselling (but not material support) to both the offender and his or her parents. It is highly debateable to what extent this can be regarded as 'intensive' supervision. The CSWs do not appear to have developed indicators on the measurable outcomes that should be achieved as a result of such intensive supervision. The Guardianship Authority / CSWs do not, as far as could be determined, have specific programmes for juveniles on intensive supervision. Rather, the role is confined to visiting the child and asking the parents/child whether the conditions of the supervision order have been complied with.

While there is general satisfaction with supervision, it is questionable how effective such orders are. The number and length of supervision visits by the Probation Service and the CSWs are too sporadic to justify being treated as providing intensive support. In addition, it is unlikely that most parents are going to report failures to comply with the conditions of the order, and thus the only measure of effectiveness of intensive supervision orders at present is whether the juvenile is once again convicted.

The interviews carried out at the CSWs and Probation Service offices indicated that both institutions have limited capacity to carry out more intensive supervision – for example, probation service offices have only one vehicle and a limited number of probation officers, all of whom appear to have heavy workloads. Given these factors, it is unrealistic to expect probation officers to make more home visits. CSWs suffer from the same limited capacity to carry out more intensive supervision.

It is recommended that the use of intensive supervision be reviewed by the Ministry of Labour and Social Welfare and the Ministry of Justice. At present there is no evidence on the effectiveness of supervision and, in particular, the rate of re-offending following a sentence of supervision. It is likely that for many juveniles, a conditional discharge order would be sufficient. Such an order would state that no further measure or punishment will be imposed provided that the conditions set by the judge (e.g. regular attendance at school) are followed. This would not require home visits by the probation service, though a requirement to attend at the probation office and show that the conditions have been followed could be placed on the child. For children who have more significant problems a truly intensive supervision programme, that offered children services, such as regular one-to-one social work sessions and other services, to address their offending behaviour and to meet their needs is required. Clearly, given the costs of a specific juvenile offender programme and the necessary involvement of staff, this measure would need to be targeted and offered only to children who have need of such a programme. Where a juvenile is ordered to undertake intensive supervision it is recommended that a supervision plan be presented to the court to which the child and the parent

have agreed. Minimum standards for supervision should be developed by the Probation Service and the Guardianship Authority. It is recommended that the JJC be amended to allow for conditional discharge orders as well as intensive supervision measures.

It is also recommended establishing juvenile specialisations both in the probation service and in the CSW offices to ensure that measures are implemented more effectively.

6.4 Disciplinary measures

19% of juveniles in the same period were sentenced to disciplinary measures, which, owing to the non-availability of disciplinary centres, consisted only of judicial admonition.⁶⁶ There is no evidence available to determine how effective such an approach is, and it raises the question of why, in these cases, diversion was not ordered. The purpose of diversion measures is to remove a child from the criminal justice system in order to avoid the negative effects that proceeding through a formal criminal justice process will have on a child. Diversion measures are also used to avoid time wasting in criminal courts. In cases in which a child merely receives a judicial admonition as a result of a judicial process, it would be useful to know whether this was because the child pleaded not guilty or it was thought that diversion was not appropriate.

6.5 Community service

8% of convicted juveniles were given a punishment of community service. The Probation Service is responsible for implementing this sentence, and selects a work placement for a juvenile offender to carry out their sentence (although the interviewees indicated that they were able to choose which particular placement

to take). Two interviewees serving a community service sentence performed work at a library shelving books and performing maintenance work, while the other interviewee completed a placement in a nursing home, doing gardening work. Probation officers visited the children between 2 – 3 times and up to twice a month. All interviewees felt that their community service sentence was a positive experience. All had completed their work placements and felt they developed skills and a work ethic. One probation officer indicated that it could be difficult for some children to complete community service orders, as they live in villages and have to commute to the nearest town to take up their work placements. For children living in difficult financial situations, raising the money to travel to the nearest town can be prohibitive. It is recommended that financial resources be made available to enable juvenile offenders to obtain transport to their community service placements. At present, the placements at which juvenile can complete community service orders is limited to a list of publicly owned enterprises. This list should be broadened to include a larger and more geographically diverse range of placements.

6.6 Obstacles to the Selection of Non-Custodial Sentencing Measures

Unsurprisingly, the information obtained from the interviews with juvenile justice professionals indicates that the most significant obstacle to the imposition of non-custodial sentencing measures is the lack of availability of these measures in practice. Most of the judges and prosecutors interviewed felt that the lack of availability, together with the non-feasibility of some measures, significantly limited the options in selecting non-custodial sentencing measures for juvenile offenders. The general view of judges was that fines could not be imposed very often, due to the lack of means, both on the part of the child and the parents.

⁶⁶ The reason for this is that the other 'educational disciplinary' measure contained in the JJC is committal to a disciplinary centre, which is not available in practice.

There were mixed views about the use of community service orders. A number of District Court judges took the view that community service orders were of little use as sentencing options for cases before their courts, given the serious nature of the offences. . Another District Court judge stated that community service orders were not being imposed in their region due to the lack of coordination between the Court and the organisations in which juvenile offenders would carry out their community service. In other regions, however, there was more optimism. Judges and prosecutors noted that community service orders were being imposed relatively often. However, overall, community service orders are not being imposed at a high level of frequency in Kosovo, with only 8% of all juveniles convicted from 1 July 2006 – 30 June 2007 receiving community service orders. This may be attributed to the lack of placements available at which juveniles can carry out community service orders.

A number of problems were highlighted by judges and prosecutors. One particular problem highlighted by a number of professionals related to juvenile offenders who were without parental care or were estranged from their families. The sentencing option of intensive supervision by a parent or guardian, and even intensive supervision by the Guardianship Authority could not be ordered, as these require the child to be supervised while living with his or her parent or carer. This leaves judges with very little choice of sentence. Further, in the case of more serious offences, it led to judges being left only with the option of a custodial sentence. One District Court Judge stated that lack of parental care was one criteria he considered when deciding whether to impose a custodial sentence. Such an approach discriminates against those without parental care and reveals the lack of

alternatives available for this group of children. Interviewees saw a real need to create institutions or structures that could provide for juvenile offenders without parental care.

A further difficulty concerned children who had mental health problems. Several judges and prosecutors felt that the lack of institutions available to cater to juvenile offenders with mental health issues or with a disability was deeply problematic, leaving them with no effective sentencing option to meet the needs of such offenders.

Resources need to be allocated if the non-custodial measures contained in the JJC are to be implemented effectively. The lack of availability of non-custodial sentencing options impairs the ability of Kosovo to comply fully with Article 40(4) of the International Convention on the Rights of the Child, which states that parties should provide a range of alternative non-custodial dispositions “to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.” Non-custodial sentences should seek to address the juvenile’s offending behaviour. This can be done through intensive supervision, but at present, there is little evidence on the effectiveness of current practice and the level of service provided. Where intensive supervision is ordered, it is recommended that a supervision plan be drafted to which the child and the parent should agree. Building disciplinary centres or any other residential institutions specifically for juvenile offenders is not recommended. A more sound solution would be to train specialists who can oversee disciplinary measures in schools or youth centres.

The creation of specialist juvenile prosecutors and judges and the

provision of in-depth, quality training to specialist prosecutors and judges may also improve the capacity for judges to impose the most suitable sentences on juvenile offenders. In most regions, there are no specialist juvenile prosecutors, both at the Municipal and District Court levels. There are specialist juvenile judges in only three out of five District Courts and in four out of seven Municipal Courts. The JJC clearly foresees the establishment of specialist juvenile judges in all regions, and creating specialists would improve the capacity for judges to impose appropriate and suitable sentences on juvenile offenders.

Recommendations

- Develop specialist posts for probation officers working with juvenile offenders and provide these probation officers with clear guidance and training on how to draft social inquiry reports.
- Develop specialist posts for CSW social workers working with juvenile offenders.
- Formalise the relationship between the CSWs and the Probation Service, which should include the development of a protocol on information sharing and how to make joint recommendations on sentencing to the courts and the establishment of regular meetings to share information.
- Amend the JJC to allow for conditional discharge orders as well as intensive supervision measures. Conditional discharge orders would be appropriate where a juvenile offender requires minimal supervision only. This would free up the resources of the Probation Service to be targeted to juveniles who require more intensive supervision in order to correct their offending behaviour.
- Review the use and effectiveness of intensive supervision measures in more detail. Allocate resources to build capacity for probation officers and CSW social workers to improve the implementation of intensive supervision measures, including ensuring an increase in the number and length of supervision visits to juveniles on intensive supervision measures and the development of minimum standards for what constitutes “intensive supervision.”
- For juveniles sentenced to intensive supervision measures, develop supervision plans, to which the juvenile and parent agree, and ensure that these are presented to the court.
- Issue guidance to probation officers on drafting supervision plans
- Develop, with the CSWs and Probation Service, a limited number of specialist well trained foster parents to help implement intensive supervision measures for children without parental care.
- The Probation Service should work to expand the current list of work placements at which juveniles can carry out community service orders.
- The Ministry of Justice should make available a specific budget line for the Probation Service to reimburse juveniles serving community service orders for transport to and from their work placement sites where the family income is below a specified limit.

7 THE JUVENILE JUSTICE SYSTEM: JUVENILES IN DETENTION

7.1 The Use of Police Detention

In compliance with the UN Convention on the Rights of the Child, Article 62 of the JJC provides that arrest, police detention or detention on remand of a child shall only be used as a measure of last resort and for the shortest possible period of time. The JJC goes on to provide⁶⁷ that the KPS may not arrest or detain a juvenile for a period exceeding 24 hours, except when a juvenile judge has ordered that the juvenile be detained on remand.⁶⁸ Interviews conducted with the Director of the Correctional Facility at Lipjan/Lipljan and police officers at regional police stations in Gjilan/Gnjilane, Mitrovicë/Mitrovica, Pejë/Peć, Prishtinë/Priština and Prizren, all confirmed that this provision was well understood and that a juvenile suspect taken into police custody for questioning could only be detained for a period of 24 hours. After the expiration of this 24 hour period, if a prosecutor determines that it is necessary to hold the juvenile in pre-trial detention for a further period, an order must be obtained from the court. Unless the prosecutor terminates the proceeding or files for release, once the court order has been granted, the juvenile will be transferred to Lipjan/Lipljan, where he or she will be held while awaiting trial (or until the juvenile presents a successful bail application).

Quantitative data obtained from the KPS on the number of juveniles detained under Article 62 of the JJC, compared with the number of juveniles suspected of having committed an offence, can be

⁶⁷ Article 63(2)

⁶⁸ See Article 63.

used to give some indication of whether the KPS are using provisional arrest and detention procedures under Article 62 as a last resort measure.

Table 5.1

Total offences for which juveniles were suspected and arrested	
Total number of offences with juvenile suspects	4317
Total number of offences for which juveniles were arrested	79

Table 5.1 suggests that police officers are using arrest procedures in Article 63 of the JJC infrequently, with juveniles arrested for only 1.8% of all offences for which they are suspects. KPS data is also available on the types of crimes for which juvenile offenders were arrested in the 12 month period.

Table 5.2

Offences for which juveniles were arrested	
Assault	4
Aggravated assault	13
Burglary	6
Criminal damage	12
Discharge of firearm	4
Drug dealing / possession	5
Forged documents	1
Harassment / intimidation	4
Illegal border crossing	2
Illegal weapons possession	8
Murder	2
Obstructing justice	3
Rape	1
Smuggling	2
Theft	8
Other	3

While in table 5.2 shows that police officers used arrest procedures for some very serious offences, it is also being used for offences at the less serious end

of the spectrum (including theft, criminal damage and other minor property offences). This may indicate that police officers may not be arresting juvenile offenders only as a last resort measure. Of course, the data does not take account of particular factors involved in making the arrest, including aggravating factors or public safety issues which may necessitate arrest or the possibility that those arrested are persistent offenders.

Raw data was obtained from regional police stations in Gjilan/Gnjilane, Pejë/Peć, Prishtinë/Priština and Prizren on juvenile offenders held in police custody, to examine the extent to which juveniles are held beyond the 24 hour maximum time limit contained in Article 63 of the JJC. Unfortunately, the Mitrovicë/Mitrovica Police Station failed to provide researchers with any data on juveniles in police detention during the time period 1 July 2006 – 30 June 2007.

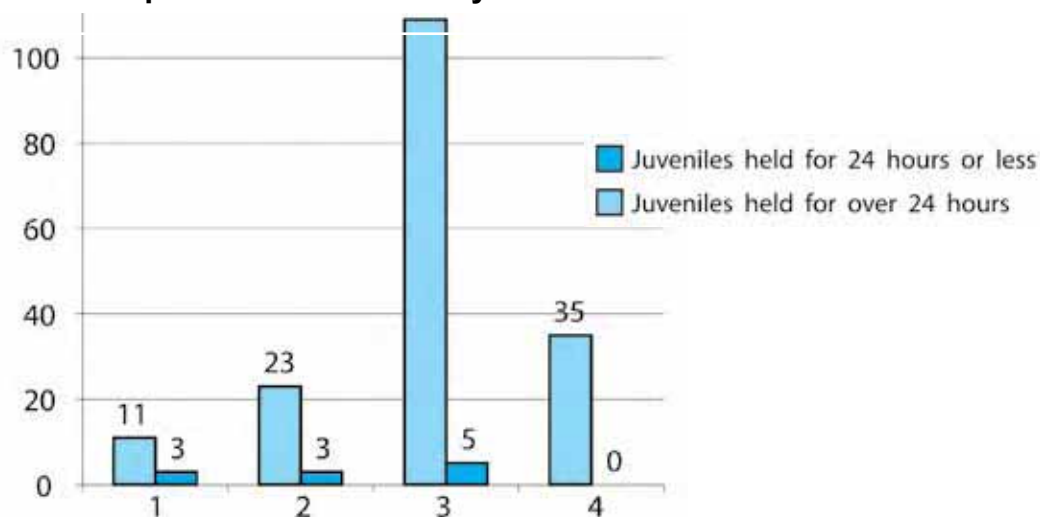
disaggregated by the length of time spent, it shows that some juvenile offenders have spent a significant length of time in police custody, the longest period being 90 hours and 40 minutes.

Table 5.4

Region	Length of time spent in police custody
Gjilan/Gnjilane	25 hours 15 min
	25 hours 25 min
Pejë/Peć	49 hours
	41 hours 15 min
	63 hours 15 min 67 hours 10 min
Prishtinë/Priština	24 hours 5 min
	24 hours 30 min
	35 hours 20 min
	36 hours 30 min
	90 hours 40 min

Table 5.3

Juveniles held in police detention 1 July 2006 - 30 June 2007



The data in Table 5.3 indicates that some juveniles, though not many, were held in police custody beyond the 24 hour maximum period stipulated in the JJC. While the numbers overall are small, when the data on the number of juveniles who have spent longer than a 24 hour period in police custody is

Police station holding cells in Gjilan/Gnjilane, Mitrovicë/Mitrovica, Pejë/Peć, Prishtinë/Priština and Prizren⁶⁹ are not suited to holding children for significant periods of time. While police officers stated that minors were always kept in separate cells to adults, cells were very small with no natural light in

⁶⁹ Visited by researchers

some and no furniture besides a bed / mattress. There were no opportunities for educational or leisure activities or exercise. The requirement that juveniles not be detained for more than 24 hours is included in the JJC to protect children's rights and their welfare. Detaining children in police cells for longer than this period raises some serious concerns. Unfortunately, data was not available on the reason/s for holding children beyond the 24 hour time period. This information would be useful in examining the obstacles to compliance with the 24 hour time limit.

It is recommended that raw data on the time juveniles spend in police detention should be regularly collected and analysed to ensure that the maximum time period of 24 hours contained in the JJC is complied with. It is also recommended that sanctions for officials who contravene Article 63 be defined and imposed.

7.2 Pre-Trial Detention

The prosecutor may apply to the court for an order that the juvenile be remanded or placed in pre-trial detention. This will only be ordered as an exception and where one of the circumstances in Article 281 of the *Criminal Procedure Code of Kosovo* is present.⁷⁰ These circumstances include: that the juvenile is at risk of not attending a main trial or going into hiding; the evidence indicates that he or she will obstruct criminal proceedings (e.g. by interfering with a witness); or where there is a risk that the juvenile will re-offend (this will be ascertained by examining the nature and circumstances of the offence and the past conduct and personal circumstances of the juvenile). The juvenile judge must consider whether the measures listed in Article 5 (which include placing the juvenile in a shelter or in an educational or similar establishment, placing the juvenile under the supervision of the Guardianship

Authority or transferring the juvenile to another family) would be sufficient before ordering pre-trial detention. This is difficult however due to the lack of availability of some of the measures in practice. The judge must also consider whether any of the measures listed in Article 268(1) of the *Criminal Procedure Code of Kosovo* may be ordered as alternatives to detention on remand, including: a summons; an order for arrest; attendance at a police station; bail; or house detention.⁷¹

If the court decides to order pre-trial detention, the judge must provide a reasoned explanation for the insufficiency of alternatives to pre-trial detention. A juvenile may be held in pre-trial detention for a maximum period of one month from the day of arrest, but may be detained for a further period of up to two months where this is ordered by a juvenile justice panel.⁷²

Where prosecutors determine that a juvenile should be held in pre-sentence detention for longer than 24 hours, he or she will be moved to Lipjan/Lipljan Correctional Facility.

7.3 Custodial Sentences

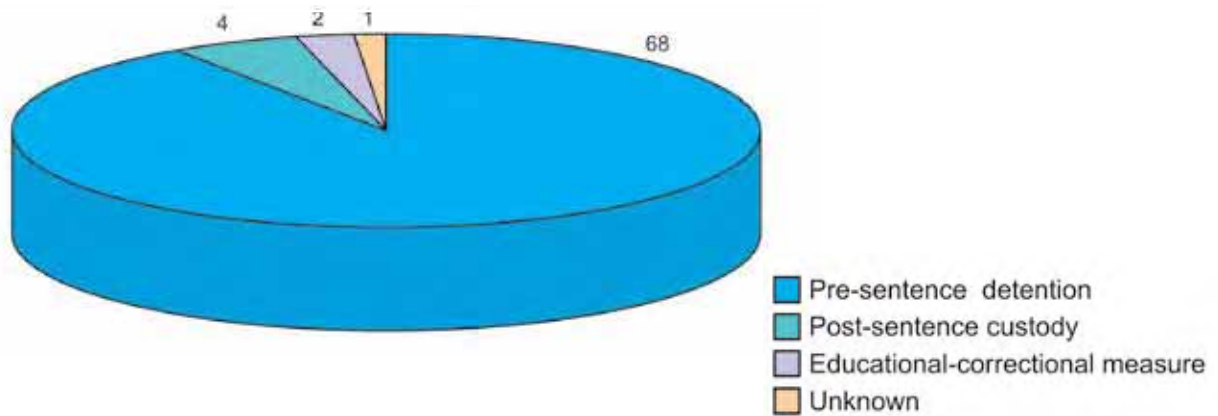
Judges can impose a custodial sentence on a juvenile convicted of a criminal offence. For juveniles aged 14-16, the court may order that the child be committed to an educational institution (Article 24), or to an educational-correctional institution or to a special care facility (Article 26), while a convicted juvenile who has reached the age of sixteen and has committed an offence punishable by more than five years imprisonment may be given a sentence in the juvenile Correctional Facility in Lipjan/Lipljan (Article 30). Article 1(3) of the JJC stipulates that "deprivation of liberty shall be imposed only as a last resort and shall be limited to the shortest possible period of time."

⁷⁰ Article 64(1).

⁷¹ Article 64(1) JJC.

⁷² Article 64(2) JJC

Table 5.5
Total juvenile detainees in Lipjan/Lipljan by type of detention



Statistics from the Kosovo Judicial Council over the period 1 July 2006 to 30 June 2007 show that out of 795 juveniles convicted, only a relatively small proportion (1%), were given a custodial sentence in the Lipjan/Lipljan Correctional Facility, while 2% of those convicted in the same period of time were sentenced to educational-correctional measures.

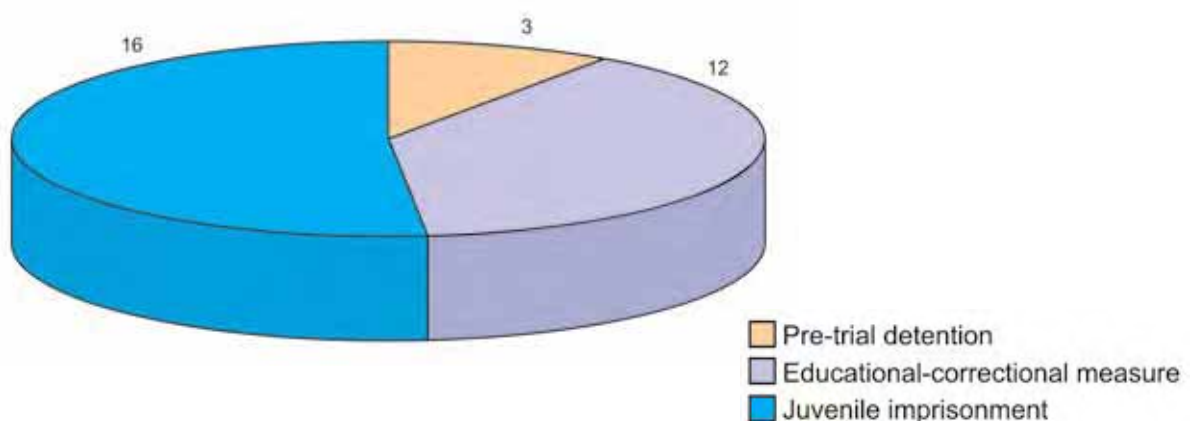
These figures have to be treated with some caution. It is possible that custodial sentences were handed down in a greater proportion of cases, as a significant number of sentences were recorded in the data as ‘other’, ‘unknown’ or ‘institutional’ (which, combined, accounted for 14% of all cases).

These categories are not further defined in the data.

Raw data provided by Lipjan/Lipljan shows that out of 75 juveniles admitted to Lipjan/Lipljan over a 12 month period (1st July 2006 – 30th June 2007), 68, or just over 90%, were held on pre-trial detention. However, this data – which details the number of juveniles *entering* Lipjan/Lipljan in a 12 month period - can distort the figures on juveniles held in detention. While it can be seen that a greater number of juveniles are admitted to Lipjan/Lipljan for reasons of pre-trial detention, they will generally only be detained for a short period of time compared with other categories of detainees. ‘Snapshot’ data⁷³, listing all juvenile detainees in Lipjan/Lipljan on 16th October 2007, shows a rather different picture (Table 5.6).

⁷³ ‘Snapshot’ data records the number of children being held in Lipjan / Lipljan on the particular day of the visit.

Table 5.6
Snapshot of total juvenile detainees in Lipjan/Lipljan



The data from Lipjan/Lipljan demonstrates that a significant number of juvenile offenders subject to pre-trial detention are being held for longer than one month (the maximum period specified in the JJC without a further court order). From 1 July 2006 – 30 June 2007, 16 juveniles (23%) held in pre-sentence detention in Lipjan/Lipljan were held for longer than one month, while 52 juveniles were held for one month or less. Table 5.7 indicates that several juveniles were held for very long periods in pre-sentence detention (for periods of up to 17 months).

Table 5.7

Length of time spent in pre-sentence detention in Lipjan/Lipljan	
1 month or less	52
2 months	6
3 months	2
4 months	1
6 months	2
7 months	1
11 months	2
15 months	1
17 months	1

Article 37(1) of the JJC recognises that holding juvenile offenders in pre-trial detention for such long periods of time is highly problematic and therefore, cases involving juveniles should be expedited and unnecessary delays should be avoided. During interviews with juvenile justice professionals, an explanation was sought for why maximum periods of time were being overrun. Several district court prosecutors indicated that the time taken to complete the investigation phase of cases involving juveniles could at times be very long. One prosecutor indicated that lab tests and analyses of forensic materials were being sent to Croatia, due to the lack of facilities in Kosovo to carry out these tests, which was a very

lengthy process. Another mentioned the difficulty in confirming that a suspect is a juvenile in cases where they do not have birth registration documents. These difficulties need to be addressed, and sanctions should be explored in order to reduce lengthy pre-trial detention periods for suspected juveniles in conflict with the law.

It is recommended that a review of practice be undertaken by the Kosovo Police Service, the Kosovo Judicial Council and the Ministry of Justice and that, based on this review, measures be introduced to expedite the investigation and trial of juveniles. Raw data on the length of time juveniles are held in Lipjan/Lipljan in pre-trial detention should be regularly collected and reviewed in order to monitor compliance with the provisions of the JJC on the maximum length of time juveniles can spend in pre-trial detention.

A further matter of concern in relation to these figures was the apparent lack of legal challenge to illegal detention. It is difficult to understand why the lawyers representing these children did not take the case back to court and seek the release of children held beyond the statutory maximum.

Interviews were undertaken with children subject to pre-trial detention and those serving custodial sentences and researchers also visited Lipjan/Lipljan in order to monitor the conditions of detention. Generally, the material conditions, education and leisure facilities, protections afforded to detainees and access to family visits all complied with international standards. However, the interviewees on pre-trial detention indicated that this category of detainees were not accorded the same access to education and leisure facilities and contacts with family as those serving post-trial detention. Both of the pre-trial

Quality Defence Counsel for Juvenile Offenders

According to international human rights standards, every child should have access to legal counsel. The International Convention on the Rights of the Child provides, in article 40(2)(ii), that a child shall have access to legal representation in the preparation and presentation of his or her defence. Rule 15.1 of the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) states that, throughout criminal proceedings, “the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country.” In accordance with these international standards, the JJC provides that children shall have access to legal representation

from the time of the first examination through to the main trial (Chapter X). In addition, Article 1(6) states that all children deprived of their liberty shall have prompt access to legal representation, as well as the right to challenge the legality of the detention.

It is of fundamental importance to ensure that children in Kosovo have access to quality legal representation, particularly in light of data that shows that some children are being held in police custody and pre-trial detention for periods well beyond the statutory maximum. The extent to which detention beyond the maximum permitted is challenged should be investigated. Defence counsel should monitor the length of time their client child is held in pre-trial custody and should challenge any unlawful detention.

detention children interviewed stated that they had only attended one day of schooling each (in 20 days / 24 days), did not engage in recreational activities, including sport, and had limited access to phone calls and visits from families. Both claimed not to have been visited by any juvenile justice professionals, including CSW or probation service representatives, and said that they were not given any information on their rights on entering Lipjan/Lipljan. In addition, both interviewees claimed that they did not know the procedure for making a complaint against a prison officer.

According to Article 65 of the JJC, a child held in pre-trial detention “shall receive social, educational, vocational, psychological, medical and physical assistance, as required in view of his or her age, gender and personality.” It is recommended that children held in pre-trial detention should be accorded the

same access to educational and leisure facilities and contact with family as detainees serving juvenile imprisonment, though this must be done in such a way as not to interfere with pending judicial processes. Juveniles in pre-trial detention should be visited regularly by representatives from either the probation service, defence councils, or the CSW in order to ensure children’s rights are ensured and that Lipjan is operating in compliance with the JJC.

7.3(a) The Imposition of custodial sentences

1. Juvenile Imprisonment

Under Article 30 JJC, judges can impose a sentence of juvenile imprisonment on a juvenile offender who has reached the age of sixteen years and who has committed an offence punishable by more than five years imprisonment, subject to the guiding principle contained

in Article 1(3) JJC, which stipulates that “deprivation of liberty shall be imposed only as a last resort and shall be limited to the shortest possible period of time.” In order to ensure that judges are using juvenile imprisonment only as a last resort measure, the researchers examined the types of offences for which a sentence of imprisonment was imposed. Data provided by the Kosovo Judicial Council records the cases in which a custodial sentence was given during a 12-month period (1 July 2006 – 30 June 2007).

Table 5.8

Custodial sentence imposed by type of offence	
Aggravated Murder	6
Attempted Murder	1
Sexual Abuse of Persons Under 16 Years	1
Unknown	1

All cases coming before relevant courts in Kosovo in which juvenile imprisonment was handed down as a sentence, from 1 July 2006 – 30 June 2007.

It is clear from Table 5.8 that, where custodial sentences were passed, they were all for serious offences attracting a punishment of more than five years imprisonment (in accordance with the conditions for imprisonment under Article 30 JJC).⁷⁴

2. Educational Correctional Measures

Juvenile offenders who receive educational-correctional measures are also placed in Lipjan/Lipljan. Data from the Kosovo Judicial Council over the period 1 July 2006 – 30 June 2007 shows that educational-correctional measures were imposed in 13 cases of forest theft and 5 cases of aggravated theft. Although this data does not, of course, account for other aggravating

factors, it is worrying that educational-correctional measures are being imposed for such offences as forest theft. These sentences were all handed down by the Prishtinë/Priština Courts. There would appear to be a particular problem with sentencing of forest theft in Prishtinë/Priština, which needs to be reviewed.

7.3(b) Conditions of Detention

Researchers undertook several monitoring visits to Lipjan/Lipljan in which they interviewed the Director of the Facility and six juvenile detainees and examined the facilities and conditions of detention against indicators developed using international human rights standards (and Chapter XVIII of the JJC). Generally, the conditions of detention at Lipjan/Lipljan were thought to accord with international standards and were thought to promote the “rehabilitation and development of the minor offender”, in accordance with article 29 of the JJC. Aside from the concerns raised above in relation to juveniles held in pre-trial detention, detainees were found to have adequate access to information, including information on rights, rules and procedures for making complaints (a satisfactory system for making anonymous complaints against prison officers was identified). Researchers identified adequate material conditions, including food, lighting, personal hygiene, access to clean clothing and bedding, ventilation and lack of overcrowding in cells. However, there was an absence of desks and chairs in cells.

The researchers were unable to find a formal policy on the use of restraints. The informal policy was that physical restraint of children could be used in situations where the child was likely to cause physical harm to an inmate or prison officers, prevention of escape and during transport. It is recommended that a formal written policy be made available to all places where a child is deprived

⁷⁴ Of course, this does not account for any sentences of juvenile imprisonment handed down under the category ‘unknown’, ‘other’ or ‘institutional’.

of his or her liberty, and that all use of restraint should be clearly recorded. The policy should make it clear that *“Restraint or force can only be used when the child poses an imminent threat of injury to him or herself or others, and only when all other means of control have been exhausted. The use of restraint or force, including physical, mechanical and medical restraints, should be under close and direct control of a medical and/or psychological professional. It must never be used as a means of punishment.”*⁷⁵

It is unclear whether solitary confinement is being used as a punishment. Again, there should be a clear written policy, in accordance with international standards, forbidding the use of solitary confinement as a punishment.

Detainees appeared to have access to educational and leisure facilities, were able to complete secondary school diplomas while in Lipjan/Lipljan and could undergo various vocational training programmes, though there are some difficulties related to the adequate numbers of teachers. Outdoor exercise appeared to be permitted for a period of 2 – 3 hours a day and detainees were permitted to play sports daily.

In terms of protection of juveniles in Lipjan/Lipljan, detainees were found to be separated by category of detention (pre-trial detention, educational-correctional measures and juvenile imprisonment), and juvenile male detainees were separated from adults. A number of concerns arose from the research:

1. Female detainees

Juvenile female detainees were not separated from adult female detainees. Whilst the number of juvenile female

detainees in Lipjan/Lipljan is very low, separation of girls from adult females is good practice. It is recommended that the practice of placing adult females and girls together should be reviewed to ascertain how separation can be achieved and girl's welfare promoted and ensured.

2. The use of Lipjan/Lipljan as an educational-correctional centre.

Although the JJC specifies that educational-correctional measures shall be executed in a semi-confined institution established specifically for this purpose (article 109(1)), the only facility at present within Kosovo is Lipjan/Lipljan, and every juvenile sentenced to a period of time in an educational-correctional centre will serve his or her sentence there. As it is classified as an 'educational measure' pursuant to the JJC, an educational-correctional measure can be imposed on a juvenile offender from the age of 14 (article 6(3)), whereas the sentence of juvenile imprisonment cannot be imposed on a juvenile offender until he or she reaches the age of 16. The interviews with juvenile offenders undergoing educational-correctional measures and juvenile imprisonment in Lipjan/Lipljan indicate that there is no material difference between the two sentences. Juveniles on educational-correctional measures are held in separate rooms, but apart from this separation, there appears to be no material difference between these categories of detainees in Lipjan/Lipljan: both appear to have the same access to education, training and leisure facilities and are subject to the same rules and entitlements to visitors and so on. Until a separate facility is constructed for juvenile offenders to carry out educational-correctional measures, it is recommended that this measure be classified in the JJC as a 'punishment', and that it should not be imposed on juveniles under the age of 16. Urgent consideration

⁷⁵ In accordance with international standards. See UN Committee on the Rights of the Child General Comment No 10 *Children's Rights in Juvenile Justice*, CRC/C/GC/10, 25 April 2007, para 89

should be given to ensuring that juveniles undergoing or sentenced to educational-correctional measures do not serve their sentence in Lipjan/Lipljan. Consideration should be given to identifying or creating a semi-confined institution for juveniles to carry out educational-correctional measures.

3. Lack of reviews

According to article 123(2) of the JJC, “every six months, the juvenile judge shall visit juveniles accommodated in an institution or facility, through direct contact with the juvenile and the officers directly involved in executing institutional educational measures and reviewing the records of the institution or facility, establish whether the juveniles are treated correctly and in accordance with the law and whether the institutional educational measures have been successful.” Unfortunately, this does not appear to happen in practice, and all juvenile offenders interviewed stated that they had never been visited by a judge or prosecutor (post-trial detainees who were interviewed had been in Lipjan/Lipljan for 23 months, 19 months, 15 months and 5 months). Some had been visited by a probation officer and / or a CSW social worker (although one detainee stated that the visit from the probation officer was very brief).

According to international standards, detention facilities in which children are held should be inspected regularly by qualified inspectors, who are not part of the administration of the facility. Such inspectors should have unrestricted access to all juveniles, all persons working at the facility and all records of such facilities.⁷⁶ The JJC provides judges with the power to carry out such inspections, but these inspections are not being carried out in practice. A monitoring body should be appointed to ensure that inspections are carried out by an NGO or the Ombudsperson’s office. Such inspections

⁷⁶ United Nations Rules for the Protection of Juveniles Deprived of their Liberty (General Assembly resolution 45/113 of 14 December 1990), Article 72.

are vital to ensure that the children’s rights are protected while in custody. It is recommended that Article 123(2) JJC be implemented in practice and that the Kosovo Judicial Council should develop guidelines to be applied in each court to ensure that visits take place in accordance with the JJC.

7.4 Post-Detention After-Care

According to Article 138 of the JJC, when a juvenile is released from detention, the Probation Service “shall offer assistance to the child after release for as long as he or she needs it.” Where it is in the best interests of the child, the Probation Service may seek assistance from the Guardianship Authority⁷⁷. The Guardianship Authority has responsibility to provide “special care” to a child who has no parental care, and this care shall include accommodation, the provision of food and clothing, medical treatment, training and employment and the “regulation of family circumstances” (Article 139). The interviews undertaken with probation officers and CSW staff indicated that very little support is currently being offered to juveniles once they are released from detention. This can be attributed to a lack of defined competencies for each institution – some of the probation officers felt that after-care was the responsibility of the CSWs, and some of the CSW interviewees stated that they were not sure whether it was the responsibility of the CSWs or Probation Service. There also appears to be a lack of coordination in most regions between the Probation Service and CSWs and other juvenile justice institutions in relation to the provision of after-care. One CSW interviewee stated that the CSW are not informed when a juvenile is released from detention.

International standards provide that children must have access to services to assist them to re-integrate back into society following their release from

⁷⁷ Whose role is performed within the CSW

custody.⁷⁸ This is very important in ensuring they are supported, continue being rehabilitated and do not re-offend. It is recommended that the responsibilities of the CSW and Probation Service in relation to the provision of after-care be clearly defined. Guidance should also be developed to ensure that Lipjan/Lipljan, the probation service and the CSWs work in close co-operation and that there is effective and timely planning for children's after-care.

Recommendations

- The Ministry of Justice, Office of the Public Prosecutor of Kosovo, and Kosovo Judicial Council should establish an independent Commission to keep under review the time spent in pre-trial detention by juveniles. The Commission should collect and analyse raw data on the time spent by juveniles in police detention and pre-trial detention to ensure compliance with the maximum time limits on detention set out in the JJC.
- The Ministry of Justice Office of the Public Prosecutor of Kosovo, and Kosovo Judicial Council should review current practice relating to the investigation and trial of juveniles and, in particular, the issue of delay. New procedural measures should be introduced to ensure that juvenile cases are expedited and undue delay avoided.
- The Ministry of Justice should develop individual plans so that juveniles held in pre-trial detention are accorded the same access to educational and leisure facilities and contact with family as detainees serving juvenile imprisonment and educational-correctional sentences.
- The Ministry of Justice, the Office of the Public Prosecutor of Kosovo and the Kosovo Judicial Council should develop guidelines to ensure that judges and prosecutors make regular monitoring visits to Lipjan/Lipljan Correctional Facility, both to detainees in pre-trial and post-trial detention.
- Kosovo Correctional Services should regularly collect and review data on the imposition of custodial sentences in order to ensure that imprisonment is being imposed only for the most serious offences for the shortest possible period of time.
- Kosovo Correctional Services should review the practice of placing girls with adult female detainees in Lipjan/Lipljan Correctional Facility.
- The Ministry of Justice should issue guidelines requiring judges to re-consider the use of the educational-correctional measure in light of the need to remove juvenile offenders serving this sentence from Lipjan/Lipljan Correctional Facility.

⁷⁸ United Nations Rules for the Protection of Juveniles Deprived of their Liberty (General Assembly resolution 45/113 of 14 December 1990), Article 80..



8

CONCLUSION

In seeking to ensure that the juvenile justice system in Kosovo complies with international and regional human rights standards, the JJC introduced several innovations into the juvenile justice framework. The research conducted for this report found that juvenile justice institutions face significant obstacles in ensuring that the JJC is fully implemented in practice, particularly in relation to provisions on diversion, the selection of non-custodial sentencing measures, the use of pre-trial detention and the provision of after-care to juveniles released from detention. It is of fundamental importance to ensure that these obstacles are removed and that systems are put in place to ensure that these provisions are effectively implemented in practice, so that the juvenile justice system in Kosovo can conform to human rights standards which support the rehabilitation of children who come into conflict with the law. To this end, the authors have made a number of recommendations that we hope will be considered by the Government in Kosovo in developing measures to strengthen the implementation of the juvenile justice system.

RECOMMENDATIONS

9.1 Amendments to the JJC

High Priority

The Kosovo Legislative Assembly should amend a number of provisions of the JJC:

- Amend article 15 JJC: rather than limiting the form of particular diversion measures, the JJC should add to the list of diversion options “other educational measures” which the municipal prosecutor or judge can devise. In such cases, the Probation Service should undertake an assessment and draw up a plan together with the child, setting out the details of the action to be taken to enable the juvenile to address his or her offending behaviour.
- Amend the JJC to provide that: (a) at the first hearing of a juvenile case, the prosecutor be under a duty to file a statement with the judge showing that diversion has been considered and setting out the reason/s why diversion was not used; and (b) giving the judge the power to order the prosecutor to re-consider re-trial diversion.
- Consideration should be given to changing the Article 14 criteria away from a minimum term of imprisonment for the offence to a more child-specific and child-focused criteria, using notions of seriousness and circumstances of the offender and offence. Alternatively, consideration should be given to raising the term of imprisonment threshold from three to five years. Additionally, ensure that guidance for prosecutors and judges is developed to define the steps to be taken in reaching a

decision or not to refer a minor to diversion.

- Amend the JJC to allow for conditional discharge orders as well as intensive supervision measures. Conditional discharge orders would be appropriate where a juvenile requires minimal supervision only. This would free up the resources of the Probation Service to be targeted to juveniles who require more intensive supervision in order to correct their offending behaviour.

9.2 Improving the practical implementation of the JJC

Urgent

- The Ministry of Justice should issue guidelines requiring judges to re-consider the use of the educational-correctional measure in light of the need to remove juvenile offenders serving this sentence from Lipjan/Lipljan Correctional Facility.
- The Ministry of Justice, Office of the Public Prosecutor of Kosovo and the Kosovo Judicial Council should review current practice relating to the investigation and trial of juveniles and, in particular, the issue of delay. New procedural measures should be introduced to ensure that juvenile cases are expedited and undue delay avoided.
- The Ministry of Justice should develop individual plans so that juveniles held in pre-trial detention are assured the same access to educational and leisure facilities and contact with family as detainees serving juvenile imprisonment and educational-correctional sentences.

High Priority

- Ensure that the Kosovo Judicial Council and the Office of the Public Prosecutor develop a procedural and practice guide for diversion. This should include guidance on the interpretation of article 14 criteria.
- Review the use and effectiveness of intensive supervision measures in more detail. Allocate resources to build capacity for probation officers and CSW social workers to improve the implementation of intensive supervision measures, including ensuring an increase in the number length of supervision visits to juveniles on intensive supervision measures and the development of minimum standards for what constitutes “intensive supervision.”
- For juvenile offenders sentenced to intensive supervision measures, develop intensive supervision plans, to which the child and parent agree, and ensure that these are presented to the court.
- Issue guidance to probation officers on drafting supervision plans.
- Develop, with the CSWs and Probation Service, a limited number of specialist well trained foster parents to help implement intensive supervision measures for children without parental care.

Medium Priority

- The Probation Service should work to expand the current list of work placements at which juveniles can carry out community service orders.

- The Ministry of Justice should make available a specific budget line for the Probation Service to reimburse juveniles serving community service orders for transport to and from their work placement sites where the family income is below a specified limit.

9.3 Capacity building in juvenile justice institutions

High Priority

- Establish juvenile prosecutors, or as an interim minimum measure, nominate a limited number of prosecutors to address cases involving juveniles in each region.
- Ensure that juvenile prosecutors receive systematic, in-depth, interactive training on the JJC, with particular focus on the value and use of diversion. Supplementary training should be provided at least every 6 months.
- Develop specialist posts for probation officers working with juvenile offenders and provide these probation officers with clear guidance and training on how to draft social inquiry reports.
- Develop specialist posts for CSW social workers working with juvenile offenders.

Medium Priority

- Establish an internal review process in each Municipal Court prosecutor’s office for review of juvenile files to ensure that diversion is considered for all cases within the JJC’s threshold.

9.4 Improved coordination between juvenile justice institutions

High Priority

- Clearly define the responsibilities of the CSW and Probation Service in relation to the provision of post-detention after-care. An Administrative Instruction should be developed, requiring Lipjan/Lipljan Correctional Facility, the Probation Service and the CSWs to develop and provide after-care for juveniles leaving Lipjan/Lipljan.

Medium Priority

- Formalise the relationship between the CSWs and the Probation Service, which should include the development of a protocol on information sharing and how to make joint recommendations on sentencing to the courts and the establishment of regular meetings to share information.

9.5 Improved monitoring of the juvenile justice system

High Priority

- Establish a Juvenile Justice Committee, including Municipal Court judges, a representative from the local prosecutor's office, the Kosovo Police Service, the Kosovo Probation Service and the CSW, to ensure good communication between different juvenile justice institutions and review of the implementation of the JJC on a regular basis.
- The Office of the Public Prosecutor of Kosovo / Kosovo Judicial Council should set targets for diversion.
- The Juvenile Justice Committees should review the performance of

all seven Municipal Prosecutors' offices dealing with juvenile cases against these targets at least twice a year.

- The Ministry of Justice, Office of the Public Prosecutor of Kosovo and the Kosovo Judicial Council should establish an Independent Commission to keep under review the time spent in pre-trial detention by juveniles. The Commission should also collect and analyse raw data on the time spent, by juveniles, in police detention and pre-trial detention to ensure compliance with the maximum time limits set out in the JJC.
- The Ministry of Justice, Office of the Public Prosecutor of Kosovo and the Kosovo Judicial Council should develop guidelines to ensure that judges and prosecutors make regular monitoring visits to Lipjan/Lipljan Correctional Facility, both to detainees in pre-trial and post-trial detention.
- Kosovo Correctional Services should regularly collect and review data on the imposition of custodial sentences in order to ensure that imprisonment is being imposed only for the most serious offences for the shortest possible period of time.
- Kosovo Correctional Services should review the practice of placing girls with adult female detainees in Lipjan/Lipljan Correctional Facility.

High Priority

- The Government should develop, in consultation with specialised statisticians, a standardised data collection strategy for

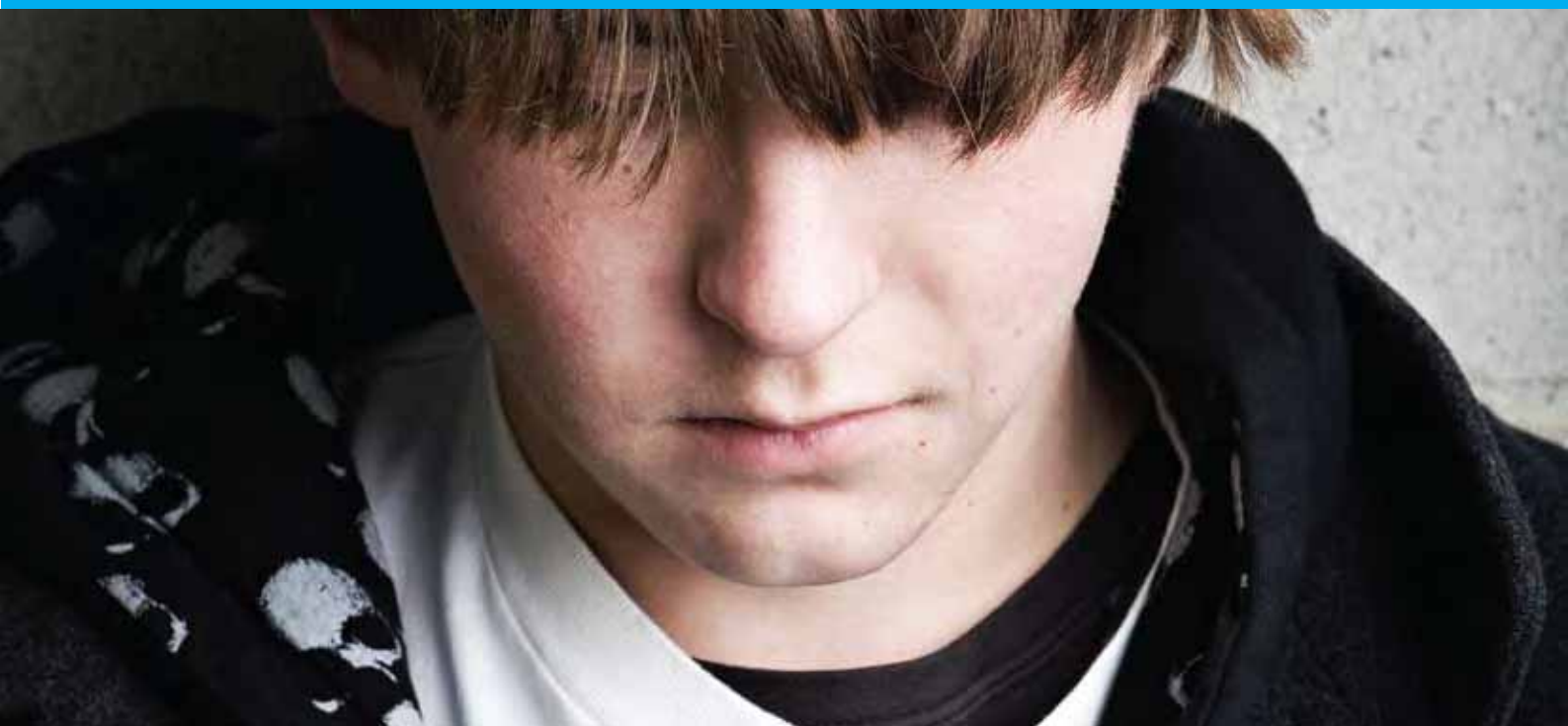
recording, collecting and collating data on juvenile crime and the implementation of the juvenile justice system. The strategy should include: the identification of the data to be collected; which institutions are responsible for recording each type of data; which institutions should be responsible for collecting each type of data; and which institution should be responsible for collating the data.

- Train relevant staff (those responsible for recording information on juvenile crime and the juvenile justice system) in local juvenile justice institutions (police stations, prosecutor's offices, Municipal and District

courts, CSW offices and Probation Service offices) on the importance of data collection and how the standardised data collection systems should be implemented at the point of recording data.

- Develop systems for collecting and collating data at central levels, at: the Ministry of Justice, the Kosovo Judicial Council, the Ministry of Internal Affairs, the Ministry for Labour and Social Welfare.
- Every year, the Ministry of Justice should appoint a juvenile justice expert to analyse the data collated by juvenile justice experts. This might be done at a public university in order to develop the capacities to analyse data on juveniles and monitor implementation of the code





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