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**Children in Conflict with the Law in Tajikistan**  
Report of the Expert Group on Juvenile Justice of  
the National Commission on Child Rights



A significant number of children come into conflict with the law—in Tajikistan as elsewhere. The UN Convention on the Rights of the Child (UNCRC) and Standard Minimum Rules for the Administration of Juvenile Justice (“Beijing Rules”) describe a comprehensive set of principles and provisions to protect children as well as society in these cases. These global agreements hold that: young children can only be dealt with under child protection legislation and juveniles must be dealt with by a separate juvenile justice system; and, further, that juvenile justice remedies be rehabilitative and restorative in nature; and, finally, deprivation of liberty must be an act of last resort.

Tajikistan, like other CEE/CIS countries, still faces the challenge of developing a separate juvenile justice system that rises to international standards and commitments. This reform involves: laws, policies and processes; mechanisms such as youth courts, regulations and monitoring instruments; accountable authorities, informed professionals and space for the voices of children and parents; as well as constructive and reconciliatory sentencing options and settings. However, significant steps have been made in recent years.

In 2003-04, the Expert Group on Juvenile Justice conducted a situational analysis of juvenile justice. Its goals were to: analyze existing criminal legislation as it relates to juveniles; determine the extent to which juvenile justice in Tajikistan meets the provisions of the UNCRC and Beijing Rules; and make recommendations to assist the National Commission on Child Protection.

## MAIN FINDINGS

- 1 Many families in Tajikistan are in difficult circumstances: rates of poverty and unemployment are high and the number of single-parent families has increased. These factors have put more and more children at risk of coming into conflict with the law. The Expert Group found that, overall, juvenile crime is low, accounting for less than 8% of all crime recorded by the Council of Justice. It is striking that 95% of crimes committed by children consist of the theft of food.
- 2 The Expert Group remarked on the lack of a juvenile justice system in Tajikistan. There is no separate legislation that governs juveniles in conflict with the law, no separate judicial procedures for juveniles and no specialized judicial authority to hear cases against juveniles. Children do have access to legal advice and representation, but availability is inconsistent over the justice process and across the justice system. Sentencing options and rehabilitative alternatives are also limited.
- 3 The treatment of children under age 14 is a particular concern. Formally, these children are under the age of criminal responsibility and fall outside the criminal justice system in Tajikistan. Yet, under the jurisdiction of the Commission on Minors, they still face the threat of arrest, pre-hearing detention, and possible deprivation of liberty for long periods in closed type ‘educational’ institutions.
- 4 Children over the age of criminal responsibility (16 years old) also face injustices, e.g., many are sentenced to substantial periods of deprivation of liberty for relatively minor offences.
- 5 Custodial conditions are a crucial problem. Assessments of the main types of closed institutions in Tajikistan found that they do not provide a healthy rehabilitative environment for the children placed there. The institutions fail to meet minimum international standards and the CRC.

## THE CRIMINAL PROCESS IN TAJIKISTAN

The Tajikistan Criminal Code defines the age of criminal responsibility as 16 years old, but that limit can be reset to as low as 14 years when a child commits a serious offence as covered in Article 23(2). Children under the criminal age are referred to the Commission on Minors, which can return the child to parents or place him or her in an institution while the case is processed. In its decisions, the Commission is supposed to take into account the age of the child, the environment in which they were raised and their current living conditions.

Parents are obliged to attend the child's hearing before the Commission but the Expert Group heard from children at the Special Vocational School that their parents were not always in attendance. If the Commission finds that the child concerned committed the offence, it may issue a warning to the child, require the offender to apologize to the victim, place the minor under parental control, impose a fine or in the case of a dangerous act assign the child to a closed institution. In practice, the Commission

Tajikistan has yet to develop a separate juvenile justice system. Currently, there are no separate courts for juveniles, no judges who specialize in juvenile justice and no distinct court proceedings for juveniles who are in conflict with the law. Juveniles are processed through the adult court system. There are, however, some laws that specifically address juveniles in conflict with the law. Again, however, the Expert Group found that these basic protections are often overlooked or poorly applied—and that, overall, the justice system lacks basic knowledge, training and mechanisms for dealing with children in conflict with the law. This system-wide paucity of qualified people and informed procedures puts children at increased risk of having their rights violated—at every stage of the process, from arrest to incarceration.

The Tajikistan Criminal Procedure Code has a number of provisions related to children and juveniles. The law requires that the parents of the juvenile arrested be contacted within eight hours of the arrest. Children with parents can be released to their family's care after an interview with authorities. Every person, including juveniles, has the right to legal representation, which is to be provided within 24 hours of the time of arrest. If a child cannot locate or afford legal representation then it is the responsibility of the State to provide it. However, very often children do not have proper legal representation over the whole course of the pre-trial and trial period.



The law has a number of provisions related to the detention of juveniles. If they are over age 14, juveniles who are taken into custody can be held in a remand centre of the Ministry of the Interior for 24 hours and with the approval of the prosecutor up to 72 hours. Beyond that, juveniles can be kept in pre-trial detention only in specific circumstances, e.g., the alleged offender was caught in the act, identified by an eyewitness or found with evidence of the crime, or the offence alleged carries the possibility of a sentence of more than one year to deprivation of liberty. Apart from these conditions, juveniles can be returned to the custody of parents or guardians who promise to make sure the child appears for court dates.

The Expert Group determined that many children who enter the justice system face prolonged detention periods—both pre-trial and upon sentencing. Even children charged with minor crimes are being placed in pre-detention centers. A big part of the problem is the lack of specialists and social services equipped to deal with juveniles. For example, when police are unable to locate the child's parents, especially if the family lives outside Dushanbe, they may refer the child to the Temporary Isolation Centre, a facility that holds children aged 3-18 who are abandoned, homeless or without primary care temporarily. In another example, when a juvenile is put on trial, the court notifies any enterprise, institution or organization with which the accused child had been associated. This violates the "Beijing Rules" which state the need to protect children against publicizing the case.

Before sentencing the child, the court is required to take into account the child's current living conditions, including family environment, economic situation and overall psychological well-being. However, the courts currently do not fully examine the child's circumstances, including the factors that contributed to or motivated them to commit the offence. There is a need to involve psychiatrists in all aspects of the court proceedings in order to ensure that the character and mental capacity of the child is fully considered.

Sentencing itself can take the form of a fine, prohibition from engaging in a specific activity for one or two years, performing correctional labor, or imprisonment for up to 10 years depending on the severity of the crime. The Expert Group found that many times children receive sentences that are too severe for the crime committed. Children are also too often being sentenced to imprisonment, while the UNCRC clearly outlines the fact that imprisonment should only be used as a last resort.

All of these deficiencies violate article 40 of the Convention on the Rights of the Child.

## **REVIEW OF CLOSED INSTITUTIONS**

The Expert Group conducted a review of each type of closed institution where children who have committed crimes may be held: the Temporary Isolation Centre; Special School; Special Vocational School; and Juvenile Colonies.

The Temporary Isolation Centre of the Ministry of the Interior is a half closed institution used for holding children aged 3-18 years old who are without parental care or a primary caregiver. It was found that the average age of children placed in the institution is under 14 and that their placement is not solely based on the crimes they commit rather due to the lack of efforts made by the police in locating the parents of the children. It is standard for children to remain at the centre for a month but in some cases children spend longer.

In 2005 the centre adopted a recommendation from the Expert Group aimed at implementing international standards at the centre and improving the staffing regime. Collaborations have taken place with UNICEF technical partners such as the Children's Legal Centre in the United Kingdom to train staff, provide technical assistance on social work, working with families and re-integrating children with their families. To reflect this change in direction, the centre was renamed Priemnik-raspredelitel (Reception Centre for Minors).

The Special School, which falls under the jurisdiction of the Ministry of Education, is a closed institution for children who have committed crimes or anti-social acts. According to government documentation, the institution accepts boys aged 11-16 and, with recent amendments to its regulations, girls aged 14-18 who are in conflict with the law. Steps have been taken to reunite children who have committed minor offences with their families. The Expert Group also plans to work with the Ministry to develop regulations for the special school that are in line with the Convention on the Rights of the Child and other international standards related to juvenile justice.

The Special Vocational School, which is the responsibility of the Ministry of Labour and Social Protection, is a closed institution intended for boys aged 14-18. Of pressing concern is the number of boys who are held there improperly either because they are younger than the acceptable age or have not been convicted of a crime. With UNICEF technical assistance, the Expert Group has developed an agreement with the Ministry to reform the school, including creation of a working group specifically for the school. The plan is to revise the school's mandate to enable changes to the staffing regime and to opening up the school. It will eventually be transformed into a multipurpose centre within the section of alternative juvenile justice.

Juvenile Colonies, which fall under the Ministry of Justice, are intended for juveniles who commit serious criminal offences. Boys who have been convicted in the criminal justice system can be sent to a juvenile colony and may remain there until they turn 18 years of age. There is serious concern about conditions in the colonies, which are staffed by military personnel and where boys may be subjected to isolation cells and corporal punishment.

Overall, the Expert Group found conditions across the types of closed institutions that fail to comply with the Beijing Rules and the Convention. One major concern is the lack of separate living quarters for children who are being held for criminal offences and those who are resident for other reasons. Hygiene standards in the institutions were also found to be very low. At the time of the situational analysis was conducted in 2003 and before recent reforms, the bathrooms and showers in the Special School and Special Vocational School were below standard, as were sleeping conditions with up to 20 children sleeping in tightly placed beds in one room. Children also suffer malnutrition, largely as the result of the limited funds received by institutions.

Discipline methods are also a concern across institutions. This is especially the case where solitary confinement and corporal punishment are used. Articles 19 and 37 of the Convention are clear about the child's right to be protected from violence, especially when they are held in closed institutions. Solitary confinement is a harmful practice for children.

The staff at all of the institutions is dominated by men, a situation that raises concerns, especially for girls who are placed in these facilities. Research has shown that having female staff in residential institutions provides a level of protection from physical violence. As well, staff lack training on how to work with children in institutions.

Contact between children in these closed institutions and their families is limited. Officially, children should receive weekly visits from family members, but the Expert Group found that the number of visits that take place is actually very low. The children are also largely cut off from the community. Since the institutions are closed, the children attend schools inside the facility. The quality of education is very low, largely due to the lack of resources. The Vocational School has a mandate to provide vocational training for the children but it was found that the training actually provided was not very practical. Similarly, training in life skills is lacking in these institutions. The level of seclusion and lack of training does not contribute to the overall rehabilitation of the child and, in fact, makes it more difficult for them to re-integrate into the community once they leave the institution.

## RECOMMENDATIONS

The Expert Group made a number of recommendations to improve the treatment of children who come into conflict with the law. Foremost, there is a need to develop an alternative system for juvenile justice, which is separate from the adult system. An alternative system should include specially trained judges, as well as the introduction of procedures that take into consideration the special needs of juveniles. Legal representation for children should be guaranteed throughout all stages of the trial. There is also a need to reduce the use of pre-trial detention. Currently children can be held for as long as 18 months before trial, a period that needs to be drastically reduced.

The state of custodial institutions and the treatment children face there is very concerning. There is a need to set minimum standards in these residential institutions and implement monitoring systems that can help ensure international standards are met and maintained. Children in the institutions should also be informed of their rights, have ready access to legal representation and contact with their families. The capacity of staff in the institutions needs to be improved, especially in terms of training on appropriate ways to deal with children.

There is a need to ensure that deprivation of liberty is a genuinely last resort. Strict criteria need to be put in place and adhered to that limit the circumstances under which children can be placed in custodial or educational institutions. In addition, closed institutions should be largely replaced by centres that focus on rehabilitation of the child. When children leave the institutions, they also need support, e.g., to find a job or secure accommodation.

More broadly, measures are needed to prevent children coming into conflict with the law in the first place as well as reducing the incidence of juvenile crime. Increasing the number of social workers available to work with children and families at risk could prevent or mitigate future conflicts with the law through early intervention.



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