

# Juvenile Justice Committees' Evaluation Report

• *unite for children*

## *1. Introduction*

Mongolia's children and adolescents are a 'transition generation' having to cope on various levels with the challenges of ongoing political, economic and social changes. It is at such times when youth are highly vulnerable in coming into conflict with the law. Crimes involving juveniles have significantly increased in recent decades, rising from 733 in 1991 to 1,080 in 2008. Most of these recorded crimes are for theft. How the State responds to these youth can determine whether they successfully make the transition to law-abiding citizens, or become embroiled in a life of crime. Unfortunately, even for first time offences or minor crimes such as theft, children too often face harsh consequences: deprivation of liberty at various stages of the justice process.

Since September 2006, the Government of Mongolia with UNICEF support has established Juvenile Justice Committee (JJC) pilot projects in two districts and one province – Bayangol, Baganuur and Khentii respectively. Government officials, children and families, and communities have voiced deep appreciation for the pilot initiative in these three locations. Discussions are underway regarding the expansion of this pilot initiative to other provinces. Meanwhile, broad legislative reform efforts are in progress to amend existing criminal, administrative, labour, child rights protection and other laws relevant to juvenile justice.

### *1.1 purpose*

Prior to legislative reform and replication, however, a comprehensive evaluation was necessary to better understand the impact, relevance and effectiveness of interventions undertaken thus far. In March 2009, two independent consultants conducted a comprehensive evaluation to assess the impact and effectiveness of the pilot JJs. Across three locations – , Bayangol and Baganuur districts of Ulaanbaatar and Khentii - more than 100 stakeholders were interviewed, from youth and their parents, community leaders, social workers, legal experts, UNICEF and JJC staff to police, prosecutors, judges, governors and ministry officials. This summary report outlines major findings of the evaluation, highlights key lessons to inform the future replication of JJs and proposes recommendations to assist the Government of Mongolia (GoM) and UNICEF to strengthen the country's justice system for children.

### *1.2 scope*

Utilizing a participatory and mixed method approach, this evaluation addresses the following key questions: **(1)** To what extent have the strategies and activities supported by UNICEF achieved their goal and objectives? **(2)** What have been the impact/outcomes of the project –

intended, positive and negative? Have there been any unforeseen impacts/outcomes? **(3)** What challenges were confronted by UNICEF and partners and how were these addressed? Which opportunities were capitalized? **(4)** What are the good practices and lessons learned by UNICEF and partners? **(5)** What recommendations can be made on the future direction of this project? **(6)** Would you recommend replicating this project in additional locations and/or taking this project to scale (e.g. linking to advocacy for legal or policy reform)?

## **2. Evaluation of the Juvenile Justice Committees**

### **2.1 Backgrounder**

**Legal context.** Over the last decade, Mongolia has made steady progress in promoting respect for children’s fundamental human rights. Mongolia has ratified 29 international human rights treaties including the Convention on the Rights of the Child (CRC). Mongolia is obliged to recognize those in conflict with the law as children, not merely criminals, and afford them special protection within the justice system. For more than a decade, Mongolia has undertaken steps to harmonize national legislation with the CRC and other ratified international instruments, and enacted a number of laws affecting child protection. Four laws in particular have the most influence on juvenile justice: the Criminal Code, Criminal Procedure Code, Law on Implementation of Court Decisions and Administrative Law.<sup>1</sup> Generally however, Mongolia’s domestic legislation is not in full conformity with the principles and provisions of the CRC. Various principles of juvenile justice, including the deprivation of liberty as a last resort, and practices from prevention through reintegration of released juveniles, are not implemented in accordance with the principles of the CRC and UN Guidelines.<sup>2</sup>

Despite the momentum on legislative reform and policy development for children, the Committee on the Rights of the Child expressed concern with gaps between law and practice, particularly the unacceptable practice of keeping persons below 18 years of age in pre-trial detention for a prolonged period of time, sentencing juvenile first-time offenders to imprisonment for petty crimes, juveniles’ inadequate access to appropriate legal aid and assistance, poor detention and prison conditions for children, inadequate social reintegration services for sentenced and released offenders and the difficulties faced by juveniles released on probation.<sup>3</sup> At this time, while the law provides some alternatives to detention, such as probation, conditional sentence and educational and disciplinary measures, there are no provisions for diversion and non-custodial rehabilitation programmes.

### **JJ chronology**

- 2000** Great Khural (the Parliament of Mongolia) approves the Strategic Plan for Mongolia’s Justice System to strengthen the judiciary and rule of law.
- 2001** Minister of Justice and Home Affairs establishes a Juvenile Justice Working Group in November 2001.<sup>4</sup> The Working Group is charged with developing a strategy to

improve the situation of children in conflict with the law, and in particular to address concerns about children in detention facilities.<sup>5</sup>

**2002**

New Criminal Code and Criminal Procedure Code and ancillary legislation come into effect.

**2006**

MoJ & HA establishes an inter-agency JJ Legal Reform Working Group to oversee JJ reform initiatives.<sup>6</sup>

*June*

Conference on Juvenile Crime

*July*

JJWG identified focus areas for reform

*Sept*

UNICEF supports the establishment of pilot Juvenile Justice Committees (JJs) in Bayangol and Baganuur, districts of Ulaanbaatar, and Khentii province with a three-fold purpose: i) to promote community-based alternatives to detention; ii) to create an evidence base for diversion; and iii) to take JJs to scale through replication and legislative reform.<sup>7</sup>

**2007**

Training of trainers on juvenile justice and child-friendly procedure manual for law enforcement officials

Development and distribution of a Court Decision Booklet on juveniles in cooperation with MoJ & HA, the Supreme Court and National Legal Centre

**2008**

Discrete amendments to the Criminal Code on juvenile justice, including Article 62<sup>18</sup>

Child protection (including juvenile justice) indicators finalized as part of the National Child Protection database with the aim of incorporation into the regular monitoring mechanism of implementation of the NPA on Child Protection and Development

Initiatives underway to replicate the JJ Project in four Aimags (Uvs, Khovd, Hovsgol and Tov) at the request of local authorities.<sup>9</sup>

**2008**

Legislative reform proposals on juvenile justice drafted by the National Legal Centre

Draft bylaw on civil registration developed by the National Legal Centre

Development and field testing of Child Rights and Child protection curricula and manuals for National Law School students<sup>10</sup>

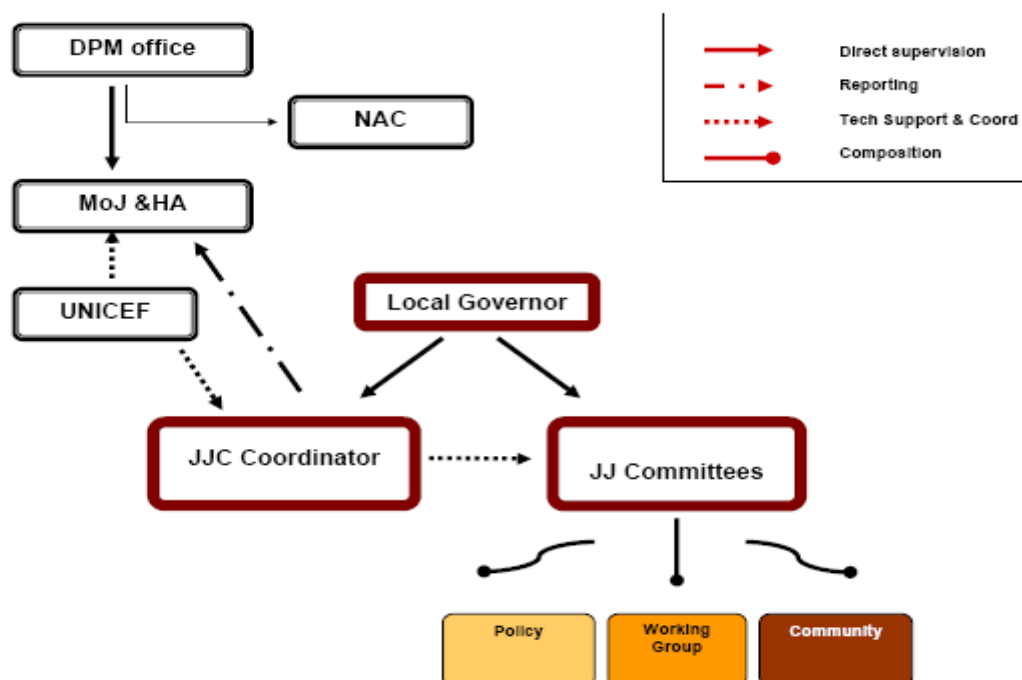
**2009**

Evaluation conducted in Bayangol and Baganuur districts of UB and Khentii to assess the impact, relevance, effectiveness and sustainability of initiatives undertaken and to propose recommendations for future strategies and actions to improve Mongolia's justice system for children.

## 2.2 JJC mandate & structure

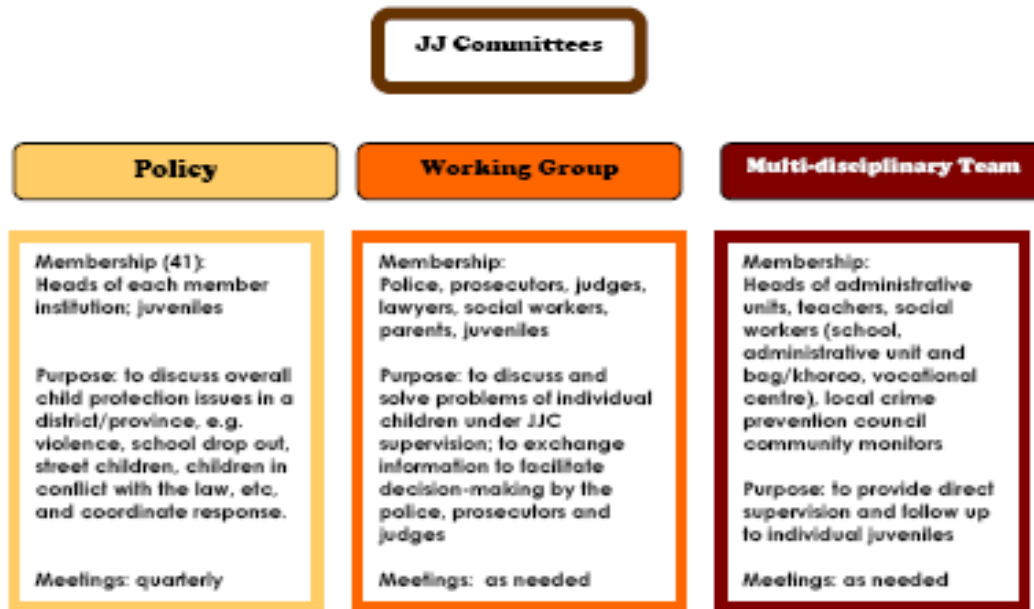
According to the original charters, the JJC shall be considered established and active upon approval of its charter by the local civil representatives' Khural. In 2006, the local Khural approved local bylaws and attached charters on the establishment of Juvenile Justice Committees (JJC) in 2 districts and one aimag: Bayangol, Baganuur and Khentii. Although the charters empower local JJC with its own structure, organisation, budget, staff, letterhead and stamp and oversight of regular activities concerning children in conflict the law, JJC are not autonomous bodies. The membership of JJC sub-committees is comprised largely of Government officials and representatives of existing agencies delegated to take actions to respond to children in conflict with the law. The JJC coordinator and social worker are the only JJC "staff" and the structure of the JJC is tenuous. Although JJC are authorised by Charters to develop procedures, guidelines and instructions, processes remain unclear. Future charters should delineate the parameters and procedural mechanisms for developing guidance. It should also address broader structural issues, i.e. how JJC fit within existing governance.

The diagram below offers a skeletal visual JJC framework based on original charter provisions and existing governance structures.



This diagram does not, however, reflect reality. At each level, there is unclear leadership, ownership and blurred lines of accountability. Although the JJC charters state that the "Juvenile Justice Committee shall work under management of the local governor ... and shall have a Head [local governor], coordinator, members and operations office consisting of the relevant officers of the Governor's office," this is not evident in practice. In all three sites – Bayangol, Baganuur and Khentii – the local governor by and large serves as a JJC figurehead

while practical leadership is delegated to the JJC coordinator, and ownership to UNICEF. Not uncommonly, the JJC coordinator is referenced interchangeably with “the JJC”. This belies an understanding of the distinct roles and responsibilities of the coordinator versus the committee itself, which is composed of three groups that function and convene at different levels.<sup>11</sup>



The 2006 JJC Charter contains a section on the detailed functions of a Juvenile Justice Committee in working with children in conflict with the law. While each function in and of itself is relatively clear, there are ambiguities on *who* will carry out each respective duty, *when* and *how*. With 41 members in plenary, the JJC clearly is not the same as the JJC coordinator. Similarly, a Committee of 41 people is not physically supervising the child whereas the JJC coordinator or Multi-disciplinary team members (MDT) may be. There is frequent reference to the JJC making “decisions”, but in fact it performs only an advisory function. Decisions about actual cases of children in conflict with the law are rendered by the relevant law enforcement authorities, in accordance with laws. A clearer understanding of these nuances is necessary to support replication, and to better identify the strengths and gaps in current practices.<sup>12</sup>

Moreover, the three levels of JJC – policy, working group and community teams – are difficult to sustain as presently operating. First, it is challenging to maintain similar levels of interest from local officials once external financial support is phased out.<sup>13</sup> Second, service provision supported by fees to local community actors may be discontinued once financial incentives end; it also discourages volunteerism.<sup>14</sup> Third, it blurs existing mandates, roles, and responsibilities and does not resolve systemic deficiencies. Members of the Bayangol MDT divulged that they received incentives for carrying out tasks which fall under existing mandates; they further explained that current salaries do not cover basic costs, including transportation, for serving these children.<sup>15</sup> Fourth, while the JJC charter outlines JJC functions, it does not demarcate function by JJC sub-committee, member agency or JJC coordinator; nor does it delineate lines of accountability. Finally, it is unclear how and to what extent the JJC MDT overlaps with, duplicates, or supplants existing community-based structures.

## 2.3 JJC in practice

*“Children’s lives are being saved. Sending them to prison will break them with long lasting adverse implications.”<sup>16</sup>*

### Impact

The JJC project has achieved its primary goal: to reduce the number of children held in police custody, pre-trial detention, incarceration and prisons. Based on international experience, we know that depriving children of their liberty simply does not work. It has generally been proven to be ineffective at promoting recovery and may further increase the chances that a child will reoffend. The JJC project clearly substantiates this with the following results:

- Ω significantly less children were held in police custody
- Δ pre-trial detention of children has dropped
- Ω sentencing of children to prison has decreased
- Δ more children were protected during justice proceedings
- Π overall decline in juvenile crimes
- Ω juvenile recidivism rates plunged

Although the JJC’s long-term impact will take years to be felt, preliminary findings clearly demonstrate the value of community-based alternatives to detention and also provide a solid basis for diversion in Mongolia. Diversion is a cost-effective informal way of dealing with juvenile offences, outside of the criminal justice system. This approach precludes due process and other violations experienced by children during justice proceedings and in institutional settings: high risks of abuse and other harm, isolation from their families and communities, disruptions in education, limited access to health care and recreational activities, and susceptibility to further criminalization.

### Outcomes for children

CHILDREN SERVED BY THE JJC ARE MORE LIKELY TO:	
Pre-trial	
	be informed of their legal rights by police officers
	be represented by legal counsel during police investigations, prosecutor interviews and trial proceedings
	be accompanied by a parent/guardian and social worker or teacher during police investigations
	be served by a specially appointed juvenile investigator (in addition to traditional appointment of juvenile prevention officer), juvenile prosecutor and juvenile judge
	be treated with respect by the police* (i.e. less/no more yelling, punching, kicking, slapping, insults, threats, pressure to confess, etc)
	be released from pre-trial detention at the request of and/or under the supervision of the JJC Coordinator
	be interrogated in child-friendly interview rooms at the police station and interviewed in a child-friendly manner by police, prosecutors and judges
	experience shorter periods of investigation*

	attend school, trainings and/or recreational activities during the pre-trial phase
<b>Trial</b>	
	be represented by counsel during trial proceedings
	be informed of their legal rights by judges
	receive forced disciplinary and educational measures as a sentence
	receive a deferred sentence with probation
	be released under the supervision of JJC
	avoid sentences of imprisonment for minor and moderate crimes

## Overall outcomes

### 1 Knowledge & Attitudes

This is the first time since the demise of the old Commission in 1990 that juvenile justice has been visibly raised and addressed at the national, city/aimag, district/soum and khoroo/bag levels. Juvenile justice is now on the agenda of all stakeholders in Bayangol and Baganuur districts of Ulaanbaatar and Khentii including DPM, ministries of justice and social welfare, NAC, local parliaments, local governors, local crime prevention councils, schools, NGOs, community leaders and members, parents, media, etc. All stakeholder respondents have indicated that the JJC project is beneficial for children. Local parliaments, governors and other entities have expressed interest in assuming greater ownership of the JJC. The local Governor (Bayangol) and Local Authority for Children (Baganuur & Khentii), for instance, have engaged in policy debates and cost-sharing considerations. More and more, official and community attitudes toward children in conflict with the law are shifting. Whereas previously children were rigidly viewed as criminals, they are now recognised as children who can change their behaviour without severe punishment (e.g. imprisonment) and successfully reintegrate into society.

### 2 Behaviour & practice

Greater levels of cooperation and coordination are evident among stakeholders on juvenile justice and child protection across the justice and social welfare sectors, child rights bodies and community-based groups. Multi-sectoral and multidisciplinary working groups at the district/aimag levels have effectively collaborated on decisions affecting individual children. Increasingly, the media has been more objective reporting on children in conflict with the law and juvenile justice. There is also less discrimination and stigma faced by children in conflict with the law in various communities due to a better understanding of the causes of juvenile crimes and how to 'rehabilitate' those who commit them. In fact, there have been reports of communities not only giving these children a second chance but mobilizing support to prevent juvenile recidivism and promote successful reintegration.

### 3

## *Legal context*

While not in full compliance with the principles of the Convention on the Rights of the Child and other international standards, the legal environment is increasingly more conducive to protecting children in conflict with the law with recent amendments to the Criminal Code and Procedure Code in 2008. The JJC project provides a solid basis for diversion. The National Legal Centre and National Law School both support diversion in their respective legislative reform proposals on the Criminal Code, Procedure Code and other relevant laws.



## *Wider impact*

Rippling effects beyond the scope of this JJC project has taken place. Local authorities from four additional provinces have requested UNICEF support to replicate the JJC model project in their areas. In two provinces (Uvs and Khovd), the local parliaments have signed declarations to financially support a similar Committee.

## **Gap:**

### Programme design

In the absence of original project documents, the evaluators relied heavily on the institutional memory of UNICEF staff and key stakeholders to discern the original aims of the JJC project. Variations emerged with respect to respondents' articulation of vision, goal, objectives and strategies. The 2007-2011 Country Programme Action Plan Results Framework did not offer clarification. The output, targets and indicators are not fully SMART (specific, measurable, achievable, relevant and time-bound), nor linked to sequential actions necessary to achieve results. A diversion strategy, for instance, cannot be put into place without legislative reform; this is not accounted for in the CPAP Results Framework.<sup>17</sup> Although the original JJC charters offer some guidance, it is a generic framework without clear goals, objectives, benchmarks, targets, indicators and lines of accountability. The JJC charters also lack a monitoring and evaluation (M&E) plan, including monitoring of budgetary allocations and utilization.

### Information management systems

Another gap is the lack of consolidated data across the justice sector, i.e. police, prosecutors and judges, as well as detailed data within respective justice sectors. Very basic data is available. Raw data exists but is not fully analyzed for maximum usage, nor is it disaggregated by age, offence, sentencing, etc.<sup>18</sup> Based on a review of Khentii court statistics, it is not possible to ascertain the number of children in conflict with the law involved in formal justice proceedings by age, sex, region, social and ethnic origin, offence, or sentencing. Nor is it possible to determine which sentences were applied for particular offences or age groups of children or ascertain the number of children deprived of liberty and the length of deprivation, disaggregated by sex, age, region, rural/urban area, social and ethnic origin, and reasons for deprivation of liberty. Further, there is a vacuum of official data on 'children in especially difficult circumstances' in accordance with the Law on the Protection of the Rights of the Child,<sup>19</sup> much less disaggregated data by age, sex, region, education, family background, etc.<sup>20</sup>



### Children at high risk

Under Mongolia's Criminal Code, the general age of criminal responsibility is 16 years old, and yet 14 years old for certain serious offences. Children below 14 years old who commit crimes will always be released from criminal liability regardless of the severity of the offence. Further, children over the age of 16 may be liable for administrative penalties under the Law on Administrative Liability. Violations can result in a fine (usually imposed against the child's parents) or "apprehension," or detention for 7 to 30 days in a police detention facility.<sup>21</sup> Both groups of children should be referred to the JJC and offered an opportunity to benefit from community-based early intervention and support services. Providing social welfare support to this 'individual' target group as one means of juvenile crime prevention is more practical and less discriminatory than canvassing a community for would-be offenders based on an inexact science.

### Child Victims & Witnesses

Although the Criminal Code and Law on the Protection of the Rights of the Child explicitly recognise a child's right to be protected against violence, exploitation, forced labour, abuse and neglect, etc., there were limited, if any, actions undertaken by the justice and social welfare sectors and the JJC to prevent or respond to crimes committed against children or to offer special protections to child witnesses. Moreover, the Criminal Procedure Code does not provide for adequate procedural safeguards of child victims and witnesses during the investigative, trial and post-trial phases.

### Coherence

Coherence can be improved at various levels within and outside of UNICEF, particularly between the UNICEF Child Protection (CP) Programme and Convergent Basic Social Services (CBSS) Programme as well as between UNICEF and UNDP on access to justice initiatives. Within UNICEF, CP and CBSS staff should jointly map geographic areas of operation, respective partners and stakeholders, range of activities and services, target groups and local lines of accountability in order to identify overlaps, intersections and opportunities for collaboration. Convergence of basic social services should also be linked to government plans on juvenile justice (and broader child protection) at the provincial and district levels. This is particularly important as UNICEF CP undertakes a systems building approach which strengthens national and sub-national structures, including the delivery of services to children.

Article 20 of the Criminal Procedure Code makes the participation of defence counsel mandatory at all stages of criminal proceedings. Given the unsustainability of JJC funded legal representation, it is important to ensure children's systematic access to justice which includes quality legal representation at all stages of criminal justice proceedings. UNDP supported 'Access to Justice' data (disaggregated by age, sex, offence, outcome and location) should be maintained at the national level and shared with UNICEF and key stakeholders. More deliberate cooperation should be cultivated between UNICEF and UNDP based on the UN-wide policy on Justice for Children recently released by the UN Secretary-General.<sup>22</sup>

### **Key lessons learned**

Numerous lessons were learned by diverse stakeholders on various levels. This section highlights some key lessons, which emphasize basic principles and good practices that can make a real difference in protecting children and preventing future juvenile crimes.

While children who commit a crime must be held accountable, the response must factor in the children's ages and evolving capacities, the need to promote their recovery and reintegration, and ensure respect for their rights and due process.

Depriving children of their liberty as a 'first resort' is harsh, unnecessary and ineffective.

Community-based alternatives to detention and reintegration services for children in conflict with the law have proven to be effective for preventing juvenile recidivism. The JJC experience also provides a solid basis for diversion in the future.

JJCs in three locations made a difference in law enforcement's compliance with international standards, i.e. less aggression towards juveniles, detention used as a measure of last resort, separation of children from adults when deprivation imposed, prompt notification to parents, more consistent referrals to JJC coordinators to coordinate legal and support services, child friendly interviewing practices, etc.

The principles of the CRC and UN Guidelines can be met in Mongolia without necessarily creating a separate juvenile court structure. What's important is that juveniles rights are fully respected by all actors at every stage of the justice process.

Respecting children's views, being open and nonjudgmental, and empowering them to reflect on past actions while taking responsibility can influence their future behavior.

The underlying factors that put adults at risk of committing crimes are not the same as those that put children at risk. Therefore, general crime prevention activities that target society as a whole are not effective for juveniles.

Preventing juvenile crimes requires addressing underlying causes such as poverty, unemployment, school drop-outs, living on the streets, poor parental supervision, family dysfunction, violence at home, parental alcoholism, negative peer influences, low self-esteem, rural to urban migration, lack of social services without civil registration, lack of legal knowledge, and inadequate leisure activities.

Prevention, early intervention and support services must be extended by justice and social welfare sectors and should reach out to those children who now fall through the gaps – children below the age of 14 who commit offences, children over 16 who commit administrative offences, child victims and child witnesses.

No one entity alone can meet the challenges of children in conflict with the law – strengthening families and communities in particular are central to a child's recovery and reintegration, which prevents recidivism.

Community leaders and service providers should better mobilize to provide coordinated support services to children, including life skills training, vocational training, education/NFE, recreational activities, legal counselling, peer educators support, and peer information exchange opportunities.

JJCs should establish institutional standards and enforceable accountability mechanisms (e.g. code of conduct for police and detention guards); minimum standards of service provision (e.g. social worker standards for working with juveniles on probation); and child-friendly reporting, monitoring and response mechanisms.

The Government Cabinet Secretariat should forge divides currently fragmenting the response of the social welfare and justice sectors with respect to the delivery of services and protections within the juvenile justice (and child protection) arena.

The current strength of JJC is based on the strength and compatibility of personalities, which is not sustainable in the long term. Interagency JJC operational protocols and guidelines with clear lines of accountability, responsibility, standards and procedures for service delivery and other functions are needed.

A transparent continuum of care and division of responsibilities connecting JJC to bag/khoroo social workers and justice actors is crucial for effective prevention and response. This requires a thorough assessment of who is responsible for what at the city/aimag, district/soum and khoroo/bag levels, what they are doing in practice, and what the barriers are to effective service delivery

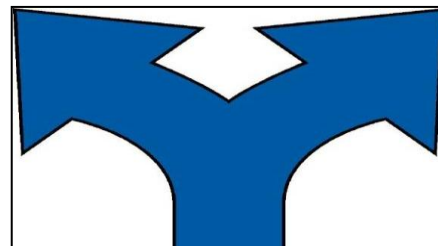
### 3. Recommendations

#### 3.1 overarching

Overarching recommendations set forth in this sub-section are envisioned to take effect from the present through existing (~2011) and upcoming (2012-2016) country programmes, which are endorsed by the Government of Mongolia and UNICEF.

Recommendation: Utilising participatory processes, key stakeholders should collectively develop a vision statement that clearly articulates the long-term vision for achieving justice for Mongolia's children.

While this vision should be aspirational, at the same time it needs to be realistic in light of the country context and socio-economic and political conditions. A vision should be broader than discrete project goals and objectives, should not be limited by the mandate or priorities of agencies, and should span over a number of years, through 2016. This vision should also include a clear model of the national child protection system necessary to ensure that justice for children is realised, reflecting current, mid-point and future incarnations. This transcends criminal justice systems and also includes strengthening social welfare systems for children and families and national human rights and child rights bodies, from khoroo/bag up to national levels.



*If you don't know where your destination (vision) is, any road will take you there*

Finally, this vision should guide strategic alliances, future strategies and evidence based programming. Developing a coherent, shared vision of 'justice for children' and a common understanding of systems building among a broad range of partners is fundamental to advance child protection. This vision should be aligned with the Mongolian Child Protection Strategy.<sup>23</sup> For purposes of this report, the recommendations are based on a general vision ensuring that all children in Mongolia will be: provided access to, better served, and protected by a child-friendly justice system, with clear linkages to the *social welfare system and national child rights and human rights bodies*.

### ***3.2 taking the JJC to national scale***

**Recommendation:** Take the JJC project to national scale progressively using a two-pronged, mutually reinforcing approach: (i) legislative reform (see below) and (ii) replication of the modified JJC in districts and aimags across the country.

The 2009-2016 goal should be to take modified JJC to national scale, with progressive replication whilst solidifying existing Committees. From 2009-2012, existing JJC should be streamlined and standardized, including a common structure and framework, uniform case management forms and standard operational procedures. In 2009, under the leadership of the Government Cabinet Secretariat and local governors and with the participation of all key stakeholders and technical support by UNICEF, JJC should develop a strategic plan of action that clearly outlines the steps to be undertaken from local up to national levels, including a replication schedule, methodologies, processes, focal points and timeline. Cost-sharing and in-kind contributions should also be part of this plan, as well as monitoring (i.e. goals, targets and indicators which should be linked to the child protection database) and evaluation.

The replication of the JJC model in four identified aimags (Uvs, Khovd, Khuvsgol and Tov) should reflect this standardized model. As JJC replication in these four locations is underway with support from local government budgets, UNICEF should extend technical expertise to assist local authorities shape JJC according to a vision of the future JJC model. In the meantime, however, existing forms, letter templates, contract templates, sample case files, monitoring tools, financial spreadsheets, reconciliation procedures, etc should be made available to new JJC. Orientation materials, on site trainings and mentoring schemes should also be developed to facilitate replication. Analyses of the prevalence of juvenile crimes, community needs and resources should help inform the order of priority or investment of energy for replication. Bylaws and charters should be accordingly amended and/or developed for approval by the Cabinet or local Hural.

### ***3.3 leadership & ownership***

**Recommendation:** Institute clear lines of leadership, ownership and accountability, as well as specific roles and responsibilities for the management and implementation of the Juvenile Justice Committees (JJC), from local up to national levels. Concrete monitoring and accountability mechanisms should be linked to all levels of JJC functioning and specific entities and actors.

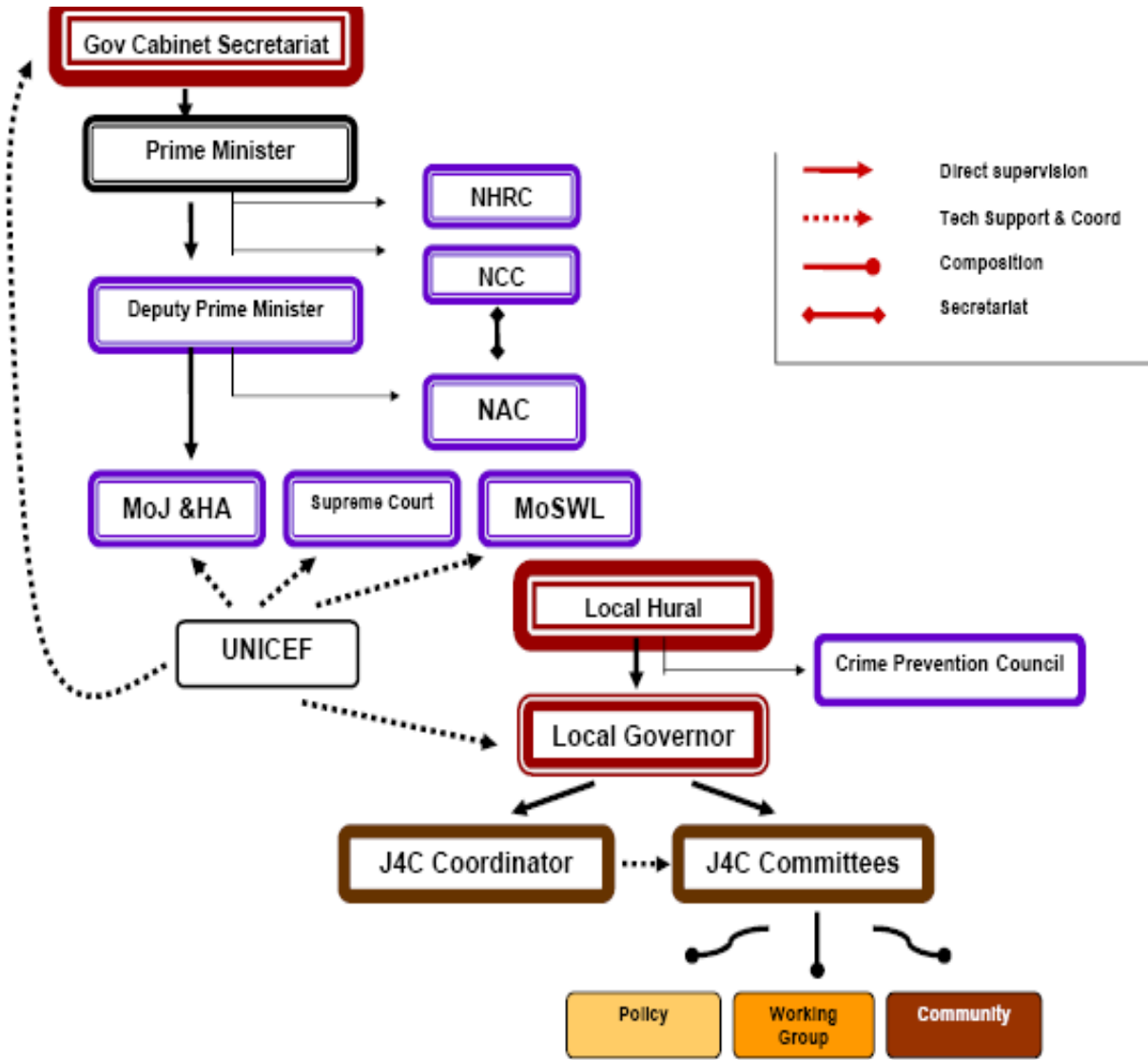
At the national level, the Government Cabinet Secretariat should take leadership and at the local level, the local hural should empower the Crime Prevention Council and appoint the local governor to oversee the administration of the Justice for Children Committee. The Government Cabinet Secretariat, local hural and local governor (denoted by bold red boxes in the diagram below) should be held accountable for the implementation of JJC, with annual reporting requirements to a designated entity on specific areas.

While the Government Cabinet Secretariat and local hural and governors are tasked with overall leadership, other entities should take ownership of the JJC at the national and local levels (denoted by purple boxes in the diagram below). Specific roles and responsibilities should

be assigned to key entities including lines of accountability and support between the national and sub-national levels. The Secretariat has an (in)direct supervisory line with the Ministries at the national level as well as the local authorities, which is crucial in implementing JJs.

NAC's role as a top down and bottom up coordinating, policy and advocacy body on children's rights should be well-established in law, policy and practice. UNICEF's role should be limited to technical support, trainings, capacity building initiatives and financial support, as appropriate – primarily to the Government Cabinet Secretariat and local governors to manage the JJs and thereafter to other key stakeholders, as necessary. Financial support should gradually be phased out as the government initially shares costs and assumes full responsibility for salaries and activities by 2016.

The diagram below proposes an overarching structural framework for the Juvenile Justice Committees, in line with existing structural realities and linking the national level to sub-national levels. Boxes with red borders denote positions of leadership with proposed supervision and reporting accountabilities; purple border boxes denote positions of ownership as these are key entities in the implementation of the JJs. UNICEF should move away from its leadership role and instead provide substantive technical support to the Governor Cabinet Secretariat, local governors, ministries and national bodies to assume leadership, management and coordination of the Juvenile Justice Committees. Communications, reporting, information-sharing and other protocols should be developed.



### 3.4 research & evidence base

**Recommendation:** Develop systematic data collection within the national statistical system on children in conflict with the law, child victims and child witnesses; ensure that all data and indicators are used for the formulation, monitoring and evaluation of policies, programmes and projects for the effective implementation of the CRC and UN Guidelines; and seek innovative ways to publish statistics and make statistical information widely available to the public.<sup>24</sup> This should build on efforts underway by UNICEF and government partners to develop a national child protection database.

#### **Social budgeting**

**Recommendation:** With a view towards bridging gaps in the realisation of children's protection rights, develop child-friendly budgets linked to economic and social policies based in part on a cost-benefit analysis of:

- ☐ JJC/J4Cs against pre-trial detention, incarceration and imprisonment, as well as service provision from pre-trial to trial to probation and reintegration
- ☐ the lack of diversion for minor and moderate crimes (at a minimum), taking into account costs of formal justice proceedings including time and efforts expended by police inspectors and investigators, prosecutors, judges, legal advocates and the community-based social services sector

#### **Evidence based prevention**

**Recommendation:** To inform a comprehensive, evidence-based prevention strategy, conduct comprehensive research on the underlying and contributing factors as well as supply and demand dimensions (for certain offences) of crimes committed by and against children. At all levels, the full range of relevant factors that may render children vulnerable to committing or falling victim to offences should be explored, such as poverty, family breakdown, substance abuse, unemployment, lack of educational and recreational opportunities, gender inequality, stressors associated with financial hardships, and widening disparities between and within countries. The role of the family, teacher, social worker, law enforcement and others should also be examined to inform who is best positioned to carry out specific prevention activities. Good, promising and ineffective practices should be documented and linkages explicitly drawn to child protection systems at the national and local levels. Based on the results of the research, BCC interventions should be tailored for targeted groups as response *activities*.

It is important to note the significance of the media's role and interpersonal communications dimensions related to prevention activities. Prevention efforts linked to a media campaign or BCC activities are critical to raising target groups' awareness on specific issues of concern and either deterring them from, or empowering them to take, certain actions that prevent crimes from being committed by and against children.

### 3.5 CRC recommendations

**Recommendation:** The Juvenile Justice Committees should also implement recommendations made by the Committee on the Rights of the Child.<sup>25</sup>

- a) Develop and implement a comprehensive national programme on administration of juvenile justice, including establishment of juvenile courts endowed with appropriately trained professional personnel covering all *aimags*;
- b) Limit by law the length of the deprivation of liberty of persons below 18;
- c) Limit by law the length of pre-trial detention of persons below 18 so that it is truly a measure of last resort for the shortest period of time, and ensure that it is decided by a judge as soon as possible and consequently reviewed;
- d) Encourage the use of alternative measures to the deprivation of liberty of persons below 18, such as probation, community service or suspended sentences;
- e) Where deprivation of liberty is unavoidable and used as a last resort, improve procedures of arrest and detention conditions;
- f) Ensure that persons under 18 have access to appropriate legal aid and defence and independent, child-sensitive and effective complaint mechanisms;
- g) Provide training on relevant international standards to those responsible for administering juvenile justice and consider establishing social worker posts in prisons to assist children in conflict with law;
- h) Ensure that both sentenced and released persons under 18 are provided with educational opportunities, including vocational and life-skills training, and recovery and social reintegration services, in order to support their full development;
- i) Seek technical cooperation and assistance from, inter alia, OHCHR, the United Nations Office on Drugs and Crime Prevention, and UNICEF.

### 3.6 JJC paradigm shift | 2012-2016 |

#### **Advocacy**

**Recommendation:** From 2010 - 2012, UNICEF, UNDP, NLC, NAC and partners should intensify advocacy activities to promote the *Justice for Children* concept as well as strengthen capacity building for key justice and social welfare professionals. This should be done in preparation for the 2012-2016 country programme moving towards the establishment of a structural Justice for Children framework that broadens the current JJC mandate and scope, as detailed below.

#### **Mandate, scope & structure**<sup>26</sup>

**Recommendation:** Coinciding with the upcoming MTR in 2014, the current name, mandate, target population, scope and structural framework of the Juvenile Justice Committee should be amended as follows:<sup>27</sup>

**Name:** Justice for Children Committee (“J4C”)

**Mandate:** Justice for Children Committees will ensure that all children are: provided access to, better served, and protected by a child-friendly justice system with clear linkages to the *social welfare system and national child rights and human rights bodies*, whether the children are victims, witnesses, in conflict with the law or if they require care and custody or protection.

**Target Population:** Justice for Children Committees should serve three main groups of children: (1) children in conflict with criminal and administrative law; (2) child victims of



abuse, neglect, violence, trafficking, child labour, exploitation or other violations; (3) child witnesses of abuse, neglect, violence, labour, exploitation or other violations.

*Scope:* Justice for Children Committees should be responsible for both *prevention and response* to children in conflict with the law, child victims and child witnesses.

It should be underscored that this does not relegate full responsibility for prevention and response to the J4C coordinator, nor should parallel structures and services be created. On the contrary, the J4C coordinator should help coordinate crime prevention activities (crimes by and against children), child protection and service delivery based on existing structures and also help strengthen capacities, quality of services, monitoring and accountability. The J4C coordinator should not engage in direct service provision other than maintaining responsibility for ‘supervision’ of a juvenile in conflict with the law. J4C coordinators should not serve as defence counsel, in any of the locations, due to potential conflicts of interest. Further, J4C coordinators should strengthen the capacity of advocates/defence counsel to provide legal counselling and effective representation throughout criminal justice proceedings. The job description of the J4C coordinator should be revised accordingly.

It is important to remember that although used interchangeably, the JJC Coordinator is not the JJC Committee. Likewise, the envisioned J4C Coordinator is not synonymous with the J4C Committee, which will be composed of members representing a range of justice, social welfare and child rights entities. Within existing mandates, they are already collectively responsible for preventing crimes, exploitation, violence, abuse and neglect, as well as responding to children in conflict with the law, child victims and witnesses. Therefore, while the J4C formalises a streamlined network to promote justice for children, it does not create “new” duties or responsibilities per se. Key to scaling up are the changed attitudes and behaviours of key stakeholders, in particular justice and social welfare officials and professionals, to assume their respective complementary functions under the Justice for Children framework.

J4C Coordinators should provide coordination, advisory and technical support to J4C Committees. Oftentimes the same institutions, as well as justice, social welfare and child rights officials, are charged with preventing and responding to issues concerning children in conflict with the law, child victims and child witnesses. This approach also recognises the interdependence of child protection concerns and hence, the need for an integrated solution. Children in conflict with the law, for instance, may also be victims of violence, exploitation, abuse or neglect. This approach promotes child protection systems building and is more efficient and sustainable over the long term.

*Structural Framework:* According to the JJC model, there are three sub-committees: policy, working group and community team. Before J4C replicates this model, a mapping exercise is warranted to map who is officially responsible for what and where at the aimag, district/soum and khoroov/bag levels, what they are doing in practice, and the strengths and barriers to effective and coordinated service delivery.

This should also identify areas of duplication and overlap with existing structures, namely the Crime Prevention Council, local child protection councils and committees, and community based networks. If the membership and functions of the prospective

J4C and respective groups are virtually identical, it is advisable to streamline them into a single entity. Whether that entity falls under the J4C or is maintained per current structure with formal linkages to the J4C, what is important is that key functions are covered, lines of accountability are clear, and work is carried out to promote justice for children. The J4C structural framework should be designed based on the findings of the mapping exercise. If J4C sub-committees are created, it is important to outline: purpose, membership, roles, duties, decisionmaking authority, quorum, review of decisions, conflict resolution, meeting rules, secretariat, etc.

## **Monitoring & evaluation**

**Recommendation:** A detailed monitoring and evaluation (M&E) plan should be developed as an intrinsic part of the Justice for Children programme design. Some tips are provided below:

### Indicators

- Based on the national child protection database, the selection of indicators should match the level of progress, i.e. impact, outcomes, outputs, etc.
- Benchmarks and targets should be set
- Terms of art and concepts should be defined
- Sources of verification should be identified

### Baseline Data

- Necessary data to be collected & requisite resources
- Data collection tools and methods
- Timeline
- Staff capacity

### Planning for Data Collection

- Essential data to be collected throughout the life cycle of the programme to monitor indicators
- Data collection tools and methods to be utilized
- Frequency of data collection
- Person(s) responsible for data collection
- Staff/logistical capacity to collect data
- Data collection reflected in work plan
- Clearly articulated roles and responsibilities for national and local government

### Planning for Data Analysis & Use

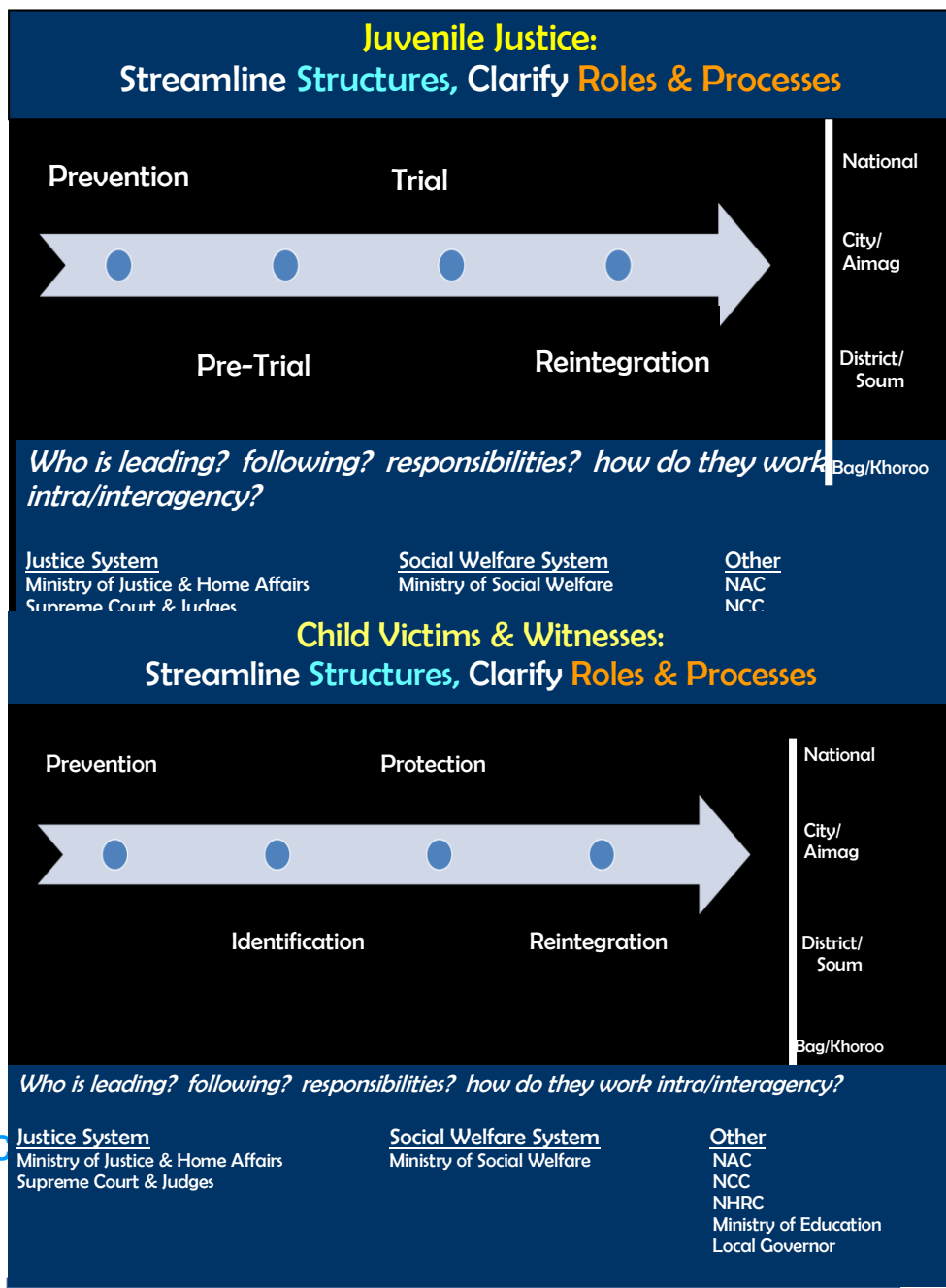
- Frequency of data analysis
- Person(s) responsible for data analysis, including oversight
- Participation of staff, stakeholders, etc in data analysis discussions
- Presentation of data
- Person(s) responsible for decision-making based on data analysis, including refinement of programming
- Communication to staff, partners, stakeholders, donors, etc
- Clearly articulated roles and responsibilities for national and local government

## Coordination, cooperation & coherence

**Recommendation:** As one preliminary step towards ensuring improved coordination, cooperation and coherence, there should be a mapping of all structures relevant to justice for children, including their functions and services, at the national and local levels. This map should also provide a visual representation of the interrelationship of structures at various levels, representing the government, the private sector and civil society.

An analysis of this map should point out structural bottlenecks, including disjointed organisation of structures, such as split lines of accountability of related agencies, e.g. NAC and NCC, and tenuous links between NAC and social welfare agencies. The mapping exercise should also capture strengths as well as gaps in service delivery and conformance with international standards.

The diagrams below offer some guidance on how structures should be mapped not only by level and function, but also vis-à-vis roles at various stages of the process, and interrelationships.



## **Communication for Development<sup>28</sup>**

**Recommendation:** Communication for Development (C4D) should be one of the main components of the Justice for Children programme. C4D can give voice to children, their families and communities to promote child protection. C4D can support social mobilisation, advocacy and behaviour and social change initiatives in order to obtain stronger programme results and policy change to tangibly benefit children in conflict with the law, child victims and child witnesses. In preparation for the CPD, UNICEF CP should collaborate with Communications to develop a focused Justice for Children C4D strategy that: strengthens community participation to reinforce messages of justice for children as social norms; engages children in conflict with the law, child victims and child witnesses, as well as their families to identify issues and solutions; and monitors behaviour and social change.

### ***3.7 realising justice for children | 2012-2016 |***

**Recommendation:** Adopt a systems building approach to justice for children that mutually strengthens the justice and social welfare systems, and national rights bodies, to comprehensively prevent and respond to children in conflict with the law, child victims and child witnesses. From 2012 through 2016, the Justice for Children Programme focus should put into practice legislative reforms (presumably enacted), strengthen institutions to prevent harms and protect children, initiate processes to facilitate implementation and solidify an evidence base to inform programming, policy and advocacy.

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<sup>1</sup> Interview with Mr. Narangeral, head of the Mongolian National Law School, 26 March 2009.

<sup>2</sup> This includes CRC Article 40(3)(b), which states: “Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.”

<sup>3</sup> CRC/C/15/Add.264, p 18, para. 66-67.

<sup>4</sup> The Working Group, headed by Secretary of State Tserendorj, includes representatives from the Ministry of Justice and Home Affairs, General Prosecutor’s Office, National Police Agency (Crime Prevention Division), Pre-trial Detention Center, the Juvenile prison, National Board for Children, Advocates Association and the National Human Rights Commission.

<sup>5</sup> Juvenile Justice in Mongolia, p 4.

<sup>6</sup> Legal reform working group includes MoJ (chair), National police agency, Supreme court, Metropolitan police, National prosecution agency, Bar Association, National Agency for Children, Court decision executing agency, Human rights commission of Mongolia and Mongolian child rights centre (NGO). Purpose: creation of a child-friendly legal environment – work includes research on the implementation of child rights, child protection and juvenile justice legislation towards the development of recommendations for an improved legal framework; capacity building of justice professionals (incl. a training manual for professionals, in-service training and an academic curriculum at BA level); advocacy for the replication of juvenile justice committees across the country; drafting of legal amendments; fostering of cross-sectoral cooperation.

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<sup>7</sup> Interviews with Berina Arslanagic, chief of child protection, UNICEF Mongolia, 17 March 2009; Injinash Dashdejid, legal reform officer, UNICEF Mongolia, 17 March 2009; and Yameen Mazumder, deputy representative, UNICEF Mongolia, 30 March 2009.

<sup>8</sup> Interview with Ms. Narantuya, head, Foreign Relation Division, Ministry of Justice, 18 March 2009.

<sup>9</sup> Interview with Berina Arslanagic, chief of child protection, and Amaraa Dorjsambuu, child protection officer, UNICEF Mongolia, 17 March 2009.

<sup>10</sup> Interview with Mr. Narangerel, Mr. Amarbayasgalan and Ms. D. Solongo, National Law School, 26 March 2009.

<sup>11</sup> This diagram represents the broad common strokes of JJ committees in Bayangol, Baganuur and Khentii based on the trip report of Anne Grandjean, child protection specialist, UNICEF headquarters, October 2008. In practice, there are slight variations with regard to membership and functions.

<sup>12</sup> Trip Report of Shelley Casey, regional child protection legal specialist, UNICEF EAPRO, October 2007.

<sup>13</sup> *ibid.*

<sup>14</sup> *ibid.*

<sup>15</sup> Focus group discussion with 14 members of the Bayangol Joint Community Team, 30 March 2009.

<sup>16</sup> This sentiment was expressed repeatedly by various stakeholders, including juveniles, parents, social workers, police, prosecutors and local community actors.

<sup>17</sup> According to Expected Output 19.2, the Criminal Code and Criminal Procedures Law (CC & CPL) will be revised and amendments approved by the Parliament; the indicator is the percentage of domestic violence cases treated in conformity with the law.

<sup>18</sup> Interview with Khugi Khurelmaa, monitoring and evaluation officer, UNICEF Mongolia, 17 March 2009.

<sup>19</sup> See Article 11.2.10 of the Law on the Protection of the Rights of the Child.

<sup>20</sup> Written evaluation comments by Injinash Dashdejid, legal reform officer, UNICEF Mongolia, 30 March 2009.

<sup>21</sup> *Juvenile Justice in Mongolia*, p 12.

<sup>22</sup> Guidance Note of the Secretary-General: United Nations Approach to Justice for Children, Interoffice Memorandum, Executive Office of the Secretary-General, 2 September 2008. Under the leadership of UNICEF in close cooperation with the Rule of Law Unit, this Guidance Note is the result of consultations among justice for children and rule of law specialists within the organization and has been endorsed by the Rule of Law Coordination and Resource Group.

<sup>23</sup> Currently pending endorsement by the Government of Mongolia.

<sup>24</sup> Based on the Concluding Observations of the Committee on the Rights of the Child on Mongolia, CRC/C/15/Add.264, 21 September 2005, pp 5-6.

<sup>25</sup> Concluding Observations of the Committee on the Rights of the Child on Mongolia, CRC/C/15/Add.264, 21 September 2005, pp 18-19.

<sup>26</sup> See Guidance Note of the Secretary-General: United Nations Approach to Justice for Children, Interoffice Memorandum, Executive Office of the Secretary-General, Unofficial version of the Mongolian Child Protection Strategy (pending official approval), 2009; 2 September 2008; Child Protection Programme Strategy Toolkit Justice for Children section, Bangkok, UNICEF EAPRO, January 2009; and UN Economic and Social Council. 25 May 2005. Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime. E/CN.15/2005/L.2/Rev.1.

<sup>27</sup> This is consistent with future directions based on an interview with Berina Arslanagic, chief of child protection, UNICEF Mongolia, 17 March 2009.

<sup>28</sup> C4D is defined as a systematic, planned and evidence-based strategic process to promote positive and measurable individual behaviour and social change that is an integral part of development programmes, policy advocacy and humanitarian work. C4D uses dialogue and consultation with, and participation of children, their families and communities. It

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privileges local contexts and relies on a mix of communication tools, channels and approaches. C4D is not public relations or corporate communications. See <http://origin-www.unicef.org/cbsc/index.html>