

## **Introduction of the Restorative justice concept and Victim-offender mediation practice in Serbia and Montenegro within the “Children’s Chance for Change” project – A juvenile justice reform initiative in Serbia and Montenegro**

UNICEF global efforts in the area of juvenile justice are directed towards the reduced incarceration of juveniles and the development of policies and practices that encourage the use of alternative measures to deprivation of liberty. Together with governmental and nongovernmental counterparts, UNICEF in Serbia and Montenegro promotes community rehabilitation as a safer and more effective approach to reintegrating the child into society than the prevailing retributive approach. For these reasons UNICEF strongly advocates restorative justice approach, diversion, and alternatives to custodial sentencing.

UNICEF in Serbia and Montenegro has been supporting governmental efforts to reform juvenile justice system since 2001, when a thorough country-wide assessment of the juvenile justice was conducted by UNICEF. The findings of this assessment served as a basis for the project "Children's Chance for Change" that was developed in partnership with the Government’s of Serbia and Montenegro – (Ministry of Justice, Ministry of Labour, Employment and Social Policy, Ministry of Interior, Ministry of Education and Sport) and the Swedish International Development Agency (Sida). The overall objective of “Children’s Chance for Change” is to promote the comprehensive and multidisciplinary reform of the juvenile justice systems in Serbia and Montenegro aimed at improving protection of the rights of the children at risk and children in conflict with the law.

Within the “Children’s Chance for Change” project, UNICEF lobbied for and provided support to the development and adoption of the new Serbian Juvenile Justice Code, which came into force on 1 January 2006. This Law represents a milestone in harmonising national legislation with the Convention on the Rights of the Child and the European standards regarding the protection of the rights of children at risk and in conflict with the law, and provides legal basis for the restorative justice approach and victim offender mediation as a means of diversion of children age 14 (age of criminal responsibility) – 18 from entering into legal system, that gives children in conflict with the law and their victims a better chance for rehabilitation and reintegration into society.

In parallel with the support to the development of the new Juvenile Justice Law, the “Children’s Chance for Change” project introduced, for the first time ever in Serbia and Montenegro, the restorative approach and the victim-offender mediation for children in conflict with the law and at risk, using the strategy which combined:

- Lobbying and advocacy efforts directed towards decision makers, juvenile justice professionals, local communities, and University authorities, professors and students;
- Systematic capacity building of juvenile justice professionals and students, and
- Initiation of several pilot projects at the strategically selected cities.

This strategy ensured that piloted diversion models adjusted to local conditions are developed and ready for replication, once the legal provisions that allow diversion of children from entering into legal procedures are endorsed (took place in 2006).

### **Strategy used and actions taken to address the issue**

In keeping with UNICEF’s global vision to reduce the number of children in custody and to promote the use of diversion measures as an alternative to legal proceedings, UNICEF’s country wide assessment of the juvenile justice system in Serbia and Montenegro recommended implementing a Diversion Scheme Pilot Project (DSPP) in Nis, the second largest city in Serbia. The aim of the DSPP was to make available diversion schemes in Nis municipality in order to effectively divert children in conflict with the law from entering into

legal proceedings. Prior to the DSPP commence, the Nis Juvenile justice stakeholders were presented with the facts and the European experiences in introducing restorative justice concept and the Victim-Offender mediation practices<sup>1</sup>.

The professionals in community of Nis, as demonstrated during the assessment, were highly receptive to the idea of a diversion project, but resented the top down approach used by many international agencies in creating projects. To involve the local professionals as much as possible, UNICEF held round table discussions to present five possible models of diversion. The participants agreed to develop the one model that was considered as the best match with the needs, the specificities and the resources of the local environment- the Victim-Offender Mediation. To set up the DSPP, the four working groups (WG) were established and are still operating as the main engine/think tank of the project:

1. The Youth WG, with the aim to conceptualize the role of youth in the development and implementation of the diversion schemes;
2. The Community Participation WG, with the aim to develop the role of the community and its participation in the diversion models;
3. The Youth Justice WG, responsible for developing the proposed policies and procedures for the diversion scheme models;
4. The Monitoring and Evaluation WG, with the aim to develop a comprehensive monitoring and evaluation system for the DSPP, including the development of a comprehensive data collection system.

The particular quality of the DSPP in Nis lies in its reliance on a multi-disciplinary approach to its development and implementation. In the process of project development juvenile justice stakeholders - judges, prosecutors, lawyers, psychiatrists, psychologists, social workers, pedagogues, police officers, educators, institution staff, law professors, university students, children from institution and in conflict with the law etc. had the chance to shape up the project, develop its activities, but also improve their working relationship, get to know each other better, and develop higher understanding of their respective roles in bringing about change for children in their community.

Nis juvenile justice stakeholders have developed full ownership over the project being involved from its inception, and responsible for the entire development of the project (problem statement, objectives, risks, etc.) with the continuous technical guidance provided by UNICEF. The evolution of the project was fully documented. Considerable educational materials incl. videos and documentation packages have been developed. This groundbreaking initiative was officially sealed with the signing of an MOU between UNICEF, the City Council of Nis, the Nis Centre for Social Work and four Serbian ministries - Ministry of Social Affairs, Ministry of Justice, Ministry of Interior and the Ministry of Education and Sports.

The DSPP in Nis has become a cornerstone of the comprehensive “Children’s Chance for Change” project supported by Sida, and evolved into a model for incorporating diversion as a standard method of practice made available to children throughout the country. In particular, the methodology of gradually introducing concepts and principles of restorative justice to all stakeholders in the community, using roundtable discussions, working groups, presentation of similar initiative in the region, and high-level training with renowned international

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<sup>1</sup> Mediation services throughout the Europe have proven successful in giving children the chance to change their negative patterns of behaviour. When a diversion measure is applied before the child is subject to formal legal proceedings, a combination of state or community agencies (Centres for social work, schools, police, prosecutor’s office, or other authorized agencies) may facilitate the process. The use of diversion in early stages supports the principle of minimum intervention and urgency and limits the child’s exposure to the negative influences that often result when a child enters the formal legal system, such as stigma of conviction, marginalization from the society mainstream, and socialization in criminal behaviour. Diversion is often the optimal solution when children commit minor offences, but have also been effectively used in cases of serious offences. The consent of the child to participate in the diversion scheme and his/her acceptance of responsibility for the offence are sine-qua-non, as is the obligation for the scheme to be reviewed by a competent authority. The most commonly used diversion scheme in European countries involves mediation between the offender and the victim, and is known as Victim-Offender Mediation (VOM).

professionals has proven to be of key importance for the further development of the VOM practice in the country.

Based on the DSPP initiative successfully piloted in the City of Nis, and continuous capacity building of juvenile justice professionals and students ensured by UNICEF (more than 200 professionals and students have been trained to apply Victim-Offender mediation, out of which 80 mediators completed training for trainers in VOM), the demand was created. Work towards introducing and exploring the possibility of developing a pilot diversion scheme in other settings and communities was proven worthwhile. Crucial documents that required much effort to be developed, (MOU, agreements with government and NGOs, Mediation Center / service Ground Rules and administrative procedures, VOM training curricula, etc.) served as 'ready to use' material for setting up several other VOM projects in the country. Following general strategy of interconnecting UNICEF initiated projects, all VOM initiatives were closely interconnected and encouraged to exchange experiences, best practices, i.e. to learn from each other in organized manner, which led to establishment of the VOM Network.

### **Results achieved so far**

The UNICEF-led initiative in introducing restorative justice, diversion scheme and victim-offender mediation (VOM) and ensuring sustainable mechanisms of dissemination of mediation practices, commenced with piloting of the Diversion Scheme Project in Nis, nowadays includes:

- a) Establishment and functioning of the Mediation Centre in the town of Nis, Serbia (156 VOM cases conducted so far);
- b) Establishment and functioning of the Mediation service in the Correctional Institution in Krusevac/Serbia developed as an alternative to the disciplinary system in the institution, which offers the victim-offender mediation as an effective conflict-resolution technique among the inmates (147 VOM cases conducted);
- c) Dissemination of the VOM practices throughout Serbia and initiation of the community based mediation in the 14 local communities in Serbia so far;
- d) Establishment of the Mediation Network encompassing the community based mediation in the 14 municipalities in Serbia (88 cases resolved applying VOM);
- e) Establishment of the VOM services in Mediation Centre within Belgrade City Centre for Social Work (in 2006);
- f) Establishment of Mediation Service in Bijelo Polje, Montenegro;
- g) Inclusion of the VOM into the curricula of the Faculty of Political Sciences/ Social Work studies/ Belgrade University (as of September 2005);
- h) Support to establishment of the Serbian Association of Mediators (established in 2006);
- i) Initiation of multilevel networking of Serbia and Montenegro Mediation initiative with leading European professionals/organisations in the area of restorative justice and victim-offender mediation (as of 2004);
- j) Jointly with the World bank/IFC, lobbying for, and supporting the Ministry of Justice to establish the National/Republican Centre for Mediation ( RCM), which include VOM as one out of five types of mediation available (established in 2006 in Belgrade); 10 RCM branches throughout the country are to be establish during 2007/2008;
- k) Professional corpus of more than 200 well-networked mediators throughout the country trained to apply Victim-Offender mediation, out of which 80 are certified trainers in VOM.
- l) Change of legislation that enabled development of diversion schemes (Law on Mediation, 2005, Juvenile Justice Law, 2006)

UNICEF has played a critical role in Serbia and Montenegro in bringing state-of-the-art practices for the development and implementation of the restorative justice approach and the Victim-Offender mediation for children at risk and in conflict with the law.

Initiation and the development of the restorative justice approach and mediation in criminal cases is stipulated in the Council of the European Union Framework Decision<sup>2</sup> Article 10 states: “Member States are to seek to promote mediation in criminal cases for the offences which they consider appropriate for this sort of measure, and to ensure that any agreement between the victim and the offender reached in the course of such mediation in criminal cases is taken into account. According to Article 17, each Member State shall bring into force laws, regulations and administrative provisions to comply with Article 10 before 22 March 2006.”

Although not (yet) European Union member states, the governments of Serbia and Montenegro, entering into partnership with UNICEF/Sida to reform juvenile justice system demonstrated firm commitment in:

- e) reforming the existing legislation and regulations,
- f) promoting the required shift from retributive to restorative justice,
- g) supporting the implementation of the restorative justice approach and victim-offender mediation since 2003,
- h) up-grading standards of practices in dealing with children at risk and in conflict with the law.

### **Remaining challenges and future activities planned**

Consistent application of the new Juvenile Justice law (Serbia)/ the revised national legislation (Montenegro) and systemic effort in mainstreaming good practices already piloted, represent solid ground for further development of the child rights based justice system in Serbia and Montenegro. However, there is still long way to go in ensuring prevalence of the restorative over retributive justice. At the moment, number of questions is open, such as determination of means to include diversion schemes as a fundamental and permanent service of the social protection system in Serbia and Montenegro, accreditation and licensing, continuous education, defining conditions for systemic supervision, endorsement of monitoring and quality control mechanism successfully piloted through UNICEF supported initiatives, etc. Those challenges have been addressed in a systematic manner, and the recent agreement between UNICEF, the WB/IFC and the Ministry of Justice, which includes joint publishing of Restorative Justice and VOM manuals as mandatory handbooks and basic sine-qua-non for licensing of all juvenile justice professionals, generates optimism re: more robust mainstreaming and the institutionalization of the successfully piloted restorative justice initiatives lead and supported by UNICEF in Serbia and Montenegro so far.

### **Contact persons in the Country Office for further information**

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<sup>2</sup> Council of the European Union (2001), Council Framework Decision Framework Decision of 15 March 2001 on the standing of victims in criminal procedures (2001/220/JHA)