



SAFEGUARDING CHILDREN IN DETENTION:
INDEPENDENT MONITORING MECHANISMS
FOR CHILDREN IN DETENTION IN MENA

Penal Reform International 2011



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Acronyms used:

ACHPR	African Charter on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
APT	Association for the Prevention of Torture
AU	African Union
CAT	UN Convention against Torture
CCDH	Consultative Council for Human Rights (Morocco)
CCPPDH	Consultative Commission for the Promotion and Protection of Human Rights (Algeria)
CPT	European Convention for the Prevention of Torture
CRC	UN Convention on the Rights of the Child
GID	General Intelligence Directorate (Jordan)
HMIP	Her Majesty's Inspectorate of Prisons (UK)
ICRC	International Committee of the Red Cross
IPVs	Independent Prison Visitors (South Africa)
JIP	Judicial Inspectorate of Prisons (South Africa)
MENA	Middle East and North Africa
NCHR	National Council for Human Rights (Jordan and Egypt)
NHRIs	National Human Rights Institutions
NPMs	National Preventative Mechanisms
OPCAT	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
PRI	Penal Reform International
UNHCR	UN High Commissioner for Refugees
UNHCHR	UN High Commissioner for Human Rights
UNICEF	UN Children's Fund
YOIs	Young Offenders Institutions (UK)

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Foreword

By Sir Nigel Rodley, member of the UN Human Rights Committee, Former UN Special Rapporteur on Torture and other cruel inhuman or degrading treatment or punishment

It is very timely that Penal Reform International (PRI) produces this Handbook on the fifth anniversary of the coming into force in June 2006 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

The role of OPCAT is critical for effective torture prevention through its requirement for regular visits to places of detention by international and national bodies. In terms of national action, all states that ratify OPCAT should put in place, within a year, an independent national mechanism to prevent torture and other ill-treatment through a system of such visits. However, while OPCAT sets out the provisions for people deprived of their liberty, it does not differentiate between adults and children in terms of the right of the national preventive mechanisms (NPMs) to access information, places of detention and hold private interviews with people deprived of their liberty.

Children are particularly at risk of harm and ill-treatment resulting from deprivation of liberty, a situation which is clearly recognised in international standards. This Handbook sets out the relevant provisions of the human rights standards (including the Convention on the Rights of the Child) that apply to monitoring places of detention for children, and provides guidance on implementing these in practice. PRI has a long experience in assisting states to implement international standards in the field of penal reform and juvenile justice and is well-placed to provide this expert guidance.

Each aspect of monitoring places of detention is considered, with practical suggestions for those carrying out the visits to ensure that the relevant questions are asked and reliable information obtained. While aimed primarily at officials responsible for establishing the monitoring mechanism, it is of wider interest for all those who visit children in detention or who are concerned to protect their safety, dignity and human rights.

The general guidelines set out in the Handbook apply in all countries and circumstances. However, the book has particular significance for the Middle East and North Africa (MENA) region in that the situation of five countries – Algeria, Egypt, Jordan, Morocco and Yemen – is considered. These are countries that have not yet ratified OPCAT and whose systems for monitoring places where children are detained differ in many respects, while also sharing some similarities. The Handbook sets out the current status of their provisions for visits to places where children are detained. Within the context of the international standards, it also highlights the areas where further steps are needed to ensure that children's rights are fully respected. For these reasons, for these reasons, this Handbook is an excellent resource for all concerned with the protection of the rights of children who are in conflict or in contact with the law.

Acknowledgments

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Introduction

1. Introduction

1.1 Background

International standards are clear that children should only be detained in custody as a last resort and for the minimum necessary period. The vast majority of children in conflict with the law should be diverted from the formal criminal justice system and alternative sanctions which promote their rehabilitation and reintegration into society should be used. Detention should be an exceptional measure which is used only for a small minority of children who have committed serious and violent crimes and the best interests of the child should be a primary consideration at all stages of the criminal justice system. Institutions which hold children should have their rehabilitation and reintegration as the main objective of all policies and processes.

However, large numbers of children are still detained every year and are growing up in detention facilities where they face severe violations of their rights. This is the case for all forms of detention including police custody, pre and post-trial detention and administrative, immigration or 'protective' detention. Children are frequently held in adult prisons in breach of national legislation and international standards stipulating that children should be held in separate facilities. Children in detention are often isolated from the community in institutions which are subject to little external scrutiny and where violations of their rights can go unmarked and unnoticed¹. They face severe disruption to their education and moral development and are deprived of family and other support at a critical time in their lives.

They can be vulnerable to torture or other cruel, inhumane or degrading treatment or punishment. They face violence, abuse, neglect and exploitation at the hands of fellow detainees and staff. Girls can be especially vulnerable to sexual abuse.² As well as the threat of violence and abuse, rights violations in detention can also include: physical and emotional neglect; malnutrition; the absence of treatment for physical or mental illness; psychological trauma; lack of education, rest, play, leisure and other conditions necessary for healthy development; discrimination; violation of the right to be heard; interference with privacy and family life; and violation of other civil and political rights such as freedom of thought, conscience, religion, association, expression and protection of legal and/or procedural safeguards in relation to deprivation of liberty.

All children have rights, everywhere and at all times. Children who are in detention do not lose their rights and are entitled to all the rights enjoyed by their peers in the community, apart from being deprived of their liberty. Children have particular survival and developmental rights that differ from those of adults as a result of their rapid physical and psychological development. Childhood is a crucial time and deprivations of food, clean water, shelter, play, healthcare and education can have an irreversible impact that can last for the rest of their lives; for example, inadequate nutrition can stunt mental and physical development irreparably and lack of education can dramatically reduce a child's opportunities as an adult.

¹ Defence for Children International (2005) *Children Deprived of Liberty: Rights and Realities*,

² Paulo Sérgio Pinheiro, *World Report on Violence against Children*, UN Secretary-General's Study on Violence against Children, Geneva, 2006, www.violencestudy.org

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Children are also entitled to the freedom to express opinions and to have a say in matters affecting their social, economic, religious, cultural and political life.

Because of their heightened vulnerability, children in detention are entitled to all human rights granted to adults' but also to additional services and protection. In order to safeguard children's rights in detention, it is very important that detention facilities are 'open' to families and to the community at large as far as possible. This encourages detention facilities to be transparent and accountable for realising the rights of the children in their care. It also helps children to be rehabilitated and reintegrated into society on their release. It gives the public confidence that detention facilities are well managed and doing their utmost to ensure that children are being rehabilitated and consequently are less likely to offend in future.

Box 1: Children in conflict with the law require different treatment

"Children differ from adults in their physical and psychological development, and their emotional and educational needs. Such differences constitute the basis for the lesser culpability of children in conflict with the law. These and other differences are the reasons for a separate juvenile justice system and require a different treatment for children".

UN Committee on the Rights of the Child, General Comment No. 10 (2007): Children's Rights in Juvenile Justice, 25 April 2007

Public scrutiny may be guaranteed in a number of ways, including ensuring access for children's families and friends, NGOs, religious bodies, human rights institutions and ombudspersons, lawyers, media, and judges. A crucial aspect of this 'openness' and scrutiny is the inspection and monitoring of detention facilities where children are held by independent bodies which are not under the same administrative authority as the prison system. The international standards are clear that independent and qualified bodies should visit detention centres on a regular basis and have full access to detention facilities, and freedom to interview children and staff in private. These bodies should have the capacity to make unannounced visits, to monitor treatment and conditions, and to investigate any allegations in a timely manner. In addition, children in detention should also have access to independent complaints mechanisms.

1.2 Aims of this Handbook

This Handbook examines how national-level independent monitoring mechanisms can help respect, protect and fulfil the rights of children who are in detention by:

- Highlighting, deterring and preventing violence and abuse against children who are a particularly vulnerable group in detention facilities.
- Opening up the issue of children in detention to the public eye.
- Identifying challenges and changes needed in policy, practice and legislation.

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- Bringing to light good practice in the treatment of children in detention which can be replicated elsewhere.
- Providing a protective mechanism for detention facility employees against unfounded criticism and supporting employees who want to resist involvement in bad practice.
- Holding those in charge accountable for what happens to children in their detention facilities.
- Giving children who are held in detention a voice.

This Handbook is aimed primarily at officials responsible for establishing and strengthening monitoring mechanisms. It is also of interest to all those engaged in monitoring detention facilities including judges, lawyers and members of civil society organisations. It examines the key components of an effective and independent national level monitoring mechanism. It presents a series of options and issues that monitoring bodies may find useful to improve the effectiveness of their work with children in detention. It looks at how monitoring bodies can prepare themselves to deal with a difficult task in often very challenging conditions and how they can ensure that their recommendations ultimately lead to improvement in the treatment of children in conflict with the law.

Box 2: Children in detention and vulnerability to violence

“Children in conflict with the law—precisely the group that according to the international standards should be the object of special assistance and attention in order to promote their rehabilitation and reintegration to the society—are one of the most vulnerable groups to the worst forms of violence.”

Violence Against Children in Conflict with the Law: A Thematic Consultation for the UN Secretary-General’s Study On Violence Against Children Paulo Sérgio Pinheiro

1.3 Children in detention in MENA

This Handbook specifically examines the role that national level independent monitoring mechanisms can play in ensuring the rights of children in detention in five selected countries in the Middle East and North Africa (MENA) region: Algeria, Egypt, Jordan, Morocco and Yemen. Children in detention in these countries are frequently subject to very harsh treatment and the need for independent monitoring mechanisms is high.

Children in detention in MENA are subject to police violence during arrest, interrogation and detention in police stations. They are held for lengthy periods in pre-trial detention for very minor offences or following public disorder. They experience violence in pre and post trial detention including unreasonable disciplinary measures and physical and sexual harassment by adult detainees, by prison staff and by peers. Systems to ensure they are detained separately from adults are often not put in place and precise data concerning their cases are frequently missing.

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They experience poor detention conditions including overcrowding, poor sanitary facilities and lack of access to education. Little is done to rehabilitate them or reintegrate them into society following detention. In Yemen in particular the lack of adequate mechanisms for determining the ages of defendants who lack birth certificates is a significant issue. As a consequence many children are tried as adults and detained in adult facilities because their age has not been accurately verified by the court. The implications of this are extremely serious not least because children who are being tried as adults may face the death penalty³.

The objectives of this Handbook are specifically to strengthen and support the establishment of regular, rigorous monitoring of detention facilities for children in the MENA region by independent trained and qualified staff. It also aims to develop understanding in the MENA region of international and regional children's rights standards regarding monitoring mechanisms. It is organised according to the following sections:

- Overview of international and regional human rights standards regarding monitoring mechanisms with particular relevance to the MENA region.
- The key elements of a robust and rigorous monitoring mechanism which is in conformity with international standards including practical examples of good practice internationally.
- A preliminary mapping of monitoring mechanisms currently in operation in Algeria, Egypt, Jordan, Morocco and Yemen looking at legislative provision as well as implementation.
- Guidance on strengthening independent monitoring mechanisms of detention facilities for children within the MENA region.

Box 3: Definitions used in this Handbook

Child: In this handbook, the word "child" refers to any person under the age of eighteen. The UN Convention on the Rights of the Child (CRC) defines a child as "every human being below the age of eighteen years unless under the law applicable to the child, majority is obtained earlier."

³ Amnesty International news release (22 December 2010) <http://www.crin.org/resources/infoDetail.asp?ID=23735&flag=news> (accessed 4 May 2011) and Human Rights Watch (2008) 'The Last Holdouts: Ending the Juvenile Death Penalty in Iran, Saudi Arabia, Sudan, Pakistan and Yemen', Available at: <http://www.hrw.org/en/reports/2008/09/10/last-holdouts> (accessed 3 May 2011)

1. Introduction

Child in conflict

with the law:	Anyone under the age of 18 who comes into contact with the justice system as a result of being suspected of or charged with committing an offence. This is the case regardless of the age of majority in a State.
Juvenile:	In many States, children in conflict with the law who are over the minimum age of criminal responsibility, but under the age of 18, are referred to as 'juveniles'. This term has come to have negative and stigmatising connotations and so this Handbook uses the term 'child in conflict with the law,' which is preferred by the CRC Committee, rather than juvenile. However, the term 'juvenile' is still used when it is specifically mentioned by an international instrument or when quoting references.
Detention facilities:	Detention facilities are any kind of establishment - penal, correctional, educational or protective - from which a child cannot leave at will. This term includes police stations, cells in court-houses, pre-trial detention centres (sometimes called remand homes), facilities which hold children who have been convicted of an offence and facilities where children are detained on immigration or administrative offences or for their own protection.

Independent

Monitoring mechanisms:	An inspection body which is independent both of individual prisons and of the prison system which is mandated to inspect detention facilities, assess the treatment of children and conditions of detention and report on their findings to a part of government that has the power to act on their findings.
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2.

International and regional standards
regarding independent monitoring
of detention facilities for children

2. International and regional standards regarding independent monitoring of detention facilities for children

2.1 Introduction

There is a wide range of international standards concerned with the independent monitoring of detention facilities for adults in general and children in particular. These have been agreed by the international community, mainly through the UN but also through regional bodies. They are outlined in UN human rights treaties which are legally binding on States that are parties to them. This means they are obliged to respect, protect and fulfil their provisions and to report on the ways in which national legislation, policy and practice reflect this. They are also contained in UN and regional non-treaty instruments such as: declarations, recommendations, bodies of principles, codes of conduct and guidelines. These instruments complement the treaties and have significant moral force. They provide useful and practical guidance on monitoring mechanisms and have been recognised by a large number of States.

The international standards are clear that independent inspections and monitoring of detention facilities by qualified bodies should take place on a regular basis, at times unannounced, with full access to the facilities, and freedom to interview children and staff in private. Furthermore, qualified medical officers should participate in these inspections to evaluate the physical environment, medical services and other aspects regarding children's physical and mental health. Where girls or women are being detained, then women should participate in the investigations. These monitoring bodies should have the capacity to evaluate treatment and conditions, and to investigate any allegations in a timely manner. Such bodies can include ombudspersons, independent commissions, members of the public, or police review boards. They should not be attached to the detention facility concerned. Their reports should be available to the assessor or to the public.

Box 4: Essential components of an independent monitoring mechanism

- Independent (ie not part of the administration of the detention facility)
- Well qualified teams of inspectors
- Inclusion of medically trained inspectors as part of inspection team
- Inclusion of women as part of inspection team where detention facilities are being inspected which hold girls and women
- Regular visits
- Liberty to make unannounced visits
- Access to all places under state's jurisdiction where children are deprived of their liberty

2. International and regional standards regarding independent monitoring of detention facilities for children

- Access to all information and records about the treatment and conditions of detention
- Access to conduct interviews with children in detention on a confidential basis
- Liberty to choose which detention facilities they visit and which children to interview
- Access to all employees of a detention facility where children are held
- Reports of inspectors must be made available publicly
- Systematic follow-up to reports
- Ability to follow up allegations of abuse or violence

2.2 Overview of international and regional human rights standards regarding monitoring mechanisms with particular relevance to the MENA region

• UN Convention on the Rights of the Child (CRC)⁴

The primary instrument concerning State obligations to respect, protect and fulfill children's rights is the CRC which has been ratified by all states in the MENA region including Algeria, Egypt, Jordan, Morocco and Yemen. State parties are obliged to give effect to the Convention by means of laws, policies and practices designed to further its goals and to report on their progress.

The implementation of the Convention is overseen by the UN Committee on the Rights of the Child, a body of 18 international experts chosen to represent a variety of geographical and linguistic communities⁵. In 2007, the UN Committee on the Rights of the Child produced a General Comment on how children in conflict with the law should be treated in line with the CRC⁶. General Comments are not binding on States but do provide compelling guidance. This General Comment states that: "Independent and qualified inspectors should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative; they should place special emphasis on holding conversations with children in the facilities in a confidential setting."

4 United Nations (UN) General Assembly, Convention on the Rights of the Child, 20 November 1989, UN, Treaty Series, vol. 1577, p. 3 and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 (CRC)

5 Reports of the States that are parties to the Convention can be found, together with the Committee's concluding comments, recommendations, guidelines and other relevant information, on the UN High Commissioner for Human Rights website (www.unhchr.ch).

6 Committee on the Rights of the Child, General Comment No. 10, Children's rights in juvenile justice (Forty-fourth session, 2007), U.N. Doc. CRC/C/GC/10 (2007)

2. International and regional standards regarding independent monitoring of detention facilities for children

• UN Convention against Torture ⁷

The primary instrument dealing with the prevention of torture is the UN Convention against Torture (CAT) (1984). This has been ratified by Algeria, Egypt, Jordan Morocco and Yemen.⁸ It calls on States to continually review their interrogation rules and arrangements for custody to prevent torture and to ensure that prompt and impartial investigation takes place where there are reasonable grounds to suspect torture has occurred. Furthermore, victims have the right of complaint and compensation. The Committee against Torture is a body of ten independent experts with the mandate to monitor implementation of CAT. It has emphasised that governments must exercise supervision over places of detention and inspections must be systematic, unannounced and separate from police and the judiciary⁹.

• Standard Minimum Rules for the Treatment of Prisoners ¹⁰

Rule 55 of the Standard Minimum Rules states that there shall be a regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be in particular to ensure that these institutions are administered in accordance with existing laws and regulations and with a view to bringing about the objectives of penal and correctional services. These Rules also set out the principle of separation of "young prisoners" from adult prisoners and the separation of accused detainees from those convicted.

• Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment ¹¹

Principle 29 states that places of detention "shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment." Furthermore, they state that a "detained or imprisoned person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment...subject to reasonable conditions to ensure security and good order in such places."

7 UN General Assembly, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: resolution / adopted by the General Assembly., 10 December 1984, A/RES/39/46 (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).

8 For a list of ratifications see www.ohchr.org/english/countries/ratification/9.ht (accessed 14th April 2011)

9 A Handbook on State Obligations under the Convention against Torture APT p52 (2002)

10 UN Standard Minimum Rules for the Treatment of Prisoners, 30 August 1955, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 30 August 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977 (Standard Minimum Rules for the Treatment of Prisoners)

11 UN General Assembly, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment: resolution / adopted by the General Assembly, 9 December 1988, A/RES/43/173.

2. International and regional standards regarding independent monitoring of detention facilities for children

• UN Rules for the Protection of Juveniles Deprived of their Liberty: (Havana Rules)¹²

In 1990 the Havana Rules were adopted. They seek to counteract the detrimental effects of deprivation of liberty by ensuring respect for the human rights of children in conflict with the law. On the inspection of institutions where children are deprived of their liberty, the Havana Rules state: “Qualified inspectors or an equivalent duly constituted authority not belonging to the administration of the facility should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative, and should enjoy full guarantees of independence in the exercise of this function. Inspectors should have unrestricted access to all persons employed by or working in any facility where juveniles are or may be deprived of their liberty, to all juveniles and to all records of such facilities.¹³”

Further they state: “Qualified medical officers should also participate in the inspections evaluating compliance with the rules concerning hygiene, accommodation, food, exercise and medical services as well as any other issue that may affect the physical or mental health of juveniles. Every juvenile should have the right to talk in confidence to any inspecting officer.¹⁴”

• Recommendations from the UN Study on Violence against Children¹⁵

In 2006, the UN Secretary-General's Study on Violence against Children noted the high level of physical violence and punishment experienced by children in detention and recommended that governments should ensure effective monitoring and access of all justice institutions: “Governments should ensure that institutions are inspected regularly by appropriately empowered independent bodies with the authority to enter without warning, interview children and staff in private and investigate any alleged violence; access to institutions by NGOs, lawyers, judges, ombudspersons, national human rights institutions, parliamentarians, the media, and others as appropriate should be assured, while respecting children's privacy rights.¹⁶”

• UN Rules for the Treatment of Women Prisoners and non-custodial measures for women offenders (Bangkok Rules)¹⁷

In 2010, the Bangkok Rules were adopted to address how women and girls deprived of their liberty differ in their needs from men and boys. They specify that “in order to monitor the conditions of detention and treatment of women prisoners, inspectorates, visiting or monitoring boards or supervisory bodies shall include women members.¹⁸”

¹² UN General Assembly, UN Rules for the Protection of Juveniles Deprived of Their Liberty: resolution / adopted by the General Assembly., 14 December 1990, A/RES/45/113 (Havana Rules).

¹³ Havana Rules, Rule 72

¹⁴ Havana Rules, Rule 73

¹⁵ Paulo Sérgio Pinheiro, World Report on Violence against Children, UN Secretary-General's Study on Violence against Children, Geneva, 2006 www.violencestudy.org

¹⁶ As above p218

¹⁷ UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, adopted by the General Assembly 15 October 2010 (the Bangkok Rules) A/C.3/65/L.5

¹⁸ Bangkok Rules, Rule 25 (3)

2. International and regional standards regarding independent monitoring of detention facilities for children

• The African Charter on the Rights and Welfare of the Child (ACRWC)¹⁹

The ACRWC was adopted by the African Union (AU) in 1990 and is a complementary instrument to the CRC but has a specific and nuanced focus on issues affecting African children. Both Algeria and Egypt have ratified the ACRWC (Morocco is not a Member State of the AU)²⁰. Its provisions concerning the rights of children in conflict with the law are largely in conformity with the CRC however, it also has a specific section focussed explicitly on the rights of children imprisoned with their mothers. The Committee has yet to produce any specific guidance on state responsibility towards children in conflict with the law.

• Robben Island Guidelines²¹

In 2002, the African Commission on Human and Peoples' Rights produced the Robben Island Guidelines which call for the establishment of "readily accessible and fully independent mechanisms to which all persons can bring their allegations of torture and ill-treatment." The Guidelines also call for States to "establish, support and strengthen independent national institutions such as human rights commissions, ombudspersons and commissions of parliamentarians, with the mandate to conduct visits to all places of detention and to generally address the issue of the prevention of torture, cruel, inhuman and degrading treatment or punishment, guided by the UN Paris Principles Relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights."

• The Arab Charter on Human Rights²²

The Arab Charter entered into force on 15 March 2008. It has been ratified by Algeria, Egypt, Jordan, Morocco and Yemen. The treaty body established to supervise its implementation is the Arab Human Rights Committee and they will start to review the first State party reports, including reports from Jordan and Algeria, during 2011. The Charter calls on State Parties to ensure that a child in conflict with the law receives "special treatment that takes account of his age, protects his dignity, facilitates his rehabilitation and reintegration and enables him to play a constructive role in society²³." However, the Arab Charter does not comply fully with the CRC as it permits the imposition of the death penalty for serious crimes even though this is a sentence which is prohibited by the CRC.

19 African Charter on the Rights and Welfare of the Child, 11 July 1990, CAB/LEG/24.9/49 (1990)

20 Other AU Member States from North Africa who have ratified the ACRWC include: Libya and Sudan. Tunisia has not ratified nor has the Sahrawi Arab Democratic Republic. For a full list of ratifications see <http://www.acerwc.org/ratifications/>

21 The Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines) African Commission on Human and Peoples' Rights (2002)

22 League of Arab States, Arab Charter on Human Rights, May 22, 2004, entered into force March 15, 2008, as translated from the Arabic in 12 Int'l Hum. Rts. Rep. 893 (2005)

23 Arab Charter on Human Rights, Article 17

2. International and regional standards regarding independent monitoring of detention facilities for children

• Rabbat Declaration on Children in the Islamic World²⁴

In 2005, members of the Organization of the Islamic Conference as well as civil society produced the Rabat Declaration on Children in the Islamic World. The declaration embraced the principles of the best interests of the child, non-discrimination, participation, survival and development, all the while preserving “common Islamic heritage” and publicising the “values of Islam with regard to women and children”. The Declaration calls upon member states ‘to prevent and protect children from all forms of exploitation, abuse, torture and violence, including physical, mental, sexual and domestic violence, and abuse by police and other law enforcement authorities in detention centres or welfare institutions, including orphanages...’

2.3 International and regional mechanisms for monitoring

• Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)²⁵

OPCAT was adopted in 2002 and came into force in 2006. It applies equally to children and adults in detention facilities. It has not been signed or ratified by Algeria, Egypt, Jordan, Morocco or Yemen²⁶. OPCAT is based on the complementarity of visits to places of detention by international and national mechanisms: “The objective of the Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.”

Under this Protocol every ratifying state has to establish a national level inspection body one year after ratification called a National Preventive Mechanism (NPM). These national level mechanisms should be empowered to visit any place under the state’s jurisdiction where people are deprived of their liberty. They must also ensure the visiting bodies are allowed access not only to the place of detention but also access to all information surrounding the persons deprived of liberty, their treatment and conditions of detention, to the prisoners themselves and to conduct interviews with them if desired, and the liberty to choose which places they visit and which prisoners are interviewed.

Ratification of the Protocol also means that a state will allow the UN Sub-Committee on the Prevention of Torture to visit places of detention. This Committee has access to all information regarding the number of persons deprived of liberty, their treatment and conditions of detention and access to all places of detention and all facilities. In exceptional circumstances, it is possible for a State to temporarily postpone access to a place for urgent reasons such as the protection of national defence, public safety, national disasters or serious disorder in the place to be visited.

24 http://www.unicef.org/childrenandislam/downloads/declaration_english.pdf (undated)

25 Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Adopted on 18 December 2002 at the fifty-seventh session of the General Assembly of the UN by resolution A/RES/57/199. Entered into force on 22 June 2006

26 http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9-b&chapter=4&lang=en (accessed 5th April 2011)

2. International and regional standards regarding independent monitoring of detention facilities for children

The Committee also has opportunities to have interviews in private, liberty to choose the places to be visited and the persons to interview. In addition, there is a provision to protect people in contact with the Sub-Committee or the national preventive mechanism from any retaliation/sanction as a consequence of their engagement with the Committee.

After the visit, the Sub-Committee provides a confidential report containing recommendations, which is transmitted to the States Parties, and if relevant, also sent to the national preventive mechanism. The report is confidential but States can authorise its publication. Recommendations are not binding but the States have an obligation to examine them and enter into dialogue on implementation. If States refuse to co-operate, then the Sub-Committee can propose to the UN Committee against Torture to adopt a public statement or to publish the report.

• UN Special Procedures

The UN has a number of procedures established by resolution of the UN Commission on Human Rights (replaced by the Human Rights Council) which allow UN bodies to visit places of detention in order to assess country situations in relation to their mandate. Prior agreement from the State concerned must be given. Recommendations are made public and presented to the UN Human Rights Council but are not binding on States. Such procedures include: the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions; Working Group on Forced or Involuntary Disappearances; and the Working Group on Arbitrary Detention. The Rapporteurs and members of Working Groups are prominent, independent experts working on a voluntary basis, appointed by the Human Rights Council. Requests are often made where it is perceived that visits will have an impact for example after a change of government or where there is increased political will to support the rights of detainees and to combat torture.

• Committee against Torture

The Committee against Torture may visit States Parties to the Convention against Torture in the case of 'systematic torture' provided it receives authorisation from the State concerned. This procedure is confidential. Algeria, Egypt, Jordan Morocco and Yemen have all ratified the Convention against Torture.

• International Committee of the Red Cross (ICRC)

The ICRC has a mandate to visit prisoners of war which has been extended to visiting detainees during internal troubles and tensions with permission from States. It has the following objectives when visiting detention facilities²⁷:

1. To prevent enforced disappearances and extrajudicial executions.
2. To prevent ill treatment.

27 For further details on the ICRC's monitoring of places of detention see "Protection of detainees: ICRC action behind bars" www.icrc.org/web/eng/siteeng0.nsf/html/review-857

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3. To improve the conditions of detention.
4. To ensure respect for judicial guarantees.
5. To restore contact with family members.

Where a person has allegedly been ill-treated, the ICRC will inform the authorities and urge them to investigate these allegations and on that basis to punish the persons responsible in order to bring all forms of ill treatment to an end and to guarantee that no such incidents re-occur. During its visits, the ICRC assesses the treatment and material conditions of detention, such as accommodation, medical care, hygiene and food. The ICRC also looks into the psychological conditions of detention and checks on aspects such as access to fresh air, family visits, etc. The ICRC relies on confidentiality to obtain access and does not report publicly on its findings. It relies on establishing trust with the authorities and the detainees and only shares its findings with the responsible authorities in a bilateral way.

• Special Rapporteur on Prisons and Conditions of Detention in Africa

Only Member States of the African Union (AU) are eligible to ratify the African Charter on Human and Peoples' Rights (ACHPR)²⁸ which was adopted by the AU in 1981. Both Algeria and Egypt have ratified the ACHPR (Morocco is not currently a Member State of the AU)²⁹. The Special Rapporteur on Prison Conditions in Africa, who is appointed by the African Commission on Human and Peoples' Rights, carries out inspections of prison systems in countries which are States Parties to the ACHPR. The strength of this mechanism is that it is preventive rather than reactive and has the mandate to regularly initiate visits provided the Special Rapporteur has the agreement of the state concerned.

Reports give a general assessment of conditions of detention and treatment and detail both problems found and good practice observed. They report to the government of the State Party they have visited and only publish their reports after integration of comments and observations of authorities concerned. They provide a very useful standard against which domestic mechanisms of monitoring can subsequently be measured. However, the Special Rapporteur has considerable difficulties in fulfilling this mandate owing to resource constraints and its approach has been described as ad hoc and lacking clear analysis of compliance with identifiable standards³⁰. A review of activity reports prepared by the Special Rapporteur finds that missions to prisons were conducted in Cameroon in 2002, Ethiopia and South Africa in 2004³¹ and Tanzania and Liberia in 2008³².

28 Organization of African Unity, African Charter on Human and Peoples' Rights ('Banjul Charter'), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986

29 All AU Member States from North Africa have ratified the ACHPR including: Libya, Sudan, Tunisia and the Sahrawi Arab Democratic Republic. For a full list of ratifications see www.au.int

30 Murray, R 'The African Commission's Approach to Prisons' Chapter 10 in Sarkin, Jeremy, ed. 2008 Human Rights in African Prisons. Athens, Ohio: Ohio University Press

31 Report of Missions to States Parties http://www.achpr.org/english/_info/prison_mis....html (accessed 5th May 2011)

32 44th Intersession Activity Report of the Special Rapporteur on Prisons and Conditions of Detention in Africa

2. International and regional standards regarding independent monitoring of detention facilities for children

- **European Convention for the Prevention of Torture (CPT)**

The European Committee for the Prevention of Torture was, in 1987, the first body set up specifically to carry out preventive visits to places of detention. Upon ratification of the Convention, State Parties accept visits of the CPT at any time to any place where persons are deprived of their liberty. They have unlimited access, at any moment to any place where a person is deprived of his or her liberty. They make periodic and ad hoc visits ("required by the circumstances") and their reports are theoretically confidential, but their publication has become the rule.

3.

Establishing Monitoring Mechanisms for Children in Detention

3. Establishing Monitoring Mechanisms for Children in Detention

3.1 Different monitoring bodies for children in detention

A range of different bodies may be involved in monitoring detention facilities for both adults and children: internal inspection bodies; judicial bodies; lawyers and Bar Association groups; official institutions established by Parliament such as National Human Rights Institutions (NHRIs) or Children's Ombudspersons offices; civil society organisations and international and regional mechanisms such as the UN Sub-Committee to CAT, the European Committee for the Prevention of Torture and the Special Rapporteur on Prisons and Conditions of Detention in Africa. Each mechanism can provide different perspectives and insight and complement each other. In countries with a multiplicity of different monitoring bodies concerned with children in detention, it is very important to have coordination between them.

Box 5: National Human Rights Institutions

"It is the view of the Committee that every State needs an independent human rights institution with responsibility for promoting and protecting children's rights. The Committee's principal concern is that the institution, whatever its form, should be able, independently and effectively, to monitor, promote and protect children's rights".

Source: UN Committee on the Rights of the Child, General Comment No. 2, 2002

Most states have established their own internal inspection mechanisms which are sometimes supplemented by judicial control. In some countries, child-focussed civil society plays an important role and has authorisation to monitor children in detention. However, in general, states have been slow to develop strong, influential, external monitoring mechanisms that are independent of the prison administration.

3.2 Specific focus on children in detention

Monitoring of children in detention may be part of a broader monitoring programme of adult prisons or may be conducted by a team focussed specifically on children. There are many reasons why children in detention need a special focus from monitoring bodies to protect their rights: they are extremely vulnerable to violence, abuse, neglect and exploitation at the hands of fellow detainees, staff or even from self-harm (including suicide). Girls can be especially vulnerable to sexual abuse.³³

<http://www.achpr.org/english/Commissioner%27s%20Activity/44th%20OS/Special%20Rapporteurs/prison%20conditions.pdf> (accessed 5th May 2011)

³³ Paulo Sérgio Pinheiro, World Report on Violence against Children, UN Secretary-General's Study on Violence against Children, Geneva, 2006, www.violencestudy.org

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As well as the threat of violence and abuse, children's rights violations in detention can also include: physical and emotional neglect; malnutrition; the absence of treatment for physical or mental illness; psychological trauma; lack of education, rest, play, leisure and other conditions necessary for healthy development and an adequate standard of living; discrimination; violation of the right to be heard; interference with privacy and family life; and violation of other civil and political rights such as freedom of thought, conscience, religion, association, expression and protection of legal and/or procedural safeguards in relation to deprivation of liberty. Furthermore, they may have difficulties in using the legal system to assert their rights or seek remedies for breaches of their rights.

The special status of children in detention demands either a separate monitoring body or special arrangements within an existing body to reflect the gravity of rights violations they experience. Visitors conducting inspections for children will need to have additional training and expertise in children's rights and legal frameworks. There is no overwhelming case for either separation or for integration so long as the mechanism pursues the promotion and protection of children's rights in detention effectively and has the necessary profile, powers and duties. Such an institution should have employees who are knowledgeable and experienced in children's rights and a ring-fenced minimum budget to monitor the conditions of children in detention.

Box 6: Explicit focus on children in detention – the Office of the Children's Commissioner in New Zealand

What is the Children's Commissioner?

The Children's Commissioner has a range of statutory powers to promote the rights, health, welfare, and wellbeing of children and young people from 0 to 18 years. These functions are outlined in the Children's Commissioner's Act 2003 (CC Act). The functions are undertaken through advocacy, public awareness, consultation, research, investigation and monitoring. The role includes specific functions in respect of monitoring activities completed under the Children, Young Persons and Their Families Act 1989 (CYPF Act). The Children's Commissioner also undertakes systemic advocacy functions and investigates particular issues with potential to threaten the health, safety, or wellbeing of children and young people. The CC Act also gives the Commissioner responsibility as an independent advocate for the interests, rights and wellbeing of New Zealand's children and young people up to the age of 18 on laws, policies, practices and other matters that affect them. It mandates a wide range of activities from investigating complaints about the treatment of individual children, to raising awareness of children's interests, rights and welfare among New Zealanders generally.

3. Establishing Monitoring Mechanisms for Children in Detention

The legislative mandate for monitoring children in detention

Firstly, section 13(1)(b) of the CC Act, states that the Commissioner must monitor and assess the policies and practices of Child, Youth and Family³⁴ and encourage the development of policies and services that are designed to promote the welfare of children and young people. Secondly, New Zealand ratified OPCAT in 2007. The New Zealand Crimes of Torture Amendment Act 2006 (COT Act) describes how this protocol will be applied in this country. The focus is on any person who is compulsorily detained.

The Children's Commissioner has been designated as a National Preventive Mechanism (NPM) under this Convention, jointly responsible with the Ombudsman, for monitoring children and young people in places of detention. In effect, the Office carries out the monitoring visits and refers reports and findings to the Ombudsman for input into their report. The Children's Commissioner's role as a NPM has some overlap with their statutory responsibility to monitor the policies and practices of Child, Youth and Family generally.

Working with other agencies

One of the ways the Children's Commissioner fulfils these responsibilities is by visiting Child, Youth and Family residences throughout the country. Other NPMs in New Zealand who may also monitor places of detention where young people are housed include:

- The Office of the Ombudsmen – in relation to prisons, immigration detention facilities, health and disability places of detention, and Child, Youth and Family residences
- The Independent Police Conduct Authority – in relation to people held in police cells and otherwise in the custody of the police
- The Inspector of Service Penal Establishments of the Office of the Judge Advocate General – in relation to Defense Force Service Custody and Service Corrective Establishments.

How to maintain independence

The Children's Commissioner is an Independent Crown Entity, appointed by the Governor-General, carrying out responsibilities and functions set out in the CC Act. This means the Commissioner's independence has been outlined in legislation. The monitoring teams are made up of representatives from the Office who are qualified social workers with experience in monitoring and analysing practice. They are interested in the welfare of children and young people and have a strong rights focus. NPM visits also include representatives from other NPM agencies in New Zealand with the responsibility for monitoring other places of detention.

³⁴ Child, Youth and Family is the government department that works with families to ensure children and young people are safe and live in an environment in which they thrive. They offer statutory care and protection and youth justice services to children, young people and their families. This includes the provision of residential services with secure facilities.

3. Establishing Monitoring Mechanisms for Children in Detention

The extra statutory powers afforded to the Commissioner in their role as an NPM have added to the robustness of the monitoring responsibilities. Specifically the role, as outlined in the COT Act, means that the Commissioner has specific functions, rights to information, and rights to enter places of detention. The COT Act also outlines how NPMs may conduct interviews detailing that sources can be kept confidential and that there will be no individual repercussions for providing information to a NPM. They also conduct robust assessments of each residence that includes interviewing children and young people, management teams, frontline staff, grievance panel members, and the partner agencies that deliver services such as health and education within each residence.

Source: Email received by PRI from the Office of the Children's Commissioner in New Zealand 7th April 2011

3.3 Independence

Political will and support for all bodies which monitor children in detention is essential to their success as is a long term commitment from the state in terms of human and financial resources. For independent bodies such as NHRIs to succeed, it is imperative that their mandate be enshrined in domestic law either by Act of Parliament or inclusion in the Constitution so that their long-term existence and independence is assured. The UN's Paris Principles³⁵ outline the essential requirements for NHRIs and call for them to:

- be set up under legislation on a firm legal basis
- have the power to decide what they should publish
- be protected from governmental pressure
- have adequate funding with their own staff and premises to carry out their task
- maintain contact with civil society organisations.

External monitoring bodies of detention centres for both adults and children should not be formally attached to any Ministry or government body. It is important to emphasise that independence can only be relative not absolute if the monitoring body is established and funded largely by government. However, there are steps which can be taken to enhance the actual and perceived independence of external monitoring bodies with the mandate to monitor children in detention³⁶:

- **Appointments:** When appointing the head then the criteria for appointment should be established in legislation along with the duration of appointment, and whether re-appointment is allowed (normally a fixed term appointment, not too short, with the possibility of an additional term). The power to dismiss such a head, usually an Ombudsperson or Commissioner for children's rights, should only be vested in Parliament or at an equivalently high level and should only be for very serious reasons. The head should have the right to appoint their own employees.

35 Principles relating to the Status of National Institutions (The Paris Principles), adopted by General Assembly resolution 48/134 of 20 December 1983

36 The European Network of Ombudspersons for Children has a very useful training pack for establishing human rights institutions for children which can be found at <http://www.crin.org/enoc/training/index.asp> (accessed 3rd May 2011)

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- **Financial autonomy:** the body needs to be financially capable of performing its functions, and as far as possible finance of the office should be removed from political control, and be guaranteed for a reasonable period. For financial issues, the office should be accountable not to government but to parliament and should be free to raise additional funds from non-government sources.
- **Right to set own agenda:** the body should be able to determine its own programme for monitoring children in detention and the government or other authority must not be able to dictate the whole programme.
- **Legal powers:** the body needs to have the legal power to be able to: access detention facilities for children on an unannounced basis; to initiate legal action, or to support legal action on behalf of children in detention; to report to the public and to Parliament if possible regarding findings and recommendations; consult with the government; and ensure that appropriate attention is paid to recommendations from the monitoring body. As far as possible the monitoring body should have guaranteed access to high-level governmental figures and across all departments.

Box 7 : Importance of unannounced visits

"The National Council for Human Rights in Jordan (NCHR) stressed that surprise visits have an important deterring effect. The NCHR has observed that if visits are announced it is difficult to observe the usual conditions in a prison. However, violations can still be detected, if the visiting team is composed of capable professionals. All information can be cross-checked during interviews in private."

Source: Report on Independent monitoring of human rights in places of detention, Regional seminar for the Middle East and North Africa, Amman, Jordan, 3-6 September 2007



Key aspects of effective monitoring for children in detention

4. Key aspects of effective monitoring for children in detention

4.1 Four General Principles of the CRC

Monitoring describes the process of regular examination of all aspects of children's rights in detention on the basis that children in detention are entitled to all the rights enjoyed by their peers in the community, apart from being deprived of their liberty. The process consists of objective documentation of the conditions of detention and the treatment of children and analysis of their conformity with national and international standards, formulation of recommendations and follow-up on the implementation of the recommendations. Of central importance to any analysis of how children are treated in detention is the CRC which emphasises that children should only be detained as a measure of last resort and for the shortest appropriate period of time.³⁷ The CRC and ACRWC have four foundational principles and these should be taken into account at all stages of the monitoring process.

The best interests of the child

This should be a primary consideration in all matters affecting the child.³⁸ The CRC Committee in General Comment No. 10 states: "The protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders."³⁹

The best interests of the child should be a primary consideration for all aspects of the monitoring process for example, during planning for visits, interviewing, preparation of reports, advocacy and working with the media. The best interests of the child should also be a core indicator for evaluating how detention facilities treat children. In assessing this, the following factors should be taken into account: the extent to which the views and opinions of children in detention are listened to and given due weight by the authorities; the extent to which all other rights of the children such as the right to dignity, liberty and equal treatment are respected by the authorities; and the extent to which the authorities take a holistic approach to children in detention focussing on both their psychological and physical well-being and their legal, social and economic interests.

The right to non-discrimination

The right to non-discrimination means that States shall respect and ensure the rights in the CRC to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.⁴⁰ The CRC Committee requires States to take all necessary measures to ensure that children in conflict with the law are treated equally.⁴¹

37 CRC, Article 37

38 CRC, Article 3

39 General Comment No. 10, para. 10

40 CRC, Article 2

41 General Comment No. 10, para. 6

4. Key aspects of effective monitoring for children in detention

Children who are likely to face discrimination within the criminal justice system include: street children; children belonging to ethnic, religious or linguistic minorities; indigenous children; girl children; children with disabilities; trafficked or migrant children and children who are repeatedly in conflict with the law. Such children are more likely to be prosecuted, more likely to be held in pre-trial detention and more likely to receive a custodial sentence. They are also more likely to be mistreated whilst in detention.

The principle of non-discrimination must be taken into account in all aspects of the monitoring process; for example, the monitoring team must comprise both men and women; information

should be gathered about characteristics of children who face discrimination within the criminal justice system to inform the monitoring process; institutions should be visited where boys and girls and children of different ethnicities are held; the monitoring team may need to have training on how to interview children from different backgrounds.

The right to non-discrimination should be a core indicator for evaluating how detention facilities treat children. In assessing this, take into account whether detention facilities provide specific protection and assistance to more vulnerable children such as migrant children, refugee and asylum seeking children, children with disabilities, homeless and street children and children of different ethnicities.

The right to survival and development ⁴²

The right to survival and development includes the rights to the resources, skills and contributions necessary for the survival and full development of the child such as adequate food, shelter, clean water, formal education, primary health care, leisure and recreation, cultural activities and information about their rights. Specific articles address the needs of child refugees, children with disabilities and children of minority or indigenous groups. This right must be taken into account in all aspects of the monitoring process; for example, are children treated with care, sensitivity, fairness and respect and with special attention for their personal situation, well-being and specific needs, and with full respect for their physical and psychological integrity throughout all aspects of the monitoring process?

The right to survival and development should also be a core indicator for evaluating how detention facilities treat children. In assessing this take into account whether children are subject to torture or inhuman or degrading treatment or punishment; whether they have the right to receive regular visits and remain in contact with

⁴² CRC, Article 6

4. Key aspects of effective monitoring for children in detention

parents/guardians; whether they have a medical examination and psycho-social examination on admission; whether they have access to health services; provision of adequate sleeping and living space; adequate clothing; food; hygiene and sanitary conditions; educational opportunities; and are staff looking after them appropriately trained.

The right to participate⁴³

Children are entitled to the freedom to express opinions and to have a say in matters affecting their social, economic, religious, cultural and political life. Participation rights include the right to express opinions and be heard, the right to information and freedom of association. Engaging these rights as they mature helps children bring about the realization of all their rights and prepares them for an active role in society - it is therefore an essential part of a child's rehabilitation and reintegration into society. The right to participate also means children should be provided the opportunity to be heard in any judicial or administrative proceedings affecting the child. The CRC Committee recommends that, wherever possible, the child must be given the right to be heard directly.⁴⁴ Children's voices and opinions should be taken into account during the monitoring process particularly during interviews but also during follow up of reports and recommendations.

The right to participate should also be a core indicator for evaluating how detention facilities treat children. When assessing this take into account whether children are informed of their rights, given adequate information about complaints mechanisms and heard in proceedings involving them. Are children's views given due weight bearing in mind their maturity and any communication difficulties they may have?

4.2 The function of visits

The main source of information for inspectors is to actually go to detention facilities in order to observe conditions and conduct interviews.⁴⁵ Visits to detention facilities have various functions:

- They can prevent violations of children's rights.
- The inspectors can respond to specific allegations of abuse made to them during visits.
- Information regarding conditions and treatment in detention can be gathered to form the basis of an analysis and recommendations for improvement. This information can also be used to establish a baseline to monitor future improvements.

⁴³ CRC, Article 12

⁴⁴ See UN Committee on the Rights of the Child, General Comment No 12 (2009): The right of the child to be heard, 20th July 2009, CRC/C/GC/12 Paras 35-37.

⁴⁵ For a detailed overview of the steps required in planning and implementing a monitoring visit see APT: Monitoring places of detention: a practical guide for NGOs

4. Key aspects of effective monitoring for children in detention

- Many countries lack reliable, up to date, disaggregated statistics on the number and characteristics of children in detention. Monitoring visits can be used to gather statistics which highlight specific child rights violations – for example, whether children are being imprisoned in adult prisons; whether children are being detained as a measure of last resort; whether children in pre-trial detention are experiencing excessive delay in the processing of their cases etc
- Visits provide a basis for direct dialogue with authorities in charge of rehabilitating children in detention facilities. Improvements can be made in the context of a constructive working relationship.
- For many children, particularly those who are detained far from their families and who have few visitors or contact with the outside world, inspectors can be a vital source of moral support.
- It can be a way of gathering information about children's experience within the criminal justice system more broadly; for example, they can be asked about the way they were treated whilst in police detention and during court hearings including trial proceedings.

4.3 Composition and training of monitoring team

To monitor the treatment of children and the conditions they are living in whilst in detention requires a team of people with a range of professional skills and experience. This is required to obtain a comprehensive understanding of children in detention which includes assessment of their legal, psychological, social, emotional, physical and cognitive situation.

Visiting teams should contain at least one person with a legal background and one with a medical background. Where detention facilities hold girls, then the team must have at least one woman to facilitate contact with them. Boys and girls in detention will respond differently to inspectors who are men or women and in general, a gender balance on the team is required to ensure that a full picture of conditions of detention is obtained. Other professionals such as teachers, psychologists, psychiatrists, social workers and educationalists are also very useful. The composition of the team should also reflect the ethnic, linguistic and regional backgrounds of the children they are meeting. This is particularly important when interviewing children since there are clear advantages in communicating in a child's mother tongue. Where the use of an interpreter is unavoidable then it is vital for the interpreter to be fluent in both languages and to be able to use language which a child can understand⁴⁶

⁴⁶ For more on working with interpreters effectively see APT: Monitoring places of detention: a practical guide for NGOs pp276

4. Key aspects of effective monitoring for children in detention

It is vital for monitoring teams to receive ongoing training throughout their term of office in relation to the rights of children in detention. This training could contain the following components:

- Basic principles of monitoring in the best interests of the child
- Legal framework for children in detention
- Key issues and problems faced by children in detention facilities
- Methodology of visits
- How to conduct interviews and communicate with children at all ages and stages of development as well as with children who are particularly vulnerable and who may have experienced serious violence and abuse
- How to behave with prison authorities and staff maintaining a balance between courtesy and persistence
- Security rules to abide by
- Report writing
- Advocacy and following up on recommendations made

Box 8 : Effective coordination between monitoring bodies in South Africa

The Judicial Inspectorate of Prisons (JIP) in South Africa is a statutory independent body under the control of the Inspecting Judge and not part of the Department of Correctional Services. The structure, powers, functions and duties of the JIP are set out under the Correctional Services Act 1998. They have access to any part of the prison estate and to any document or record they wish. The JIP is merely a reporting and investigative authority, and therefore has no powers to take disciplinary action against correctional officers. The Correctional Services Act also places statutory responsibility on Heads of Prisons to report to the Inspecting Judge all cases of solitary confinement, segregation, use of mechanical restraints and deaths in prison.

Since July 2002, the JIP has also had Independent Prison Visitors (IPVs) set up in each of its nine provinces. They are there to facilitate the humane treatment of prisoners and the improvement of prison conditions. Most IPVs have no prior knowledge of the prison environment and the Judicial Inspectorate has noted the need to increase resources and efforts in order to fully support the work of the IPVs. They have also highlighted how the support of Area Managers, Heads of Prisons and other officials of the Department of Correctional Services for the IPVs has been an important factor in ensuring the IPVs can work successfully for the humane treatment and improvement of conditions for prisoners.

4. Key aspects of effective monitoring for children in detention

When it became apparent that the IPV's were in need of both closer support and closer auditing and accountability, Regional Coordinators were appointed in each of the provinces from the ranks of IPV's. Since 2001 the JIP has attempted to introduce an online system for its IPV's where by the dispersed IPV's can submit electronic reports and prisoner complaints directly to the JIP. This speeds up the reporting and also allows for two-way messaging between the Judicial Inspectorate's office and the Independent Prison Visits.

In addition to the above, the Centre for the Study of Violence and Reconciliation has a criminal justice project which helps to monitor prison conditions by ensuring the effective development and implementation of policy around human rights and the treatment of prisoners. They also take part in training the Department of Corrections, prisoners, the Judicial Inspectorate and IPV's in human rights issues.

Source: Judicial Inspectorate of Prisons in South Africa

4.4 Preparation for monitoring visits

Obtaining access to detention facilities where children are held

Independent monitoring mechanisms must have access to all places of detention, including facilities, of their choice. They must have access to all information concerning the number of children deprived of their liberty as well as information regarding their treatment. They should be able to conduct private interviews with children provided informed consent is given and be able to visit without prior notification.

Box 9: Lack of access to prisons in Uganda

The Uganda Human Rights Commission was set up under the provisions of the Constitution of Uganda 1995. One of its functions is to visit all places of detention to assess the condition of inmates and make recommendations for its improvement. The visits to places of detention are followed by reports and special letters to relevant authorities about the findings and recommending measures to improve the situation. Even though the Commission has the constitutional right to visit any place of detention without notice, this is hampered by a requirement of the army of giving them prior notice. A further issue in Uganda is that the Commission has no access to 'safe houses', which house hard core criminals involved in terrorist activities before taken to court and where it is believed torture occurs unabated and human rights are frequently violated.

Source: Uganda Human Rights Commission

4. Key aspects of effective monitoring for children in detention

Length and frequency of visits

Visits should be long enough to interview people in charge, prison employees and children themselves as well as to view facilities and living conditions. Children in detention may find it particularly difficult to trust an unfamiliar adult and it will take time and patience before a child can feel sufficient trust to communicate freely. It is particularly important to leave enough time to conduct meaningful and ethical interviews and discussions with children. Visits will be much more effective in terms of promoting sustained improvement in the conditions of detention and treatment of children if they take place on a regular and systematic basis.

Selection of detention facilities to visit

Many different criteria can be applied when selecting and prioritising which of a large number of different detention facilities to visit where children are held. Emphasis should be given to the following:

- The level of risk of rights violations experienced by children; for example, focus on certain towns, cities or districts where children living in and of the street are a particular target by security forces.
- The information available from other national or international monitoring bodies; for example, if there are credible reports from other sources of overcrowding of certain institutions where children are held or certain institutions where the risk of protection abuses is especially high owing to inadequate accountability then these should institutions should be prioritised.
- Police stations in particular can be settings where children are subject to violence. As a preventive measure, particular attention should be paid to making regular and unannounced visits to police stations.

In order to obtain a comprehensive overview of the conditions of children in detention, it may be necessary to visit a sample of institutions. These might include facilities which are considered to be most representative of the experience of children and facilities which have not been routinely visited in the past perhaps because they are in rural areas. It is important to visit a cross-section of facilities looking at different places of detention (police custody, pre-trial detention, post-trial detention, administrative detention, immigration detention, protective detention etc) and ensuring that visits review the experiences of boys and girls of different ethnicity and linguistic groups.

Child protection policy

It is good practice for monitoring bodies, which have direct and indirect contact with children, to have their own child protection policy.⁴⁷

⁴⁷ See <http://www.childhope.org.uk/article.asp?id=587> for guidance for any organisation on developing their own child protection code (also available in Arabic)

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Such a policy is a statement of intent that demonstrates a commitment to safeguard children from harm and makes clear to all what is required in relation to the protection of children. It helps to create a safe and positive environment for children and to show that the organisation is taking its duty and responsibility of care seriously. Such a policy will provide guidance on issues such as proper screening in the recruitment and supervision of inspectors working with children in detention; training provided to inspectors on how to work with children in detention so they are safe; and, safe storage of children's personal information including records of allegations of abuse. Inspectors should be required to sign a child protection policy and have received appropriate training on how to interview a range of different age groups.

Box 10: Preparation for a monitoring visit to detention facilities in Morocco

In 2004, and again in 2008, the Consultative Council for Human Rights (CCDH) in Morocco began planning for monitoring visits to a range of adult and children's detention facilities. The CCDH's Working Group on the Protection of Human Rights and the Prevention of Violations was in charge of planning and preparation for these visits and adopted the following approach:

- To take into consideration all the work previously done by the CCDH, particularly reports and summaries of previous visits;
- To arrange an information and coordination meeting with the Director of the Prison Administration with regard to the visits, and to get acquainted with the latest developments on the issue of prison conditions;
- To prepare standard questionnaires to collect information during the visits; and
- To define criteria for the selection of prison facilities to be visited including: prisons that were built recently and were not visited by the relevant group under the previous mandate of the CCDH; prisons that have not been visited since 1996; prisons with serious problems of overcrowding; prisons located in remote areas; reform and rehabilitation centres where children are held; prison complexes of Oukacha and Salé, which have the highest number of prisoners; the local prison of El Jadida, as an example of a prison that has experienced a fire; prison farm of al-Adir; women's block in the prisons of Settat, Casablanca and Salé.

Source: Thematic Report on the Situation in Prisons produced by CCDH in 2008
http://www.ccdh.org.ma/IMG/pdf/Rapport_prisons-2.pdf (accessed 13 May 2011)

4.5 Implementation of the visit

Build constructive relationships

Visitors must be clear about the objectives of their visit and its limitations. Above all they should not promise to take action on behalf of children and their families unless they are certain that they will be able to follow through with these promises. It is very important for monitoring bodies to respect the authorities and the staff in charge. Visitors should endeavour to create a constructive working relationship with authorities and to identify the appropriate level to bring concerns regarding children in detention.

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They should also be mindful that staff who have responsibility for children in detention are often carrying out an extremely demanding job with few resources or external sources of support with, for example, rehabilitation or reintegration. Furthermore they are often poorly paid and their work is not highly valued. Above all visitors should remain impartial and not discriminate against anyone they come into contact with as a result of the monitoring visit on the basis of sex, religion, language, ethnicity, sexuality or other grounds.

Credible evidence

Inspectors must ensure that their reports are based upon reliable and credible information. In order to obtain a comprehensive picture of how children are being treated whilst in detention, inspectors should discuss progress and setbacks with the director and the staff of the facility, examine the conditions of detention first hand, check written documentation and records and hold confidential conversations with the children held in the facility. Detailed interviews should be conducted with authorities, staff and the different professionals taking care of children in detention such as doctors, nurses and teachers. Other reliable sources should also be consulted with such as lawyers, families of children in detention and civil society organisations who are involved in working with children in detention.

Consulting with children in detention

Children have a right to be heard. Article 12 of the CRC states that: "States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child....For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body....". Visits from inspectors provide an invaluable pathway for the voices of children in detention to be heard. As far as possible, children should be able to give their own accounts rather than have people speak on their behalf, and children's ability to take responsibility and action for themselves should be highlighted by inspectors. The Committee on the Rights of the Child has produced a General Comment No. 12⁴⁸ on the right of the child to be heard which gives guidance on how to ensure that children's voices are captured in a meaningful and ethical manner. It emphasises that a child cannot be heard effectively where the environment is intimidating, hostile, insensitive or inappropriate for her or his age.

Interviewing children in detention and reporting on their treatment and conditions can create a wide range of challenging ethical issues for inspectors. What should an inspector do if a child alleges that they have been abused by another inmate or member of staff? How can an inspector ensure that children are speaking freely and openly?

48 UN Committee on the Rights of the Child, General Comment No 12 (2009): The right of the child to be heard, 20th July 2009, CRC/C/GC/12

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How can an inspector ensure that a child has given informed consent to be interviewed? Is there a risk of reprisals for a child who discloses information about maltreatment or poor conditions? Before and during any visit the possible impact on participating children of the interview questions, methods and findings should be evaluated.

Informed consent

Before any interview is conducted, a child must give informed consent. This is the process whereby a child voluntarily agrees to be involved in an interview or focus group discussion and makes this decision based on full disclosure of pertinent information. Children's competency to give informed consent to participate in the work of an inspection visit will depend on many factors: age, understanding, quality and accessibility of information that they are provided with in advance and the nature of their involvement.

As a first step, they must be given adequate information to make an informed decision. Particular attention needs to be paid to the provision and delivery of child-friendly information in advance of and during interviews. They must be given a very clear picture of what involvement in the monitoring visit means. This involves practical information about the time and place of the interview, the general progress and outcome of any report on the visit, how the information they provide will be used and the extent to which it will be public.

Expectations should be carefully managed to ensure a realistic picture is given of possible outcomes of the interview; this is particularly the case if the interview covers areas relating to a child's specific legal case. It must be made very clear that, inspectors (unless they have a specific judicial remit) will have very limited opportunity to intervene in any legal proceedings.

Participation in an interview must be freely volunteered, with the understanding that the child can withdraw at any time. It must be made clear that they can agree or disagree to participate with no risk of adverse consequences. There may be occasions, for example when very young children are involved, or when the child's maturity and understanding is such that consent to interview will have to be obtained from their parent or guardian by proxy.

Different approaches to consulting with children

• One-to-one interviews with children

One to one interviews have the advantage of allowing inspectors to find out first-hand from children about their experiences with the justice system from the point of first contact with the system to their present point. Questions can focus on:

- Background of the child including family and social context;
- Reasons for committing offences;

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- Treatment at first contact with system particularly at the police station;
- Experience of system through pre-trial detention, trial and sentencing;
- Experience within the institution including measures of rehabilitation and reintegration on offer.

Ideally such interviews should be in private although there may be security or other reasons which mean a social worker or representative from the detention facility may be present.

• Interviews with a parent, guardian or other relative

To gain further insights into the treatment of children in detention, interviews should be conducted with parents, guardians or other family members.

• Focus Groups

Focus group discussions can be used to corroborate the data gained from children in the one-to-one interviews and in order to get a more rounded picture of children within institutions. Some children may be more willing to speak in a group setting and be less worried about reprisals so focus groups can provide better quality data. Questions will cover similar topics to those of the one-to-one interviews although will be adapted to allow for more discussion around the issues. This will ideally be administered with as few adults present as possible to allow the children to speak more freely. However, if for security or other reasons it is deemed necessary then institution staff (including social workers) should be allowed to attend.

General guidance on conducting interviews with children

Children can provide useful information; however often interviewers are unsure as to how to let them do it. For example, in an interview, the less information the child gives in free recall, the sooner the interviewer may start using leading questions, which can influence the child and distort the story. Also, children may perceive the interview task differently from adults and as a result children try to tell the interviewer what they believe the interviewer wants them to say. They may answer questions they do not understand and about which they have no information. Best practice guidelines include the following:

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- introducing yourself before the interview;
- explaining the purpose of the interview;
- explaining that it is acceptable to tell the interviewer they do not know the answer to a question;
- explaining to children that they should correct the interviewer if he or she is mistaken;
- encourage the child to tell in his or her own words;
- details should be encouraged by responses such as "and then what happened"; pressure and coercion, leading questions and selective reinforcement of responses must be avoided;
- the child should be discouraged from trying to answer questions when the answer is not known;
- repeated questions should be avoided since this tells the child the previous answers were not acceptable.

When preparing for the interview, choose a location where there is as much privacy as possible, there are few distractions and the child feels safe and comfortable. Also choose how the interview will be recorded and how these records will be kept confidential – i.e. two interviewers (one note taking), one interviewer taking notes, using recording device. Be aware of common problems such as children answering questions to which they don't know the answer; children telling the interviewer what they believe the interviewer wants to hear; and children fearing that any information they disclose will result in reprisals once the interviewers have gone.

Making the child feel safe by introducing yourself properly before the interview. Explain the purpose of the interview, what the information they give will be used for and the limitations of the things you can change. Explain why you are taking notes/using a recorder during the interview and how it will be kept confidential. Start with conversational or non-controversial questions and work towards more sensitive issues. Use an informal and relaxed approach to help the child feel at ease. Understand that it may take some time for the child to become relaxed enough to be comfortable talking, especially if the events they are recalling are traumatic ones such as maltreatment in police stations.

In order to get unbiased information, explain that it is acceptable to tell the interviewer if they do not know the answer to a question and that they should correct the interviewer if s/he is mistaken or incorrect. Avoid leading questions or comments that may make the child feel coerced or pressured into giving a certain answer and also avoid repeated questions as it may lead the child to believe their previous answer was 'wrong'. Use simple, age-appropriate language and ensure that the child understands the correct meaning of the question. To get more detail use follow-up questions, e.g. "And then what happened?" Ensure you have a non-judgemental attitude which conveys acceptance of the child.

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When finishing the interview, ask the child if they have any questions for you or anything else they'd like to tell you. Explain again the limitations of your work and avoid raising false hopes and complete your notes immediately after the interview has finished to ensure the most accurate representation of the meeting as possible.

4.6 Reporting

Following collation of a comprehensive range of information and evidence, the next stage in the monitoring process is to analyse and compile the findings and to provide the authorities and other stakeholders with concrete, practical recommendations. There can be different types of report. A monitoring body might decide to report on each visit to a detention facility or to present a global report on a series of visits in which case patterns of violations may be exposed. Or reports might have a specific objective; for example, to gather a baseline of information about how many children are being held in detention alongside adults. Visit reports should contain the following:

- Composition of visiting team
- Date and time of visit
- Specific objectives of visit
- How the information was gathered and verified
- Principal concerns regarding children

Monitoring conditions of detention for children involves assessing whether children deprived of their liberty are treated with the respect due to their inherent dignity and value as human beings. This implies measuring the extent to which conditions correspond to national and international human rights standards. An inspection body should also try to explain the causes for failure to respect international standards. Such causes might include a failure to incorporate international standards fully into domestic law; lack of knowledge and training amongst staff in detention facilities which are caring for children; and a lack of human and financial resources.

Box 11: Reporting and the Havana Rules

"After completing the inspection, the inspector should be required to submit a report on the findings. The report should include an evaluation of the compliance of the detention facilities with the present rules and relevant provisions of national law, and recommendations regarding any steps considered necessary to ensure compliance with them. Any facts discovered by an inspector that appear to indicate that a violation of legal provisions concerning the rights of juveniles or the operation of a juvenile detention facility has occurred should be communicated to the competent authorities for investigation and prosecution."

Source: Havana Rules, Rule 74

It is important not to simply reiterate the international standards but to explore the reasons why they are not being met and where possible to propose solutions. Recommendations should identify the main problems and explore what can be achieved in the short, medium and long-term. They should be aimed at the right level of authority and should as far as possible be realistic and follow logically from how the problem has been presented in the report.

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Independent inspectors should publish all parts of their reports on children in detention except for those that are related to confidential security information or details of individual children. The individual detention facilities, prison administration and government should undertake to respond promptly and fully to the reports which they receive.

The privacy and personal data of children in detention must be protected by monitoring inspectors. This means that access to printed and electronic personal information about children should be restricted to the minimum number of people who need to know and that no information or personal data may be made available or published, particularly in the media, which could reveal or indirectly enable the disclosure of the child's identity, including image, detailed descriptions of the child or the child's family, names or addresses, audio and video records, etc. With regards to the use of photographs of children in detention, children must be asked for their permission before a photo is taken and a photo may only be used if a child has given their consent for its use for a specified purpose.⁴⁹ Furthermore, their identity should not be revealed in any circumstances so for example, faces should be obscured.

Every child has a right to be accurately represented through both words and images. Inspectors must be aware of the risk that, once public, their reports may be used to sensationalise issues around children in detention and that the children who participated may be mis-represented and linked with contemporary moral panic surrounding children in conflict with the law. It is essential to avoid the use of language and images that could degrade, victimise or shame children; which make generalisations which do not accurately reflect the nature of the situation; or which discriminate.

4.7 Advocacy and follow-up

The next stage of the process is to transmit the findings to the authorities concerned and in some cases to other players such as the media or civil society. Monitoring bodies may produce excellent and widely read reports highlighting reform required, however, it is not unusual for their recommendations to be ignored on the grounds of shortage of resources or competing political priorities. This undermines the effectiveness of any monitoring system. It is a vital stage in the loop for monitoring bodies to systematically follow up regarding the implementation of recommendations by the authorities.

⁴⁹ Adapted from World Vision Child Protection Policy, section 8.4

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In cases where there is unwillingness to respond to recommendations, a monitoring body should consider approaching other bodies to exert pressure on authorities for example, parliamentarians, civil society, the media and international organisations. They should consider participating in the drafting of shadow reports to UN and regional human rights bodies such as the African Committee of Experts on the Rights and Welfare of the Child as well as the Universal Periodic Review process.

Information and reports from domestic visiting bodies can also be sent to other relevant UN bodies such as the Special Rapporteur on Torture, Special Rapporteur on the Independence of Judiciary, Special Rapporteur on Extrajudicial Executions and Special Rapporteur on Human Rights Defenders, the UN Working Group on Arbitrary Detention, UNICEF, UNHCR and the UN Committee on the Rights of the Child. It may also be important to contact regional human rights mechanisms such as the African Committee on the Rights and Welfare of the Child and the Rapporteur on Prisons and Conditions of Detention in Africa.

All forms of inspection should have a clear procedure for matters which require urgent attention. Allegations of serious ill-treatment and torture should be transmitted to the authorities immediately, and at a level that does not endanger the child or children concerned by the allegation.

Box 12: Independent Monitoring Mechanisms for Children in detention in the UK
The UK has a total of eighteen designated 'national preventative mechanisms' which are coordinated by Her Majesty's Inspectorate of Prisons (HMIP). HMIP is an independent inspectorate that reports on conditions in and treatment of those in prisons, Young Offenders Institutions (YOIs), and immigration detention centres. HMIP reports directly to the UK government. It comprises of 6 inspection teams throughout the UK, which each specialise in inspecting a certain kind of institution, including one specialising in the inspection of YOIs.

A team includes healthcare inspectors, drug inspectors, researchers and administrative staff. It works alongside other inspectorates, e.g. the Royal Pharmaceutical Society. Some inspections are announced and the prison is informed in advance of the visit while others are unannounced and the inspection team visits without notifying the establishment beforehand. Inspectors cannot be refused entry by the establishment and must have access to all relevant documents they may need and any prisoners they wish to interview.

Full Inspections occur at least once every 5 years and are announced visits. The Inspectorate collects information from, among others: staff; those imprisoned or detained there; and visitors or others with an interest in the establishment. If the visit is announced, one month prior to the full inspection, an inspector will visit the establishment to request a range of information and documents and researchers will conduct a confidential survey or a representative sample of the prisoner population.

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The full inspection is then carried out and conducted against the Inspectorate's published inspection criteria, "Expectation". Inspection findings are reported back to the establishment's managers and reports are then published within 16 weeks of inspection. The establishment is then expected to produce an action plan, based on the recommendations made within the report, within a short period following publication.

Unannounced full follow-up inspections are also carried out and assess progress made since the full inspection and carry out an in-depth analysis of any areas of serious concern raised in full inspection. Shorter follow-up inspections are also used where there are fewer concerns about the establishment and inspectors merely focus on the progress made and note any additional areas of concern.

Complementing the work of the HMIP, by law every prison must have an Independent Monitoring Board (Prison Act 1952). Until 2003 these were known as Board of Visitors and they are made up from ordinary members of the public who have unrestricted access at any time and can talk to any prisoner or detainee they wish to. They must undertake a full programme of training before the start of their appointment. They inspect their local prison or detention centre and each Board meets regularly to raise matters of concern about the establishment. Each Board also produces an annual report on the establishment they oversee.

Source: <http://www.justice.gov.uk/inspectors/hmi-prisons/>

5.

Standards to use when monitoring
the conditions and treatment
of children in detention

5. Standards to use when monitoring the conditions and treatment of children in detention

5.1 Framework for international standards

Of central importance to any analysis of how children are treated in detention is the CRC which emphasises that children should only be detained as a measure of last resort and for the shortest appropriate period of time.⁵⁰ Monitoring should focus on all aspects of children's rights in detention taking into account that children in detention have the same rights, aside from the right to liberty, as children living normal lives outside. The whole monitoring process should take into account the fact that children's rights are interdependent and should be approached with a holistic perspective. Above all, the explicit and over-riding purpose of detaining children should be to contribute to their rehabilitation and reintegration back into society on completion of their sentence.

Several international documents elaborate further on the CRC and establish minimum standards for the treatment of children in conflict with the law. These are of crucial importance and value to monitoring mechanisms. In 1985, the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) were adopted by the UN General Assembly. The general principles and perspectives of the Beijing Rules aim to promote children's welfare to the greatest extent possible and to minimise the necessity of intervention by the justice system and therefore reduce the harm caused by such intervention.

In 1990, the UN Rules for the Protection of Juveniles Deprived of their Liberty: (Havana Rules)⁵¹ were adopted by the UN General Assembly. The Havana Rules provide detailed recommendations concerning the treatment of children placed in custodial institutions and are based on the principle of detention only as a last resort and for the shortest possible time and the principle of separation from adults. They provide an invaluable 'checklist' for monitoring mechanisms and include:

- Encouragement of small facilities to enable individualized 'treatment' and negative effects of incarceration should try and be avoided in larger penal institutions.
- Right to receive regular visits and remain in contact with parents/guardians.
- Medical examination and psycho-social examination on admission.
- Right to complain and the assistance in making a complaint.
- Staff working with children in detention should receive appropriate education and training including child welfare and human rights.
- Ensure conditions of detention are satisfactory, including but not limited to: sleeping and living space; adequate clothing; food; hygiene and sanitary conditions; educational opportunities; and appropriately trained staff.

⁵⁰ CRC, Article 37

⁵¹ UN General Assembly, United Nations Rules for the Protection of Juveniles Deprived of Their Liberty: resolution / adopted by the General Assembly., 14 December 1990, A/RES/45/113 (Havana Rules).

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- Ensure that girls, who make up a relatively small proportion of the prison population, still have their needs adequately met, for example with educational opportunities, privacy and special hygiene requirements.
- Prohibits a number of disciplinary punishments for juveniles deprived of their liberty including: corporal punishment; placement in a dark cell; closed or solitary confinement; reduction of diet; and restriction or denial of contact with family members.

The following is an overview of some of the principal issues to monitor in terms of the relevant international standards as well as what to look out for during visits.⁵²

- Rehabilitation and reintegration
- Protecting children in detention from torture
- Separation from adults
- Protection measures
- Living conditions
- Contact with family and the outside world
- Access to health care
- Access to education, vocational training and recreation
- Religion
- Treatment of girls in detention
- Treatment of children living in prison with their mothers
- Training and organisation of prison staff

This is not a comprehensive list and inspectors should consider the full breadth of international standards as well as the specifics of local context when devising criteria since monitoring visits take place in a wide variety of different detention settings and different contexts. Please also see Annexe One for a sample checklist of assessment criteria.

Box 13: Constitutional guarantee for the rights of detainees in South Africa

Data on the numbers of children held in detention in Africa is not uniformly available. However, it has been estimated that South Africa has the largest contingent of child prisoners in Africa. South Africa is one of only two African countries that make reference to the state as provider for the welfare of detainees. Article 35 of the constitution notes: “Everyone who is detained, including every sentenced prisoner, has the right to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment.”

Sloth-Nielsen, J 'Children in African Prisons'

⁵² Many of these issues are covered in depth in APT's 'Monitoring Places of Detention: A Practical Guide for NGOs.'

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5.2 Rehabilitation and reintegration

International standards promote a holistic approach to rehabilitation and reintegration which addresses both the practical and emotional needs of the child. The Beijing Rules state that children in detention shall receive “care, protection and all necessary individual assistance – social, educational, vocational, psychological, medical and physical – that they may require in view of their age, sex and personality”⁵³ In order to benefit from rehabilitation, children in detention need to be in a safe environment with access to medical care, involvement in educational, cultural and recreational activities, contact with family and the outside world and adequate living conditions. The adverse effects of detention on children needs to be minimised and maximum support provided to ensure that a child will eventually reintegrate into society and assume a constructive role in society on release.

Article 37(b) of the CRC states that a child's deprivation of liberty shall be for the shortest appropriate period of time. In order to implement this provision, States should review any custodial sentence on a regular basis and make a decision as to whether continuing detention is necessary.⁵⁴ Rule 28 of the Beijing Rules provides that “Upon evidence of satisfactory progress towards rehabilitation, even offenders who had been deemed dangerous at the time of their institutionalisation can be conditionally released whenever feasible”.

Successful reintegration back into the community on release should be seen as the main objective of the rehabilitation process so for example, an emphasis should be placed on children maintaining strong relationships with their families to smooth the transition back into the community since contact with families is an integral component of rehabilitation and reintegration as well as a fundamental right.

Visitors should take the following into account when assessing the rehabilitation and reintegration services provided to children in detention:

- assess whether rehabilitation begins from the day a child arrives in a detention centre and continues until he or she has discharged any sentence entirely;
- find out what happens at the point of reception when the authorities should gather personal information which allows for an individual plan designed to enable a child to progress through less restrictive regimes and prepare them for release and reintegration into society;
- assess the extent to which children in detention have guaranteed access to a range of meaningful rehabilitative activities which promote the child's physical and mental health, foster self-respect and a sense of responsibility and develop attitudes and skills that will prevent re-offending;
- review the extent to which children can enjoy appropriate physical conditions and have access to care and facilities which facilitate their continuing education and personal development;

⁵³ Beijing Rules, Rule 13.5

⁵⁴ See Rule 28 Beijing Rules

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- do children have the prospect of early release;
- consider whether children are allowed to visit their home and family prior to their release as an integral part of preparations for them and their family for their leaving the institution; and⁵⁵
- to what extent do detention facility staff work with other agencies on reintegration and is there provision for planning for a child's release looking at accommodation, education or vocational training or employment, counselling, medical support and any financial support.

5.3 Protecting children in detention from torture, inhumane or degrading treatment or punishment

International standards are clear that “[n]o child shall be subjected to torture or other cruel, inhumane or degrading treatment or punishment”.⁵⁶ CAT also stipulates in Article 2 (1) that each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. Torture can include solitary confinement, sensory deprivation and denial of medical attention. It can be mental or physical and include electric shocks, suspension in painful poses, beating, rape, deprivation of food, sleep and communication and so on.

Visitors should document and respond to any allegations of torture made by children. This is an extremely sensitive issue and visitors should receive appropriate training on interviewing children who may have been harmed in this way. Medical personnel should be on hand to help document any allegations. Children may be most vulnerable to torture during detention in police stations. Monitoring bodies should have the mandate to visit children whilst they are being held in police stations. If this is not possible they should aim to speak to children about their treatment afterwards. Allegations of torture or ill-treatment should be transmitted, to the authorities responsible for investigation, at all times ensuring that the procedure will not endanger the child concerned and acting at all times in their best interests.⁵⁷

Visitors should ensure that there are written rules on measures of discipline used in institutions⁵⁸ which are “consistent with the upholding of the inherent dignity of the juvenile and the fundamental objective of institutional care, namely, instilling a sense of justice, self respect and respect for the basic rights of every person”.⁵⁹ Such written rules should be in line with international standards such as the Havana Rules which specifically prohibit corporal punishment as a disciplinary measure for children deprived of their liberty⁶⁰ as well as placement in a dark cell; closed or solitary confinement;

55 Havana Rules, Rule 59

56 Article 37(a), CRC which mirrors the provision in Article 7 International Covenant on Civil and Political Rights, Article 5 of the African Charter on Human and Peoples Rights, Article 16 of the African Charter on the Rights and Welfare of the Child and Article 13 of the Arab Charter on Human Rights.

57 Havana Rules, Rule 74. For more information on documenting and reporting on allegations of torture see APT Monitoring Guide pp 106

58 Havana Rules, 68

59 Havana Rules, Rule 66

60 Havana Rules, Rule 67

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reduction of diet; and restriction or denial of contact with family members.⁶¹ Visitors should also ensure that the written rules are known about by children and staff alike and implemented effectively.

Attention should also be paid to the use of restraints on children. The Havana Rules provide that measures of restraint and the use of force should be prohibited in all but exceptional circumstances and only used “when all other means of control have been exhausted”.⁶² The CRC Committee in its General Comment 10 further narrows the circumstances in which restraint and force can be used to “only when the child poses an imminent threat of injury to him or herself or others, eliminating the use of restraint for serious destruction of property” and states that the use of force or restraint should be under the direct and close control of a medical and/or a psychological professional.⁶³ The Committee on the Rights of the Child recommends training for staff on the rules and standards governing the use of force and restraint. Where staff violates these rules, they should be subject to disciplinary measures.⁶⁴

Visitors should determine whether children are being searched and in what circumstances. Children should only be searched, particularly intimately, in limited circumstances and where safeguards are in place to protect the child. Rule 10.3 of the Beijing Rules states that contact between law enforcement agencies and a child shall be managed in such a way as to respect the legal status of the child, promote the well-being of the child and avoid harm to her or him, with due regard to the circumstances of the case.

Emphasis should also be placed during visits on the steps taken to protect children from violence from other detainees whether adults or other children. For example, are children who are convicted separated from children in pre-trial detention; is careful consideration given to the issue of who shares living quarters; is there an easily accessible and confidential complaints system; are there explicit anti-bullying policies.

5.4 Separation from adults

The CRC Committee states that: “There is abundant evidence that the placement of children in adult prisons or jails compromises their basic safety, well-being, and their future ability to remain free of crime and to reintegrate”.⁶⁵ This is reinforced in nearly every international standard relevant

61 Havana Rules, Rule 67. See also UN Committee on the Rights of the Child General Comment 10 which states that disciplinary measures in violation of Article 37 CRC must be strictly forbidden, including corporal punishment, placement in a dark cell, closed or solitary confinement, or any other punishment that may compromise the physical or mental health or well-being of the child concerned.

62 Havana Rules, Rule 64

63 See UN Committee on the Rights of the Child, General Comment No 10 (2007): Children's Rights in Juvenile Justice, Para. 89

64 See UN Committee on the Rights of the Child, General Comment No 10 (2007): Children's Rights in Juvenile Justice, Para. 89

65 See UN Committee on the Rights of the Child, General Comment No 10 (2007): Children's Rights in Juvenile Justice, Para. 85

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to children in conflict with the law; for example, the Beijing Rules state that “Juvéniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.”⁶⁶

Visitors should assess whether:

- Children are being held in separate facilities from adults, which include distinct, child-centred staff, personnel, policies and practices;
- Separation is maintained in all detention settings including police stations, transportation between courts and detention centres and court cells.
- Girls in particular are held separately from women given that girls make up a very small percentage of young offenders and the right of girls to be held separately from women is frequently violated. The CRC Committee recommends that even where States have low rates of girls in detention, they should still ensure that there are appropriate facilities separate from adults.

5.5 Protective measures for children in detention

Informed of rights

On admission to detention facilities, children are likely to be confused and particularly vulnerable. The visiting team should examine the extent to which children are given information about their rights whilst in detention on arrival, whether they are helped to understand the routines of the detention facility and the complaints procedures and whether they are given a medical and psycho-social examination and proper assessment of their needs so that a plan for their time in detention is developed. Visitors should also check whether children's families know how to contact them and whether property is held in secure storage.

Registers

Registers are a vital tool for visitors to consult since they can give information about the number of children being held, their ages and reasons for deprivation of their liberty as well as date of release. This is vital information to obtain not least to determine if there is over-crowding. There should also be a register in which any incidents are systematically recorded such as the use of force, restraint or disciplinary measures.

Right to complain and assistance with making a complaint taking into account a child's age and capacity

Visitors should assess the extent to which children have the right to make requests or complaints to the director of the detention facility,⁶⁷ the central administration, judicial authorities and other independent authorities (including independent monitoring bodies themselves) about any matter that affects them while in detention. Such complaints should not be censored either in terms of content or substance and children should be free from fear of reprisals.⁶⁸ Children also have to be aware of their rights and the complaints procedure⁶⁹ and this information should be presented in a child friendly

⁶⁶ Beijing Rules, Rule 26.3

⁶⁷ Rule 75 Havana Rules

⁶⁸ Rule 76, Havana Rules

⁶⁹ Para 89, General Comment 10

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manner, which also takes into consideration any learning difficulties, illiteracy⁷⁰; language barriers etc. The Havana Rules emphasise that any complaint should be dealt with and the child informed of the response without delay.⁷¹

Visitors should also determine how easily children can bring complaints in practice; for example, do detention centres have systems of locked boxes where children can 'post' complaints; do they have access to child helplines; and do they have access to writing materials. The Havana Rules state that children have the right to assistance to make complaints. In particular, "[i]lliterate juveniles should be provided with assistance should they need to use the services of public or private agencies and organisations which provide legal counsel or which are competent to receive complaints".⁷² Another point for visitors to consider is whether staff or mentors are assigned for the specific purpose of responding to verbal complaints from children.

5.6 Living conditions

Good living conditions are an essential aspect of a child's rehabilitation and reintegration. Visitors should observe the realities of living conditions as closely as possible taking into account Section D of the Havana Rules. This provides that sleeping accommodation should consist of small dormitories or individual rooms and should be unobtrusively supervised.⁷³ There should be sufficient, clean bedding and adequate sanitary facilities should be installed.⁷⁴ To the greatest extent possible, children should be allowed to wear their own clothes,⁷⁵ and should be provided with storage facilities for their own personal items.⁷⁶ Adequate food and clean drinking water should be made available.⁷⁷ In addition, "[t]he physical environment should be in keeping with the rehabilitative aim of residential treatment with due regard to the need of children in detention for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure time activities".⁷⁸

5.7 Contact with families and the outside world

Communication with the outside world is "an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society."⁷⁹ The Havana Rules do not limit the persons with whom children should be allowed to maintain contact to relatives and legal guardians and specifically include "friends and other persons or representatives of reputable outside organisations".⁸⁰ This contact is both an integral part of the right to fair and humane

70 See Rule 36(1) Standard Minimum Rules for the Treatment of Prisoners

71 Rule 76 and Rule 36(4)

72 Rule 78, Havana Rules

73 Havana Rules, Rule 33

74 Havana Rules, Rule 34

75 Havana Rules, Rule 36

76 Havana Rules, Rule 35

77 Havana Rules, Rule 37

78 Havana Rules, Rule 32

79 Havana Rules, Rule 59

80 Havana Rules, Rule 59

5. Standards to use when monitoring the conditions and treatment of children in detention

treatment and also essential to the preparation of children for their return to society.⁸¹ In order to facilitate contact with the outside world, the Havana Rules provide that children should be able to receive special permission to leave the detention facility for educational, vocational or other important reasons. Any time spent outside the detention facility should be counted as part of the period of sentence. The following issues should be considered:

- Assess how frequently children are able to receive visits. The Havana Rules state that they should occur “in principle once a week and not less than once a month.”⁸²
- Look at whether children have access to appropriate facilities to maintain contact with relatives and significant others such as comfortable private space to conduct visits.
- Are children placed in a facility that is as close as possible to the place of residence of his or her family?⁸³ To ensure that children are able to be placed near their families, the Havana Rules encourage States to decentralise institutions.⁸⁴
- Are children provided with help in communicating with their families and is their right to privacy respected?⁸⁵
- In addition to being able to communicate with their families, are children allowed to communicate with other persons or representatives of reputable outside organisations who can help to expand the range of activities and support that the child can access while detained, supporting their development and encouraging their reintegration into society.

5.8 Access to health care

Article 24 CRC provides that children have the right to enjoy the highest attainable standards of health and to facilities for the treatment of illness and rehabilitation. The basic principle for visitors to consider is that the standard of health care provided to children in detention should be equivalent to that a child could expect to receive in the community. The Havana Rules⁸⁶ lay down detailed standards for access to medical facilities for children in detention.

- Do children have the right to access medical treatment and psychiatric services preferably in the community in which the child custody facility is located in order to prevent stigmatisation of the child, promote self-respect and to encourage reintegration.
- Does the facility provide immediate access to medical facilities and equipment in the case of emergencies and have staff who are trained to deal with medical emergencies.⁸⁷
- Do children have access to psychological care. The Havana Rules recognise that children may be suffering from mental health issues which may be exacerbated by being deprived of their liberty and provide that children suffering from a mental illness should be treated in a

81 Havana Rules, Rule 59

82 Havana Rules, Rule 60

83 UN Committee on the Rights of the Child, General Comment No 10 (2007): Children's Rights in Juvenile Justice, Para. 60

84 Havana Rules, Rule 30

85 Havana Rules, Rule 61 and 87 (e)

86 Havana Rules, Rules 49-55

87 Havana Rules, Rule 51

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specialised institution under independent medical management.⁸⁸ Rule 26 of the Beijing Rules provide that children in detention shall receive all necessary psychological care.

- Do children have access to specialized drug abuse prevention and rehabilitation programmes administered by qualified personnel. These programmes should be adapted to the age, sex and other requirements of the juveniles concerned, and detoxification facilities and services staffed by trained personnel should be available to drug- or alcohol-dependent juveniles.⁸⁹

5.9 Access to education, vocation training and recreation

Learning and skills should be central to the regime of detention facilities and children should have access to education and training which enables them to achieve their full potential. This is vital to enable a child's rehabilitation and reintegration. Article 28 of the CRC enshrines the right to education for all children and children in detention should receive the same standard education as that provided to their contemporaries living in the community. The Havana Rules specifically provide that access to education should not be limited to compulsory school ages;⁹⁰ and a child should also be able to receive vocational training "in occupations likely to prepare him or her for future employment".⁹¹ Detailed standards regarding education for children in detention can be found in the Havana Rules.⁹²

Visitors should assess whether national education laws specifically cover children held in detention facilities and whether the education provided is suited to the child's needs and abilities and offered by qualified teachers. The Havana Rules recommend that such education should be provided outside the child custody facility wherever possible. It is recognised, however, that if detention is really used as a matter of last resort that this may not be possible. In order not to stigmatise children and to reduce discrimination, diplomas or educational certificates awarded to children while in detention should not indicate in any way that the juvenile has been institutionalised'.⁹³

The Havana Rules provide that "where possible, juveniles should be provided with the opportunity to perform remunerated labour".⁹⁴ Children should not be expected to work for free and should be equitably remunerated.⁹⁵ In order to protect this particularly vulnerable group of children, however, visitors should check whether national labour laws explicitly apply to children in detention in the same way as to other children in the community and that any work that children undertake does not interfere with their education. All laws and regulations on children's labour should comply with the

88 Havana Rules, Rules 52 and 53.

89 Havana Rules, Rule 54

90 Havana Rules, Rule 39

91 Havana Rules, Rule 42

92 Havana Rules, Section E

93 Rule 40, Havana Rules.

94 Rule 45, Havana Rules

95 Havana Rules, Rule 46

5. Standards to use when monitoring the conditions and treatment of children in detention

international standards set out in the CRC⁹⁶ and International Labour Organisation Convention on the Worst Forms of Child Labour⁹⁷.

The Havana Rules sets out the requirements for exercise and recreational activities and provide that every child has the right to a suitable amount of time for daily free exercise. This should take place in the open air whenever weather permits. During this time, appropriate recreational and physical training should be provided.⁹⁸ Rule 21(1) of the Standard Minimum Rules for the Treatment of Prisoners specifies that every prisoner shall have at least one hour of suitable exercise in the open air daily if the weather permits.⁹⁹ Visitors should consider this as an absolute minimum for children. Children should also have additional time for daily leisure activities, part of which should be devoted, if the child so wishes, to arts and crafts skill development.¹⁰⁰ Both the Havana Rules and the Standard Minimum Rules for the Treatment of Prisoners require that detention facilities provide adequate space, installations and equipment for recreational, physical and leisure activities and ensure that each child is physically able to participate in the available programmes of physical education.

5.10 Religion

Under the CRC, States must “respect the right to the child to freedom of thought, conscience and religion¹⁰¹.” The Havana Rules are clear that every child in detention “should be allowed to satisfy the needs of his or her religious and spiritual life, in particular by attending the services or meetings provided in the detention facility or by conducting his or her own services and having possession of the necessary books or items of religious observance and instruction of his or her denomination¹⁰²”. Visitors should ensure that representatives of major religions are allowed to hold regular services and pay pastoral visits to children on request. Children should also be able to not participate in religious services.

5.11 Treatment of girls in detention

Women and girls deprived of their liberty differ from men and boys in many regards including the fact they are often primary carers for children themselves; they have different health, hygiene and sanitary needs; they are at a higher risk of substance abuse, self-harm, mental health issues, HIV and other STDs, and may have experienced past physical, emotional or sexual abuse. The Beijing Rules state that “Young female offenders placed in an institution deserve special attention as to their personal needs and problems. Their fair treatment shall be ensured.”¹⁰³

96 Havana Rules, Rule 44 and CRC Article 32

97 International Labour Organisation, Worst Forms of Child Labour Convention, C182, 17 June 1999, C182.

98 Rule 21(1) of the Standard Minimum Rules for the Treatment of Prisoners

99 Rule 21 of the Standard Minimum Rules for the Treatment of Prisoners

100 Havana Rules, Rule 47

101 CRC, Article 14 (1)

102 Havana Rules, Rule 48

103 Beijing Rules, Rule 26.4

5. Standards to use when monitoring the conditions and treatment of children in detention

The UN Rules for the Treatment of Women Prisoners and non-custodial Measures for Women Offenders (the Bangkok Rules) emphasise how damaging detention can be for girls and recognise the need for different treatment providing that measures applied under the law are taken “solely to protect the rights and special status of women, especially pregnant women and nursing mothers, children and juveniles... shall not be deemed to be discriminatory”.¹⁰⁴ They include specific measures to protect girl children in detention such as equal access to education and vocational training, education on health care, counselling for sexual abuse or violence and added protections for children living with their mothers in prison.

Crucial factors to consider in monitoring girls in detention are that girls should be held separately from adults as well as from boys since they are at particular risk of physical and sexual abuse, particularly when detained in mixed-sex facilities, or where a general lack of facilities for girls results in placement in adult facilities. Furthermore, there may be a lack of female staff in facilities detaining girls increasing the risk of male staff engaging in ‘sanctioned sexual harassment,’ including improper touching during searches, or watching girls while they dress, shower, or use the toilet. Male staff may also use their positions of authority to demand sexual favours.

Box 14: Rules of General Application, Section 10 of the Bangkok Rules for Juvenile female prisoners

Rule 36: Prison authorities shall put in place measures to meet the protection needs of juvenile female prisoners.

Rule 37: Juvenile female prisoners shall have equal access to education and vocational training that are available to juvenile male prisoners.

Rule 38: Juvenile female prisoners shall have access to age- and gender-specific programmes and services, such as counselling for sexual abuse or violence. They shall receive education on women’s health care and have regular access to gynaecologists, similar to adult female prisoners.

Rule 39: Pregnant juvenile female prisoners shall receive support and medical care equivalent to that provided for adult female prisoners. Their health shall be monitored by a medical specialist, taking account of the fact that they may be at greater risk of health complications during pregnancy due to their age.

5.12 Children living in prison with their mothers

Pregnant women and women with young children should not be imprisoned unless absolutely necessary. Article 30 of the ACRWC deals with children of imprisoned mothers and states that: “a non-custodial sentence will always be first considered when sentencing such mothers.” In its General Comment 28, the Human Rights Committee stated that “pregnant women who are deprived of their liberty should receive humane treatment and respect for their inherent dignity at all times, and in particular during the birth and while caring for their newborn children.” The General

¹⁰⁴ Principle 5, Body of Principles

5. Standards to use when monitoring the conditions and treatment of children in detention

Comment requires States Parties to report on facilities and medical and health care for imprisoned mothers and their babies¹⁰⁵ The UN Standard Minimum Rules for the Treatment of Prisoners states that: 'In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practical for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate. Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.'

The Bangkok Rules elaborate further that punishment by close confinement or segregation should not be applied to pregnant women, women with infants and breastfeeding mothers in prison. Disciplinary sanctions for women prisoners shall not include a prohibition of family contact, especially with children.

If children are imprisoned with their mothers then the state takes on responsibility for caring for the child. As a basic principle, visitors should be aware that children living in prison should never be treated as prisoners themselves and consider the following:

- Children living with their mothers should not be subjected to disciplinary punishments.
- In principle they should be free to leave the prison and participate in outside activities, provided their mothers allow them and in compliance with security considerations.
- Mechanisms should be in place to protect children from all forms of physical and psychological abuse in prisons.
- On admission to prison the number and personal details of children accompanying their mothers should be recorded.
- During the time which they spend in prison, children should be provided with ongoing good quality primary health care services and their development monitored by a prison psychologist and specialists in child development (e.g. on regular visits from community healthcare services). The prison administration should collaborate with health clinics for vaccinations and periodic examinations of children for administering their vaccinations and monitoring their physical development.
- The environment provided for the child's upbringing should be as close as possible to that of a child outside prison, with a nursery staffed by specialists who can take care of the child while separated from his or her mother. They should have adequate food, water, play and exercise facilities.
- Mothers should be provided with the maximum possible opportunities to spend time with their children.

¹⁰⁵ Human Rights Committee, General Comment 28 on the equality of rights between men and women, Para 15, U.N. Doc. HRI/GEN/1/Rev.7 at 153 (2004)

5. Standards to use when monitoring the conditions and treatment of children in detention

5.13 Training and organisation of prison staff

Section V of the Havana Rules sets out detailed standards for detention centre staff. Only appropriately qualified and trained staff should work with children in detention. In particular, the Director/Head of a facility should be adequately qualified for his or her task, with administrative ability and suitable training and experience, and should carry out his or her duties on a full-time basis.¹⁰⁶ In addition centres should have specialists such as teachers, vocational instructors, counselors, social workers, psychiatrists and psychologists. Staff should be trained in order for them to carry out their responsibilities effectively; in particular, staff should receive training in child psychology, child welfare and international standards and norms of human rights and the rights of the child, including the Havana Rules. Staff also needs to be trained in behaviour management techniques. The following should be taken into account during visits:

- Given the documented levels of violence perpetrated by staff against children in detention, staff should be carefully selected, undergo criminal record checks, receive appropriate training and necessary supervision, be fully qualified, and receive adequate wages.
- Levels of staffing should ensure effective care and oversight.
- Staff must be trained in child rights and nonviolent disciplinary measures.
- Efforts should be made to improve the status of individuals working with children in detention to ensure high-calibre employees.
- Health-care and educational staff should be institutionally independent from the agency that runs the detention facility
- All staff should be required to report all instances of violence.

¹⁰⁶ Rule 86, Havana Rules

6.

A preliminary mapping of monitoring mechanisms currently in operation in Algeria, Egypt, Jordan, Morocco and Yemen

6. A preliminary mapping of monitoring mechanisms currently in operation in Algeria, Egypt, Jordan, Morocco and Yemen

6.1 Algeria

6.1.1 Legal framework for sentencing and detaining children

Algeria has ratified the CRC and the ACRWC. Under the Criminal Procedure Code, a child under 18 years may be subjected to one or more protective or re-educational measures :¹⁰⁷

- Placed back into the custody of his parents or legal guardians
- Non-custodial supervision
- Placed in an authorized educational or vocational training institution
- Placed in an authorized medical establishment
- Placed in State care
- Placed in a boarding school suitable for juvenile delinquents

A child under 13 may not be held in a penal institution even temporarily¹⁰⁸. However, a child who has been convicted of an offence and is aged between 13 and 18 may be held temporarily in a penal institution if the measure appears to be absolutely necessary or no other arrangements can be made. In such a case, the child shall be held in special quarters or, alternatively, in an area where he or she will as much as possible be held separately from adults at night. If a child between the ages of 13 and 18 is convicted of an offence for which the punishment is death or life imprisonment, the sentence is reduced to between 10 and 20 years imprisonment. If they are convicted of a crime for which the punishment is imprisonment, they shall receive half the term that they would have served if they had been over 18 years.

6.1.2 Situation of children in detention in Algeria

Children are detained in establishments known as 'specialised centres for the reintegration of minors'. Conditions of detention are governed largely by the Law of the Organisation of Prisons and Social Reintegration of Prisoners. This states that during their stay at the rehabilitation centres, children must be treated in accordance with their age and personality to maintain their dignity, and to ensure that they receive full and satisfactory care¹⁰⁹. It is a concern that pre-trial children are housed in the same premises as those children already convicted of an offence. Furthermore, in some cases overcrowding has meant that children have been held with adults; however, in general the government maintains separate juvenile detention centers¹¹⁰

107 Articles 444 and 445 of Act 82-03 of 1982, amending the Algerian Criminal Procedure Code

108 Article 456 of the Algerian Criminal Procedure Code

109 Article 119 of the Law of Organisation of Prisons and Social Reintegration of Prisoners

110 US Department of State Human Rights Report Algeria, Bureau Of Democracy, Human Rights, And Labor April 8, 2011 <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154458.htm> (Accessed 13 May 2011)

6. A preliminary mapping of monitoring mechanisms currently in operation in Algeria, Egypt, Jordan, Morocco and Yemen

6.1.3 Monitoring mechanisms in Algeria

- International and regional monitoring

Algeria has not ratified OPCAT. It has not received a visit from the Special Rapporteur on Prison Conditions in Africa. It has not accepted requests for visits from¹¹¹: the UN Working Group on Enforced or Involuntary Disappearances (pending since 1997), the UN special rapporteur on torture (pending since 1997), the UN special rapporteur on extrajudicial executions (pending since 1998), the UN special rapporteur on human rights and counterterrorism (pending since 2006), and the UN special rapporteur on arbitrary detention (pending since 2009). When questioned on the lack of cooperation with UN Special Procedures, the government replied that the requests had been made during a “sensitive political moment.”

The government did accept a visit from the UN Special Rapporteur on violence against women in 2007. Furthermore, during 2010, it allowed the ICRC and the Red Crescent Society to visit regular, nonmilitary prisons. ICRC visits to persons held in places of detention run by the Ministry of Justice and to those detained in police stations and gendarmeries were carried out in accordance with ICRC standard practices¹¹³.

- National level monitoring

There are three separate national-level mechanisms for monitoring the treatment of children in detention facilities: judicial monitoring, internal administrative monitoring by government departments and monitoring conducted by the Consultative Commission for the Promotion and Protection of Human Rights (‘the Commission’ or CCPPDH¹¹⁴) which is accredited as Algeria’s NHRI.

a) Judicial monitoring

The Law of the Organisation of Prisons and Social Reintegration of Prisoners allows for “detention institutions and specialized centres for women and juveniles to be monitored by judges on a regular basis as per their areas of specialization¹¹⁵.” During 2010, a total of 1,530 reports were prepared by visiting judges to detention facilities for both adults and children¹¹⁶. These reports are delivered to the Minister of Justice’s office which may transmit them on to the competent authority, for example, the Directorate General of Prison Administration and Reintegration, to consider and possibly act upon the recommendations. The reports are not made available to the public. The Chairman of the Judicial Council and the Attorney General are obliged to prepare joint, periodic reports every six months highlighting situations within detention facilities and how they are functioning.

111 Universal Periodic Review Algeria: Compilation of UN Information A/HRC/WG.6/1/DZA/2 26 March 2008 <http://daccess-dds-ny.un.org/doc/undoc/gen/g08/122/21/pdf/g0812221.pdf?openElement> (accessed 13 May 2011)

112 Universal Periodic Review Algeria, Report of the Working Group A/HRC/8/29 23 May 2008 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/136/82/PDF/G0813682.pdf?OpenElement> (accessed 13 May 2011)

113 United States Department of State, 2010 Country Reports on Human Rights Practices - Algeria, 8 April 2011, available at: <http://www.unhcr.org/refworld/docid/4da56deec.html> [accessed 18 May 2011]

114 CCPPDH is the acronym for the French title: Commission consultative de promotion et de protection des droits de l’homme

115 Algerian Law of the Organisation of Prisons and Social Reintegration of Prisoners, Section III, Articles 33, 34, 35 and 36

116 Interview with PRI and Judge Meriem Cherfi in May 2011

6. A preliminary mapping of monitoring mechanisms currently in operation in Algeria, Egypt, Jordan, Morocco and Yemen

Furthermore, the Minister of Justice or the Attorney-General can issue permission for researchers, government and non-governmental bodies to visit detention facilities¹¹⁷.

b) Administrative monitoring

Algeria has a system of administrative monitoring of detention facilities. The 'Wali' (administrative head of a district) visits once a year to prisons within the jurisdiction of the 'Wilaya' (a district)¹¹⁸. The purpose of this monitoring is to ensure that administrative authorities are fulfilling their duties correctly; for example, units from the ministries of National Solidarity, Health and Labour who are engaged in providing services to detention facilities. They do not have a specific focus on children's issues and their reports are not made public. This mechanism is limited to ensuring administrative efficiency and accountability.

c) Consultative Commission for the Promotion and Protection of Human Rights (CCPPDH)

The Commission was initially established by Presidential Decree in 2001¹¹⁹. It is accredited as an NHRI and currently has status B meaning that it is found to be in partial compliance with the Paris Principles. Its ability to be independent has been criticised because, under its founding Decree, it is accountable only to the President of the Republic who also has responsibility for appointing the President of the Commission and selecting all its members¹²⁰. In 2009, the Commission's status was modified so that it now has a stronger legislative basis,¹²¹ however, challenges in terms of its independence remain¹²². Furthermore, its annual reports are not made public or widely distributed¹²³.

117 Algerian Law of the Organisation of Prisons and Social Reintegration of Prisoners, Section III, Article 36

118 Article 35 of the Law of the Organisation of Prisons and Social Reintegration of Prisoners: "each Governor must make sure that he/she has personally visited the province's detention facilities once a year at least."

119 Presidential Decree No. 01-71 of 25 March 2001

120 The national institution for human rights in Algeria before the International Coordinating Committee of NHRIs, Alkarama for Human Rights, 5 February 2009

121 Summary of Algeria's NHRI reviewed by the Sub-Committee on Accreditation, Geneva, March 2010, <http://www.nhri.net/default.asp?PID=607&DID=0> (accessed 13 May 2011)

122 As above p3 According to the NGO Alkarama for Human Rights, "the nomination of candidates is neither public nor transparent. The selection procedure is not known and vacancies are not advertised."

123 See Concluding Observations on Algeria from the Committee Against Torture, 40th Session, 2008 CAT/C/DZA/CO/3 which state: "While noting with satisfaction the establishment of the National Advisory Commission for the Promotion and Protection of Human Rights on 9 October 2001, the Committee remains concerned about the lack of available information on the work of the Commission. The Committee is also concerned that the members are appointed by Presidential decree and that, according to information provided by the Algerian delegation, the President decides whether to follow up on the recommendations of the Commission, including the publication of its report, which is an obstacle to the transparency needed for it to run smoothly and independently.....The State party should ensure that the annual reports on the work of the National Advisory Commission for the Promotion and Protection of Human Rights are made public and widely distributed."

6. A preliminary mapping of monitoring mechanisms currently in operation in Algeria, Egypt, Jordan, Morocco and Yemen

In 2010, the Sub-Committee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights reviewed the Commission's application for re-accreditation and found the following:¹²⁴

- The Commission is required to report to the President of the Republic, rather than to the Parliament. The Commission's reports are neither widely circulated nor discussed nor considered by governmental bodies or parliament.
- While the legislation establishes a selection committee to consider the appointment of members, the final selection and the appointment of members still remains with the President of the Republic. The amended legislation fails to establish a clear, transparent and participatory selection process, and does not establish clear and objective grounds for the dismissal of members as is required by the Paris Principles.
- There is no legislative provision regarding the recruitment of staff.
- The need for the CCPPDH to receive adequate funding to allow it to effectively perform its functions.
- That all the CCPPDH members are part-time.

Under Article 1 of its founding Decree, the Commission can receive complaints regarding human right violations and undertake any suitable action, including seeking concerted redress to individual or collective complaints, informing the complainant on its right, or transmitting the matter to the relevant authorities. An important part of CCPPDH's mandate is to visit, and report on visits, to prisons and detention centres in Algeria. During 2007 and 2008 they visited nearly a quarter of all detention facilities including those where children are held: El Harrach Centre for Re-education and Rehabilitation; Blida Foundation for Re-education; Ptzi Ouzou Foundation for Re-education; and Setift Centre for Re-education and Rehabilitation

¹²⁵The criteria used by CCPPDH for assessing the treatment and condition of children in detention include: the extent to which private rooms are available for juveniles to meet with their lawyers; their access to lawyers; whether complaint mechanisms and remedies are available and accessible to children; access to health services including the availability of clinics, ambulances, access to general practitioners, dentists, specialists X-rays and other specialists such as psychologists; availability of sufficient food; hygiene including conditions of toilets, showers, water, laundry, cleaning materials; condition of beds; adequacy of heating; access to recreation and education including literacy skills, vocational training and newspapers.

The Commission reports of 2007 and 2008 do not highlight any serious violations of the rights of children in detention. This may be in part because observation is the only means used of collecting data. Furthermore, the criteria used for assessing treatment of children and conditions of detention are quite narrow and lack a broad, rights-based approach.

¹²⁴ Report and Recommendations of the Sub Committee on Accreditation March 2010
<http://www.nhri.net/default.asp?PID=607&DID=0> (accessed 13 May 2011)

¹²⁵ Democratic People's Republic of Algeria, Consultative Commission for the Promotion and Protection of Human Rights in Algeria, Report on Visit to Detention Facilities 2008 p7-151 (in Arabic, translation provided by PRI consultant Dr Fawaz Ratrouf)

6. A preliminary mapping of monitoring mechanisms currently in operation in Algeria, Egypt, Jordan, Morocco and Yemen

6.2 Egypt

6.2.1 Legal framework for sentencing and detaining children

Egypt has ratified the ACRWC and the CRC. The CRC is domesticated into national law although the government itself recognises that “[T]he use of the Convention...has been limited depending on the awareness of the judge and the parties to a particular case with its provisions.”¹²⁶ Egypt has not ratified OPCAT. The main piece of national legislation relating to the juvenile justice system in Egypt is Child Law Act No.12 (1996). This was amended in 2008¹²⁷ and amongst other changes the age of criminal responsibility was raised from 7 to 12 years. Article 1 of the amended Children’s Act states the following: “The State shall guarantee, as a minimum standard, the rights of the child provided for in the Convention of the Rights of the Child and other relevant international instruments applicable in Egypt”¹²⁸.

Under the 2008 Act, a child between 12 and 15 can only be sentenced to preventative or rehabilitative measures. Furthermore, a child cannot be detained or held in prison with adults. A public officer or a law enforcement agent found in breach of this rule will receive a prison sentence and/or be fined.

6.2.2 The situation of children in detention in Egypt

The US State Department Report on Human Rights for 2010 finds that children are not always held separately from adults.¹²⁹ Torture is widespread in detention centres in Egypt. Amnesty International (AI) submitted to the Universal Periodic Review (UPR) that: “Torture and other ill-treatment are systematic in detention centres, including police stations and premises of the State Security Investigations (SSI), throughout the country. The most common methods reported are electric shocks, beatings, suspension by the wrists or ankles, and death threats and threats of rape or sexual abuse of the detainee or a female relative”¹³⁰. AI stated further that hundreds of complaints alleging torture have been brought to the attention of the Public Prosecutor’s Office, but it has failed to comply with its legal obligation to investigate such complaints, giving rise to a climate of impunity.¹³¹ Human Rights Watch has described Egypt as having a ‘torture epidemic,’: “The government continues to arrest homeless or truant street children who are not charged with any crime on arrest. The authorities do not routinely monitor conditions of detention for children, investigate cases of arbitrary arrest or abuse in custody, or discipline those responsible”¹³².

126 Egypt State Party Report to the UN Committee on the Rights of the Child (2010): para 15 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/412/45/PDF/G1041245.pdf?OpenElement>

127 Egypt Child Law Act No.126 of 2008

128 English translation taken from NCMM website: http://www.nccm-egypt.org/e7/e2498/e2691/infoboxContent2692/ChildLawno126english_eng.pdf

129 United States Department of State, 2010 Country Reports on Human Rights Practices - Egypt, 8 April 2011, available at: <http://www.unhcr.org/refworld/docid/4da56deec.html> (accessed 18 May 2011)

130 Amnesty International UPR Submission Egypt (2009) p2

http://lib.ohchr.org/HRBodies/UPR/Documents/Session7/EG/AI_UPR_EGY_S07_2010_AmnestyInternational.pdf

131 As above p2

132 Human Rights Watch UPR Submission Egypt (2009) <http://www.hrw.org/en/news/2010/02/16/upr-submission-egypt-september-2009> (accessed 7th May 2011)

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6.2.3 Monitoring mechanisms in Egypt

- International and regional monitoring

Egypt has not ratified OPCAT nor has it received a visit from the Special Rapporteur on Prison Conditions in Africa. The following requests, amongst others, have been made for visits but not agreed upon¹³³: Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (requested in 1996 and 2007); Working Group on Arbitrary Detention (requested in 2008); Special Rapporteur on extrajudicial, summary or arbitrary executions (requested in 2008). In 2009, Egypt received a visit from the Special Rapporteur on the promotion and protection of human rights while countering terrorism. It should be noted that the relationship with UN Special Procedures may change significantly in light of the revolution during January and February 2011.

The government did not permit independent human rights observers to visit prisons or other places of detention during 2010, despite repeated requests from the ICRC and other domestic and international human rights monitors. Some prisons remained completely closed to the public.

- National level monitoring

a) Judicial monitoring

The president of the Juvenile Court or one of his representatives is by law required to visit detention centres, vocational training centres, and any other institution that cooperates with the court every three months: "to ensure that the above institutions are complying with their obligations to rehabilitate the child and assist him to reintegrate into society"¹³⁴. However, it is unclear what criteria is used to assess the treatment and conditions for children during visits. Furthermore, visits are ad hoc and occur irregularly.

In addition, the public prosecutor or *niyaba* is responsible for inspecting prisons and places of detention on a regular and unannounced basis¹³⁵. Its inspections of police stations are supposed to be conducted on the spot, immediately upon receiving information about illegal practices in a precinct or as part of regular unannounced inspection visits¹³⁶.

133 Working Group on the Universal Periodic Review for Egypt, Compilation of UN documents A/HRC/WG.6/7/EGY/2, 26 November 2009

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/172/57/PDF/G0917257.pdf?OpenElement> (accessed 13 May 2011)

134 Article 134 Amended Child Law Act 2008

135 Prison Law 396/1956, Article (1) states that penitentiaries, general prisons, central prisons are subject to judicial inspection

136 Human Rights Watch (2011) "Work on Him until He Confesses" Impunity for Torture in Egypt

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If the *niyaba* receives a report that a citizen's rights have been infringed in any detention facility subject to judicial inspection, it must investigate this information immediately. The Code of Criminal Procedure sets out judicial responsibility, especially with regards to the *niyaba*: "All members of the *niyaba* and the presidents and deputies (*wukala*) of primary and appellate courts have the right to visit the general and central prisons in their jurisdiction to ascertain that no one is incarcerated illegally. They have the right to study the registers of the prison as well as the arrest and detention warrants and to take a copy. They have the right to communicate with any inmate, and hear any complaint the inmate wants to communicate to them. The director and employees of the prisons must provide them with the necessary support to obtain the information they request" ¹³⁷

The *niyaba* only very rarely publicly reports on the visits it undertakes, and it does not publish statistics on the number of investigations it initiates into arbitrary detention or torture and ill-treatment as a result of its inspections of places of detention.

Civil society organisations in Egypt have expressed concern that judges do not properly monitor children in detention owing to the pressures of their large case-load. One recommendation is that this role be assigned as well to Child Protection Committees.

b) National Council for Human Rights (NCHR)

The National Council for Human Rights was established in 2003. In 2006, it was accredited with an 'A' status by the International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights meaning it is in compliance with the Paris Principles. This is due to be reviewed next in late 2011.

Prior to the revolution, members of the National Council for Human Rights were appointed by the ruling party-dominated upper house of parliament, the Shura Council, which appointed mostly ruling party members to the NCHR. It is mandated to receive complaints from the public, advise the government and publish annual reports on human rights in Egypt. The NCHR has at times been able to negotiate prison visits with the Ministry of Interior, most recently in May and June 2010 when it visited four prisons, their first visits since 2005. In these reports, the NCHR reported improved health care, food, and recreation. The NCHR considers itself an ombudsman serving on behalf of prisoners, but there is no official government ombudsman.

6.3 Jordan

6.3.1 Legal framework for sentencing and detaining children

The main national legislation with regard to children in conflict with the law is the Juveniles Act although currently a draft Child Rights Act and draft Juvenile Law is being reviewed by Parliament. Jordan has ratified the CRC and in 2006, the CRC was published in the Official Gazette giving it the status of national law and meaning any plaintiff or judge may use it in national courts, giving children greater legislative protection.

¹³⁷ Code of Criminal Procedure Article 42

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Under the Juvenile Law, children may be detained pre and post trial in 'centres for education and rehabilitation'. It forbids any child to be sentenced to death or imprisonment with hard labour. The Act also does not allow for a child to be sentenced to life imprisonment, but instead allows for sentences of detention for a term of three to nine years in a centre run by the Ministry of Social Development. Where a court does sentence a juvenile to detention, the term imposed is required to be one third of the term that would be imposed upon an adult.¹³⁸

6.3.2 Situation of children in detention in Jordan

• Children in conflict with the law

Centres for education and rehabilitation are organised as follows:

- **Centres for pre-trial detention:** There are six such centres where children are held established by the Ministry of Social Development in collaboration with the Directorate of General Security. Five are for boys and one for girls opened in 2008. During 2010, these centres detained a total of 4,371 children¹³⁹. Children in pre-trial detention are allowed to leave the institution for up to a week to visit their families for holidays or other occasions if necessary.¹⁴⁰ They may also leave to attend academic or vocational training courses, on condition they return to the institutions when the courses are over for the day.

- **Centres for the education and rehabilitation of juveniles:** There are five such centres for sentenced children which are supervised by the Ministry of Social Development. One is for boys aged between 15 and 18 (Usama ibn Zaid) and four others: 3 for boys (Dar Amman, Irbid House, Ma'an House) and one for girls (House for Education and Rehabilitation of Girls). During 2010, a total of 2,614 children were detained in these centres¹⁴¹. It should be noted that the numbers of children detained in these centres has decreased in recent years owing to an increase in the use of alternative sentences by prosecutors and judges.¹⁴²

The US State Department reports allegations of violence and abuse against children in detention¹⁴³. In 2010, a Web site published a report detailing stories of government authorities physically and verbally abusing children in government-run juvenile detention centres. In response to the allegations, the Ministry of Social Development investigated these claims and concluded that there was no evidence to support them. In 2009 former and current residents and parents of children in several ministry-operated juvenile rehabilitation centers reported verbal and physical abuse of children by supervisors. The government investigation remains pending.

¹³⁸ Article 18, Juveniles Act of Jordan

¹³⁹ Information provided from the Annual Report of the Directorate of Social Defense (2010) as translated by PRI consultant Dr Fawaz Ratrouf.

¹⁴⁰ Article 27, Juveniles Act of 2002

¹⁴¹ As above

¹⁴² Questionnaire completed by PRI Consultant Dr Fawaz Ratrouf 15 May 2011

¹⁴³ United States Department of State, 2010 Country Reports on Human Rights Practices - Jordan, 8 April 2011, available at: <http://www.unhcr.org/refworld/docid/4da56db8c.html> [accessed 18 May 2011]

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• Administrative, immigration or 'protective' detention

The detention of girls for violating social codes of conduct has been reported in Jordan in centres including the Jweideh Women's Correctional and Rehabilitation Centre and Wifaq Centre in Jordan¹⁴⁴. More often than not, such detention is considered to be protective, providing these girls with refuge from the physical and psychosocial dangers they might face if they were to continue to live within their families or communities. Girls who have committed offences are held alongside girls who are victims of domestic violence, who have been raped or assaulted, or who are at risk of becoming a victim of honour crimes and are being held for their own protection¹⁴⁵.

6.3.3 Monitoring mechanisms in Jordan

- International and regional monitoring

Jordan has not ratified OPCAT. It co-operates well with UN Special Procedures and has only one outstanding request for a visit from the UN Special Rapporteur on violence against women dating from 2007¹⁴⁶. The Special Rapporteur on the question of torture visited Jordan from 25 to 29 June 2006. In his report, he concludes that the practice of torture is widespread in the country, and in some places routine, namely within the General Intelligence Directorate (GID) and the Public Security Directorate's Criminal Investigation Department¹⁴⁷. The report stated further that notwithstanding the provisions and safeguards laid out in Jordanian law to combat torture, in practice they are totally meaningless because the security services are effectively shielded from independent criminal prosecution and accountability¹⁴⁸.

During 2010, the government permitted local and international human rights observers to visit prisons and conduct private interviews and the ICRC visited prisoners and detainees in all prisons, including those controlled by the GID and the military intelligence directorate, according to standard ICRC modalities.

- National level monitoring

Jordan has three different bodies which are responsible for monitoring the treatment of children in detention facilities: the judiciary, the Ministry of Social Development and the National Centre for Human Rights which is an accredited NHRI.

a) Judicial monitoring

144 Human Rights Watch (2009) *Guests of the Governor, Administrative Detention Undermines the Rule of Law in Jordan* <http://www.hrw.org/en/reports/2009/05/25/guests-governor> (accessed 12 May 2011)

145 Unicef (2011), "Administrative detention of children: a global report"

146 http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/JO/A_HRC_WG6_4_JOR_2_E.PDF (accessed May 5th 2011)

147 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak Addendum MISSION TO JORDAN A/HRC/4/33/Add.3 5 January 2007

148 United States Department of State, 2010 Country Reports on Human Rights Practices - Jordan, 8 April 2011, available at: <http://www.unhcr.org/refworld/docid/4da56db8c.html> [accessed 18 May 2011]

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The Attorney-General has the overall mandate to oversee prisons and detention centres¹⁴⁹ as well as to ensure that courts and tribunals are implementing the law correctly. In addition, court judges are obliged to visit facilities where children are held 'at least once every three months'¹⁵⁰. Their findings are not made public. In July 2009, parliament passed an amendment enabling all Ministry of Justice personnel to visit detention centres at any time.

Box 15: UN Committee on the Rights of the Child Concluding Observations for Jordan (2006)

"The Committee recommends that the States party (a) Urgently raise the minimum age of criminal responsibility to an internationally acceptable level; (b) Strengthen its efforts to implement the Juvenile Justice Reform Programme and to ensure that it conforms fully with the principles and provisions of the Convention; and develop and implement a comprehensive system of alternative measures such as community service orders and interventions of restorative justice in order to ensure that deprivation of liberty is used only as a measure of last resort; (c) Establish juvenile courts with appropriately trained staff throughout the country; (d) Expand access to free legal aid and independent and effective complaints mechanisms to all persons below 18 years of age; (e) Ensure that both sentenced and released persons below 18 years of age are provided with educational opportunities, including vocational and life-skills training, and recovery and social reintegration services, in order to support their full development."

Source: *Concluding Observations of the Committee on the Rights of the Child: Jordan*. 02/06/2006. CRC/C/15/Add.125

b) Ministry of Social Development – Directorate of Social Defence

Administrative staff at the Directorate of Social Defense (which sits within the Ministry of Social Development) has the right to inspect facilities where children are held¹⁵¹ and to investigate administrative, financial, technical, and legal issues. Furthermore, staff of the Services Improvement and Operations Management at the Directorate of Institutional Development, are entitled to conduct surveys on services given to accused and convicted juveniles, and for those who have received exit permits, during the period of detention at the juvenile homes, and to assess services of the juveniles' rehabilitation centres. Reports are sent to line managers but there is a lack of proper follow up on recommendations.

c) National Centre for Human Rights

The National Centre for Human Rights (NCHR) was established in 2002 and became operational in 2003. It currently has an 'A' accreditation from the International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights meaning it

149 Section 1, Article 16 of the Jordanian Code of Criminal Procedure and its amendments No. 9, 1961 states that: "The Attorney-General shall watch the course of justice and oversee prisons and detention centers in the implementation of laws. He also represents the executive power at the courts and tribunals, then contacts the respective authorities directly."

150 According to item IV of Article 36 of the Juvenile Act, "The court judge must visit any of these homes indicated in this Law – the Juvenile Law - at least once every three months."

151 Applying the administrative decision No. 1 for the year 2010, issued by the Minister of Social Development, and under reference No. NS / 9449 dated 21.06.2010, regarding the restructuring of the central administrative units at the Ministry of Social Development.

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is in full compliance with the Paris Principles¹⁵². The Centre has a wide human rights mandate and deals with cases of human rights violations, complaints, education and promotion, monitoring and integrating human rights into Jordanian legislation and practices. The NCHR is funded primarily by the state. The NCHR Board of Trustees is appointed by a Royal Decree upon the recommendation of the Prime Minister. The General Commissioner is appointed by the Council of Ministers at the recommendation of the Board for a three year renewable term.

The NCHR has a specific mandate to "visit the reform and rehabilitation centers, detention centers and shelters for juveniles in accordance with followed procedures"¹⁵³ and begun this work in 2004 visiting centres without giving prior notice to the Ministry of Social Development. The NCHR has a specialised 'Women and Child Unit' within its structure to focus on monitoring of conditions of detention centres for children whilst a Criminal Justice Unit monitors the situation of prisons more generally.

It also follows up on complaints, compiles reports and submits recommendations about addressing challenges as well as identifying good practice¹⁵⁴. It does not however have access to police stations.

Box 16: UN Committee on the Rights of the Child Concluding Observations for Jordan (2006)

The Committee welcomes the establishment of the National Centre for Human Rights (NCHR) by temporary law in 2002 and, in particular, its mandate which includes promoting and monitoring the implementation of the rights of the child and receiving individual complaints from children. It also notes with appreciation that human resources dedicated to focus on the rights of the child have been provided to NCHR. While welcoming the adoption of the permanent law on NCHR on 14 September 2006, the Committee regrets that the mandate of Centre is still limited in matters concerning the police and the military. In addition, the Committee notes with interest that the State party considers the establishment of an ombudsperson...The Committee recommends that the State party further ensure that NCHR is provided with adequate human, financial and technical resources and that it has facilities to monitor and evaluate progress in the implementation of the Convention at the national and local levels as well as to receive, investigate and address complaints from children. The Committee also recommends that the State party expand the monitoring mandate of NCHR to include all agencies of the Government, including the police and the military. The Committee emphasizes the need to ensure that this mechanism is easily accessible to children.

Source: *Concluding Observations of the Committee on the Rights of the Child: Jordan*. 02/06/2006. CRC/C/15/Add.125

Reports of the visits are submitted in the first instance to the Director of the NCHR and subsequently submitted to the Prime Minister who in turn transmits it to relevant ministries

¹⁵² The NCHR was last reviewed in October 2010

http://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf (accessed 6th May 2011)

¹⁵³ Code of the National Center for Human Rights No. 51 of 2006.

¹⁵⁴ http://www2.ohchr.org/english/bodies/cat/docs/ngos/Jordanian_National_Centre_HR.pdf (accessed 5 May 2011)

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requesting implementing of recommendations. Between 2005 and 2009 a total of five reports on conditions of children in detention were prepared using the following methodology¹⁵⁵:

- Desk review of domestic legislation and international standards
- Review of data concerning children in detention
- Interviews with civilian and police responsible for detention of children
- Interviews with social workers and directors and employees of rehabilitation homes where children are held
- Field visits and observation supplemented by photos

Difficulties with the reporting process include a lack of methodology to measure the relationship between international standards and domestic realities; lack of verification of sources; and inconsistent use of performance indicators. Furthermore, the recommendations in the reports are very broad and general and therefore difficult for the authorities to adopt.

Complaints procedure

The NCHR is also mandated to receive complaints sent by email or through the NCHR hotline or reported in person in the course of visiting a detention facility. A complainant may also submit a complaint to the Ombudsperson's Bureau. On receipt of a complaint, the NCHR gathers information, prepares a summary and reports to the Public Security Directorate with recommendations which might, for example, include referring a perpetrator of torture or inhuman treatment to the Police Court. The NCHR will follow up on implementation of these recommendations. The NCHR tries to make detainees aware of this independent complaints mechanism through distribution of pamphlets and through information sharing during visits to detention facilities. In 2008, the NCHR received more than 100 complaints directly from detained children on violations committed against them (compared to 87 complaints in 2007). Thirty-seven of these were allegations of torture against Criminal Investigation Department personnel, 21 complaints related to the right to receive family care, 22 related to delay in litigation procedures, 11 to the right to education, 7 complaints related to the right to legal assistance, and 5 related to the right not to be subjected to inhumane treatment¹⁵⁶.

6.4 Morocco

6.4.1 Legal framework for sentencing and detaining children

Morocco has ratified the CRC. The Penal Code stipulates that children under 12 years are not criminally responsible.

¹⁵⁵ The text of the following NCHR reports was reviewed by a PRI consultant Dr Fawaz Ratrouh: First periodic report of the status of juvenile institutions of social defence in Jordan (2005); Second periodic report of the status of juveniles' institutions of social defence in Jordan (2006); Third periodic report of the situation of children detained in Jordan, according to national legislation and international standards (2007); Fourth periodic report on juvenile offenders and juvenile justice in the Kingdom (2008) and Fifth periodic report of juvenile offenders and children at risk from penal treatment (2009)

¹⁵⁶ National Centre for human Rights 5th Report (2008) Para 30

http://www.carim.org/public/polsoc texts/PO3JOR1123_945.pdf (accessed 4th May 2011)

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Children between 12 and 18 years have limited criminal responsibility and are subject only to protective or rehabilitation measures or to 'mitigated punishment'. Article 476 of the Code of Criminal Procedure provides that children should only be imprisoned provisionally and when absolutely necessary. This section of the law also requires that they be held in separate facilities from the adult prison population and requires judges to visit children held in detention at least once a month. The law clearly provides for alternative sentencing, such as remanding the child to the custody of his or her parents or entrusting them to the care of an alternative organization for education and rehabilitation.

6.4.2 Situation of children in detention in Morocco

• Children in conflict with the law

There are 65 prisons for adults reporting to the General Commission for Prisons' Management, three of which include private wards for children in Al Dar Al Baida', Sala and Ali Momen." According to official figures, the number of children who are detained in wards attached to adult prisons after conviction has increased from 951 in 2008 to 1,151 in 2009¹⁵⁷. The government also runs 22 Child Protection Centres (CPCs), five of which are specifically for girls. Unlike the prisons, the CPCs are managed by the Ministry of Youth and Sports. They each have capacity for between 90 and 140 children.

According to official figures, the number of children in pre-trial detention has increased from 1,092 in 2008 to 1,267 in 2009¹⁵⁸. The US Department of State Country Report on Human Rights Practices in Morocco¹⁵⁹ observed: "According to NGOs, as many as 90 percent of incarcerated minors were in pre-trial detention. The law provides for a limited system of bail, but bail was rarely granted. The number of children sentenced to be held in educational centres was 2,388 in 2009¹⁶⁰."

The Prison Code (1999), states that children are to be separated from adults in penal institutions. However, the US Department of State Country Report on Human Rights Practices 2009: Morocco finds that: "Although the law dictates that juvenile prisoners be separated from adults in prisons, this did not always occur in practice. There are only three juvenile detention centres. Due to the lack of juvenile facilities, authorities often held juveniles together with adults, particularly in pre-trial detention and in police stations. Human rights groups reported the abuse of younger offenders by other minors, older inmates, and prison guards. Local NGOs estimated there were at least 4,000 juveniles in the prison system. Offenders convicted of minor crimes are often placed in the same cell as those convicted of more serious offences."

• Administrative, immigration and protective detention

157 Information provided to PRI by the Moroccan Ministry of Justice in 2011

158 Information provided to PRI by the Moroccan Ministry of Justice in 2011

159 The US Department of State Country Report on Human Rights Practices 2009: Morocco <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154468.htm> (accessed 7th May 2011)

160 As above

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The Child Protection Centres were originally intended to provide an alternative to prison for children in conflict with the law. However, they are more commonly referred to as centres de sauvegarde or safeguard centres and are used to house convicted children and also homeless children, victims of domestic violence, drug addicts and other "children in distress" who have committed no crime.

Morocco is a key transit country for sub-Saharan migrants seeking passage to Europe. The Migration Act (2003) provides grounds for the deportation, expulsion, and detention of foreign nationals who are not authorized to enter or remain in Morocco, including detailed specifications on lengths of detention and access to rights. The Global Detention Project finds that migrants are detained for lengthy periods of time and cites one case where a woman and her child were held for two months¹⁶¹. Children are generally detained with their mothers but migrants are not held separately from criminal detainees.

6.4.3 Monitoring Mechanisms in Morocco

- International and regional monitoring mechanisms

Morocco has not ratified OPCAT. The ICRC did not make a request to visit detention facilities during 2009. It has no outstanding requests for visits from UN Special Procedures.

- National level mechanisms

a) Judicial monitoring

The Criminal Law provides for juvenile judges to visit detention facilities where children are held at least once a month¹⁶². The purpose of these visits is to review their conditions and the educational and correctional programmes available. However, a judge's findings are not binding on prison authorities¹⁶³. At least 600 visits were made to detention facilities during 2009, including those where children are held, by judiciary authorities for various oversight reasons¹⁶⁴.

b) Administrative oversight

A provincial committee, whose composition and function are governed by Articles 620 and 621 of the Criminal Procedure Act, is mandated to inspect prisons and young offenders' centres. It can submit reports and recommendations to the Minister of Justice. However, the frequency of visits is not defined and in practice there are long gaps in between visits¹⁶⁵.

161 Global Detention Project (2011) "Morocco Detention File"

http://www.globaldetentionproject.org/fileadmin/docs/Morocco_Detention_Profile_2011.pdf (accessed 13 May 2011)

162 Articles 473, 469 and 489 of the Morocco Criminal Procedure Code

163 Thematic Report on the Situation in Prisons produced by CCDH in 2008

http://www.ccdh.org.ma/IMG/pdf/Rapport_prisons-2.pdf (accessed 13 May 2011)

164 The US Department of State Country Report on Human Rights Practices 2009: Morocco

<http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154468.htm> (accessed 13 May 2011)

165 Thematic Report on the Situation in Prisons produced by CCDH in 2008

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In addition, the Directorate General for Prison Administration reported that 88 regional or parliamentary commissions made prison visits during the year.¹⁶⁶

c) Inter-agency monitoring

The Ministry of Justice has formed committees to coordinate the work that various governmental and non governmental institutions are carrying out at detention centres where children are held. These institutions are: the Ministry of Social Development, Family and Solidarity, Ministry of Health, the Royal Gendarmerie and National Security, Ministry of Youth and Sport, as well as, non-governmental bodies and civil society organisations including Mohammed VI Foundation for the Reintegration of Prisoners. This partnership works in preliminary courts and at a regional level to examine how children are treated. In addition, the Ministry of Justice, in partnership with the Mohammed VI Foundation for the Reintegration of Prisoners, has created a Committee to follow up on the judges' inspection visits and to ensure that there is a legal basis for detaining children. Consisting of one representative from the Ministry of Justice and a representative from Mohammed VI Foundation and some selected judges, this Committee is also tasked with visiting detention facilities and reporting back with recommendations.

d) Consultative Council for Human Rights in Morocco (CCDH)¹⁶⁷

The CCDH has an 'A' accreditation from the International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights meaning it is in compliance with the Paris Principles¹⁶⁸ and this status was reaffirmed in 2007. It was first established in 1990 but its status was brought into line with the Paris Principles in 2001. The Consultative Council issues advisory opinions on the protection and promotion of fundamental rights and freedoms, produces an annual report on the situation of human rights in Morocco, and makes recommendations on the harmonization of national laws, the desirability of acceding to international instruments and the handling of cases of human rights violations.

The Consultative Council receives and investigates complaints alleging human rights violations, makes regular visits to prisons and inquires about the situation of prisoners, issues advisory opinions on improving the protection and promotion of human rights, formulates recommendations on bringing internal legislation into line with the relevant international standards and works to strengthen cooperation between the Government and civil society. In addition, the Diwane Al-Madalim (Office of the Ombudsman) was established in 2001 and has a complaints mechanism.

¹⁶⁶ The US Department of State Country Report on Human Rights Practices 2009: Morocco
<http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154468.htm>

¹⁶⁷ CCDH is the French acronym for the Conseil Consultatif des Droits de L'homme du Maroc

¹⁶⁸ http://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf (Accessed 12th May 2011)

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In 2004 the CCDH produced a report on the situation of prisons which included a section on children. This report was updated in 2008.¹⁶⁹ It found that children were being held in adult prisons, in almost all of the prisons visited. The living conditions in the adult prisons meant that it was impossible for these children to receive any rehabilitation activities or education. In relation to staffing, it found that “Officers working in reform and rehabilitation centers are neither motivated nor qualified to deal with juvenile offenders who pose many problems in view of adolescence and the requirement of their reintegration. Additionally, almost all these officers have already served in adult prisons. Therefore, they treat juvenile offenders the way they treat adult prisoners. They do not take into account their specific age, and the care and special treatment they need¹⁷⁰.”

e) Civil society

During 2009, the government permitted prison visits by independent human rights observers, including local human rights groups, but not by international groups or the media. Authorities documented 132 visits by domestic NGOs during the first six months of 2009. NGOs reported that although international NGOs visited prisons in previous years, the DGAP's new director general discouraged such visits, and they ceased. Other groups that worked with the government to try to improve human rights conditions or investigate alleged abuses included Friends of the Center for Reform and the Protection of Youth (more commonly known as Association Mama Assia), which focused on working with children. The Moroccan Observatory of Prisons was also active as well as Mohammed VI Foundation for Reintegration of Prisoners.

As part of the UPR process for Morocco in 2008, the Moroccan Association for Human Rights and International Federation for Human Rights (FIDH) recommended the introduction of an independent national body to supervise prisons, with the power to make unannounced inspections and even, where necessary, to order medical inspections to establish whether there had been cases of torture, as recommended by the Human Rights Committee in 2004.¹⁷¹

6.5 Yemen

6.5.1 Legal framework for sentencing and detaining children

Yemen has ratified the CRC. The main laws governing children in conflict with the law are the Criminal Code 1994, the Criminal Procedure Code 1994, the Juvenile Welfare Act 1992 amended 1997, and the Children's Rights Act 2002. The minimum age of criminal responsibility is seven. Draft amendments to the Criminal Code, the Juvenile Welfare Act and the Children's Rights Act have recently been proposed.

¹⁶⁹ Thematic Report on the Situation in Prisons produced by CCDH in 2008
http://www.ccdh.org.ma/IMG/pdf/Rapport_prisons-2.pdf (accessed 13 May 2011)

¹⁷⁰ As above

¹⁷¹ Morocco UPR Summary of Stakeholders Information A/HRC/WG.6/1/MAR/3
11 March 2008 Para. 16

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Article 11 of the Juvenile Act states that no child under 12 years can be detained in a police station or other security facility but instead must be placed with a parent or guardian or in the nearest juvenile rehabilitation centre for no more than 24 hours. Those over 12 years but under 18 years may be detained in a police station for not more than 24 hours and on condition that they are segregated from adult prisoners.

Yemen's Penal Code provides for reduced sentences for crimes committed by persons under 18. The Criminal Code states that a child aged 15-17 "shall be sentenced to a maximum of half the punishment set forth legally" and between three and ten years imprisonment if the offence typically attracts the death penalty.¹⁷² It is unlawful to sentence persons under 18 to imprisonment for life, however, children can receive sentences of corporal punishment, including flogging and amputation. Yemen's very low birth registration rate makes it difficult for many juvenile offenders to prove their age at the time of the offence: UNICEF's 2006 Multiple Indicator Cluster Survey in Yemen found only 22 percent of births of children under age five were registered.¹⁷³

The imposition of the death penalty on juvenile offenders is expressly prohibited by Article 31 of Yemen's Penal Code and Article 37 of the Juvenile Welfare Act. However, difficulties in age determination means that offenders who were under 18 at the time of committing the offence may be tried as adults and sentenced to death. The Government has stated that no child has been punished by stoning,¹⁷⁴ and that no child under 18 has ever been executed.¹⁷⁵ However, according to UNICEF, 14 people who were children at the time of committing an offence were executed between 2006 and 2010, 11 were on death row as at January 2011, and a further 84 were at risk of being sentenced to death.¹⁷⁶

6.5.2 Situation of children in detention in Yemen

Children are held in four different forms of detention facility: police station custody, central prisons with facilities for children who are accompanying their mothers, pre and post trial detention for those under 15 at social guidance homes. Children from 15-18 are held in centres attached to adult prisons. According to government sources, in 2009, 1,010 children between 15 and 18 years old were held in these facilities and in 2010 the number was 903.¹⁷⁷ Children aged 12-15 are held in ten Homes of Social Guidance (3 for girls and 7 for boys). In 2009, 1,280 children were held in these Homes of Social Guidance and, in 2010, this figure fell slightly to 1,174.¹⁷⁸

¹⁷² Yemen Report on Inhuman Sentencing of Children, CRIN 02/11/2010

¹⁷³ UNICEF, Multiple Indicator Cluster Survey: Monitoring the Situation of Children and women, Yemen 2006, Key Findings.

¹⁷⁴ A/HRC/12/13, 5 June 2009, Report of the Working Group on the Universal Periodic Review: Yemen, para. 51; see also CCPR/C/YEM/2004/4, 23 February 2004, Fourth periodic report to the Human Rights Committee, para. 174

¹⁷⁵ A/HRC/12/13, 5 June 2009, Report of the Working Group on the Universal Periodic Review: Yemen, para. 53

¹⁷⁶ Yemen Report on the Inhuman Sentencing of Children, CRIN 02/11/2010

¹⁷⁷ Figures provided to PRI Consultant Dr Fawaz Ratrouh by the Ministry of Social Affairs and Labour

¹⁷⁸ As above

6. A preliminary mapping of monitoring mechanisms currently in operation in Algeria, Egypt, Jordan, Morocco and Yemen

Box 17: UN Committee on the Rights of the Child Concluding Observations for Yemen (2005)

"The Committee recommends that the state party (a) Raise the minimum age of criminal responsibility to an internationally acceptable level; (b) Develop an effective system of alternative sentencing for persons below 18 who are in conflict with the law, such as community service and restorative justice, with the view inter alia, to ensuring that deprivation of liberty is a measure of last resort; (c) Guarantee that all children have right to appropriate legal assistance and defence; (d) Take necessary measures to make the deprivation of liberty as short as appropriate, inter alia by using suspended sentencing and conditional release; (e) Ensure that persons below 18 in detention are separated from adults; (f) Ensure that persons below 18 remain in regular contact with their families while in the juvenile justice system; (g) Provide ongoing training for judges and law-enforcement officials; and (h) Seek assistance from, inter alia, OHCHR, the Centre for International Crime Prevention, and UNICEF."

Source: *UN Committee on the Rights of the Child Concluding Observations: Yemen 21/09/2005 CRC/C/15/Add.267, para. 77*

6.5.3 Monitoring of Conditions of detention

- International and regional monitoring

Yemen has not ratified OPCAT. It has agreed upon visits from the Special Rapporteur on extrajudicial, summary or arbitrary executions (2006) and has received requests but not yet agreed to visits from the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (since 2006) and the Special Rapporteur on freedom of religion or belief (2006). According to a Joint Submission made to the Universal Periodic Review process for Yemen in 2009, the authorities rejected the ICRC's requests for access during 2007 and 2008.¹⁷⁹

- National level monitoring

a) Judicial monitoring

Juvenile judges "or other assigned experts are expected to visit care and rehabilitation homes and other places where juveniles are detained, at least once every three months¹⁸⁰". Their reports are not made public.

179 Joint Submission by the Sisters Arab Forum for Human Rights, Sana'a, Yemen; Yemeni Organization for the Defense of Rights and Freedoms, Yemen; Committee against Torture and Arbitrary Arrests; Change Organization; Cairo Institute for Human Rights Studies, Cairo, Egypt.

Universal Periodic Review: Yemen, Summary of Stakeholders Information 19 February 2009

A/HRC/WG.6/5/YEM/3

http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/YE/A_HRC_WG6_5_YEM_3_E.pdf (Accessed 12th May 2011)

180 Article No. (28) of the Juvenile Welfare Act

6. A preliminary mapping of monitoring mechanisms currently in operation in Algeria, Egypt, Jordan, Morocco and Yemen

b) Administrative oversight

The General Directorate of Social Defence within the Ministry of Social Affairs and Labour has the mandate to “visit, on a regular basis and whenever necessary, institutions for rehabilitation and care of juveniles to get update on the situation, assess activities, and report back including recommendations on dealing with obstacles that might hinder the progress of work within these institutions¹⁸¹.” The Ministry of Human Rights also follows up on issues of children in conflict with the law by visiting central prisons and social welfare homes and institutions as does the National Network for Child Protection under supervision of the Supreme Council for Motherhood and Childhood.

c) Civil Society Monitoring

Yemen does not have an NHRI accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. Aside from the judicial and administrative monitoring outlined above, monitoring of children in detention facilities is conducted in an ad hoc manner primarily by civil society organisations supported by UNICEF or other donors. According to a Joint Submission made to the Universal Periodic Review process for Yemen in 2009, the authorities impose tight restrictions on carrying out independent missions to inspect and monitor conditions inside detention centres and have also barred the Yemen Observatory for Human Rights from making visits to all prisons with the exception of the Hajja one.¹⁸²

However, in 2010, the Ministry of Social Affairs and Labor in cooperation with the Yemen National NGO Coalition and funded by UNICEF made a study of juvenile care institutions in Yemen¹⁸³. It found that children in detention come from ‘poor families’ and struggle to maintain contact with their families whilst being held. Children are often sent to adult prisons despite the fact that Social Guidance Homes are available. They are held in conditions of over-crowding in institutions which lack psychologist, social workers and officials trained in children’s rights. They also found that many children were tortured during their arrest and investigation and were held alongside adults. They lacked food, water, toiletries and adequate bedding. About 10% of institutions do not have supervisory boards.

In addition, during 2007, the Children’s Parliament of Yemen conducted field visits to observe the conditions of children in detention. In total they visited nine central prisons with facilities for children, 14 temporary jails and six social guidance homes and conducted interviews with the former Minister of the Interior, the Minister of Justice, and the Secretary General of the Higher Council of Motherhood and Childhood¹⁸⁴. Their findings were that in the temporary jails, children were mixed with adults, had no legal representation, were in poor health, malnourished and exposed to violence by jail staff. In the central prisons they found that the staff were not qualified and there was no focus on rehabilitation. Violence is widespread and children were found to be living with their convicted mothers. In Social Guidance Homes, children were in poor health, had insufficient food, staff were not qualified and there was no emphasis on rehabilitation.

181 Article No. (37) of the Regulations of the Juvenile Welfare Act

182 Joint Submission by the Sisters Arab Forum for Human Rights, Sana’a, Yemen; Yemeni Organization for the Defense of Rights and Freedoms, Yemen; Committee against Torture and Arbitrary Arrests; Change Organization; Cairo Institute for Human Rights Studies, Cairo, Egypt.

Universal Periodic Review: Yemen, Summary of Stakeholders Information 19 February 2009
A/HRC/WG.6/5/YEM/3

183 Mikhlaifi, Ahmed, 2010, child-care institutions in Yemen: a field study to assess the current situation, Publication of the Ministry of Social Affairs and Labor and UNICEF

184 Democracy School, in association with Save the Children (2009) “First Report by the Children’s Parliament on the Conditions of Children in Yemen”, Available at:

<http://www.crin.org/resources/infoDetail.asp?ID=20863&flag=legal> (25th April 2011)

7.

Meeting the challenges -
Strengthening independent monitoring
mechanisms of detention facilities
for children within the MENA region.

7. Meeting the challenges – Strengthening independent monitoring mechanisms of detention facilities for children within the MENA region.

The mapping above in Chapter 6 provides a preliminary overview of the patchwork of provision for different bodies to monitor children in detention in Algeria, Egypt, Jordan, Morocco and Yemen. It is not straightforward to assess how effective these mechanisms are, nor the impact if any, they have had on the rights of children in detention. However, this preliminary mapping does serve to highlight certain key areas which require strengthening.

Detention facilities need to be monitored by well-qualified independent bodies on a regular basis and at times unannounced

None of the countries assessed has a systematic, comprehensive approach to monitoring children in detention. Visits happen sporadically and on an ad hoc basis. There is lack of co-ordination amongst the different bodies involved. A more systematic and comprehensive approach is required so that monitoring can work effectively by building on findings and tracking progress made from year to year. Furthermore, there must be provision for unannounced visits.

In all five countries there is provision for judicial control by which judges and public prosecutors are responsible for carrying out regular visits to places of detention and inspecting the conditions and treatment of detention. These vary in efficiency and quality but can be effective when the judge can issue binding decisions about the treatment and conditions of children in detention. However, it seems that recommendations made by judges to prison authorities are not always binding and reports are not made public so it is difficult to assess how effective this process is as a means of protecting the rights of children in detention.

Monitoring by internal administrative bodies who oversee the work of the prison authorities is also allowed for in all countries. However, the focus is on the administrative running of the institutions in terms of compliance of staff and procedures with national standards and administrative guidelines and regulations. Such monitoring does not focus on broader issues concerning the conformity of children's treatment with international standards. As a consequence, it is possible for such administrative monitoring to be undertaken but for international standards to still not be complied with.

In certain countries, notably Morocco, civil society plays a role in monitoring. Civil society organisations can often function with a high degree of independence from authorities and make their reports public. However, the legal basis for their monitoring can be weak and subject to the vagaries of political will. Such organisations may also face serious resource constraints making comprehensive monitoring throughout a country difficult. Civil society monitoring is very important but it needs to be allowed for in law so as to allow for sustainable and long-term involvement. Alternatively, civil society should sign an agreement with the authorities safeguarding their right to conduct regular visits.

7. Meeting the challenges – Strengthening independent monitoring mechanisms of detention facilities for children within the MENA region.

Administrative and judicial monitoring and civil society monitoring which lacks a firm legislative basis are insufficient safeguards for children in detention on their own. They need to be complemented by strong external independent monitoring bodies. Algeria, Egypt, Jordan and Morocco all have accredited NHRIs who do conduct monitoring visits to detention facilities where children are held. However, monitoring is conducted on an unsystematic basis, their reports are not always made public or widely distributed, the methodology used is not always in line with international standards and the institutions themselves are not fully independent from government. Even where the monitoring methodology is quite well developed as for example in Morocco, there is an insufficient focus on children as a group requiring specific attention. Furthermore, the inspectors are usually members of staff from the NHRI and there is insufficient breadth in their composition; frequently they lack medically trained inspectors. Yemen has no such independent body and needs to establish a NHRI with the explicit mandate to monitor places of detention where children are held.

Criteria used for assessing the conditions and treatment of children should be in line with international human rights standards

There is an urgent need for monitoring mechanisms in all five countries to review the standards of assessment used and bring them in line with international standards. Specific issues which require attention include:

- Separation from adults

Most countries have introduced special legislation or procedures taking into account the specific needs of children in custody and have laws and/or prison rules which require that children are separated from adults in prisons and other detention facilities, or that they are sent to special children's remand homes or specialised juvenile rehabilitation centres. There is evidence that these systems break down in practice and it is vital that monitoring mechanisms focus on children's separation from adults. In all countries, the number of separate facilities for children is quite limited, and the poor geographical distribution of children's institutions means that they are either transferred a long distance away from their families, or detained in adult jails. This is of particular concern to girls, since most countries have fewer separate facilities.

- Lack of protection puts children at serious risk of torture, ill-treatment and other forms of abuse

The use of corporal punishment is widespread throughout the region and there are insufficient restrictions on types of punishment that may be imposed on children eg prohibition of solitary confinement or handcuffs. In some countries, allegations of the torture of detainees is widespread and it is essential that inspecting bodies document and respond to any allegations of torture made by children. In particular the mandate of monitoring bodies in the region must include access to police stations where children may be most vulnerable to torture. If this is not possible they should aim to speak to children about their treatment in police stations afterwards. Emphasis should also be placed during visits on the steps taken to protect children from violence from other detainees whether adults or other children.

7. Meeting the challenges – Strengthening independent monitoring mechanisms of detention facilities for children within the MENA region.

- Rehabilitation and reintegration

Most detention centres for children in MENA lack adequate facilities for education, vocational training, counselling and reintegration. Monitoring bodies should prioritise scrutiny of the rehabilitation activities and services which are provided and examine the extent to which detention facility staff work with other agencies on reintegration and the provision made for planning for a child's release looking at accommodation, education or vocational training or employment, counselling, medical support and any financial support.

More emphasis on interviewing children rather than just observation as a means of gathering data

A wide range of different sources of information should be drawn upon when assessing the treatment and conditions of children in detention. A vital source of information is to speak directly with children themselves. Children in detention have a right to be heard and monitoring visits provide them with an opportunity to give their views and opinions; they also give inspectors insight into and evidence of their treatment and conditions. Interviewing children should be a mandatory component for any monitoring body in MENA reviewing children in detention.

The public should have access at least to parts of the inspection reports that do not involve prison security

Administrative and judicial reports are not public documents. Some civil society reports on detention visits have been made public for example in Yemen. Reports from NHRIs have been made public to a certain extent, for example in Jordan and Morocco. However, independent monitoring bodies should have a stronger commitment to ensuring their reports are publicly available and used as an opportunity to engage the media and civil society in discussion about the situation of children in detention and to raise possible alternatives to detention.

Implementation of recommendations should be followed up and scrutinised

Recommendations need to be practical and achievable and their implementation closely followed up. NHRIs are independent of government and should raise issues around the violations of rights of children in detention directly with international and regional human rights bodies; for example, a failure to implement or take steps to implement recommendations could be raised in the UPR process or whilst drafting shadow reports to UN and regional human rights bodies such as the African Committee of Experts on the Rights and Welfare of the Child. Close links should also be maintained with relevant UN bodies such as the Special Rapporteur on Torture, Special Rapporteur on the Independence of Judiciary, Special Rapporteur on Extrajudicial Executions and Special Rapporteur on Human Rights Defenders, the UN Working Group on Arbitrary Detention, UNICEF, UNHCR and the UN Committee on the Rights of the Child. It may also be important to contact regional human rights mechanisms such as the African Committee on the Rights and Welfare of the Child and the Rapporteur on Prisons and Conditions of Detention in Africa. This will help to maintain pressure on authorities.

7. Meeting the challenges – Strengthening independent monitoring mechanisms of detention facilities for children within the MENA region.

Monitoring mechanisms should also look at children held in administrative, immigration and 'protective' detention

Monitoring bodies should be engaged in reviewing the conditions of detention and treatment of children in different detention settings. This includes police stations, court cells and pre and post trial detention. However, it can also include the use of immigration, administrative or 'protective custody' which disproportionately affects girls. The mandate of monitoring mechanisms should explicitly include these detention centres where children are held.

Ratify OPCAT

All five countries have ratified CAT. However, they still grapple with problems of torture in detention against both adults and children. Ratifying OPCAT would have a preventive effect and enable these countries to identify the root causes which lead to torture occurring. Regular visits to detention facilities by National Preventive Mechanisms (NPMs) or by the Sub-Committee on the Prevention of Torture would have an important deterrent effect for detaining authorities. Establishing a NPM will be of enormous benefit to the authorities since it will be able to provide them with substantiated and realistic recommendations.



References & ANNEXE

References

- Key International Standards regarding monitoring mechanisms for children in detention

UN Convention on the Rights of the Child: CRC (1989)

UN Committee on the Rights of the Child General Comment No. 10 (2007) on "Children's rights in juvenile justice"

UN Minimum Rules for the Administration of Juvenile Justice: the 'Beijing Rules' (1985)

UN Rules for the Protection of Juveniles Deprived of their Liberty: the 'Havana Rules' (1990)

UN Guidelines on the Administration of Juvenile Justice: the 'Vienna Guidelines', ECOSOC Resolution 1997/30 (1997)

UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: CAT (1984)

Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) (2002)

UN Standard Minimum Rules for the Treatment of Prisoners: The Standard Minimum Rules (1957)

UN Minimum Rules for Non-Custodial Measures: The Tokyo Rules (1990)

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988)

UN Study on Violence against Children (2006)

UN Rules for the Treatment of Women Prisoners and non-custodial measures for women offenders (Bangkok Rules) (2010)

African Charter on the Rights and Welfare of the Child: ACRWC (1990)

Arab Charter on Human Rights (2004)

Rabtat Declaration on Children in the Islamic World (2005)

- Guidance on strengthening monitoring mechanisms for children in detention

The Association for the Prevention of Torture (APT) is a very useful training resource for independent monitoring:

http://www.apr.ch/index.php?option=com_docman&Itemid=259&lang=en

The Office of the High Commissioner for Human Rights (OHCHR) has produced a Training Manual on Human Rights Monitoring which has useful recommendations for conducting investigations: www.ohchr.org/Documents/Publications/training7Introen.pdf

A Human Rights Approach to Prison Management Second Edition, International Centre for Prison Studies (2010)

www.kcl.ac.uk/depsta/law/research/icps/news.php?id=list

International Centre for Prison Studies, Guidance Notes on Prison Reform

<http://www.prisonstudies.org/prison-reform.html>

The European Network of Ombudspersons for Children has a very useful training pack for establishing human rights institutions for children which can be found at

<http://www.crin.org/enoc/training/index.asp>

Water, sanitation, hygiene and habitat in prisons (ICRC) (2005)

www.icrc.org/eng/resources/documents/.../p0823.htm

Making Law and Policy that Work, Penal Reform International (2010)

www.penalreform.org/.../making-law-and-policy-work

Making Standards Work, Penal Reform International (2001)

www.penalreform.org/.../making-standards-work-international-handbook-good-prison-practice

UNODC Handbook for Prison Leaders

www.unodc.org/unodc/en/justice-and-prison.../tools.html

ChildHope, Child Protection Toolkit

<http://www.childhope.org.uk/article.asp?id=587> for guidance for any organisation on developing their own child protection code (also available in Arabic)

Checklist for Aspects of Detention to Inspect

The following outlines the different aspects of detention to inspect and the international standards relating to children that account for them. Inspectors should examine the following by both observation and by undertaking interviews with the children and staff of detention facilities.

Material Conditions:

Accommodation

"Sleeping accommodation should normally consist of small group dormitories or individual bedrooms, while bearing in mind local standards." JDL 33

Every juvenile should, in accordance with local or national standards, be provided with separate and sufficient bedding, which should be clean when issued, kept in good order and changed often enough to ensure cleanliness. JDL 33

Are cells properly ventilated?

Is the temperature in the cells appropriate (for all seasons)?

Do juveniles have access to daylight whilst in their cells?

Can juveniles regulate the heat/light themselves (i.e. open windows, use electric lights)?

Are cells cleaned and disinfected regularly?

Does each juvenile have their own bed and bedding?

Does every juvenile able to sleep on a mattress (or similar)?

How often are juveniles blankets/pillows/bed sheets changed?

Food

Every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health and, as far as possible, religious and cultural requirements. Clean drinking water should be available to every juvenile at any time. JDL 37

Are there any signs that children are malnourished?

Do children have free access to clean drinking water throughout the prison?

Is the kitchen clean and food preparation hygienic?

Is the quantity of food sufficient?

Who decides on menus and ensures children receive a balanced diet?

What is the annual budget for food? (and therefore, the amount per detainee per day)

Are considerations made for religious dietary requirements?

Clothing

To the extent possible juveniles should have the right to use their own clothing. Detention facilities should ensure that each juvenile has personal clothing suitable for the climate and adequate to ensure good health, and which should in no manner be degrading or humiliating. Juveniles removed from or leaving a facility for any purpose should be allowed to wear their own clothing. JDL 36

Is juvenile clothing appropriate for the climate and season?

Are juveniles allowed to wash their clothing?

Are juveniles supplied regularly with soap?

How much access do they have to washing facilities, i.e. showers? Are these clean and sufficient in number?

Is there a good sanitation system with suitable and clean toilet facilities for the number of residents?

Do children have access to toilet facilities at all times of the day? And night?

Personal Property

The possession of personal effects is a basic element of the right to privacy and essential to the psychological well-being of the juvenile. The right of every juvenile to possess personal effects and to have adequate storage facilities for them should be fully recognized and respected. Personal effects that the juvenile does not choose to retain or that are confiscated should be placed in safe custody. JDL 35

Educational/Vocational Work

Every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society. Such education should be provided outside the detention facility in community schools wherever possible and, in any case, by qualified teachers through programmes integrated with the education system of the country so that, after release, juveniles may continue their education without difficulty. Special attention should be given by the administration of the detention facilities to the education of juveniles of foreign origin or with particular cultural or ethnic needs. Juveniles who are illiterate or have cognitive or learning difficulties should have the right to special education. JDL 38

Diplomas or educational certificates awarded to juveniles while in detention should not indicate in any way that the juvenile has been institutionalized. JDL 40

Every juvenile should have the right to receive vocational training in occupations likely to prepare him or her for future employment. JDL 42

How much education for juveniles is on offer? Daily, weekly etc...

Is the quality similar to that found in the community?

Are the children able to work toward national qualifications?

What percentage of juveniles/of school age juveniles participate in educational courses?

Are teachers recruited from outside the prison?

Is vocational training for juveniles offered in the facility? If so, what kind, how often and for how long?

Recreation

Every juvenile should be allowed to satisfy the needs of his or her religious and spiritual life, in particular by attending the services or meetings provided in the detention facility or by conducting his or her own services and having possession of the necessary books or items of religious observance and instruction of his or her denomination...Every juvenile should have the right to receive visits from a qualified representative of any religion of his or her choice, as well as the right not to participate in religious services and freely to decline religious education, counselling or indoctrination. JDL 48

Every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. Adequate space, installations and equipment should be provided for these activities. JDL 47

What size is the area allocated for exercise and recreation?

Is there exercise/recreational equipment they can use in this area?

Does the area offer a sheltered part as well?

Does each juvenile receive one hour of physical recreation (in the open air) every day?

How many hours does a child spend out of his/her cell daily? (Observation of a timetable if possible)

Are a) sporting b) cultural c) other activities available and can all children take part?

When, how often, and where are religious services or meetings conducted? Are all children who wish to allowed to attend?

Contact with the Outside World

Every juvenile should have the right to receive regular and frequent visits, in principle once a week and not less than once a month, in circumstances that respect the need of the juvenile for privacy, contact and unrestricted communication with the family and the defence counsel. JDL 60

Every juvenile should have the right to communicate in writing or by telephone at least twice a week with the person of his or her choice, unless legally restricted, and should be assisted as necessary in order effectively to enjoy this right. Every juvenile should have the right to receive correspondence. JDL 61

Do juveniles have free access to correspondence materials? (letters, telephone usage) Is this unrestricted? Is correspondence censored?
How often are juveniles allowed visits? What is the length of these visits?
Where do visits take place? Is there a certain amount of privacy allowed?
Can juveniles correspond (via letter, telephone, visits) freely and in privacy with legal counsel?

Protection

Using restraint

Instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation. They should not cause humiliation or degradation, and should be used restrictively and only for the shortest possible period of time...to prevent the juvenile from inflicting self-injury, injuries to others or serious destruction of property. JDL 64

Is restraint only used in exceptional cases? What constitutes an 'exceptional case'?
How often do incidents of restraint occur? How long does each incident normally occur for?
Are all cases of restraint recorded?

Disciplinary measures

All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose. Labour...should not be imposed as a disciplinary sanction. JDL 67

Who is responsible for imposing disciplinary sanctions? What is the procedure for imposing them?
What are the disciplinary measures available to prison staff/authorities?
Are all cases where disciplinary measures used recorded?

Complaints mechanisms

Every juvenile should have the right to make a request or complaint, without censorship as to substance, to the central administration, the judicial authority or other proper authorities through approved channels, and to be informed of the response without delay. JDL 76
Every juvenile should have the right to request assistance from family members, legal counsellors, humanitarian groups or others where possible, in order to make a complaint. Illiterate juveniles should be provided with assistance should they need to use the services of public or private agencies and organizations which provide legal counsel or which are competent to receive complaints. JDL 78

How accessible is the complaints mechanism to juveniles?
Is confidentiality of complaints ensured?
Is a response to the complaint provided in a timely manner?
Is the complaints mechanism used? How many complaints have been submitted in the last six months? How many have been responded to?
Are there any allegations of juveniles facing reprisals for submitting a complaint?

Medical Services

Every juvenile has a right to be examined by a physician immediately upon admission to a detention facility, for the purpose of recording any evidence of prior ill-treatment and identifying any physical or mental condition requiring medical attention. JDL 50
The medical services provided to juveniles should seek to detect and should treat any physical or mental illness, substance abuse or other condition that may hinder the integration of the juvenile into society. Every detention facility for juveniles should have immediate access to adequate medical facilities and equipment appropriate to the number and requirements of its residents and staff trained in preventive health care and the handling of medical emergencies. Every juvenile who is ill, who complains of illness or who demonstrates symptoms of physical or mental difficulties, should be examined promptly by a medical officer. JDL 51

How long does a juvenile wait to see medical personnel after asking?
Is there access to a psychologist available? If so, how often? And how is access organised?
Do medical personnel have appropriate qualifications (the same standards as for medical personnel working outside detention facilities)?

Gender Specific Aspects

Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured. Beijing Rules 26.4

The accommodation of women prisoners shall have facilities and materials required to meet women's specific hygiene needs, including sanitary towels provided free of charge and a regular supply of water to be made available for the personal care of children and women, in particular women involved in cooking and those who are pregnant, breastfeeding or menstruating. Bangkok Rules, Rule 5

If a woman prisoner requests that she be examined or treated by a woman physician or nurse, a woman physician or nurse shall be made available, to the extent possible, except for situations requiring urgent medical intervention. If a male medical practitioner undertakes the examination contrary to the wishes of the woman prisoner, a woman staff member shall be present during the examination. Bangkok Rules, Rule 10

Do girls have the same access to education as boys? Is this of the same quality?

Do girls have the same opportunities for vocational training as boys? Is this of the same quality?

Are the special needs of pregnant girls addressed properly? Are they given appropriate medical care?

Do girls have the same access (and same quality) of healthcare as boys?

Do girls have access to female sanitary products free of charge?

Are girls able to request medical examination by a female physician?

Preparation for Release

All juveniles should benefit from arrangements designed to assist them in returning to society, family life, education or employment after release. Procedures, including early release, and special courses should be devised to this end. JDL 79

Personnel

Personnel should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counsellors, social workers, psychiatrists and psychologists...Detention facilities should make use of all remedial, educational, moral, spiritual, and other resources and forms of assistance that are appropriate and available in the community, according to the individual needs and problems of detained juveniles. JDL 81

The personnel should receive such training as will enable them to carry out their responsibilities effectively, in particular training in child psychology, child welfare and international standards and norms of human rights and the rights of the child, including the present Rules. The personnel should maintain and improve their knowledge and professional capacity by attending courses of in-service training, to be organized at suitable intervals throughout their career. JDL 85

Save dignity
 Each juvenile has a right to receive vocational training
 Professionalism
 Prison is the last choice
 Qualified staff

Training
 Find jobs
 The right to receive regular visits and frequent

Medical Care

Juvenile

Prison is the last choice

Insure Safety
 Prisons should meet
 Specifications and standards
 Notification of illness
 Injury and death
 Good treatment

Respect

Reintegration and rehabilitation

Spread the feeling of justice

Care
 Connection
 Equality
 The right to make a request or complaint

Reform