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# A review of law and policy to prevent and remedy violence against children in police and pre-trial detention in eight countries

## OVERVIEW REPORT

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## Acronyms

APP	African Prisons Project (Uganda)
CAT	UN Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
CEECIS	Central and Eastern Europe and the Commonwealth of Independent States
CHRAGG	Commission for Human Rights and Good Governance (Tanzania)
CPT	European Committee for the Prevention of Torture
CRC	UN Convention on the Rights of the Child
FHRI	Foundation for Human Rights Initiative
ICCPR	International Covenant on Civil and Political Rights
ICRC	International Committee of the Red Cross
JJSO	Juvenile Justice System Ordinance (Pakistan)
NCHR	National Council for Human Rights (Jordan)
NPMs	National Preventative Mechanisms
OHCHR	Office of the High Commissioner for Human Rights
OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
PRI	Penal Reform International
SPARC	Society for the Protection for the Rights of the Child (Pakistan)
SRSG	Special Representative of the Secretary-General
UHRC	Uganda Human Rights Commission
UN	United Nations
UNICEF	UN Children's Fund
UNODC	UN Office on Drugs and Crime
UPR	Universal Periodic Review
WHO	World Health Organisation

# 1. INTRODUCTION

‘Juvenile justice is a core dimension of the rights of the child and a pivotal area where States’ commitment to children’s rights can be best expressed. We have a unique opportunity to promote a paradigm shift and help the criminal justice system evolve from an adult universe where children and adolescents hardly belong and where violence remains a high risk into an environment where children are seen as rights holders and are protected from all forms of violence at all times.’

Marta Santos Pais, the Special Representative of the Secretary-General (SRSG) on Violence Against Children speaking at an experts meeting held in January 2012 in Vienna to formulate and accelerate the adoption of effective measures to protect children within the juvenile justice system against all forms of violence.

Violence against children who are deprived of their liberty is a severe violation of child rights that is frequently invisible and under-researched. This is despite the fact that the 2006 UN Study on Violence found that children in care and justice institutions may be at higher risk of violence than virtually all other children.<sup>1</sup> It is very difficult to get a full and clear picture of the prevalence of violence against children in detention. Nonetheless, there is reliable and consistent evidence that children are at significant risk of violence in police and pre-trial detention in both developed and developing countries and that violence in these settings is widespread and in some cases normalised. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment states that ‘Violence in places of detention, including special institutions for children, is manifest in several ways, mainly through physical and sexual violence, as well as through verbal abuse. In addition, children are also subjected to violence as a result of conditions of detention, or as a form of discipline or punishment’.<sup>2</sup>

The World Health Organisation (WHO) explains how the impact of violence on children in the general population can have irreversible and life-long consequences: ‘it is associated with risk factors and risk-taking behaviours later in life. These include violent victimization and the perpetration of violence, depression, smoking, obesity, high-risk sexual behaviours, unintended pregnancy, and alcohol and drug use. Such risk factors and behaviours can lead to some of the principal causes of death, disease and disability – such as heart disease, sexually transmitted diseases, cancer and suicide.’<sup>3</sup>

States that are parties to the Convention on the Rights of the Child (CRC) have a clear obligation to take all appropriate legislative, administrative and educational measures to protect children in detention from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment or exploitation, including sexual abuse.<sup>4</sup> Furthermore, under Article 40 (1), of the CRC states are obliged to: ‘recognise the right of every child alleged as,

<sup>1</sup> United Nations Secretary-General, *World Report on Violence against Children* (2006), p175

<sup>2</sup> *Sexual Violence in Institutions, including in detention facilities*, Statement by Manfred Nowak, Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment (2010)

<sup>3</sup> WHO and the International Society for Prevention of Child Abuse and Neglect (2006) *Preventing child maltreatment: a guide to taking action and generating evidence*

<sup>4</sup> CRC, Article 19

accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.' In their General Comment on Children's Rights in Juvenile Justice (General Comment No. 10) the CRC Committee asserts that all forms of violence in the treatment of children in conflict with the law must be prohibited and prevented.<sup>5</sup> The right of children to protection from violence is also found in the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Under Article 24 of the ICCPR, children enjoy the right 'to such measures of protection as are required by [their] statuses as minors. In addition, both the ICCPR and CAT prohibit cruel, inhuman, or degrading treatment.

Penal Reform International (PRI) has undertaken a desk review that aims to increase our understanding of the specific legal and policy measures that can work to prevent and remedy violence against children in detention. The review focuses on eight target countries selected because they are countries where PRI has a presence and/or relative influence to follow up recommendations - Bangladesh, Georgia, Jordan, Kazakhstan, Pakistan, Russia, Tanzania and Uganda. For each country the desk review aims to:

- identify policy and legislative measures already in place to prevent and detect violence, to assist victims and to make perpetrators accountable;
- highlight significant gaps in provision; and
- make recommendations for improvements.

This report first describes the background to and methodology used in the desk review before summarising its key findings and recommendations.

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<sup>5</sup> UN Committee on the Rights of the Child (CRC), *CRC General Comment No. 10 (2007): Children's Rights in Juvenile Justice*, 25 April 2007, CRC/C/GC/10 hereafter General Comment No.10, para 13

## 2. BACKGROUND TO THE DESK REVIEW

### 2.1. DEFINITIONS

For this desk review, children are defined as all those under 18.<sup>6</sup> In the context of detention, violence against children can take many forms including torture, beatings, isolation, restraints, rape, harassment, self-harm and humiliation. This desk review draws on definitions of violence provided by the CRC: 'all forms of physical or mental violence, injury and abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse'.<sup>7</sup> This includes torture which is defined by the Committee on the Rights of the Child in a recent General Comment as 'violence in all its forms against children in order to extract a confession, to extra-judicially punish children for unlawful or unwanted behaviours, or to force children to engage in activities against their will, typically applied by police and law enforcement officers, staff of residential and other institutions and persons who have power over children, including non-State armed actors'.<sup>8</sup> The Committee on the Rights of the Child has emphasised that the term violence 'must not be interpreted in any way to minimize the impact of, and need to address, non-physical and/or non-intentional forms of harm (such as, *inter alia*, neglect and psychological maltreatment)'.<sup>9</sup>

### 2.2 METHODOLOGY USED

A list of indicators of law and policy measures that can prevent and respond to violence against children in detention were drawn up. These were based upon various sources including the report prepared by the Office of the High Commissioner for Human Rights (OHCHR), UN Office on Drugs and Crime (UNODC) and the SRSG on Violence against Children entitled *Joint Report on Prevention of and Responses to Violence Against Children within the Juvenile Justice System* and the research plan used by UNICEF in the Central and Eastern Europe and the Commonwealth of Independent States (CEE/CIS) region supporting research into the torture and ill-treatment of children in the context of juvenile justice: prevalence, impact, prevention, detection, assistance and accountability. Please see Annex 1 for the indicators used. These indicators include:

- Having systematic information and data gathering in place to determine the scale and character of the problem;
- Having a comprehensive policy on children's law and justice that makes it clear that children in conflict with the law are rights holders, violence against children in detention is unacceptable and that perpetrators will be held accountable;
- Ensuring that deprivation of liberty is used as a measure of last resort by having in place an appropriate minimum age of criminal responsibility, diversion measures and alternative measures to detention;
- Ensuring that children are detained for the shortest appropriate period of time by implementing effectively legal limits on time spent in police and pre-trial detention;
- Protecting children when they are in detention by separating children from adults, having properly trained, qualified and remunerated employees working in detention facilities and ensuring contact with families, lawyers and civil society;

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<sup>6</sup> CRC, Article 1

<sup>7</sup> CRC, Article 19

<sup>8</sup> UN Committee on the Rights of the Child (CRC), *General Comment No. 13 (2011): The right of the child to freedom from all forms of violence*, 18 April 2011, CRC/C/GC/13 para 26

<sup>9</sup> *Ibid.* para 4

- Having an effective independent complaints and monitoring mechanism; and
- Holding those responsible for violence against children accountable through investigation of allegations, prosecution of those implicated by the evidence and imposition of proportionate penalties where applicable.

A desk review was conducted to assess whether the above pre-defined law and policy measures were in place in Bangladesh, Georgia, Jordan, Kazakhstan, Pakistan, Russia, Tanzania and Uganda. The desk review also sought to consider the extent to which the measures were implemented in practice where such information was available. The desk review itself was an intensive literature search, review, and synthesis of relevant documents concerning each of the eight countries' current law and policy relating to the indicators identified. It drew upon a wide range of sources including information and reports from international NGOs such as UNICEF, UN and regional human rights mechanisms such as the Universal Periodic Review (UPR), National Human Rights Institutions, civil society and, in some instances, the media. Separate reports were developed for each country (these are annexed below) and the findings from the desk review were distributed to partner organisations and PRI regional offices that are working on children and justice in each country. They were asked to fill in remaining gaps and comment on the accuracy, credibility and relevance of the information provided.

This desk review focuses on police and pre-trial detention based on the assumption that these settings are particularly dangerous for children. Children can be vulnerable when in contact with the police: unreasonable force may be used in the course of arrest and during interrogations in order to force confessions; they may be held for lengthy periods of time alongside adult detainees; the arrest and placement of children in police detention may go unrecorded for some time, thereby providing law enforcement officials with a cloak of impunity; children can be very isolated at the police station; they may be denied access to legal representatives; and their families are often not told that their child has been arrested or where they are being held. Children in pre-trial detention are often at greater risk than those who have been convicted of being held in the same overcrowded pre-trial detention facilities as adults, which can increase the risk of violence occurring.

The way in which girls and boys experience violence in detention can be different. Girls are always in the minority within criminal justice systems for children and require special protection as a consequence. As a result of their low numbers, many countries do not have special facilities for them and they are often held with adult women, which may increase the risk of physical and sexual abuse. Furthermore, they can be at risk of being held in isolation or far from their homes in order to keep them in institutions separate from boys. There may be a lack of female staff in facilities where girls are detained. Efforts were made to reflect these differences in the design of the desk review questions for each country.

### **2.3 CHALLENGES AND LIMITATIONS**

This desk review is designed to provide a snapshot of the state of play of existing law and policy measures to prevent and reduce violence against children in eight countries and as such provide a useful springboard for further action on the ground. However, it has many limitations. It has a limited scope; for example, it doesn't consider primary and secondary crime prevention measures for children, it doesn't examine violence by police which doesn't



result in arrest and detention (for example against children living or working on the street) and doesn't look at law and policy in place for children who are in post-trial detention. It also does not cover administrative or immigration detention or detention of children who are held with their mothers.

It is only a desk review and not original research and is therefore hampered by its reliance on existing research on the issue. Although every effort was made to ensure its comprehensiveness it is possible that key sources were not accessed. At times the only information available was out of date and it was not always possible to provide an up-to-the-minute account of current law and policy measures. In many of the eight selected countries it was hard to find research on implementation of law and policy in practice so this research reveals gaps in law and policy alone. As a result the research was not always nuanced enough to identify which of the proposed complementary measures should be prioritised and which are most likely to succeed. Despite these limitations, it is hoped that the desk review and country reports are a useful starting point for further action.

### 3. FINDINGS AND RECOMMENDATIONS

This desk review focuses on a number of legal and policy measures which, it is assumed are amongst the minimum measures that should be in place in order to construct a justice system for children which prevents, detects and remedies violence against children effectively. The following gives an overview of the extent to which these legal and policy measures are in place in our eight selected countries and makes some general recommendations for improvement. For more detailed analysis of the law and policy referred to please see the individual country reports annexed below. The findings are divided into the following nine categories of legal and policy measures:

- Information and data collection
- Comprehensive policy
- Use of detention as a last resort
- Detention for the shortest possible time
- Prevention measures at the police station
- Prevention measures during court proceedings
- Prevention measures in pre-trial detention facilities
- Independent monitoring mechanisms
- Measures to ensure accountability

#### 3.1 INFORMATION AND DATA COLLECTION

Evidence of violence against children in detention was found in all eight of our target countries from a variety of sources but it was very difficult to secure reliable and transparent data on the extent of the problem.

All eight of the target countries have ratified the CRC and evidence of violence against children in detention was found in the Committee on the Rights of the Child's Concluding Observations as well as shadow reports prepared by civil society organisations working directly with children in conflict with the law. All of our countries, except Tanzania, have ratified CAT, and shadow reports and Concluding Observations by the Committee against Torture were also sources of information.<sup>10</sup> Only Kazakhstan and Georgia have ratified the Optional Protocol to the Convention against Torture (OPCAT). Information about violence against children in police and pre-trial detention was also generated by the stakeholder's reports to the Universal Periodic Review (UPR) mechanism as well as the Special Procedures of the UN Human Rights Council (primarily the UN Special Rapporteur on Torture). Georgia and Russia have both ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the reports of the Committee for the Prevention of Torture (CPT) were also drawn upon.

A further important source was information provided by National Human Rights Institutions that monitor detention facilities where children are held or receive complaints directly from children. This was particularly the case in Tanzania where its National Human Rights

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<sup>10</sup> However, Bangladesh's initial report to the Committee against Torture has been overdue since 1999 and Pakistan ratified in 2010 so has yet to submit its initial report.

Institution, the Commission for Human Rights and Good Governance (CHRAGG), conducted a series of monitoring visits to review the conditions for children in detention in Tanzania.<sup>11</sup>

However, the centrally-collected governmental data on children in conflict with the law that is publicly available - such as statistics published by Ministries of Justice - rarely include specific data relating to the prevalence of violence. In many contexts it was difficult to find data even regarding the numbers of children detained each year in pre-trial detention and very difficult to find numbers of children held in police custody. In most of our eight countries, the management of data regarding children in conflict with the law is not sufficiently coordinated, systematic or comprehensive and is not always publicly available. When a government does not have sufficient and relevant information about how a distinct justice system for children is working in practice then there is an increased risk that children may be exposed to violence, that perpetrators will not be held accountable and that the ill-treatment of children in detention remains invisible and unreported.

### **RECOMMENDATION TO IMPROVE THE GATHERING AND USE OF DATA**

All of our countries need to have more effective and more transparent data collection and publication on indicators that can help to address violence covering the following<sup>12</sup>:

- Time spent in detention before sentence
- Number of child deaths in detention during 12 months
- Percentage of children not wholly separated from adults
- Percentage of children visited by family member in last three months
- Percentage who enter a pre-trial or pre-sentence diversion scheme
- Number of children in detention per 100,000 child population
- Percentage of children in detention who are victims of self-harm during a 12-month period
- Percentage of children in detention who are victims of sexual abuse during a 12-month period
- Percentage of children in detention who have experienced closed or solitary confinement at least once during a 12-month period
- Existence of a system guaranteeing regular independent inspection of places of detention
- Existence of specialised standards and norms concerning recourse by personnel to physical restraint and use of force with respect to children deprived of liberty
- Existence of specialised standards and norms concerning disciplinary measures and procedures with respect to children deprived of liberty

The UNODC-UNICEF Manual suggests that data should be disaggregated by gender, ethnicity, offence and district of origin. It also suggests that data on juveniles deprived of

<sup>11</sup> CHRAGG (2011) *Inspection Report for Children in Detention Facilities in Tanzania*

<sup>12</sup> These indicators are based upon those recommended by UNODC and UNICEF in their *Manual for the measurement of juvenile justice indicators* (2007) United Nations: New York, and also on indicators outlined in Detrick S, Abel G, Berger M, Delon, A and Meek R (2008). *Violence against children in conflict with the law: A study on indicators and data collection in Belgium, England and Wales, France and the Netherlands*. Amsterdam, Defence for Children International.

liberty be disaggregated by the kind of facility in which they are confined. The proposed categories are police stations, juvenile detention facilities, 'juvenile rehabilitation facilities/schools' and 'prison', defined as 'detention facility housing both children and adults.'

### **3.2. COMPREHENSIVE LAW AND POLICY ON JUVENILE JUSTICE**

In their General Comment on Children's Rights in Juvenile Justice, the Committee on the Rights of the Child state that: '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.'<sup>13</sup> The development of a comprehensive law and policy on juvenile justice in line with the core elements set out in the Committee on the Rights of the Child's General Comment No 10 can help to construct a climate where children in conflict with the law are defined as rights holders who are entitled to proportionate and fair treatment in line with international human rights standards. Such a policy can make it clear that violence against children in detention is unacceptable and that perpetrators will be held accountable.

Amongst our eight countries, Uganda comes closest to having a fully comprehensive policy on justice for children that ensures that children are separated and treated differently from adults at all stages of the criminal proceedings. For the rest, rehabilitation instead of punishment is yet to become the main aim and in the absence of a child-focused approach, most of our eight countries model their law and policy for children on that of adults with certain limited adaptations such as the notification of parents or guardians of arrest and reduced terms of detention relative to those handed to adults. The lack of a separate and defined policy makes it more difficult for different agencies with responsibility for children in conflict with the law such as the police, probation, social welfare and detention authorities to work together.

### **RECOMMENDATION**

A comprehensive law and policy reforming justice for children should be developed and implemented that addresses all elements of the system from prevention of crime through to reintegration. An inter-agency approach should be adopted and clear responsibilities and timeframes allocated to each.

### **3.3 USE OF DETENTION AS A LAST RESORT**

Keeping children out of police and pre-trial detention in the first place will reduce the numbers of children exposed to violence in these settings. There are a number of measures that are required for this to happen that are explored below.

#### **Setting the age of criminal responsibility at 12 or higher**

<sup>13</sup> General Comment No 10, para 10

Setting the age of criminal responsibility as high as possible and no lower than 12 years (as recommended by the UN Committee on the Rights of the Child<sup>14</sup>) is an important preventive measure since it reduces the number of children in detention overall. Legislation on this issue varies considerably with minimum ages of criminal responsibility ranging between seven in Jordan and Pakistan, nine in Bangladesh, 10 in Tanzania, 12 in Uganda, 14 in Georgia and 16 in Russia and Kazakhstan (14 for certain crimes in both countries). Bangladesh, Pakistan and Tanzania - which have a common-law tradition - still retain the principle of *doli incapax* (where it must be proved that children within a certain age bracket above the minimum age of criminally responsibility have the required maturity to be deemed criminal responsible). In many of the eight countries, children lack documents that can prove their age owing to inadequate birth registration procedures. Age determination procedures can be erratic and the methods used subjective.

## RECOMMENDATIONS

- It is strongly recommended that Bangladesh, Jordan, Pakistan and Tanzania raise the age of criminal responsibility for all children to at least 12 years in line with guidance from the Committee on the Rights of the Child.
- Bangladesh, Tanzania and Pakistan should remove the *doli incapax* provision.
- Birth registration must be encouraged and proper age determination procedures established and implemented within police stations and within court systems.

## Diversionsary measures

Article 40 (3)(b) of the CRC requires States to promote laws and procedures for dealing with children in conflict with the law without resorting to judicial proceedings. Diverting children away from the formal criminal justice system is an important way of ensuring they are not exposed to violence within detention settings. The law and policy in place in our eight countries regarding diversion is inevitably variable. Some countries have little or no provision (Bangladesh and Pakistan); others have patchy provision that is largely implemented with the support of civil society (Jordan, Russia and Tanzania). Georgia has some successful pilot programmes to build upon, Kazakhstan has recently introduced some innovative mediation programmes and Uganda has perhaps the most extensive provision.

## RECOMMENDATION

Far more attention must be given to developing and implementing measures for diverting children out of the formal justice system through the use of police cautions, mediation and alternative dispute resolutions. Police and prosecutors should be trained in these methods and judges should be involved in their development so they have confidence in their effectiveness.

<sup>14</sup> General Comment No 10, para 32

## Having alternatives to pre-trial detention

International law severely limits the circumstances in which children can be placed in detention either after being charged and awaiting trial or while under investigation pre-charge. Article 37(b) of the CRC provides that detention shall only be used as a last resort and for the shortest possible time. In addition, Rule 17 of the Beijing Rules provides that detention 'shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response'. Rule 2 of the Havana Rules add that 'deprivation of the liberty of a juvenile [...] should be limited to exceptional cases.' Whenever possible, pre-trial detention should be avoided, and judges should consider alternative measures, such as close supervision, care or placement with a family or in an educational setting or home. Having alternatives to pre-trial detention will reduce the numbers of children exposed to violence in pre-trial detention.

The Committee on the Rights of the Child acknowledges that pre-trial detention can be considered where it is necessary to ensure appearance at court proceedings, or where the child is an immediate danger to himself or herself or others, but only where non-custodial alternatives are not sufficient. Any pre-trial detention should be subject to regular review. Law and policy in our eight countries is not generally in line with international standards and, with the exception of Georgia and Kazakhstan, pre-trial detention is largely over-used.

Country	Total no. of children held in police detention, per annum or at the time of assessment <sup>15</sup>	Total no. of children held in pre-trial detention, per annum or at the time of assessment <sup>16</sup>
<b>Bangladesh</b>	No figures available.	No figures available.
<b>Georgia</b>	During the year 2010, 19 girls and 437 boys were detained in police temporary detention isolators. <sup>17</sup>	As of 1 April 2012 <sup>18</sup> , there were just seven children held in pre-trial detention (one of them female). <sup>19</sup>
<b>Jordan</b>	No figures available.	During the year 2010, a total of 4,371 children <sup>20</sup> , were held in both pre- and post-trial detention, (the vast majority were boys in pre-trial detention).
<b>Pakistan</b>	1 September 2009: 'At a given time approximately 9,000 to 10,000 children remain in criminal litigation with the majority of them	As of December 2011 there were 1,256 children in pre-trial detention. <sup>22</sup>

<sup>15</sup> Most recent figures available

<sup>16</sup> Most recent figures available

<sup>17</sup> Annual Report of the Public Defender of Georgia (2010) p.46 Available at <http://www.ombudsman.ge/files/downloads/en/rthhchgdjhxwaxayjhp.pdf>

<sup>18</sup> Source of information: Penitentiary Department

<sup>19</sup> Ministry of Justice statistics

<sup>20</sup> Information provided from the Annual Report of the Directorate of Social Defence (2010) as translated by PRI consultant Dr Fawaz Ratrou

	released on bail at their first appearance in the court. <sup>21</sup>	
<b>Russia</b>	No figures available for desk review	The number of children in pre-trial detention centres at the end of 2011 was 1,781. <sup>23</sup>
<b>Tanzania</b>	No figures available for desk review	At the time of assessment in 2010, there were a total of 80 children being detained in pre-trial detention in Remand Homes and an estimated 1,400 children held in adult prisons in both pre- and post-trial detention. <sup>24</sup>
<b>Uganda</b>	No figures available for desk review	At the time of assessment in 2010, a total of 316 children were found in the four remand homes. <sup>25</sup>

## RECOMMENDATION

If not already in place then legislation should be introduced that imposes restrictions on the use of pre-trial detention so it is only used as a last resort and for the shortest possible period of time and where there is a risk of absconding and/or if a child is a danger to themselves or others.

### Abolishing status offences

Status offences include truancy, running away, violating curfew laws or possessing alcohol or tobacco.<sup>26</sup> Such conduct would not be a criminal offence if committed by an adult but a child can be arrested and detained simply on the basis of their age. Status offences focus disproportionately on regulating the actions of girls as well as boys who are poor, disadvantaged or who work or live in the streets and therefore spend much of their time outside of the home. These offences should be abolished and the related conduct should be addressed instead through multi-agency child protection mechanisms. This will ensure that children are not held in detention and exposed to the risk of violence for behaviour which does not represent a serious risk to the child or others. In several countries, for example Bangladesh and Uganda, the police have broad discretionary powers to 'detain' children in

<sup>22</sup> Administration of Juvenile Justice in Pakistan SPARC (2011) Available at: <http://sparcpk.org/PA-JJ.html>

<sup>21</sup> Written replies by the government of Pakistan to the list of issues (CRC/C/PAK/Q/3-4) prepared by the Committee on the Rights of the Child in connection with the consideration of the third and fourth periodic reports of Pakistan (CRC/C/PAK/3-4) para 87

<sup>23</sup> Figures from Federal Service of Execution of Punishments of Russia, Available at <http://fsin.su/structure/inspector/iao/statistika/Xar-ka%20v%20CIZOiT/>

<sup>24</sup> CHRAGG (2011) *Inspection Report for Children in Detention Facilities in Tanzania*

<sup>25</sup> African Prisons Project (2010) *Juvenile Detention in Uganda*, Table on p13, Available at: <http://www.africanprisons.org/research/juvenile-detention-in-uganda/>

<sup>26</sup> See Child Rights Information Network (2010) *Global Report on Status Offences*, Available from [www.crin.org/docs/FileManager/Status\\_Offenses.pubs\\_final.pdf](http://www.crin.org/docs/FileManager/Status_Offenses.pubs_final.pdf)

need of protection, frequently children living or working on the street, who have committed status offences such as loitering or begging.

## RECOMMENDATION

A clear distinction must be made between measures for children in need of protection and those in conflict with the law to ensure that those in need of protection are not taken through the criminal justice system. Similarly, status offences such as begging and prostitution should be identified as welfare issues and children engaging in these activities should be dealt with within a national child protection system.

### 3.4 DETENTION FOR THE SHORTEST POSSIBLE TIME

#### Limiting time in police detention

The UN Committee on the Rights of the Child has indicated in General Comment No 10 that no child should be detained by the police for more than 24 hours without a judicial order. The longer the period spent in police custody without the knowledge of the court system (and possibly without the knowledge of family or guardian) the greater the risk of violence taking place.

Most of our countries do have an explicit provision that children should not be held for longer than 24 hours including Bangladesh, Jordan, Uganda, Tanzania and Pakistan. However, for all of these there is evidence that the legal time limit is not adhered to in practice; for example, in Tanzania the CHRAGG assessment found that 37% of the 179 children who were interviewed were held in detention in police stations for more than four days. A further 33% revealed that they had been held for between two to three days and only 30% said that they had been held within a 24-hour time period.<sup>27</sup> In Georgia, Russia and Kazakhstan the time limit for detaining a child in police custody is a maximum of 72 hours.

## RECOMMENDATIONS

- Where already in place, the time limit of 24 hours for detaining a child in police custody must be strictly enforced.
- In Georgia, Russia and Kazakhstan, the time limit for detaining a child in police custody must be reduced from 72 hours to 24 hours for all children in line with the recommendations of the Committee on the Rights of the Child.

#### Limiting time in pre-trial detention

The maximum time spent in pre-trial detention should be no longer than six months.<sup>28</sup> Enforcing time limits will ensure that the numbers of children in pre-trial detention are

<sup>27</sup> CHRAGG (2011) *Inspection Report for Children in Detention Facilities in Tanzania*

<sup>28</sup> UN Committee on the Rights of the Child (CRC), *CRC General Comment No. 10 (2007): Children's Rights in Juvenile Justice*, 25 April 2007, CRC/C/GC/10, para 83



reduced and therefore the risk of violence is lessened. Detention should be reviewed at least every 14 days. Some countries have no clearly defined limits at all (Bangladesh, Jordan and Kazakhstan). In Uganda and Pakistan the time limit is six months and in Georgia it is nine months from the point of arrest. In Russia it is 18 months in very exceptional circumstances and in Tanzania it can be a maximum of two years.

#### **RECOMMENDATION**

The length of time children can be held in pre-trial detention must be limited by legislation to a maximum of six months in order to ensure that they are only deprived of their liberty for the shortest possible period, in line with international standards. Provisions should be included that ensure the review of detention every 14 days by a judicial body.

### **3.5 PREVENTION MEASURES AT THE POLICE STATION**

#### **Proper registering of detainees within a time limit**

Police stations should register a child's details (including age) and the time of arrest/apprehension and these registers should be open to inspection by lawyers, social workers and independent monitoring bodies. Registering of detainees is an important preventive measure since it establishes that the police station has responsibility and is accountable for the treatment of a child detainee. There is a mixed picture with some countries silent on the issue (Bangladesh and Tanzania) and others having it as a requirement but with evidence of it not being properly enforced (eg Kazakhstan).

#### **RECOMMENDATION**

Proper procedures for registering children and admissions at the police station should be developed and strictly implemented.

#### **Access to medical care at the police station**

Children should have access to medical treatment whilst in police detention if they have been injured or are in a state of psychological trauma. For most countries it was very difficult to obtain information on the policies followed should a child require medical attention whilst at the police station reflecting an absence of clear guidance overall on the treatment of children in police detention.

#### **RECOMMENDATION**

Proper procedures should be in place to ensure that a child is given access to medical care when required at the police station.

### **Specialist police officers to deal with children**

International standards<sup>29</sup> encourage specialisation within the police to deal with child offenders and a child should be referred to the relevant specialised officer as soon as possible following arrest. All of the countries except Pakistan have provision for some kind of specialised children's desks and trained police officers; however, in many countries this important requirement is very partially implemented at best with sporadic geographical coverage.

#### **RECOMMENDATION**

All law enforcement agencies should have specialised child units and well-trained child justice personnel to deal with children who come into contact with law enforcers or law enforcement agencies.

### **Protection from abuse when taking samples and during searches**

The process of taking samples and searching children in order to obtain evidence or for security purposes can be abused by police. The international instruments do not provide any specific protection for children in the course of searches although Rule 10.3 of the Beijing Rules requires contact between law enforcement officials and children to 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 him or her. Intimate searches (such as taking of blood, saliva or pubic hair) should only be taken in limited circumstances and carried out by a medical practitioner. No countries, aside from Georgia, have child-specific law and policy on this issue although some have provision in legislation for searches to be conducted by an officer of the same gender.

#### **RECOMMENDATION**

Clear guidance for police should be enacted regarding the taking of samples and undertaking of searches ensuring that it promotes the well-being of the child and avoids harm to him or her. A child in detention should only be searched by a police officer of the same gender and intimate searches should only be carried out in limited circumstances and where safeguards are in place to protect the child.

### **Separation from adults during police detention**

It is vitally important that there is law and policy in place that sets out the appropriate physical conditions for police holding cells that accommodate children and ensures separation from adults, particularly if the child may spend the night in police detention. All countries save for Pakistan have a formal principle in place of separation of adults and children but there is a range of different policies and practice in our eight countries and varying degrees of separation from adults in practice at the police station. In Tanzania, out of the 30 police stations visited during the CHRAGG assessment in 2011, only four had a

<sup>29</sup> Beijing Rule 12.1; Riyadh Guideline 58

separate cell where children could be detained. Uganda has a constitutional provision to the effect that 'A child offender who is kept in lawful custody or detention shall be kept separately from adult offenders.' (Article 34(6)). However, a report by the Foundation for Human Rights Initiative (FHRI) on juvenile justice in Uganda states that there are very few specialised cells in police stations and children are 'routinely' detained with adults.<sup>30</sup> This is confirmed by the Commissioner of Police and Community Affairs: 'The police have few detention facilities and in some cases children are detained with adults or at police posts where such detention is not allowed. It is not uncommon to find children remanded at police stations by courts. This may be due to lack of remand homes in some magisterial areas.'<sup>31</sup>

There is no obligation in Pakistan for children to be detained separately from adults in police custody, and while the Prison Act and Prison Rules require the separation of male children from adults, and girls from male detainees in pre-trial detention, this is not extended to police facilities. UNICEF has reported that children are often kept in the same quarters as adults, usually locked up for 24 hours a day.<sup>32</sup>

## RECOMMENDATION

Legislation should explicitly require the separation of children and adults at all points of detention or deprivation of liberty including during transportation to court/other facilities as well as during police and pre-trial detention.

## Notification of parents and others

Rule 10.1 of the Beijing Rules provides that a child's parents or guardian shall be notified immediately if their child is apprehended. The Standard Minimum Rules for the Treatment of Prisoners states that an 'untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends'.<sup>33</sup> The CRC Committee in General Comment 10 recommends that: 'To promote parental involvement, parents must be notified of the apprehension of their child as soon as possible.'<sup>34</sup>

In all eight of our countries, there is law requiring that parents/guardians and for some countries probation officers must be notified of a child's arrest. However, there is evidence of considerable difficulties in implementation. In 2008, the Bangladesh Police commissioned an independent piece of research during which 500 children in conflict with the law were interviewed across six divisional cities.<sup>35</sup> Their survey found that 55% of the time probation officers are not notified by the police of the arrest of a child. Furthermore, the authorities contact parents only 52% of the time and often allegedly to get money from them in exchange for the release of their children. In Tanzania, the CHRAGG assessment found that

<sup>30</sup> Foundation for Human Rights Initiative (2009) *Juvenile Justice in Uganda, January to July 2009*

<sup>31</sup> Commissioner of Police Affairs (undated) *Role of the police under diversion: an assessment, successes and failures*, Available

from <http://www.createsolutions.org/unicef/Documents/resources/country/africa/ugandapoliceroleindiversion.pdf>

<sup>32</sup> UNICEF (2006) *Juvenile Justice in South Asia: Improving Protection for Children in Conflict with the Law*

<sup>33</sup> Standard Minimum Rules for the Treatment of Prisoners, Rule 92

<sup>34</sup> General Comment No 10, para 54

<sup>35</sup> *Bangladesh Police Assessment Study for Children* (2009) <http://www.police.gov.bd/index5.php?category=230>

42% of children said they were not given a chance to contact their relatives upon arrest whilst 44% said they were allowed to contact their relatives.<sup>36</sup> In Uganda, FHRI report that parents or guardians are often scared to accompany their children to police stations in case they themselves are arrested. As a consequence, children appear in court unaccompanied and the magistrate is forced to deny them bail and remand them since bail is conditional on being accompanied by an adult.<sup>37</sup>

## RECOMMENDATION

Increased efforts should be made to ensure that existing policy and regulations are implemented that require the mandatory presence of a parent/guardian/legal representative/appropriate adult during the interrogation of a child at a police station.

### Legal representation

Article 37(d) of the CRC states that every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance. Article 40 (2)(b)(ii) further specifies that States shall ensure that every child shall have legal or other appropriate assistance in the preparation and presentation of his or her defence. The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems assert that states should establish child-friendly legal aid systems that 'enable children, who are arrested, deprived of personal liberty, suspected or charged with a crime, to contact their parents/guardians at once and to prohibit any interview in the absence of a parent/guardian, and lawyer or other legal aid provider'.<sup>38</sup> Such contact with the outside world can be a vital preventive mechanism and can also be an opportunity for children to report violence.

For several of our countries, legal representation is allowed but is not mandatory; Pakistan, Uganda, Tanzania and Bangladesh. In some countries their presence during interviews is obligatory; Russia, Kazakhstan, Jordan, Georgia. In all countries the systems for provision of legal representation for children in conflict with the law are problematic. In Pakistan, the Juvenile Justice System Ordinance of 2000 (JJSO) states that 'every child who is accused of the commission of an offence...shall have the right of legal assistance at the expense of the State'. However, it does not detail at what points of the criminal justice system this legal assistance should be provided, or who is responsible for informing a child of this right and ensuring it is fulfilled.

In Tanzania only 22.35% of the children interviewed during CHRAGG inspection visits said that they had legal representation whilst they were held in police detention. Nearly 59% said they did not have contact with a lawyer, whilst the remainder did not know.<sup>39</sup> To put these figures into context, 75% of Tanzania's population lives in rural areas and there are only 1,135 lawyers to service a population of 42 million.<sup>40</sup> The Tanzanian Women Lawyers

<sup>36</sup> CHRAGG (2011) *Inspection Report for Children in Detention Facilities in Tanzania*

<sup>37</sup> Foundation for Human Rights Initiative (2009) *Juvenile Justice in Uganda, January to July 2009*, p6

<sup>38</sup> UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, para 52(b)

<sup>39</sup> CHRAGG (2011) *Inspection Report for Children in Detention Facilities in Tanzania*

<sup>40</sup> Figures cited in UNODC Survey report on access to legal aid in Africa (2011)

[http://www.unodc.org/pdf/criminal\\_justice/Survey\\_Report\\_on\\_Access\\_to\\_Legal\\_Aid\\_in\\_Africa.pdf](http://www.unodc.org/pdf/criminal_justice/Survey_Report_on_Access_to_Legal_Aid_in_Africa.pdf)

Association estimates that 13 regions (out of 21) in Tanzania have no lawyers at all. At the same time there is growing demand for paralegals, of which there are 2,500 in Tanzania.<sup>41</sup> In Russia, there have been reports that police have obtained defence counsel friendly to the prosecution who have subsequently agreed to the interrogation of their clients in their presence while making no effort to defend their clients' legal rights.<sup>42</sup>

## RECOMMENDATION

Policy and regulations should be developed that require the presence of legal assistance and the mandatory presence of a parent/guardian/legal representative/appropriate adult during the interrogation of a child at a police station.

### 3.6 PREVENTION MEASURES DURING COURT PROCEEDINGS

#### **Support from social workers/probation officers to identify alternatives to pre-trial detention**

Early involvement of social workers or probation officers in cases concerning children in conflict with the law can help to prevent violence as well as to respond to it. All of our countries, except Kazakhstan, have some provision for social workers/ probation officers to be involved in cases concerning children in conflict with the law but there are immense challenges in implementing this.

In Bangladesh, in many cases no attempt is made by the police to contact the Probation Officer to make a social inquiry report.<sup>43</sup> An additional problem is the lack of probation officers available (as of 2010 there were only 23 probation officers covering 64 districts). Where probation officers are not employed in a district, their responsibilities must fall on already-burdened social workers. For this reason, in many cases probation officers are not easily accessible or available at required times, particularly in the evenings or at weekends.<sup>44</sup>

In Jordan, the system of probation officers who are available at police stations and courts in order to provide assistance to children and their families is undermined by the lack of training and human resourcing underpinning their role: in 2007 there were 82 probation officers accredited by the Ministry of Social Development and the reports they tendered to judges have been described as 'rarely...of a sufficient standard and comprehensiveness' for judges' use.<sup>45</sup> These shortcomings are acknowledged in the Ministry of Social Development's Strategic Action Plan for the years 2011 to 2013, which aims to establish four dedicated juvenile courts and provide specialised training in juvenile justice and child protection.

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<sup>41</sup> *Ibid.*

<sup>42</sup> US Department of State *Human Rights Report 2010: Russia*, Available at: <http://www.state.gov/j/drl/rls/hrrpt/2010/eur/154447.htm>

<sup>43</sup> Justice M Imman Ali (2010) *Towards a Justice Delivery System for Children in Bangladesh*

<sup>44</sup> Justice M Imman Ali (2010) *Towards a Justice Delivery System for Children in Bangladesh*

<sup>45</sup> Terre des hommes - Lausanne in Jordan, *Assessment of the Juvenile Justice System in Jordan*, p39 2010 cited in Save the Children Sweden (2011) *Country Profile of Jordan*, available at: <http://www.ibcr.org/editor/assets/Jordan%20Country%20Profile.pdf>

In Tanzania, the CHRAGG inspection visits found that very few children had access to Social Welfare Officers who could be responsible for preparing a social investigation report to be used to inform sentencing or pre-trial detention decisions. They concluded that in most cases Magistrates are forced by circumstance to order custodial sentences owing to a lack of Probation Officers and Social Welfare Officers to deal with children.

## RECOMMENDATION

Courts must be supported in their decision-making by social workers, probation officers or other suitable persons who can liaise with family and community and identify community-based alternatives to pre-trial detention.

### Provision of legal assistance during court proceedings

Article 40 (2)(b)(ii) of the CRC as well as Article 14 (3)(d) of the ICCPR refer to the right to 'legal or other appropriate assistance in the preparation and presentation of his or her defence'. The CRC Committee recommends that States provide, as much as possible, for adequate trained legal professionals, such as expert lawyers or paralegal professionals.<sup>46</sup> The CRC Committee recommends that legal assistance and representation should be free of charge to children, a recommendation also supported by the Council of Europe.<sup>47</sup>

Jordan does not have a clear policy on this issue and many children do not benefit from legal advice or representation during their interaction with the legal system although there are a limited number of NGOs able to provide access to legal assistance for children in conflict with the law. Similarly in Bangladesh there is no policy for providing children with free and proper access to legal representation for their trial and UNICEF has noted that children are frequently tried in adult courts without any legal representation.<sup>48</sup> When a child does have legal representation assigned through government funding, where parents of a child do not have adequate financial resources, it is reported that lawyers are often assigned on a very short notice and are even substituted for other lawyers throughout the trial and therefore have little knowledge of the case or the background of the child.<sup>49</sup>

However, in Kazakhstan, specifically in Almaty and Astana, specialised groups of lawyers defend juvenile suspects and accused juveniles who are not represented by a private lawyer. They work together with a psychologist and student volunteers, who assist in preparing information relevant to legal issues as well as providing basic psychosocial assistance.<sup>50</sup> In Uganda, a draft policy on legal aid has been developed by the Justice, Law

<sup>46</sup> UN Committee on the Rights of the Child, General Comment No 10 CRC/C/GC/10 25 April 2007 para 49

<sup>47</sup> See also Guidelines of the Committee of Ministers of the Council of Europe on Child Friendly Justice 1098<sup>th</sup> meeting, 17 November 2010, [www.coe.int/wcd](http://www.coe.int/wcd)

<sup>48</sup> UNICEF (2010) *Bangladesh: Justice for Children Factsheet*

<sup>49</sup> Justice M Imman Ali/UNICEF (2010) *Towards a Justice Delivery System for Children in Bangladesh*

<sup>50</sup> Information obtained from UNICEF Regional Office for Central and Eastern Europe and the Commonwealth of Independent States April 2012, *Juvenile Justice in Central Asia, Reform Achievements and Challenges in Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan And Uzbekistan*, p14, Available at: [http://www.unicef.org/ceecis/UNICEF\\_JJ\\_Synthesis\\_2012\\_Web.pdf](http://www.unicef.org/ceecis/UNICEF_JJ_Synthesis_2012_Web.pdf)

and Order Sector which emphasises that children require legal representation from arrest onwards. This is currently undergoing consultation.<sup>51</sup>

## RECOMMENDATION

Policy and regulations should be developed that require that every child is entitled to free and well-qualified legal representation for the duration of the legal proceedings.

### Exclusion of evidence obtained through torture or threats

Courts which allow evidence that has been obtained through torture or threats add to the problems of impunity that make these practices so common for children during the investigation phase. This provision is well articulated amongst our eight countries. For example, in Georgia, the Constitution (Article 42.7) states that 'evidence obtained in contravention of law shall have no legal force', with torture and ill-treatment prohibited by Article 17 of the Constitution.

In Bangladesh, the High Court Division has held that confession made by children is of no legal effect.<sup>52</sup> In a later case it was felt by the High Court Division that 'prudence demands that when children are taken to record their confessional statements, they must be accompanied by a parent, guardian, custodian or legal representative.'<sup>53</sup> In Jordan too, if children do not have access to legal representation and do not have a parent or guardian present during questioning then evidence collected is inadmissible according to the 2007 Juvenile Justice Law.

What is lacking is clarity about how courts should respond to a finding that a confession that was a result of torture. In Russia, for example, the Committee against Torture found that in practice there is little guidance provided to the courts on how to rule that the evidence is inadmissible, or to order an immediate and independent investigation.<sup>54</sup> In Kazakhstan, the Committee against Torture noted reports that judges often ignore the complaints of torture and ill-treatment, do not order independent medical investigations, and often proceed with the trials, therefore not respecting the principle of non-admissibility of such evidence in every instance.<sup>55</sup>

## RECOMMENDATION

Clear legal provisions should be adopted that prescribe measures to be taken by courts should evidence appear to have been obtained through torture or ill-treatment. It should be ensured that confessions made under duress are not used as evidence in trials.

<sup>51</sup> Uganda Draft National Legal Aid Policy (November 2011) Presented to JLOS by the Governance and Justice Group, Available at: [http://jlos.go.ug/uploads/Policy\\_Final\\_Uganda\\_draft\[1\]%20NOV%202011.pdf](http://jlos.go.ug/uploads/Policy_Final_Uganda_draft[1]%20NOV%202011.pdf)

<sup>52</sup> Bangladesh Legal Aid and Services Trust vs. Bangladesh and others, 22 BLD 206.

<sup>53</sup> per Md. Imman Ali, J. in *Jaibar Ali Fakir v. The State*, 28 BLD 627

<sup>54</sup> Concluding Observations for the Russian Federation of the Committee against Torture CAT/C/RUS/CO/4 (2007) Para 21

<sup>55</sup> Concluding Observations for Kazakhstan of the Committee against Torture, CAT/C/KAZ/CO/2 (2008) Para 29

### 3.7 PREVENTION MEASURES IN PRE-TRIAL DETENTION FACILITIES

#### Separation from adults in pre-trial detention

International standards, including the CRC<sup>56</sup> and the ICCPR<sup>57</sup>, are clear that children must be separated from adults when deprived of their liberty, unless it is in the child's best interests not to do so.<sup>58</sup> General Comment no 10 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'.<sup>59</sup> The CRC Committee recommends that girls are held separately from women even where States have low rates of female child offending.<sup>60</sup> Children in pre-trial detention should be held separately from children in post-trial detention.

In all of the eight countries the law is clear that children must be held separately from adults. In Jordan the Juveniles Act includes a prohibition of the detention of juveniles in centres for adults; juveniles may only be detained in juvenile welfare centres run by the Ministry of Social Development and there is no evidence to suggest that this is not observed. In Russia, Article 33 of the Federal Law 'On the detention of suspects and accused of committing crimes' states that children must be held in separate cells from adults in pre-trial detention centres of the Federal Penitentiary Service (FSIN). However, 'in exceptional circumstances' with the consent of a prosecutor, children may be housed with adults of 'positive character', convicted for the first time of a minor or average offence, the Ministry of Justice Order of 2005 states that the judgment of this 'positive character' must be made by an inspector for education and a psychologist.

In the other countries in practice separation is not always observed either owing to inadequate provision of detention facilities for children or lack of knowledge and awareness by magistrates and judges at the point of remanding children to pre-trial detention.

In Uganda, a stakeholder report to the UPR found that 'there are inadequate separate detention spaces for children: There are 4 remand homes nationwide and one reception centre in Naguru which have not been able to adequately handle the number of cases leading to continued detention of juveniles with adults'.<sup>61</sup> In its 14th annual report, the Uganda Human Rights Commission (UHRC) reported that they had found 64 children detained with adults during monitoring missions.<sup>62</sup> In Tanzania, children may not be imprisoned according to the Law of the Child Act and so in theory the issue of mixing with adults should not arise. In practice the CHRAGG assessment revealed that approximately

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<sup>56</sup> CRC, Article 37(c)

<sup>57</sup> ICCPR, Article 10(3).

<sup>58</sup> CRC, Article 37(c); United Nations Standard Minimum Rules for the Administration of Justice (Beijing Rules) GA Res 40/33 of 29 November 1985 Rule 13.4; International Covenant on Civil and Political Rights Article 10(2)(b), UN Standard Minimum Rules on the Treatment of Prisoners, ECOSOC 663(c) (xxiv) of 31 July 1957 and 2076 (LX11) 13 May 1977 Rule 8(d).

<sup>59</sup> General Comment No. 10, para 85

<sup>60</sup> See for example CRC Committee, *UN Committee on the Rights of the Child: State Party report: Canada*, 12 March 2003, CRC/C/83/Add.6; CRC Committee, *UN Committee on the Rights of the Child: Concluding Observations: Canada*, 27 October 2003, CRC/C/15/Add.215, CRC Committee, *UN Committee on the Rights of the Child: Concluding Observations: Iceland*, 13 February 1996, CRC/C/15/Add.50.

<sup>61</sup> African Prisons Project (2010) *Juvenile Detention in Uganda*

<sup>62</sup> UHRC 14th Report (2011) p27



1,400 children are held in adult prisons. Over 90 percent of these children were in pre-trial detention and the vast majority were boys. They have no legal protections since in theory they should not be in prison at all.

In Bangladesh, the Children Act, Article 51(2) states 'a youthful offender sentenced to imprisonment shall not be allowed to associate with adult prisoners'. Nothing is mentioned explicitly regarding their separation from adults in pre-trial detention on the assumption that children are detained pre-trial in children-only institutions ('places of safety'). It is often the case however, that parents request that their child be held in the local District jail since that is more accessible for them (the jails have children wings for persons up to 18 years of age). The High Court Division has held such custody to be illegal and ordered the children to be removed from the jail. Another judgement has also been issued to provide places of safety for children in every district.<sup>63</sup> In addition, children detained in 'certified institutes' are required by the Children's Rules, rule 22 (11) to be separated at night on the basis of age, with those over the age of 14 years separated from those at or below the age of 14.

In recent years Bangladesh has established a National Taskforce for Releasing Children from Jails which includes six government ministries and UNICEF, and works to find alternative options to imprisoning children in adult jails including referring them to Child Development Centres (specialised institutions for detaining children in conflict with the law as well as those in contact with the law) or reintegrating them back to their families.<sup>64</sup> The numbers of children held in adult jails has fallen significantly. According to UNICEF, in 2009, there were still 205 children aged under 18 years being held in adult jails in Bangladesh, 98 of whom were under the age of 16.<sup>65</sup> More recently, following a decision of the High Court Division<sup>66</sup> the figure has now fallen to below 10.<sup>67</sup>

In Pakistan, the Prison Act and Prison Rules require the separation of male children from adults but there is no requirement in this legislation that girls must be separated from adult female detainees.<sup>68</sup> In the Punjab region, AGHS have observed a lack of separate wards for girls who are detained alongside adult women.<sup>69</sup> Furthermore, UNICEF have reported that there is only one specific juvenile remand home in Pakistan (in Karachi) and that the majority of children are held in pre-trial detention in adult facilities, often not adequately separated from adults.<sup>70</sup> According to the NGO SPARC, detained children are kept in separate barracks (on the same detention site) to adults and there is an on-going problem of child prisoners being sexually abused by the older inmates in the same living quarters, and sometimes by the adult prisoners, as during their imprisonment children are mixed with the general prison population and adult prisoners have easy and frequent access to juvenile wards.<sup>71</sup>

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<sup>63</sup> Information provided by Justice Muhammad Imman Ali, Judge of the Appellate Division, Supreme Court of Bangladesh

<sup>64</sup> UNICEF (2010) *Bangladesh: Justice for Children Factsheet*

<sup>65</sup> *Ibid.*

<sup>66</sup> *The State- versus-The Secretary, Ministry of Home Affairs, 19 BLT 376(Suo Motun Rule No.15 of 2010)*

<sup>67</sup> Information provided by Justice Muhammad Imman Ali, Judge of the Appellate Division, Supreme Court of Bangladesh

<sup>68</sup> UNICEF (2006) *Juvenile Justice in South Asia: Improving Protection for Children in Conflict with the Law*

<sup>69</sup> AGHS Child Rights Unit (2011) *Children in Prisons: Punjab Report, January to December 2010*

<sup>70</sup> *Ibid.*

<sup>71</sup> Abdullah Khoso (2012) *Administration of Juvenile Justice in 2011 (draft)* in SPARC (2012) *State of Pakistan's Children in 2011 (draft)*

Kazakhstan also faces the challenge that children can be detained separately but in the same building and sharing facilities with adults. The internal regulations for remand centres specify that minors must be placed in cells taking into account their age, physical development and educational neglect. A report on conditions in an isolator in Astana prepared by UNICEF<sup>72</sup> staff in 2009 indicated that the four male juveniles confined there at the time of the visit were housed in a separate cell but on a floor where there are cells for adults. As there was no separate area outside the cell, either indoors or outdoors, reserved for the use of juvenile detainees, they were confined in their cell for most of the day.

In Georgia, the Criminal Procedural Code, Article 323 specifically refers to the separation of children in pre-trial detention: 'The juvenile defendant, to whom detention is applied as a preventive measure, shall be held separately from adult defendants, convicts, and juvenile convicts'. Article 68 of the Imprisonment Code states that a child may stay in a juvenile establishment until the age of 20, although doesn't state whether or not those who have reached the age of maturity will be separated from those under the age of 18.

Georgia has a very small number of children in pre-trial detention and currently they are usually held in pre-trial detention facilities, isolated from adult inmates.<sup>73</sup> However, the Public Defender has highlighted the fact that girls, both those on remand and sentenced, are rarely separated fully from women prisoners. For example, the newly-separated renovated unit for female girls on the territory of the General and Prison Regime Penitentiary Establishment No. 5 for Women and Juveniles is only formally separated from the unit for women and there is a shared yard which means that, in practice, girls stay for a fair period of the day with sentenced women. During one monitoring visit, the establishment was overcrowded and due to this, female juveniles were living with adults in one cell.<sup>74</sup>

## RECOMMENDATIONS

- Amendments to legislation should be made that explicitly require the separation of girls and boys and adults at all points of detention or deprivation of liberty including during transportation to court/other facilities and during both police and pre-trial detention. Boys must be held separately from girls and children in pre-trial detention should be held separately from children who have been convicted.
- Efforts should be made to separate older and younger children whilst held in detention.

<sup>72</sup> UNICEF Regional Office for Central and Eastern Europe/Commonwealth of Independent States (2009) *Assessment of juvenile justice reform achievements in Kazakhstan*

<sup>73</sup> IJJO Interview with PRI Georgia's Regional Director on the evolution of the Juvenile Justice system, 28 March 2012 found at: <http://www.penalreform.org/news/ijjo-interview-pri-georgias-regional-director-evolution-juvenile-justice-system>

<sup>74</sup> Public Defender of Georgia *Annual Report of the Public Defender of Georgia: The Situation of Human Rights and Freedoms in Georgia 2010*

### **Regular visits by parents, guardians, family members and others**

Article 37(c) of the CRC provides that: 'Every child deprived of liberty ... shall have the right to maintain contact with his or her family through correspondence and visits,'<sup>75</sup> while the Beijing Rules provide that parents or guardians shall have a right of access 'in the interests and well-being of the institutionalised juvenile'.<sup>76</sup> The Havana Rules state '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' and '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'.<sup>77</sup> Such contact is an important preventive measure since it ensures oversight of children's treatment by family and friends.

Jordan's law and policy do meet these requirements and 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.<sup>78</sup> 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. In Georgia children are allowed 'four short visits per month, one additional short-term visit as an incentive; have 3 long-term visits per year, and as a form of incentive – two additional long-term visits per year with the length of 1 – 2 days'.<sup>79</sup> In Uganda, the remand homes and national centre have an open policy on visits from family and parents, although according to the APP research, they are not always able to visit.

In Pakistan, the Juvenile Justice Rules allow for each child to be allowed to meet with relatives, friends or legal counsel at least twice a week and in 'reasonable facilities'.<sup>80</sup> However, SPARC reports that the time allocated for these meetings is usually short and that, as opposed to the reasonable facilities required under the legislation, the child is separated from family members by bars and wire gauze.

There are also challenges in Tanzania because while children are allowed to receive visits on a weekly basis in general and to receive and write letters, in practice many children rarely if ever see their family while detained, as children are often held in facilities far from their homes and their families and friends cannot afford the time and money to travel. When families do make the journey, visits are often not private and there are rarely dedicated visitors' areas. While community-based organisations and religious institutions are also allowed to visit with the consent of detention centre authorities, the frequency of such visits is highly variable depending on both the presence and willingness of those organisations in each area and the attitudes of prison management in different facilities.

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<sup>75</sup> See also Rule 61 Havana Rules which provide that '[e]very juvenile should have the right to receive correspondence'

<sup>76</sup> United Nations Standard Minimum Rules for the Administration of Justice (Beijing Rules) GA Res 40/33 of 29 November 1985 Rule 26.5

<sup>77</sup> Havana Rules, Rules 60 and 61

<sup>78</sup> Juveniles Act of 2002, Article 27 in Jordan

<sup>79</sup> Imprisonment Code, Article 70 in Georgia

<sup>80</sup> Juvenile Justice Rules 2001, Section 11 in Pakistan

In Russia, children face several restrictions on their contact with family and friends. The Federal Law 'On detention of persons suspected or accused of committing a crime' allows for two visits per month of a pre-trial (adult) detainee from relatives or other persons for up to three hours. However, it does require the detainee to obtain written permission from the body or person overseeing the criminal case. According to the Ministry of Justice Order 'On the rules of procedure of remand prison system' (2005), children suspected or accused of committing a crime have no limit to the number of letters, telegrams or packages they are allowed to receive or send. However, the post is subject to censorship and all stationery must be purchased by the detainee.

The Havana Rules are clear that while family visits need to be regulated in order to ensure the effective running of the institutions, family visits/contact should not be withheld or granted as a measure of discipline or encouragement.<sup>81</sup> In Bangladesh this is not upheld and the regularity of visits by parents/guardians to children is dictated by rule 22 of the Children's Rules, which categorises children into three 'Grades' dependent on their behaviour and conduct. Those on General Grade (where all children begin when detained) may write and receive one letter and have two meetings with his/her parent or guardian each month. A child on Star Grade (for good behaviour) may write and receive two letters and meet with his/her parents or guardian every 10 days. Those on Penal Grade (for bad conduct) 'shall forfeit all privileges', which implies they are not allowed any correspondence or meetings with parents or guardians. Even those who are on the enhanced grade for good behaviour may only meet with their parent or guardian once every ten days, which is less than suggested by international guidelines. In addition, the distance of the remand homes from family members make the possibility of visits for the children very difficult. Attempts are being made to introduce video-conferencing in the Child Development Centres to facilitate more regular communication between children and their families.<sup>82</sup>

## RECOMMENDATIONS

- Regulations relating to visits by parents, family members and others to children in detention should be developed taking into account the following issues:
  - The Havana Rules state that they should occur 'in principle once a week and not less than once a month'.<sup>83</sup>
  - Children should have access to appropriate facilities to maintain contact with relatives and significant others such as comfortable private space to conduct visits.
  - Children should be placed in a facility that is as close as possible to the place of residence of his or her family.<sup>84</sup> To ensure that children are able to be placed near their families, the Havana Rules encourage States to decentralise institutions.<sup>85</sup>
  - Children should be provided with help in communicating with their families and their right to privacy should be respected.<sup>86</sup>

<sup>81</sup> Havana Rules, Rule 67

<sup>82</sup> Information provided by Justice Muhammad Imman Ali, Judge of the Appellate Division, Supreme Court of Bangladesh

<sup>83</sup> Havana Rules, Rule 60

<sup>84</sup> General Comment No 10, para 60

<sup>85</sup> Havana Rules, Rule 30

<sup>86</sup> Havana Rules, Rule 61 and 87 (e)

- Children should be 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.

### **Specialised standards and norms concerning disciplinary measures and procedures with respect to children in pre-trial detention**

Pre-trial detention facilities should ensure that there are written rules on measures of discipline used in institutions<sup>87</sup> 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'.<sup>88</sup> 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 liberty as well as placement in a dark cell; closed or solitary confinement; reduction of diet; and restriction or denial of contact with family members.<sup>89</sup> The written rules should be 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'.<sup>90</sup> 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.<sup>91</sup> 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 violate these rules, they should be subject to disciplinary measures.<sup>92</sup>

It was not easy to obtain comprehensive information on the use of disciplinary measures and the use of restraints in the eight countries. This reflects an absence of publicly available guidance and regulations on this issue which is specific for children rather than for the general adult prison population. However, the desk review revealed that corporal punishment is prohibited as a disciplinary measure in detention in Georgia, Jordan, Kazakhstan, Russia and Uganda whilst it is still not prohibited in Bangladesh, Pakistan and Tanzania.<sup>93</sup> Challenges with implementation of prohibition remain.

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<sup>87</sup> Havana Rules, Rule 68

<sup>88</sup> Havana Rules, Rule 66

<sup>89</sup> Havana Rules, Rule 67. See also General Comment No 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.

<sup>90</sup> Havana Rules, Rule 64

<sup>91</sup> See General Comment No 10, para 89

<sup>92</sup> General Comment No 10, para 89

<sup>93</sup> End Corporal Punishment, *Online global table: legality of corporal punishment*, (2012) Available at: <http://www.endcorporalpunishment.org/pages/frame.html>

In Uganda, corporal punishment is prohibited as a disciplinary measure in penal institutions in the Prisons Act (2003, in force May 2006) and the APP report found that in the majority of remand homes there was no recourse to physical discipline and children who misbehaved were verbally reprimanded. However in both Mbale Remand Home and Kampiringisa National Rehabilitation Centre, corporal punishment in the form of caning was routinely used for disciplinary reasons. Kampiringisa had an isolation cell used for punishment.<sup>94</sup> FHRI has also noted that a form of punishment was detention in a 'batanga cell'- a dark cell where children could be detained for up to a week and given one meal a day.<sup>95</sup>

In Pakistan, the JJSO states that no child may be given corporal punishment whilst in custody. However, the JJSO does not override contradictory legislation and is not implemented throughout the country and corporal punishment is still currently used as a disciplinary measure; for example, Article 46 of the Prisons Act allows for whipping as a punishment within the prison system for male prisoners, and the only difference for children is stated that 'in case of prisoners under the age of sixteen...in the way of school discipline, with a lighter ratton' (Article 53). Regionally, in the Punjab (the most populous region in Pakistan), the Borstal Act also permits corporal punishment for males in the institutions under its jurisdiction.<sup>96</sup>

In Georgia, corporal punishment is prohibited as a disciplinary measure under the Law of Imprisonment which also prohibits the use of placement of a child in solitary confinement.<sup>97</sup> In Russia, corporal punishment is considered unlawful as a disciplinary measure in penal institutions, but there appears to be no explicit prohibition. Article 44 of the Federal Code allows for the use of physical force in detention against accused or suspected persons to prevent them committing an offence or to overcome their opposition to the 'legitimate demands of detention', if non-violent ways do not stop the actions of the detainee.

Furthermore, in Russia under the Federal Law 'On detention of those persons suspected or accused of committing a crime' children may be sanctioned to a reprimand, or placement in solitary confinement for a period of up to seven days for a range of infractions including: abuse of other detainees; attacking staff; disobedience; possession of alcohol or drugs; possession of prohibited items; gambling; and disorderly conduct. During solitary confinement visits with all except their counsel is prohibited.

In Bangladesh, there are no specific rules regarding the discipline of children in pre-trial detention and corporal punishment is still considered lawful as a disciplinary measure in detention in certified institutes and prisons. The Children Rules allow for punishment by 'caning not exceeding ten stripes' which should be inflicted 'on the buttocks or on the palm of the hand', with the requirement that a medical officer be present. Similarly, 'separate confinement' may be used as a disciplinary measure, although with no more details as to the conditions of this confinement or the length of time allowable available. Legislation is being reviewed to end these practices and while the Children Bill of 2010 states children should

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<sup>94</sup> African Prisons Project (2010) *Juvenile Detention in Uganda*, p4

<sup>95</sup> Foundation for Human Rights Initiative (2009) *Juvenile Justice in Uganda, January to July 2009*, p26

<sup>96</sup> Global Initiative to End Corporal Punishment of Children,  
<http://www.endcorporalpunishment.org/pages/frame.html>

<sup>97</sup> Imprisonment Code of Georgia, Article 57, Article 82

not be subject to inhuman and degrading punishment, it does not expressly prohibit corporal punishment.<sup>98</sup>

The High Court Division of Bangladesh in a judgement banned corporal punishment in educational institutions and also observed as follows: 'We are of the view that laws which allow corporal punishment, including whipping under the Penal Code, Code of Criminal Procedure, Railways Act, Cantonment Pure Food Act, Whipping Act, Suppression of Immoral Traffic Act, Children Rules, 1976 and any other law which provides for whipping or caning of children and any other persons, should be repealed immediately by appropriate legislation as being cruel and degrading punishment contrary to the fundamental rights guaranteed by the Constitution'.<sup>99</sup>

Under the Children Rules 1976, there are three grades of detained children which also work as a disciplinary system: the Star Grade, General Grade and Penal Grade. For the purpose of discipline a child may be placed in Penal Grade where he must be employed in 'hard and laborious work' and forfeits privileges such as correspondence with his parents/guardians. The Superintendent must record the punishment in the register with the reasons for the punishment and the duration. Punishments are given for acts covered in rule 23 of the Children Rules, namely omitting to do work or education; doing anything with intent to cause himself or others injury; causing insubordination, disorderly conduct, violence or rioting; taking part in an attack upon a detainee or officer; indecent behaviour; or refusing to submit to medical examination or vaccination.

In Tanzania's Retention Homes and Approved School, discipline is controlled by the facilities authority.<sup>100</sup> The available disciplinary measures in the Approved School and Retention Homes differ with those in adult prisons. In Upanga Retention Home it was stated that where the offender is a fellow child, then common punishments are to clean the dormitory, wash dishes or perform harder exercises. At Segerea prison three punishment facilities were observed in the boys' dormitories where children are placed in solitary confinement.

## RECOMMENDATIONS

- Specific regulations must be drawn up and implemented concerning the use of positive discipline measures in all detention facilities where children are held. These must be in line with the Havana Rules and in particular must prohibit corporal punishment, solitary confinement and restriction or denial of contact with family members as disciplinary measures. These regulations must be known about by children and staff.
- Measures of restraint and the use of force should be prohibited in all but specified exceptional circumstances and only used when all other means of control have been exhausted.

<sup>98</sup> Global Initiative to End Corporal Punishment (2012) *Country Report: Bangladesh*

<sup>99</sup> per Md. Imman Ali, J. in Bangladesh Legal Aid and Services Trust (BLAST), and another v Secretary, Ministry of Education, and others, 31 BLD 201

<sup>100</sup> Under S.122 of the Child Act, the Minister established a Board of Visitors whose duty is to maintain discipline as stipulated under S.123(1)(e)

### **Appropriately qualified, trained and remunerated staff**

According to the UN Study: 'Unqualified and poorly remunerated staff are widely recognised as a key factor linked to violence within institutions.' Article 10 of CAT requires that education and information regarding the prohibition against torture is included in training of law enforcement personnel. Additionally, 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.<sup>101</sup> Centres should have specialists such as teachers, vocational instructors, counsellors, 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 need to be trained in behaviour management techniques.

The overall impression is that staff in all eight countries have a low status, are poorly qualified and do not operate within the context of a clear code of conduct regarding child protection. No evidence was found of institutions where children are detained having an overarching child protection policy that includes a clear statement that every child has the right to be protected from all forms of violence, abuse, neglect and exploitation, and it is the duty of every police officer and detention facility employee to ensure that children are so protected.

In Tanzania for example, the CHRAGG inspection revealed that there is a scarcity of professionals trained to deal with children and little coordination between District Social Welfare Officers, District Medical Officers and Prison Officers. In the Retention Homes and the Approved School there were few Social Workers and sometimes none at all; for example there was just one Social Worker at Irambo Approved School and three Para-social workers. In Uganda, the APP report found that there is generally a lack of specialist staff training in the facilities for juveniles. In an interview with the APP, the Commissioner for Youth and Children noted that there are no psychologists in any of the homes or any psychological training given. Also, although the wardens of remand homes had child protection training, this had not been disseminated to the guardians/social workers. They had been trained in social work, but had received no specific training on working with children in conflict with the law.<sup>102</sup>

A number of countries have programmes in place to improve this. In Kazakhstan, the Juvenile Justice System Development Concept calls for postgraduate programmes for the training of judges and other staff of the juvenile justice system. In Jordan, there is currently no code of conduct for staff working in juvenile detention centres; however, the development of a code of conduct is one of the proposals being considered by the Ministry of Social Development as part of its Juvenile Justice Reform Programme for the years 2011 to 2013. Included in the same programme are plans to deliver psychosocial capacity-building training to workers at juvenile detention centres, as well as training on child protection issues.

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<sup>101</sup> Havana Rules, Rule 86

<sup>102</sup> African Prisons Project (2010) *Juvenile Detention in Uganda*, p22



## RECOMMENDATIONS

- Staff should be carefully selected, undergo criminal record checks, receive appropriate training and necessary supervision, be fully qualified, and receive adequate wages.
- Staff must be trained in child rights and non-violent disciplinary measures.
- Efforts should be made to improve the status of individuals working with children in detention to ensure high-calibre employees.
- They must be trained to immediately report any concerns, suspicions or disclosures of violence against children to the appropriate authorities.

### 3.8 INDEPENDENT MONITORING OF POLICE AND PRE-TRIAL DETENTION FACILITIES

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.<sup>103</sup> 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 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.

There is a very mixed picture of monitoring mechanisms amongst our eight countries. Only Georgia has established a National Preventive Mechanism (NPM) which is located within the Public Defender's Office. The Imprisonment Code (Article 60) gives the Public Defender of Georgia and the Special Preventive Group the right to access all pre-trial detention and custodial establishments without special authorisation. However, NGO groups have found that one consequence of the creation of the NPM is that other public oversight in places of detention has disappeared, including public committees mandated by the Ministry of Justice to enter prisons and conduct monitoring. Kazakhstan is in the process of developing a NPM.

In some countries, National Human Rights Institutions play a dynamic role: the Uganda Human Rights Commission visited all five remand homes where children are held in 2011; CHRAGG in Tanzania conducted a monitoring visit in 2010; in Jordan the National Centre for Human Rights (NCHR) has a specific mandate to 'visit the reform and rehabilitation centers, detention centers and shelters for juveniles in accordance with followed procedures'<sup>104</sup> and began this work in 2004 visiting centres without giving prior notice to the Ministry of Social Development. Pakistan's National Human Rights Commission conducts some prison monitoring, receives complaints regarding prisoner abuse and also documents

<sup>103</sup> Eg Havana Rules 72 and 73, General Comment No 10 para 89 ('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')

<sup>104</sup> Code of the National Center for Human Rights No. 51 of 2006

cases of police abuses. The 'Child Protection Officer' appointed by the Ministry of Human Rights, who must be a lawyer and is appointed to deal with matters relating to children in conflict with the law, is obligated to visit the children's barracks of jails on a monthly basis to gather information and data on detained children.<sup>105</sup>

In others there is openness to civil society; for example, Uganda allowed international NGOs, foreign diplomats, and local NGOs, principally the FHRI and the Uganda Prisoners' Aid Foundation, to conduct prison visits during 2010 but required advance notification.<sup>106</sup> In Pakistan, some human rights groups have been permitted by local, provincial and national authorities to monitor conditions specifically for children and female prisoners.<sup>107</sup> However, the International Committee of the Red Cross (ICRC) has reported difficulties in accessing detention sites, in particular those detaining persons for security-related offences.<sup>108</sup> Russian NGOs have reported that the penitentiary system overall has become less transparent than previously and national NGO representatives are now not allowed to visit prisons in many regions.<sup>109</sup> The European Committee for the Prevention of Torture (CPT) has made regular visits to Russia (most recently in 2012 and 2010) although the latest report to be made public was from a 2001 visit. The Committee against Torture has noted that representatives of international organisations (other than the CPT) are only permitted to talk to prisoners when accompanied by representatives of the administration. In many countries, the judiciary plays a role in visiting detention facilities where children are held although frequently their findings are not made public (for example in Bangladesh and Tanzania).

Overall, provision is sporadic and lacks coordination. Monitoring of police detention is often neglected; for example in Bangladesh, it has been reported that monitoring mechanisms to supervise police conduct are poor and that police are rarely held accountable for any alleged abuses.<sup>110</sup>

## RECOMMENDATIONS

- Ensure that independent inspections and monitoring of detention facilities by qualified bodies take place on a regular basis, at times unannounced, with full access to the facilities and freedom to interview children and staff in private.
- It is recommended that Bangladesh, Jordan, Pakistan, Russia, Tanzania and Uganda take steps to sign and ratify the OPCAT and establish an effective, transparent National Preventive Mechanism (NPM) that is allowed to access and carry out regular and unannounced monitoring activities in pre-trial facilities and police cells, and that they are sufficiently staffed and resourced to implement such activities.

<sup>105</sup> Information provided by DOST Welfare Foundation

<sup>106</sup> US Department of State *Human Rights Report, Uganda, 2010*

<sup>107</sup> US Department of State *Human Rights Report, Pakistan 2010*

<sup>108</sup> US Department of State *Human Rights Report, Pakistan 2010*

<sup>109</sup> Stakeholders Submission to the UPR 2009

<sup>110</sup> Adolescent Development Fund (2008) *Alternative Report to the CRC*

### 3.9 MEASURES TO ENSURE ACCOUNTABILITY

Under international human rights law, states are obliged to thoroughly and promptly investigate allegations of violence (including the use of torture) against children in police and pre-trial detention, prosecute those implicated by the evidence, and, if their guilt is established following a fair trial, impose proportionate penalties. Implied in this is that the children concerned should have the opportunity to assert their rights and receive a fair and effective remedy, that those responsible stand trial, and that the victims themselves obtain reparations.

However, in many countries those responsible, whether law enforcement officers or other detainees, are not investigated or prosecuted because of ineffectiveness and a lack of resources in the criminal justice system, but also because these acts are tolerated and sometimes even encouraged by the state.

#### **Mechanisms of complaint**

Children should have the right to make requests or complaints to the director of the detention facility, the central administration, judicial authorities and other independent authorities about any matter that affects them while in detention.<sup>111</sup> Such complaints should not be censored either in terms of content or substance.<sup>112</sup> In order to exercise their right to make complaints, children must be aware of their rights and the relevant complaints procedure.<sup>113</sup> Rule 35(1) of the Standard Minimum Rules on the Treatment of Prisoners provides that every prisoner on admission shall be provided with written information on the authorised methods of seeking information and making complaints and on his rights and obligations. Children must be given this information in a child-friendly manner, which also takes into consideration any learning difficulties, illiteracy or language barriers.<sup>114</sup>

Complaints might be made to an independent monitoring body either in person during an inspection or through alternative measures such as telephone, mail or email. Many of our countries have active National Human Rights Institutions that could theoretically fill this role; for example children may make complaints to the Public Defender (Ombudsman) of Georgia. The Children's Commission in Russia is also mandated to receive complaints directly from children in detention (although children in detention is a very small part of the ombudsman's work and therefore often not identified as a priority), however there are seldom complaints lodged by children in detention either due to their lack of knowledge about procedures to do so or their fear of reprisals.

In Jordan, the NCHR is mandated to receive complaints sent by email or through the NCHR hotline or reported in person in the course of visiting a detention facility. 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

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<sup>111</sup> Havana Rules, Rule 75. Standard Minimum Rules for Prisoners, Rule 35(3) and Rule 36(1) which provides that detainees should have this opportunity each week day

<sup>112</sup> Havana Rules, Rule 76

<sup>113</sup> General Comment 10, para 89

<sup>114</sup> Standard Minimum Rules for the Treatment of Prisoners, Rule 36 (1)

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 - 37 of these were allegations of torture against Criminal Investigation Department personnel.<sup>115</sup> It should be noted that the ICCPR Committee found that: 'The Committee....notes with concern the absence of a genuinely independent complaints mechanism to deal with cases of alleged torture or ill-treatment by public officials, as well as the low number of prosecutions of such cases.'<sup>116</sup>

In Pakistan, Child Complaint Offices (CCO) were established at the Federal Ombudsman's Office in Islamabad in 2009, to hear complaints of child rights violations by any government authority but the National Human Rights Commission reports that their progress has been very slow and during 2011, they only received 85 complaints.<sup>117</sup> CCOs were also set up at the provincial level at the offices of the Provincial Ombudsman. The Punjab CCO in Lahore released its 2010 annual report in December 2011, according to which it had only received 274 applications in two years despite having been allocated a substantial budget; of these complaints, 18 were against police.

Other mechanisms include making complaints to detention officials. For example, in Pakistan, according to the NGO SHARP, a complaints system does exist and by law authorities must allow those detained to submit complaints without censorship and to request an investigation into allegations of inhumane conditions. However, in practice it does not function effectively.<sup>118</sup> In Russia, the Federal Law 'On detention of persons suspected or accused of committing a crime' allows for the submission of requests and complaints by suspects and defendants to the prosecutor, the court and other public authorities who have the right to monitor places of detention (e.g. Commission for Human Rights or the European Court of Human Rights) through the administration of the detention facility without being subject to censorship. It also outlines how and when responses to complaints must be made by the administration, ranging from 5 to 10 days. However, the Committee against Torture have expressed concern at the documented reports which state that those who do lodge complaints are often subject to abuse and reprisals.

## RECOMMENDATIONS

- Establish effective, confidential and child-friendly complaint procedures for children and their families and ensure that complaints are promptly and thoroughly investigated by an independent authority.
- In cases where violence is alleged, children should be immediately examined by health professionals in order to document the violation and to provide appropriate care and redress to the children.<sup>119</sup>

<sup>115</sup> National Centre for human Rights 5<sup>th</sup> Report (2008) Para 30

[http://www.carim.org/public/polsoc texts/PO3JOR1123\\_945.pdf](http://www.carim.org/public/polsoc texts/PO3JOR1123_945.pdf)

<sup>116</sup> ICCPR (2010) Concluding Observations of the Human Rights Committee, CCPR/C/JOR/CO/4, para 9

<sup>117</sup> NHRC (2011) <http://www.hrcp-web.org/pdf/AR2011/Complete.pdf>

<sup>118</sup> US Department of State *Human Rights Report 2010*

<sup>119</sup> A valuable source of guidance for this is the UN Office of the High Commissioner for Human Rights (ed.). *Istanbul Protocol : manual on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment / . rev.ed. New York: United Nations; 2004.*

## **Criminal prosecution**

In all of our countries, acts of violence against children in detention, like any violent crime against a person, are punishable under the provisions of the regular criminal law. If the victim is a child then this is often an aggravating factor when it comes to sentencing. However, in practice, in contexts where the perpetrator of violence in detention is a peer or adult detainee, then the child concerned may face enormous challenges in bringing this to the attention of prosecuting authorities such that the allegation is properly investigated and, if appropriate, prosecuted criminally. Child victims or witnesses of abuse are often scared to come forward because of a well-founded fear of reprisals by other detainees. Perpetrators are therefore rarely held accountable, allowing high rates of violence to continue unchecked, thereby perpetuating tolerance of violence against children. Where investigations are carried out, children and young people can be viewed as unreliable witnesses leading to the collapse of the case. It can be very difficult for children to obtain the medical evidence required to establish the abuse. The European Court of Human Rights found in 2010 that Russia had violated Article 3 in the case of an 18-year-old who was arrested and beaten whilst in police detention and that the police failed to properly investigate the ill-treatment owing to delay and loss of crucial medical evidence.<sup>120</sup>

When the perpetrators of violence against children are law enforcement officials and there is the possibility that the violence can be defined as torture or cruel, inhuman or degrading treatment, these challenges become even more exaggerated. For children who suffer police violence, reporting is seriously hampered by the fact that they must complain directly to the police about police abuse. The threat of repercussions by police is a serious deterrent to any child coming forward to make complaints or testify. Corruption in the police force may also be a disincentive to filing a criminal complaint against a police officer or detention centre employee. The cases that are reported to the police are often only superficially investigated.

### **RECOMMENDATIONS**

- Bangladesh, Pakistan, Russia and Uganda should legislate for the definition of torture and ill-treatment in line with the definition in the CAT.
- Deliver a firm message of 'zero tolerance' of ill-treatment, including through on-going training activities, to all police and prison staff. As part of this message, it should be made clear that the perpetrators of ill-treatment and those condoning or encouraging such acts will be subject to severe sanctions.
- Ensure that allegations of violence and ill-treatment including torture are impartially and adequately investigated and take appropriate action against those responsible including criminal prosecution, suspension and termination.

### **Provision of remedy for victims of violence**

Very few countries have a clear law on provision of remedy for child victims of violence. There is no legal obligation in Kazakh domestic legislation for financial compensation or rehabilitation of torture victims. Under the existing legal framework in Pakistan, claims for reparation for an act of torture would be settled under Shari'ah law. The Asian Human Rights Commission note that the possibility of using civilian court proceedings to obtain

<sup>120</sup> Tigran Ayrapetyan v. Russia ECHR (2010)

compensation is undermined as often the proceedings require a police report to substantiate a claim against torture, which is understandably very difficult for victims, especially children, to obtain.<sup>121</sup> In Russia, the Committee against Torture have also expressed concern at the lack of proper compensation for victims of torture and ill-treatment as well as an absence of proper rehabilitation measures.

### **RECOMMENDATION**

Develop and implement a policy on the provision of adequate compensation and rehabilitation programmes for children who have been subject to violence whilst in contact with the criminal justice system.

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<sup>121</sup> Asian Human Rights Committee: <http://www.humanrights.asia/countries/pakistan/torture-in-pakistan>

# ANNEX 1

## COUNTRY STUDY TEMPLATE

### INFORMATION REQUIRED FOR COUNTRY STUDIES ON LAW AND POLICY MEASURES TO PREVENT AND REMEDY VIOLENCE AGAINST CHILDREN DURING POLICE AND PRE-TRIAL DETENTION

#### 1. Baseline information

##### **NB where possible this information should be disaggregated by gender**

- The number of children arrested within 12 months per 100 000 child population
- The number of children in detention per 100 000 child population
- The number of children in pre-trial detention per 100 000 child population
- Time spent in detention before sentence
- Time spent in detention after sentence
- Number of child deaths in detention during 12 months
- Percentage of children not wholly separated from adults
- Percentage of children visited by family member in last 3 months
- Percentage of children receiving a custodial sentence
- Percentage who enter a pre-trial or pre-sentence diversion scheme
- Percentage of children in detention who are victims of self-harm during a 12-month period
- Percentage of children in detention who are victims of sexual abuse during a 12-month period
- Percentage of children in detention who have experienced closed or solitary confinement at least once during a 12-month period
- Percentage of children released from detention receiving confidential exit interviews by independent authority

#### 2. Overarching law and policy

- Is there a comprehensive law and policy on juvenile justice in line with the core elements set out in Committee on the Rights of the Child General Comment no 10?

#### 3. Measures in place to reduce the number of children in detention overall

- Are status offences and minor offences such as begging or loitering decriminalised?
- Are there any status offences/ minor offences which particularly impact on girls?
- What is the age of minimum criminal responsibility?
- What is the minimum age at which children can be detained in custody?
- What provision is there for children with mental health problems to be dealt with outside the criminal justice system?
- What is the availability and use of pre-trial and pre-sentence diversion
- Does the use of pre-trial and pre-sentence diversion differ for girls and boys?

#### 4. Measures in place to protect children from violence at the police station

- Are there alternatives to arrest such as issuing a police warning/caution or written notice to appear?
- What are the legal requirements regarding the presence of lawyers, appropriate adults, parents or guardians during questioning in a police station? What are the sanctions for breach of these requirements?
- Does the law limit the period that a child may be held by the police for questioning without a judicial order to 24 hours, as recommended by the Committee on the Rights of the Child? If not, how long may the police keep a child in detention for purposes of questioning without a court order?
- What are the legal provisions for children to have access to medical care whilst detained by the police?
- Is there provision for a child to be handed over to a specialised police official as soon after arrest or apprehension as possible?
- Do procedural rules regarding searches of children respect their privacy and dignity, and ensure that intimate searches are only authorised in narrow circumstances and carried out by a medically trained person of the same sex unless delay would cause harm to the child?
- Do procedural rules regarding the taking of intimate and non-intimate samples for evidence include rules relating to consent, and to the retention of such evidence?
- What do rules of evidence say regarding the submission of any statements or evidence that are not gathered in compliance with law or policy, and what are sanctions for officers regarding failures arising from this?
- Is there law and policy setting out appropriate physical conditions for police holding cells that accommodate children and which take into account the requirements of boys and girls?
- Do police station registers indicate the child's details (including age) and the time of arrest/apprehension and are these registers open to inspection by lawyers, social workers and independent monitoring bodies?

## **5. Measures for protecting children being brought before the court for the first time**

- Are children brought before a court/tribunal (or the appropriate forum) for consideration of release as soon as possible but within 24 hours of arrest or apprehension?
- What are the sanctions against those responsible if there is a delay in coming before court?
- Law and policy regarding transporting children to court (ie separate from adults, girls separate from boys, and not handcuffed except in tightly-prescribed exceptional circumstances).
- Law and policy regarding accommodation of children at court, ie kept separate from adults and girls separate from boys.
- What are the legal requirements regarding the presence of lawyers, appropriate adults, parents or guardians during court appearances? What are the sanctions for breach of these requirements?
- Is the possibility of diversion or other alternative measures considered at the first appearance?



- If the case is not to be diverted, then are alternative measures to detention considered eg unconditional or conditional release into the care of parent/guardian/other appropriate adult, close supervision in the community, foster care etc?
- Are courts allowed to use evidence that has been obtained through torture or threats to be presented to the court or used against a child to lead to a conviction?

#### **6. Measures to reduce the numbers in pre-trial detention**

- Law and policy regarding use of alternative measures to detention eg diversion/referral to restorative justice programmes.
- Alternatives to pre-trial detention eg care of parent/guardian/suitable adult, close supervision, foster care etc.
- Law and policy regarding maximum period in pre-trial detention (Committee on the Rights of the Child recommends no longer than six months).
- Frequency that detention is reviewed.
- Support from social workers/probation officers to identify alternatives to pre-trial detention
- Are regular visits to the child in detention by parents/guardians/responsible adults permitted?

#### **7. Measures to control and reduce the use of restraint by staff members working in institutions where children are detained**

- Are there specialised standards and norms concerning disciplinary measures and procedures with respect to children in police and pre-trial detention? What are they?
- What is the percentage of children in detention who have experienced a disciplinary measure at least once during a 12-month period? (disaggregate by sex where possible)
- What are the sanctions for use of prohibited measures or where measures are used outside the restrictions used by law?

#### **8. Measures to control the use of illegal violence by staff members**

- What are the sanctions, including criminal charges, civil claims for damages and dismissal proceedings, for any prohibited use of violence against children?
- Are staff appropriately qualified, eg are they carefully selected and recruited/ is there professional recognition of child care work/ are there specialist staff members such as psychologists available to children?
- Are staff directed to undertake their duties in a humane, committed, professional and fair manner, and without resort to violence or unlawful use of force or restraint?

#### **9. Measures to prevent violence by adult detainees**

- Are children prohibited from mixing with adults in any form of detention? (exceptions may be made for children who reach the age of majority whilst in detention, subject to appropriate supervision and risk management)
- What measures are taken to ensure girls are held separately from women?

#### **10. Measures to prevent violence by other children**

- Are children assessed on admission to determine the type and level of care required for each child?
- Are children placed within the facility according to the outcome of the assessment, in accordance with their particular needs, status and special requirements?

#### **11. Measures to ensure accountability**

- Do the staff of police or detention facilities, or other persons having access to them, have a legal obligation to report complaints or evidence of ill-treatment of children confined in the facility or police station?
- Which agencies or officials are responsible for investigating cases of violence against children in police and pre-trial detention? What are their responsibilities and obligations?
- What are the sentences attached to the offences of violence against children in detention?
- Does the law recognise the responsibility of the State to pay damages, or provide any other forms of compensation, to victims of violence?
- Are there gender-specific procedures for girls and boys who have been victims of torture and other ill-treatment, including with regard to access to redress for victims of rape and other sexual abuse?
- Does a child who claims to be a victim of violence have the right (standing) to take legal action in person, if his or her parents are unwilling to do so?

#### **12. Provision for complaints**

- What provision is made for children to make formal complaints regarding their treatment in police and pre-trial detention?
- Can others make complaints on their behalf? (parent/guardian/ appropriate adult etc)
- Do mechanisms ensure there are no reprisals against those who bring the complaint?
- Are there sanctions attached when breaches of law or policy are found via complaints?

#### **13. Inspection and monitoring**

- Is there a system guaranteeing regular independent inspection of places of detention?
- What is the percentage of police stations and pre-trial detention facilities that have received an independent inspection visit in the last recorded 12 months?
- Do children have confidential access to the team carrying out the inspection?
- Do inspection teams include women as well as men?

#### **14. Data collection**

- Is data relevant to violence against children collected in line with the recommended UNODC and UNICEF indicators, and disaggregated by gender?<sup>122</sup>

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<sup>122</sup> UNODC and UNICEF *Manual for the measurement of juvenile justice indicators* (2007) United Nations: New York and also indicators outlined in Detrick S, Abel G, Berger M, Delon, A and Meek R (2008). *Violence against children in conflict with the law: A study on indicators and data collection in Belgium, England and Wales, France and the Netherlands*. Amsterdam, Defence for Children International

**15. OTHER RELEVANT INFORMATION**

- Are there any significant cases or jurisprudence concerning violence against children in police and pre-trial detention? If so please identify and summarise them.
- Are there any examples of measures taken by governments, civil society or others that have contributed to preventing or detecting violence against children in police and pre-trial detention and/or which have provided affected children with redress and rehabilitation or increased the likelihood of perpetrators being held accountable?
- Any other relevant information for this country?