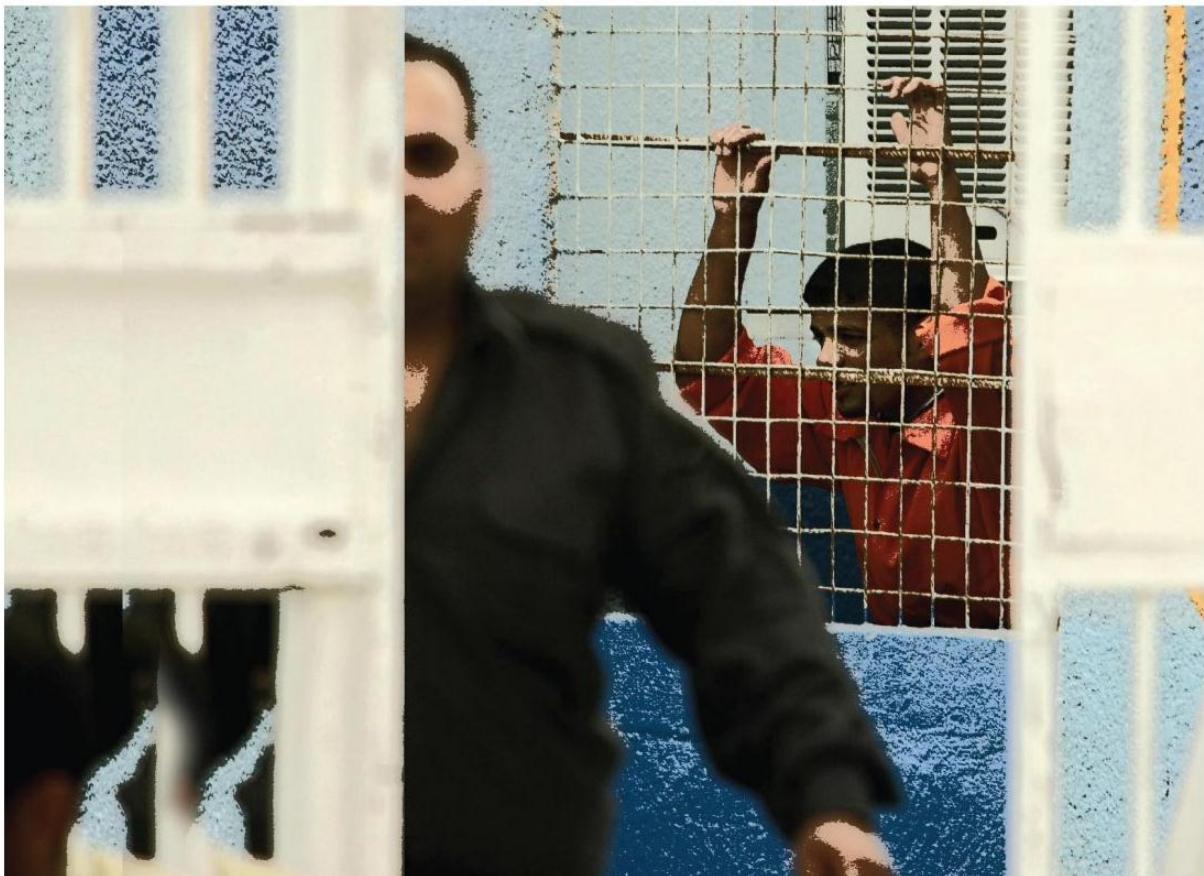




A review of law and policy to prevent and remedy violence against children in police and pre-trial detention in Jordan



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ISBN: 978-0-9571996-9-9

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This material has been funded by UK aid from the UK Government; however the views expressed do not necessarily reflect the UK Government's official policies.

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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 their rights and 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 nearly all other children.¹ 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.

In the context of detention, violence against children can take many forms including torture, beatings, isolation, restraints, rape, harassment, self-harm and humiliation. 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’.²

The World Health Organization (WHO) has stated that 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.’³

States that are parties to the UN Convention on the Rights of the Child (CRC) have a clear obligation to take all appropriate legislative, administrative and educational measures to

¹ United Nations Secretary-General, *World Report on Violence against Children*, 2006, p175.

² *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.

³ WHO and the International Society for Prevention of Child Abuse and Neglect, *Preventing child maltreatment: a guide to taking action and generating evidence*, 2006.

protect children in detention from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment or exploitation, including sexual abuse.⁴ Furthermore, under Article 40 (1) of the CRC states are obliged to: 'recognise the right of every child alleged as, 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.⁵ The right of children to freedom 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 carried out a 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 in Jordan. This is part of a larger piece of work which reviews legal and policy measures to prevent and remedy violence against children in detention in seven other countries, selected because they are countries where PRI has a presence and/or relative influence to follow up recommendations: Bangladesh, Georgia, Kazakhstan, Pakistan, Russia, Tanzania and Uganda. For each country the 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 review before summarising its key findings and recommendations for Jordan.

⁴ Convention on the Rights of the Child (CRC), Article 19.

⁵ 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 REVIEW

Definitions

For this review, children are defined as all those under 18⁶ and 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'.⁷ 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'.⁸ 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)'.⁹

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*. They were also based on 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 by looking at its prevalence, impact, prevention, detection, assistance and accountability. Please see Annex 1 for the indicators used which 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 effective legal limits on time spent in police and pre-trial detention;

⁶ CRC, Article 1.

⁷ CRC, Article 19.

⁸ 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.

⁹ *Ibid.* para 4.

- 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;
- 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 Jordan and the extent to which the measures were implemented in practice where such information was available. The research constituted an intensive literature search, review, and synthesis of relevant documents concerning Jordan's 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, media reports.

This 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 because they are 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.

Challenges and limitations

This 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 Jordan and as such provide a useful springboard for further action on the ground. However, it has limitations: 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.

This review is not original research and is therefore hampered by its reliance secondary data sources on the issue. Although every effort was made by PRI to ensure its comprehensiveness, it is possible that key sources were not accessed. Despite these limitations, it is hoped that the report is a useful starting point for further action.

3. FINDINGS AND RECOMMENDATIONS

Evidence available on the issue

Number of children detained in police and pre-trial detention

There are six centres in Jordan where children are held in both pre- and post-trial detention. These are established by the Ministry of Social Development in collaboration with the Directorate of General Security. Five are for boys and one for girls opened in 2008. During 2010, these centres detained a total of 4,371 children¹⁰, the vast majority of whom were boys in pre-trial detention.

There are no figures available regarding the number of children arrested and detained in police stations but statistics produced by the Ministry of Social Development claim that in 2008, 6,277 children committed offences, of whom around 96 per cent were boys. Around 75 per cent of these were relatively minor offences such as theft or assault.¹¹

What evidence do we have of prevalence of violence against children in police and pre-trial detention?

There have been a number of credible reports concerning the mistreatment of children in detention in Jordan in recent years but it is difficult to secure reliable and transparent data on the extent of the problem that is disaggregated between pre- or post-trial detention or between girls and boys. For example, in 2008, the National Centre for Human Rights (NCHR) received 37 complaints from children detained in juvenile detention centres or from their guardians alleging torture or battery by members of the Criminal Investigations Department. A further five complaints were tendered relating to allegations of inhuman treatment.¹²

In 2010, a website in Jordan published a report detailing stories of government authorities physically and verbally abusing children in government-run juvenile detention centres. In response to the allegations, the Ministry of Social Development investigated these claims and concluded that there was no evidence to support them.¹³ In 2009 former and current residents and parents of children in several ministry-operated juvenile rehabilitation centres reported verbal and physical abuse of children by supervisors. The government investigation is still pending.¹⁴ According to a 2009 assessment of juvenile justice detention centres conducted by Terre des Hommes, 'Children sleep in large dormitories. This situation posed a

¹⁰ Information provided from the Annual Report of the Directorate of Social Defence (2010) as translated by PRI consultant Dr Fawaz Ratrout.

¹¹ Statistics on juvenile justice provided by the Ministry of Social Development, Social Defence Department, (2008) cited in Terre des Hommes, *Assessment of the Juvenile Justice system & the Situation of Children in Conflict with the Law in Jordan*, 2010.

¹² Figures cited in Save the Children Sweden (2011) *Country Profile of Jordan*, p55 available at: <http://www.ibcr.org/editor/assets/Jordan%20Country%20Profile.pdf> (accessed 23 October 2012).

¹³ US Department of State, *Human Rights Report 2010: Jordan*, available at: <http://www.unhcr.org/refworld/docid/4da56db8c.html> (accessed 23 October 2012).

¹⁴ As above

high risk of intimidation, physical and sexual abuse, particularly taking into account the limitations of supervision during the night'.¹⁵

When the government does not have sufficient and relevant information about how the juvenile justice system 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.

RECOMMENDATIONS TO IMPROVE EVIDENCE AND DATA GATHERING

- More studies must be undertaken to establish the extent of the problem.
- Jordan needs to have more effective and more transparent data collection and publication on indicators that can help to address violence covering the following:¹⁶
 - 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 three months
 - Percentage who enter a pre-trial or pre-sentence diversion scheme
 - Number of children in detention per 100,000 child population
 - Number of child deaths in detention during a 12-month period, per 1,000 children detained
 - 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

¹⁵ Terre des Hommes, *Needs from Within, An assessment of psychosocial needs in the juvenile justice detention centers*, 2009.

¹⁶ These indicators are based upon those recommended by UNODC and UNICEF in their *Manual for the measurement of juvenile justice indicators*, United Nations: New York, 2007; and also on indicators outlined in Detrick S, Abel G, Berger M, Delon, A and Meek R, *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, 2008.

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 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 a 'detention facility housing both children and adults'.

Use of detention as a last resort

Comprehensive law and policy on children in criminal justice

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 establish that detention should only be used as a last resort. At the moment Jordan lacks a comprehensive policy on children in criminal justice.

The main piece of national legislation with regard to children in conflict with the law is the Juvenile Act (Law No 24 of 1968 and its amendments). Under the current Juvenile Act, children may be detained pre- and post-trial in 'centres for education and rehabilitation' which are the responsibility of the Ministry of Social Development. The Ministry of Justice supports capacity building for judges and court staff on juvenile justice issues. Other relevant laws include:

- Code of Criminal Procedures No 9 of 1961 and its amendments
- Penal code (Law No 16 of 1960 and its amendments)
- Law of the observation of the conduct of the juveniles (Law No 37 of 2006)

A new draft Juvenile Act has been developed but has been substantially delayed in coming into law. Currently it is being reviewed by the Legislation and Opinion Bureau.¹⁷ Under the draft law, pre-trial detention is limited to two weeks and if the child is not released or brought to trial in that time, there will be mandatory referral to a judge who will normally release the child on bail or under some kind of supervision. The draft law promotes restorative principles with the focus on rehabilitation rather than punishment, the use of non-custodial measures to the extent possible, and the complete separation of children and adults. The draft law grants judges more flexibility by providing them with a wider range of dispositions.

A number of civil society initiatives are ongoing to improve the legislative and institutional capacity of the justice system for children, including a project by NGO Terre des Hommes to pilot community sentencing, as well as a programme to enhance the capacities of the judiciary to deal more effectively with cases of children in conflict with the law initiated by Care International, UNICEF and other NGOs.

¹⁷ As of August 2012.

Minimum age of criminal responsibility

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 Child¹⁸) is an important preventive measure since it reduces the number of children in detention overall. A minimum age for detention above that for criminal responsibility can also reduce the numbers of children detained. In Jordan the age of criminal responsibility is extremely low, even within the region. It is currently just seven years, although under the draft Juvenile Act it will be raised to 12.

Abolishing status offences

Status offences include truancy, running away, violating curfew laws or possessing alcohol or tobacco. 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 and thereby exposed to the risk of violence for behaviour which does not represent a serious risk to the child or others. Not much evidence regarding the use of status offences in Jordan was found but in 2008, legal penalties for individuals found begging or peddling in the street in Jordan were increased, and the families of children found begging or peddling now face the possibility of reductions to the means-tested financial benefits flowing from the National Aid Fund.¹⁹

Availability of diversion by police

Specifically trained police officers called Juvenile Police Officers (JPOs) can divert children from the formal justice system based on a Memorandum of Understanding between the Ministry of Social Development and the Ministry of Public Security. Furthermore, within the Jordanian juvenile justice process, informal processes of negotiation and conciliation between the victim and offender serve as *de facto* diversions. They are facilitated by the police and occur before the case is registered. This is an informal, unregulated process that can only happen in the case of minor offences.

Diversions by courts

Diverting children away from the formal criminal justice system is an important way of ensuring they are not exposed to violence within detention settings. Current law in Jordan does not provide clear guidance on the use of diversion for children, however, the draft Juvenile Act gives judges the option of imposing a range of diversionary measures both pre- and post-trial: these include police reprimand, delivery to parents or guardians, compulsory public service, access to vocational training, probation and restricted movement orders.

Alternatives to pre-trial detention

The Juvenile Act provides for release on bail pre-trial, with or without guarantees (as well as a range of non-custodial sanctions for children after conviction). According to Terre des Hommes, 'for a variety of complex and inter-related reasons neither bail, nor non-custodial, community-based sanctions are used with sufficient frequency'.²⁰

¹⁸ General Comment No 10, para 32.

¹⁹ Save the Children Sweden, *Country Profile of Jordan*, 2011, p63, available at: <http://www.ibcr.org/editor/assets/Jordan%20Country%20Profile.pdf> (accessed 23 October 2012).

²⁰ Terre des Hommes, *Assessment of the Juvenile Justice system & the Situation of Children in Conflict with the Law in Jordan*, 2010, p 7.

RECOMMENDATIONS TO ENSURE DETENTION IS USED AS A LAST RESORT

- The new draft Juvenile Justice Law should be put before Parliament at the earliest opportunity.
- It is strongly recommended that Jordan raise the age of criminal responsibility for all children in line with guidance from the UN Committee on the Rights of the Child.
- Status offences should be identified as welfare issues and children engaging in these activities should be dealt with by the social welfare system and not the child justice system.
- Measures for diverting children out of the formal justice system, such as the use of cautions, mediation and alternative dispute resolutions should be explored, developed and implemented. Police and prosecutors should be further trained in these methods.
- Legislation should be introduced that imposes greater 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 where there is a risk of absconding and/or if a child is a danger to themselves or others.

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 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. The Juvenile Act limits the time that children may be detained in police stations to 24 hours.

Limiting time in pre-trial detention

The maximum time spent in pre-trial detention should be no longer than six months according to international standards. Enforcing time limits will ensure that the numbers of children in pre-trial detention are reduced and therefore the risk of violence is lessened. Detention should be reviewed at least every 14 days. In Jordan, the position in law is not clear.

RECOMMENDATIONS

- The time limit of 24 hours for detaining a child in police custody must be strictly enforced.
- The length of time children can be held in pre-trial detention must be limited by legislation in order to ensure that they are only deprived of their liberty for the shortest possible period, in line with international standards.

Prevention measures at the police station

Proper registering of detainees within a time limit

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. The situation in Jordan regarding registration is not clear.

Procedure for use of force against children during arrest and detention

The current Juvenile Act stipulates that children must not be handcuffed at the time of arrest unless necessary; however, a report from the National Centre for Human Rights (NCHR) in 2010 found that police often handcuff children when sending them to court.²¹

Specialist police officers to deal with children

International standards²² 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. Jordan is currently undergoing reforms in its treatment of children within police stations. Whilst in most police stations there is no child protection policy and children are held in cells with adults, in a growing number children do receive specialised treatment, including separate cells, provision of adequate food, having a social worker present during interviews and the provision of specialised police officers.

In certain areas of the country the police do have the option of referring a case to a Juvenile Police Office which is the only specialised police body for dealing with young offenders in Jordan. There are currently four of these offices in: Amman, Zarqa and one soon to start work in Wadi Seer. They aim at achieving early conciliation between victims and offenders. This avoids court referral and the opening of any official file on the child at the Ministry of Social Development. Over 250 cases were dealt with through this model by one specialised officer alone during 2009. The Ministry of Social Development plans to train a further 20 specialised Juvenile Officers as part of its strategic plan for juvenile justice reform over the years 2011 to 2013. While there is no legislative basis for the work of these officers, their activities are underpinned by a Memorandum of Understanding between the Ministry of Social Development and the police. This has drawbacks, as implementation then depends on obtaining support from police station chiefs. The advantage is that the lengthy process of shepherding legislation through Parliament was avoided. A recent study revealed mixed performance and outcomes: the JPOs suffer from lack of support and coaching, the number of children referred by the other police stations is low, and reconciliation is achieved for only 26% of the cases received.

As a further step, the Jordanian authorities have created a specialised Juvenile Police Department which currently only serves the area of North Amman. The department consists of specialised and trained police officers and social workers who wear civilian clothes. PRI

²¹ The *Seventh Periodic Report on Conditions at Reform and Rehabilitation Centers and Temporary Detention Centers - In the Hashemite Kingdom of Jordan - For the period from 1/1/2009 until 30/6/2010*, National Centre for Human Rights, 2010.

²² Beijing Rule 12.1; Riyadh Guideline 58.

worked in partnership with the department to develop child protection policies and working procedures for this department.

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. No information on taking of samples from children in police detention in Jordan was found and there is no evidence to suggest that this happens in practice.

Separation from adults during police detention

This is a vital protective mechanism and the international instruments are clear on the importance of separation of children from adults. In Jordan, practice varies according to which police station children are held at.

Presence of lawyers, parents and others during questioning

Article 37 (d) of the CRC requires states to provide children with 'prompt access to legal and other appropriate assistance'. The draft 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'. Such contact with the outside world can be a vital preventive mechanism and can also be an opportunity for children to report violence.

Under the Juvenile Act, a juvenile may only be interrogated in the presence of a parent, guardian or other person responsible for his care, or his lawyer. Where none of the above is available, the probation officer shall attend the interrogation sessions.

RECOMMENDATIONS TO PREVENT VIOLENCE AT THE POLICE STATION

- Proper procedures for registering children and admissions at the police station should be developed and implemented.
- Provision of specialised juvenile police officers should be extended across all regions.
- Amendments to legislation should be made that explicitly require the separation of children and adults at all points of detention or deprivation of liberty, including during transportation to court or other facilities. Given the very low minimum age of criminal responsibility in Jordan, efforts should be made to separate older and younger children whilst held in detention. Similarly, boy and girl children must be properly separated whilst in detention in police cells.

Prevention measures during court proceedings

Courts specialising in children's cases

Prior to their appointment to the bench, all prospective judges undergo a two-year training course facilitated by the Judicial Institute.²³ This course includes training specifically targeting juvenile justice issues and is supported by a specialised manual on the role of lawyers in juvenile justice, which was published jointly in 2008 by the Judicial Institute and the United Nations Office on Drugs and Crime.²⁴ The Judicial Institute also administers in-service training to judges which includes juvenile justice issues. The higher profile that juvenile justice issues have enjoyed as a collateral benefit of the reforms targeted in that area has increased judges' willingness to work for longer periods of time in the juvenile jurisdiction, rather than seeking to move on at the 'earliest opportunity'.²⁵

However, there is a lack of dedicated juvenile courts. Currently, there are three Magistrates Courts, situated in Amman, Irbid and Zarqa, which have jurisdiction over children's cases. However, only the Amman Conciliation Court deals with juvenile matters exclusively and is presided over by a specialist juvenile judge. Children in conflict with the law from areas outside the territorial jurisdiction of the three Conciliation Courts appear before First Instance Courts of general (adult) jurisdiction, as do all children accused of participating in criminal activities with adult co-defendants or accused of offences punishable by more than seven years imprisonment. 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.

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

Children in conflict with the law are supposed to benefit from the support of probation officers, who are available at police stations and courts in order to provide assistance to children and their families. They are social workers, and are also tasked with preparing background reports about a child's social, familial, educational and economic circumstances in order to inform the judge's response to the child's alleged act. However, this mechanism is undermined by the lack of training and human resourcing underpinning the probation officers role: in 2007 there were 82 probation officer 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.²⁶

Provision of legal assistance during court proceedings

²³ United States Agency for International Development, *Future Directions of Jordan's Judicial Upgrade*, p 2, available online at http://pdf.usaid.gov/pdf_docs/PDACM078.pdf (accessed 23 October 2012).

²⁴ Interagency Panel on Juvenile Justice, *Resources and Training*, available online at <http://www.ipjj.org/> (accessed 23 October 2012).

²⁵ Willie McCarney and Widad Adas, *Terminal Evaluation Report: Strengthening the legislative and institutional capacity of the juvenile justice system in Jordan*, 2007, available from <http://www.unodc.org/documents/evaluation/ProjEvals-2007/ProjEval-2007-8.pdf> (accessed 23 October 2012).

²⁶ Terre des Hommes - Lausanne in Jordan, *Assessment of the Juvenile Justice System in Jordan*, 2010, p39, cited in Save the Children Sweden, *Country Profile of Jordan*, 2011, available at: <http://www.ibcr.org/editor/assets/Jordan%20Country%20Profile.pdf> (accessed 23 October 2012).

Not all children in conflict with the law are provided with legal assistance free of charge. Currently, only defendants (of any age) charged with offences that may be punishable by the death penalty are entitled to publicly-funded legal assistance. The current Juvenile Act does not address this and includes no requirement that children be provided with legal assistance if they come into contact with the legal system. The law of the Jordanian Bar Association No 1 for the year 1972 and its amendment gives the president of the Association the right to ask any lawyer to provide free service to defend any person who cannot pay the fees of a lawyer and Article 100 stipulates that lawyers are required to provide *pro bono* professional services at least once a year.²⁷

In each of the six juvenile detention centres administered by the Ministry of Social Development, free legal advice and counselling is provided by an NGO (Mizan Human Rights Law Group) pursuant to a Memorandum of Understanding concluded with the Ministry. However, prior to detention, and especially when children come from socio-economically deprived or single-headed households, many children do not benefit from legal advice or representation during their interaction with the legal system. Moreover, the lack of training and experience that many lawyers have in the field of juvenile justice undermines their capacity to effectively protect the interests of juvenile clients.

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 in the investigation phase of the juvenile justice system. 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 Juvenile Act and its amendments.

RECOMMENDATIONS FOR COURTS

- More juvenile courts that can hear children's cases on a priority basis should be created.
- 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.
- Policy and regulations should be developed that require the presence of legal assistance during court proceedings.
- 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.

²⁷ National Centre for Human Rights & UNODC, *Fourth periodical report concerning the juveniles justice in the Kingdom for 2007*, Framework of the Juveniles Law Amending Committee (2006-2007).

Prevention measures in pre-trial detention facilities

Separation from adults in pre-trial detention

The Juvenile 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. This promotes their social reintegration by preventing them from associating with adult offenders and thereby protecting them from possible abuse and exploitation.

Regular visits by parents/guardians/family members and others

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.²⁸ 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.

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'. Training for the directors and staff of juvenile detention centres on child protection issues has been implemented following a partnership between PRI and the Ministry of Social Development. 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.

Provision of health care

Each detention centre is visited on a weekly basis by a medical doctor from a nearby public hospital and collaborates with nearby public hospitals for emergencies.

RECOMMENDATIONS TO PREVENT VIOLENCE DURING PRE-TRIAL DETENTION

- Implementation of the Juvenile Justice Reform Programme should be expedited.
- Specific regulations must be drawn up and implemented concerning the use of disciplinary measures in all detention facilities where children are held. This 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. These regulations must be known about by children and staff.
- 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, as well as to report immediately any concerns, suspicions or disclosures of violence

²⁸ Juveniles Act of 2002, Article 27.

against children to the appropriate authorities.

→ Establish a clear child protection policy with step-by-step procedures on how allegations and disclosures of violence are to be handled by institutions.

Independent monitoring of police and pre-trial detention facilities

According to the UN Rules for the Protection of Juveniles Deprived of their Liberty, duly constituted authorities independent from the institution should undertake inspections on a regular basis, with unannounced inspections on their own initiative. Such inspections can play an important role in preventing violence as well as providing avenues for children to bring violence to the authority's attention.

Relevant international and regional human rights instruments ratified and cooperation with UN special procedures

Jordan has ratified the ICCPR and the CAT. Jordan has also ratified the Arab Charter of Human Rights (2008). Jordan has ratified the CRC and, in 2006, the CRC was published in the Official Gazette giving it the status of national law, meaning any plaintiff or judge may use it in national courts. However, Jordan has not ratified OPCAT and does not allow for communications to be sent to the Committee against Torture. It cooperates well with UN Special Procedures and has only one outstanding request for a visit from the UN Special Rapporteur on violence against women dating from 2007.²⁹ The Special Rapporteur on torture visited Jordan from 25 to 29 June 2006.

System guaranteeing regular independent inspection of places of detention

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

i. Judicial monitoring

The Attorney-General has the overall mandate to oversee prisons and detention centres³⁰ as well as to ensure that courts and tribunals are implementing the law correctly. In addition, court judges are obliged to visit facilities where children are held 'at least once every three months'.³¹ Their findings are not made public. In July 2009, parliament passed an amendment enabling all Ministry of Justice personnel to visit detention centres at any time.

ii. Ministry of Social Development – Directorate of Social Defence

²⁹ http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/JO/A_HRC_WG6_4_JOR_2_E.PDF

³⁰ Section 1, Article 16 of the Jordanian Code of Criminal Procedure and its amendments No. 9, 1961 states that: 'The Attorney-General shall watch the course of justice and oversee prisons and detention centers in the implementation of laws. He also represents the executive power at the courts and tribunals, then contacts the respective authorities directly'.

³¹ According to item IV of Article 36 of the Juvenile Act, 'the court judge must visit any of these homes indicated in this Law – the Juvenile Law - at least once every three months'.

Administrative staff at the Directorate of Social Defence (which sits within the Ministry of Social Development) have the right to inspect facilities where children are held³² and to investigate administrative, financial, technical, and legal issues. Furthermore, staff of the Services Improvement and Operations Management at the Directorate of Institutional Development are entitled to conduct surveys on services given to accused and convicted juveniles, and for those who have received exit permits, during the period of detention at the juvenile homes, and to assess services of the juveniles' rehabilitation centres. Reports are sent to line managers but there is a lack of proper follow-up on recommendations.

iii. National Centre for Human Rights (NCHR)

The NCHR was established in 2002 and became operational in 2003. It currently has an 'A' accreditation from the International Coordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights, meaning it is in full compliance with the Paris Principles.³³ The NCHR has a specific mandate to 'visit the reform and rehabilitation centers, detention centers and shelters for juveniles in accordance with followed procedures'³⁴ and began this work in 2004 visiting centres without giving prior notice to the Ministry of Social Development. The NCHR has a specialised 'Women and Child Unit' within its structure to focus on monitoring of conditions of detention centres for children, whilst a Criminal Justice Unit monitors the situation of prisons more generally. It also follows up on complaints, compiles reports and submits recommendations about addressing challenges as well as identifying good practice.³⁵ It does not however have access to police stations. Reports of the visits are submitted in the first instance to the Director of the NCHR and subsequently submitted to the Prime Minister who in turn transmits it to relevant ministries requesting implementation of recommendations. Between 2005 and 2010, a total of seven reports on conditions of children in detention were prepared using the following methodology³⁶:

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

³² Applying the administrative decision No. 1 for the year 2010, issued by the Minister of Social Development, and under reference No. NS / 9449 dated 21.06.2010, regarding the restructuring of the central administrative units at the Ministry of Social Development.

³³ The NCHR was last reviewed in October 2010.

http://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf (accessed 23 October 2012).

³⁴ Code of the National Center for Human Rights No. 51 of 2006

³⁵ http://www2.ohchr.org/english/bodies/cat/docs/ngos/Jordanian_National_Centre_HR.pdf (accessed 23 October 2012).

³⁶ The text of the following NCHR reports was reviewed by a PRI consultant Dr Fawaz Ratrouf: *First periodic report of the status of juvenile institutions of social defence in Jordan*, 2005; *Second periodic report of the status of juveniles' institutions of social defence in Jordan*, 2006; *Third periodic report of the situation of children detained in Jordan, according to national legislation and international standards*, 2007; *Fourth periodic report on juvenile offenders and juvenile justice in the Kingdom*, 2008; *Fifth periodic report of juvenile offenders and children at risk from penal treatment*, 2009; and the *Seventh Periodic Report on Conditions at Reform and Rehabilitation Centers and Temporary Detention Centers In the Hashemite Kingdom of Jordan For the period from 1/1/2009 until 30/6/2010*.

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

RECOMMENDATIONS TO ENSURE INDEPENDENT MONITORING

- 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 Jordan take steps to sign and ratify the OPCAT.

Measures to ensure accountability

Under international human rights law, Jordan is 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.

In the first instance there should be clear and well-understood avenues for children to make complaints of ill-treatment whilst in detention. The NCHR is mandated to receive complaints sent by email, through the NCHR hotline, or reported in person in the course of visiting a detention facility. A complainant may also submit a complaint to the Ombudsperson's Bureau. On receipt of a complaint, the NCHR gathers information, prepares a summary, and reports to the Public Security Directorate with recommendations which might, for example, include referring a perpetrator of torture or inhuman treatment to the Police Court. The NCHR will follow up on the implementation of these recommendations. The NCHR tries to make detainees aware of this independent complaints mechanism through distribution of pamphlets and through information sharing during visits to detention facilities.

In 2008, the NCHR received more than 100 complaints directly from detained children on violations committed against them (compared to 87 complaints in 2007). Thirty-seven of these were allegations of torture against Criminal Investigation Department personnel; 21 complaints related to the right to receive family care; 22 related to delay in litigation procedures; 11 to the right to education; seven complaints related to the right to legal assistance; and five related to the right not to be subjected to inhumane treatment.³⁷

³⁷ National Centre for Human Rights, *Fifth Report*, 2008, para 30.
http://www.carim.org/public/polsocxtxts/PO3JOR1123_945.pdf (accessed 23 October 2012).

However, 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.'³⁸

The relevant provision in the domestic Penal Code which criminalises torture, Article 208, was amended in December 2007 in order to bring it in line with the definition in the CAT. The amendment redefined the statute to include psychological torture and broadened its applicability to all public officials, as recommended by the UN Special Rapporteur on Torture in his January 2007 report. The penalties foreseen, however, are not commensurate with the gravity of torture (six months to three years imprisonment). No official has been prosecuted under Article 208 to date.

In principle, children should have access to civil and criminal remedy procedures should an assault take place. Furthermore, in November 2009 the Council of Ministers passed amendments placing stiffer disciplinary measures, including salary deductions and termination, on public officials who used corporal punishment on children, including those in juvenile centres; however, this is rarely used in practice.

RECOMMENDATIONS TO COUNTER IMPUNITY

- Deliver a firm message of 'zero tolerance' of ill-treatment, including through ongoing 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.
- It is recommended that an independent body for receiving and processing complaints by children in detention be established in order for any instances of abuse, ill-treatment or torture to be properly reported and followed-up.

³⁸ ICCPR, *Concluding Observations of the Human Rights Committee*, CCPR/C/JOR/CO/4, 2010, para 9.

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 three 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?³⁹

15. Other relevant information

³⁹ UNODC and UNICEF, *Manual for the measurement of juvenile justice indicators*, United Nations: New York, 2007; and also indicators outlined in Detrick S, Abel G, Berger M, Delon, A and Meek R, *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, 2008.

- 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?